

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	SUMMARY OF FACTS
Against On Time Taxpayers,)	AND
A Political Committee)	STATEMENT OF FINDINGS

M. Dean Jellison filed a complaint alleging that On Time Taxpayers (OTT), a political committee, violated certain Montana campaign finance and practices laws and rules. The complaint sets forth five separate claims.

CLAIM I

The complaint alleges OTT violated Montana Code Annotated § 13-37-205 when it filed a statement of organization that did not designate a primary campaign depository.

CLAIM II

The complaint alleges OTT violated Administrative Rules of Montana 44.10.405(1)(f) by filing a statement of organization that did not include the name, office sought, and party affiliation of a candidate the political committee opposed.

CLAIM III

The complaint alleges OTT violated Montana Code Annotated § 13-37-131 when it paid for campaign ads that misrepresented matters that were relevant to the campaign.

CLAIM IV

The complaint alleges OTT violated Montana Code Annotated § 13-35-225 when it paid for campaign ads that did not include the address of OTT's treasurer.

CLAIM V

The complaint alleges OTT violated Montana Code Annotated §§ 13-37-225 and 13-37-226 by failing to file reports of contributions and expenditures.

SUMMARY OF FACTS

1. Dale Williams was an incumbent Flathead County Commissioner in 2002. He ran unsuccessfully in the June 4, 2002 primary election in Flathead County, losing the nomination to another Republican candidate for county commissioner.

2. On February 16, 2000, the State of Montana filed a criminal complaint in the Justice Court of Flathead County charging Dale Williams with one count of Unlawful Restraint and two counts of Assault, all misdemeanors. The local Justice of the Peace declined to hear the case, and Sanders County Justice of the Peace Robert L. Beitz was called in to preside over the matter. In addition, Flathead County hired County Prosecution Services, a bureau in the State of Montana Attorney General's Office, to prosecute the criminal charges filed against Williams. On July 28, 2000, the State of Montana filed an amended complaint charging Williams with two counts of Disorderly Conduct, both misdemeanors. On the same date, Williams pleaded *nolo contendere*¹ to the charges. The sentence included fines of \$100 for each offense and a \$30 surcharge for each offense.

3. On February 13, 2002, the Daily Interlake, a Kalispell newspaper, published an article reporting that Dale Williams paid his property taxes more than three years after the taxes were due. Williams was quoted in the article as stating that his failure to pay the taxes on time was part of a "tax investment strategy." The article also quoted him as follows: "When you're making 15 percent on your money, it doesn't make sense to pull it out." According to the article Williams paid more than \$6,000 in back taxes, penalties, and interest shortly after being contacted by the Daily Interlake prior to publication of the article. County tax records confirm that Williams' property taxes, which were originally due on November 30, 1998, were paid on February 12, 2002.

¹ *Nolo contendere* is a plea to a criminal charge in which the defendant does not contest the charge. The effect is the same as a guilty plea -- it results in a conviction. See Montana Code Annotated §§ 45-2-101(43) and 46-1-202(7).

4. After reading the article in the Daily Interlake regarding Williams' property tax issues, Robert Kieser, Alex Hilton, and Eve Dixon decided to form a political committee to oppose any candidate who did not pay his or her taxes on time. The name of the committee, "On Time Taxpayers," was the result of the publicity surrounding Dale Williams and his failure to pay his property taxes on time. At the time OTT was formed, the only candidate the committee members were aware of who had not paid his taxes on time was Williams.

5. OTT filed a C-2 form with the office of the Commissioner of Political Practices (Commissioner) on May 2, 2002. A C-2 is a statement of organization form for political committees. The C-2 reported OTT's mailing address as: "P.O. Box 575," in Kalispell. The C-2 listed Robert Kieser as the committee treasurer along with Kieser's home address. Kieser stated that, when he first filed the C-2, OTT did not have a federal identification number, and the bank where he intended to open an account for the committee would not let him do so until he obtained a federal identification number. Kieser telephoned the Commissioner's office and was told by an employee of that office that he only needed to provide the name of the bank in which the account would be opened. Kieser told the employee of the Commissioner's office that the Glacier Bank in Kalispell would be the depository bank for OTT. The C-2 filed in the Commissioner's office lists "Glacier Bank, Kalispell, Montana" under the "committee account information" section of the form. This information was added to the form filed by OTT by the employee of the Commissioner's office based on her telephone conversation with Kieser.

6. Subsequently, OTT filed an amended C-2 with Commissioner's office and with the Flathead County election administrator's office on May 7, 2002. The amended C-2 on file in the Commissioner's office lists "Glacier Bank, Kalispell, Montana" under the "committee account information" section of the form. The C-2 filed with the Flathead County election administrator's office does not list the name of OTT's depository.

7. Both of the C-2 forms filed by OTT provide the following in the “purpose of committee” section of the form: “To examine tax investment strategies in the Flathead valley.” In the section of the form provided, neither of these two C-2 forms lists the names of any candidates or ballot issues supported or opposed by OTT.

