

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

ANTHONY ROSALES	COPP-2024-CFP-009
v.	DISMISSAL
MELISSA SMITH	ATTRIBUTION DISMISSAL

COMPLAINT

On April 21, 2024, Anthony Rosales of Great Falls, MT, filed the above-named campaign practices complaint against Melissa Smith, also of Great Falls. The complaint alleged that the “Melissa Smith for a Thriving Montana” (Melissa Smith) Facebook page ran paid advertisements promoting Great Falls school board candidate Marlee Sunchild and did not include the required “paid for by” attribution statement. Mr. Rosales also alleges that the website, gfvote.com (which is linked on the Melissa Smith Facebook page) supports Marlee Sunchild’s candidacy and also “lacks any attribution that may be required by COPP.” Finally, the complaint suggests that Marlee Sunchild’s “CERS entries lack any financial reporting.”

ISSUES

“Paid for by” attribution requirements, Mont. Code Ann. (MCA) § 13-35-225 (2023), and campaign finance reporting requirements, specifically as applied to local candidates, MCA § 13-37-225 and Admin. R of MT. 44.11.304 (2023).

FINDING OF FACTS

The facts necessary for a determination in this matter are as follows:

Finding of Fact No. 1: On January 23, 2024, Marlee Sunchild filed a C-1A Statement of Candidate as a candidate for election to a School Trustee position in Great Falls with COPP. On this Statement of Candidate, candidate Sunchild certified that campaign contributions and expenditures would be less than \$500.00. (Commissioner’s Records).

Finding of Fact No. 2: COPP review of the Melissa Smith Facebook page determined that the page has, to date, run three (3) distinct paid advertisements supporting candidate Sunchild: one active between April 4 and April 11 but currently inactive, at an amount spent of less than \$100.00 that does not include any “paid for by” attribution statement; one active between April 19 and May 2, but currently inactive, at an amount spent of less than \$100.00 that does not include any “paid for by” attribution statement; and a final one active as of May 2, at an amount spent of less than \$100.00, with an attribution statement of “Paid for by Elaine Schoyen, 2860 Meadow Dr., Bozeman, MT 59715.” (Commissioner’s Records).

Finding of Fact No. 2A: COPP review of the gfvote.com website determined that, while mentioning all Great Falls school trustee, Cascade County commission, and legislative candidates in and around Cascade County by name, no “paid for by” attribution message was included. Telephone information for an individual named Pete Fontana is included on the website, providing the impression that he is the website’s administrator or otherwise directly runs it.

Finding of Fact No. 3: On April 24, 2024, COPP received the original signed and notarized copy of this complaint from complainant Rosales. In reviewing the complaint, Commissioner Gallus determined it was merited, as certain paid Facebook advertisements run by the Melissa Smith Facebook page did not contain the required ‘paid for by’ attribution message. (Commissioner’s Records).

Finding of Fact No. 4: On the morning of April 30, 2024, COPP contacted the Melissa Smith Facebook page at its listed email, MelissaSmith4HD23@gmail.com, to notify it that a merited attribution complaint had been received. This correspondence also stated, “You will need to add the full “paid for by” attribution statement to all unattributed paid advertisements and provide photographic notice to COPP showing this addition has been made” within 2 business days. (Commissioner’s Records).

Finding of Fact No. 5: On the morning of May 2, 2024, COPP sent follow-up correspondence to the Melissa Smith Facebook page, again notifying the page of this formal complaint and Montana’s “Paid for by” attribution requirements. (Commissioner’s Records).

Finding of Fact No. 6: On May 2, 2024, David Saslav, spouse of Melissa Smith (the operator of the Melissa Smith Facebook page), contacted COPP via telephone to discuss this complaint. He indicated that the Facebook ads referenced in this complaint were financed independently of candidate Sunchild, and that each would be attributed or removed from circulation as appropriate.

Mr. Saslav called again later that afternoon, and during this conversation again stated that the ads were financed independently of candidate Sunchild. He also stated during this call that he is not a page administrator for, or otherwise directly involved in the operation of, the gfvote.com website.

Finding of Fact No. 7: On the afternoon of May 2, 2024, David Saslav provided, via email, the Melissa Smith Facebook page’s formal written response to this complaint. The response indicated that each ad had been amended to include an attribution message of “Paid for by: Elaine Schoyen, 2860 Spring Meadow Blvd., Bozeman MT 59715” and included pictures showing this attribution message added. The response indicated that “In the aggregate, less than \$200 has been spent on Facebook ads.”

As to the gfvote.com website, Mr. Saslav states that “all hyperlinks to candidate material have been removed as of this date.”

DISCUSSION

Attribution

Melissa Smith for a Thriving Montana Facebook page

Under Montana law “all election communications, electioneering communications, and independent expenditures must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication.” (MCA) § 13-35-225(1). This complaint references several election communications supporting Great Falls school trustee candidate Marlee Sunchild, posted on the Melissa Smith Facebook page, that allegedly failed to include the attribution statement required by Montana election law. COPP reviewed the complaint and determined the allegation to be merited.

In reviewing the matter, COPP determined that the Melissa Smith Facebook page has financed three (3) election communications supporting candidate Sunchild requiring attribution: paid Facebook advertisements which were run April 4-11 and April 19-May 2, 2024, both of which failed to include a “paid for by” attribution statement but are currently inactive, and one beginning May 2, that is currently active with an attribution message of “paid for by Elaine Schoyen, 2860 Spring Meadow Dr., Bozeman MT 59715” (FOF, 2).

Montana law requires an accelerated review (“as soon as practicable”) of a campaign practice complaint alleging an attribution violation. In this matter, COPP staff contacted the Melissa Smith Facebook page “as soon as practicable” to provide notification of the attribution deficiency. (FOF, 4). Without receiving an immediate response, COPP again contacted the page on May 2, 2024. (FOF, 5). Later that same day, David Saslav contacted COPP on behalf of the Melissa Smith Facebook page. Mr. Saslav indicated that a private individual, Elaine Schoyen of Bozeman, financed the advertisements, provided COPP with the relevant “paid for by” attribution statement for each, and deactivated the non-attributed ad that was at the time still active. (FOF, 2, 6, 7).

The law governing complaints of failure to properly attribute political communications provides precise directions to the Commissioner:

1. The Commissioner is to immediately assess the merits of the attribution complaint. MCA § 13-35-225(5). The Commissioner found merit to the attribution complaint and hereby memorializes that finding.
2. The Commissioner shall notify the individual of the merit finding, requiring the individual to bring the material into compliance. MCA § 13-35-225(6)(a). In this matter COPP was able to notify the Melissa Smith Facebook page of the attribution deficiency via email correspondence on April 30, and May 2, 2024, and telephone conversations on May 2, 2024.
3. The candidate or political committee financing the material is provided 2 business days to bring the material into attribution compliance. MCA § 13-35-225(6)(a)(i). In this matter, COPP first determined that an individual, Elaine Schoyen of

Bozeman, individually financed the ads. The Melissa Smith for a Thriving Montana Facebook page appropriately brought the ad into compliance by deactivating the unattributed version and providing COPP with the relevant “paid for by” attribution statement. (FOF, 5, 6).

Under Montana law, the candidate or political committee with an attribution deficiency is relieved of a campaign practice violation, provided they promptly carry out the attribution correction. In this case, the Melissa Smith Facebook page and, by extension, Elaine Schoyen, have met these duties by providing COPP the relevant attribution statement for all current advertising and inactivating all unattributed advertisements. The parties are therefore relieved of a campaign practice violation under MCA § 13-35-225(6).

COPP has no reason to doubt the veracity of the Melissa Smith for a Thriving Montana Facebook page’s assertion that the advertisements in question were financed by Elaine Schoyen of Bozeman. Being financed by an individual, no additional disclosure for this activity is required under Montana law.

Gfvote.com website

Next, the complainant alleges that the website, gfvote.com, which is linked on the Melissa Smith Facebook page, provides a hyperlink to additional information regarding Ms. Sunchild, but to no other candidates, “suggesting a biased reporting for one specific candidate,” and is also lacking “any attribution that may be required by COPP.” *Complaint*, 3.

Gfvote.com is not a respondent named in this complaint and therefore COPP may only consider the actions of gfvotes.org as they involve Melissa Smith. In this matter, Melissa Smith has stated that it does not serve as the website administrator, nor is otherwise directly involved in administering or financing the gfvote.com website. (FOF, 7). COPP’s review of the website determined that individual Pete Fontana is the site administrator. Furthermore, there are currently no links to additional candidate information provided on the website. If there were, and if this did indeed indicate “biased reporting,” I am not provided jurisdiction as the Commissioner of Political Practices to investigate such a complaint. Consequently, any allegations pertaining to gfvote.com referenced in this complaint are hereby dismissed.

COPP did review the website and determined that it mentions, by name, all candidates for local (school/county) and legislative offices in and immediately surrounding Great Falls, but as the complainant asserts, it does not itself include a “paid for by” attribution message (FOF, 2A). Because gfvote.com does not support or oppose a candidate, but rather lists all local and legislative candidates in and around Great Falls by name, was edited within 60 days of the initiation of voting, and is a “paid communication that is publicly distributed by...internet website,” it likely meets the definition of an electioneering communication under Montana election law and therefore requires the inclusion of “paid for by” attribution. MCA §§ 13-1-101(19)(a), 13-35-225. COPP will contact Pete Fontana, the site administrator for gfvote.com and, if necessary, work with him to bring the website into compliance.

Local candidate reporting and disclosure

The complainant in this matter also alleges that candidate Marlee Sunchild “may” have failed to file campaign finance reports with COPP as required. Specifically, it argues that such requirements are triggered “if there has been >\$450 from a single source as a contribution to Sunchild’s campaign.” Complaint, 3.

In making this allegation, the complainant misstates Montana election law. First, while \$450.00 is the maximum allowable contribution that candidate Sunchild could accept from an individual contributor, it is not the threshold at which financial reporting and disclosure is required. ARM 44.11.227(c). Candidates for local office, such as a school trustee position, are exempted from filing campaign finance reports with COPP if contributions received and expenditures made are both less than \$500.00. MCA § 13-37-226(5) and ARM 44.11.304 (*emphasis added*). Candidate Sunchild, when filing with COPP, certified that contributions and expenditures would be less than \$500.00, and the complainant has provided no evidence that Ms. Sunchild has exceeded that limit. (FOF 1). Second, COPP accepts the explanation provided by the Melissa Smith Facebook page that the advertisements in question are independent expenditures and were in no way coordinated with the Sunchild campaign.¹ (FOF, 6).

As a candidate spending less than \$500.00, Ms. Sunchild is exempted from filing financial reports with COPP. Furthermore, the paid advertisements on the Melissa Smith Facebook page were independent expenditures and as such, even if they exceeded the \$500.00 threshold, Ms. Sunchild is under no obligation to report them as contributions received. ARM 44.11.502(6)(c).

CONCLUSION

All attribution requirements as to the Melissa Smith for a Thriving Montana Facebook page have now been met in accordance with Montana law and COPP policy. All other allegations against Melissa Smith and Candidate Sunchild have been considered as addressed above and are hereby dismissed in full.

DATED this 19th day of June, 2024.



Chris J. Gallus
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¹ MCA §13-1-101(28) "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.