8. Kieser, Hilton, and Dixon all stated that the omission from the C-2 filed by OTT of a statement that OTT opposed candidate Dale Williams was an oversight. The intent, as noted in Fact 4, was to oppose any candidate who did not pay his or her taxes on time, including Williams. The committee neglected, however, to indicate on the C-2 that it opposed the candidacy of Williams.

9. OTT paid for newspaper and radio ads opposing the candidacy of Dale Williams. The newspaper ads included a photo of Dale Williams with the following text superimposed over the photo:

Cost of Dale Williams appearing in court on 2 charges of disorderly conduct: \$2,000

Dale Williams’ delinquent property taxes used for his personal gain the last three years: \$6,000

Value of decent conduct in the Commissioner’s office: PRICELESS!

DALE WILLIAMS IS Wrong for Flathead County

Vote for a Republican You Can Trust

Paid for by On Time Taxpayers, Box 575, Kalispell, Bob Kieser - Treasurer

10. The radio ad financed by OTT contained the following script:

Boy, Dale Williams sure has been telling you a lot of reasons to vote for him, but like a typical politician, he won’t tell you the whole truth. The truth is, when Dale Williams was called before a judge and fined twice for disorderly conduct, it cost us over \$2,000, and Dale Williams didn’t pay his property taxes for three years in order to pad his own pocket. Responsible people pay their taxes on time. So vote for a responsible Republican you can trust. Paid for by On Time Taxpayers, Bob Kieser, Treasurer.

11. The complaint alleges that the ads intentionally misrepresent the facts surrounding the criminal convictions of Dale Williams. M. Dean Jellison, the complainant, contends that the criminal proceedings involving Williams did not cost the taxpayers any money. Alex Hilton wrote both ads. He said he came up with the \$2,000 figure by taking into account the amount paid by Flathead County to the State of Montana for prosecution services, the amount paid to a Sanders County Justice of the Peace, and the additional value of county employee time spent working on the case. Hilton also factored in administrative costs related to filing of the charges and court time for the hearings related to the charges. Hilton believes that when all the direct and incidental costs are added together, his \$2,000 figure is “conservative.”

12. As noted in Fact 2, Flathead County hired County Prosecution Services, a bureau in the Montana Attorney General’s office, to prosecute the criminal charges against Dale Williams. Records on file with the Montana Department of Justice disclose that Flathead County paid the Department of Justice \$1,000 for the work performed by County Prosecution Services.

13. Sanders County Justice of the Peace Robert L. Beitz was paid mileage expenses of \$69.55 on March 30, 2000, and \$68.25 on July 28, 2000, for his travel to Flathead County to preside over the criminal charges against Williams. Judge Beitz was also required to be absent from his normal duties as Sanders County Justice of the Peace on those two days.

14. The amount of time devoted to the Williams case by Flathead County employees and the value of that time is undeterminable.

15. OTT filed a form C-6 with the Commissioner’s office on June 21, 2002. A form C-6 is a “political committee finance report” used by political committees to report campaign contributions and expenditures. The June 21, 2002 C-6 reports contributions and expenditures for the period May 15 through June 20, 2002. Records provided by OTT establish that the political committee made its first expenditure on May 23, 2002,

and that it did not incur any debts or obligations prior to May 23, 2002. The office of the Flathead County election administrator has no record of a C-6 being filed by OTT in that office.

STATEMENT OF FINDINGS

CLAIM I

The complaint alleges OTT violated Montana Code Annotated § 13-37-205 when it filed a C-2 (statement of organization) that did not identify a depository bank for the committee. Montana Code Annotated § 13-37-201 requires a political committee to file a statement of organization (referred to in the statute as a “certification”) with the Commissioner’s office and with the Flathead County election administrator. See Montana Code Annotated § 13-37-225(1). The election administrator is typically the county clerk and recorder. Montana Code Annotated § 13-1-101(8). Montana Code Annotated § 13-37-205 requires a political committee to designate a primary campaign depository for the purpose of depositing contributions and disbursing expenditures. Administrative Rules of Montana 44.10.405(1)(c) requires the campaign depository to be listed on the C-2.

As described in Facts 5 and 6, the information that Glacier Bank in Kalispell was to be the campaign depository was provided to the Commissioner’s office after the first C-2 was filed, and a subsequent C-2 filed with the Commissioner’s office five days later listed Glacier Bank in Kalispell as OTT’s depository. The C-2 filed with the Flathead County election administrator’s office, however, did not list OTT’s depository. The failure to include the campaign depository information on the C-2 filed with the county election administrator violates Montana Code Annotated § 13-37-205 and ARM 44.10.405(1)(c).

CLAIM II

The complaint alleges that OTT violated Administrative Rules of Montana 44.10.405 because the C-2 filed by the committee did not indicate it was opposing

candidate Dale Williams. Administrative Rules of Montana 44.10.405(1)(f) requires a C-2 filed by a political committee to include: “[t]he name, office sought, and party affiliation (if any) of each candidate whom a committee is supporting or opposing; if a committee is supporting the entire ticket of any party, the name of the party.” As reflected in Facts 4 and 8, OTT’s intent when it organized was to oppose any candidate who did not pay his or her taxes on time, including Dale Williams. OTT claims that the omission of the information was an oversight. While that contention is plausible, nevertheless the rule clearly requires the information to be included on the C-2. OTT’s failure to provide the information that it was opposing candidate Dale Williams constitutes a violation of Administrative Rules of Montana 44.10.405(1)(f).

CLAIM III

The complaint alleges that OTT’s radio and newspaper ads violated Montana Code Annotated § 13-37-131(1), which provides:

It is unlawful for a person to misrepresent a candidate’s public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

The complainant contends the assertion in the ads that the criminal proceedings involving Dale Williams cost the taxpayers \$2,000 is “a deliberate falsehood,” since there was no cost to the taxpayers. As set forth in Fact 12, however, Flathead County paid \$1,000 to County Prosecution Services in the Montana Attorney General’s office to prosecute the charges against Williams. In addition, Flathead County paid a Justice of the Peace from another county \$137.80 for his travel expenses related to the case (Fact 13). There were also undoubtedly incidental expenses related to the prosecution of these criminal proceedings, including county employee time for administrative support, clerical expenses, etc.

Montana Code Annotated § 13-37-131(1) requires evidence of a knowing misrepresentation, or at least of a demonstrably false statement made with reckless

disregard of whether the statement is true or false. The evidence in this case shows that Alex Hilton determined a \$2,000 estimate of costs related to the prosecution of Williams based on his assessment of the various expenses incurred by Flathead County, both direct and indirect. While the \$2,000 figure may not be verifiable with mathematical precision, there is insufficient evidence that Hilton's and OTT's \$2,000 estimate is demonstrably false or that Hilton or OTT made the statement with reckless disregard as to whether it is true or false.

CLAIM IV

The complaint alleges that OTT's campaign ads violated Montana Code Annotated § 13-35-225 because the ads did not include the address of OTT's treasurer. Montana Code Annotated § 13-35-225 provides, in relevant part:

Election materials not to be anonymous. (1) Whenever a person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer. Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol. (Emphasis added).

The newspaper ads financed by OTT contain the attribution: "Paid for by On Time Taxpayers, Box 575, Kalispell, Bob Kieser - Treasurer." M. Dean Jellison, the complainant, contends that "Box 575" is the address of the committee, not the address of the treasurer. The C-2 filed by OTT lists "Box 575" as the address of the committee. Past experience in the Commissioner's office has shown that the existing statutory language creates some confusion regarding which particular address must be listed by

a committee -- the mailing address of the committee or the mailing or home address of the treasurer. The Commissioner's interpretation of existing law is that either one is acceptable; therefore, the attribution provided in OTT's newspaper ads do not violate the statute.²

While OTT's radio ads included the name of the committee treasurer, the ads did not include the address of either the committee or the committee treasurer; therefore, the lack of the address in the attribution constitutes a violation of Montana Code Annotated § 13-35-225(1).

CLAIM V

The complaint alleges that OTT failed to file a report of contributions received or expenditures made. As disclosed in Fact 15, OTT filed a C-6 finance report with the Commissioner's office on June 21, 2002, reporting contributions and expenditures for the period from May 15 to June 20, 2002. The election was held on June 4, 2002. (Fact 1). As an independent political committee, OTT would have been required to file a pre-election report twelve days prior to the election only if it made expenditures five or more days prior to the May 23, 2002 filing deadline. See Montana Code Annotated §§ 13-37-226(5)(a) and 13-37-228(1). Thus, had OTT made expenditures on or before May 18, 2002, it would have been required to file a pre-election report by May 23, 2002. As noted in Fact 15, OTT made its first expenditure on May 23, 2002, and incurred no debts or obligations prior to that date; therefore, OTT was not required to file a pre-election report. According to Montana Code Annotated § 13-37-226(5)(b), OTT was required to file its post-election report no later than 20 days after the election, by June 24, 2002. OTT's C-6, filed on June 21, 2002, was timely.

² HB 253, which would amend Montana Code Annotated § 13-35-225 to clarify the attribution requirements, is currently being considered by the Montana Legislature. If passed, it will make it clear that attributions in materials financed by political committees can include either the address of the committee or the committee treasurer.

Montana Code Annotated § 13-37-225(1) requires reports to be filed with the Commissioner “and with the election administrator of the county in which . . . the political committee has its headquarters.” While OTT filed the required report with the Commissioner, failure to file a copy of the report with the Flathead County election administrator constitutes a violation of Montana Code Annotated § 13-37-225(1).

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is sufficient evidence to conclude that On Time Taxpayers and the individual treasurer and committee members of On Time Taxpayers violated Montana’s campaign finance and practices reporting and disclosure laws and rules and that a civil penalty action under Montana Code Annotated § 13-37-128 is warranted.

DATED this _____ day of March, 2003.

Linda L. Vaughey
Commissioner of Political Practices