

Complaint of violation of Montana Campaign Laws
by Terry (TJ) McDermott
2018 Democratic Candidate for Missoula County Sheriff/Coroner

Facts:

On the C5 campaign finance report for the period of 01-04-2018 to 05-01-2018 the TJ McDermott for Sheriff campaign reported an expenditure of \$330.00 for an online banner ad that ran on the Missoulian.com. Although the C5 states 1-day Missoulian on-line ad buy 4/30/2018, the ad actually ran on April 26, 2018. The banner ad invited people to attend his campaign kickoff that evening and when clicked on, the banner linked to www.mcdermott4sheriff.com the official website for the McDermott for Sheriff campaign. **Exhibit A-1** is a photo of the banner ad. There are two images because of the width of the ad.

At the time of this banner advertising, McDermott's campaign website did not have a "Paid For By" attribution nor did it have any identification as to which political party McDermott was a candidate of. McDermott's website was live for several weeks prior to this banner ad appearing on the Missoulian.com and did not have the required "Paid For By" attribution or the political party identifier for at least some of that time. There is not an expenditure listed for this website in McDermott's C5 report for the period of 01-04-18 to 05-01-18. Online web content with a direct link requires some sort of hosting service and, in most cases, these services have fees associated with the creation of the site itself and registering the domain name with the FCC when a direct link is provided. If no fee is charged, an in-kind contribution at the very least should be reported by the McDermott campaign to indicate that such services were received by the campaign at no expense. Most candidates pay reasonable fees associated with the creation and hosting of a website and it is reasonable to assume that McDermott's campaign has also paid for these services without properly reporting the fees associated with these services. During the time the McDermott campaign website has been active, other links soliciting online donations to the campaign have been included on the website. The website is actively seeking donations for the campaign even though no expense for the website has been officially reported as required by law. **Exhibit A-2** is a screen shot of the website www.mcdermott4sheriff.com as it appeared during the time the Missoulian banner ad was actively directing people to the website by clicking the banner link.

In late April 2018 the McDermott campaign began running "boosted-sponsored" posts on Facebook and has continued to do so through at least May 14, 2018. The McDermott campaign has run at least four different boosted or sponsored Facebook posts that did not contain a "Paid For By" attribution even though "boosted" or "sponsored" designations are only added to Facebook advertising that has been paid for to reach a larger audience. One of these three boosted or sponsored posts did not include the identification of a political party. Please see images of these four Facebook posts below: **Exhibits A-3, A-4 A-5, and A-6** are screen shots of four boosted-sponsored posts that did not have a "Paid

For By” attribution. The boosted-sponsored Facebook post appearing in **Exhibit A-4** also does not identify any political party.

Also in late April 2018 large signs (approximately 12-15 square feet) and small signs (approximately 5-6 square feet) promoting the McDermott campaign began appearing all around Missoula County. Most, if not all of these signs, appear to be signs from McDermott’s 2014 campaign as the signs have been altered to add a small “Re-Elect” sticker attached to each sign just above TJ in the star. **Exhibits A-7 and A-7(2)** are photos of the signs.

The McDermott campaign’s C5 filing for the period of 01-04-2018 to 05-01-2018 does not list any expenditure or debt for campaign signs, any expense or debt for a PO Box, any expense or debt for a website, or any expense or debt for website hosting. **Exhibit A-10** is a screen shot of the debts listed on the C5 for the period of 01-04-2018 to 05-01-2018 and **Exhibit A-11** is a screen shot of the expenditures listed on the C5 for the period of 01-04-2018 to 05-01-2018.

McDermott’s 2018 C1A form posted on the Montana Commissioner of Political Practices website lists McDermott’s Candidate Committee Name as “Committee To Re-Elect TJ McDermott For Sheriff.” A copy of the C1A report is labeled **Exhibit A-8**. The signs posted throughout Missoula County have a “Paid For By” attribution of “The Committee to Elect TJ McDermott For Sheriff” which is inaccurate as his 2018 registered campaign name is “The Committee to Re-Elect TJ McDermott for Sheriff.” There is some sort of white sticker pasted over part of the bottom of the sign with writing on it, but the writing is too small to read, even at close range. **Exhibit A-9** is a close up photo of the bottom of the sign.

Since the signs currently posted around Missoula County appear to be campaign signs from the 2014 election, the 2018 campaign was required to list the fair market value of the signs as an “In-Kind” donation from the prior campaign. That In-Kind” donation from the 2014 campaign is not listed on the C5 representing the period of 01-04-2018. The C5 document dated 05-22-14 from McDermott’s 2014 campaign lists an expense of \$11,105.00 for large and small yard signs and campaign cards paid to Westridge Creative. **Exhibit A-12** is a screen shot of the sign expenses from the 2014 McDermott C5 campaign report dated 5-22-14.

The McDermott campaign C5 filing for the period of 01-04-2018 to 05-01-2018 lists a debt to Westridge Creative in the amount of \$140 for 200 stickers to update signs and a debt to Westridge Creative in the amount of \$3,360 for Proj Mgt. See **Exhibit A-10**.

Applicable Montana Campaign Laws, Rules and Decisions

MCA 13-35-225 requires all election communications, electioneering communications, and independent expenditures to clearly and conspicuously include the attribution “paid for by” followed by the name and address of the person or entity that financed the

expenditure for the communication. This statute also includes communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf to state the candidate's party affiliation or include the party symbol. **MCA 13-1-101 (17) (a)** defines an expenditure as a "Purchase, payment, distribution, loan advance, promise, pledge, or gift of money or anything of value made by a candidate or political committee to support or oppose a candidate or ballot issue."

ARM 44-11-403 requires candidates and political committees to report In-Kind contributions and to describe what was received and the value reported shall be the fair market value of the contribution at the time of the contribution.

MCA 13-37-229 (b) requires reports of expenditures made to a consultant, advertising agency, polling firm etc. to be itemized and described in sufficient detail to disclose the specific services performed.

The Accounting and Reporting Manual for Candidates and Treasurers published by the Montana Commissioner of Political Practices states In-Kind contributions must be accounted for and reported in the same manner as other contributions. The term "In-Kind Contribution" means the furnishing of services, property or rights without charge or at a charge that is less than fair market value to a candidate or political committee for the purpose of supporting or opposing any candidate, ballot issue or political committee.

Bennett versus Vent Missoula On October 25, 2017 Missoula resident and legislator Bryce Bennett filed a campaign complaint against the Facebook page Vent Missoula for failure to disclose itself as an incidental committee and for failure to disclose expenditures. The complaint said that Vent Missoula "boosted" and "sponsored" posts involved in the local Missoula municipal election. The complaint contended that Vent Missoula should be required to properly attribute all election and electioneering material.

In his decision on this complaint, Montana Commissioner of Political Practices Jeffrey A. Mangan stated that unpaid postings of political content on social media such as Facebook, Twitter and Youtube is currently allowed under Montana Political Campaign Finance Law. When an individual chooses to pay for, by "boosting" or "promoting" that same political content, it is then advertised and made available to a wider audience. On Facebook, such posts are identified with a "sponsored" label. It is paid political content that may be required to be reported and attributed under Montana Political Campaign Finance law.

Commissioner Mangan dismissed this complaint saying the dismissal was based on the principal of excusable neglect, given the first time nature of the determination, but also stated excusable neglect cannot be applied to oversight or ignorance of the law and excusable neglect will not be applied to excuse future campaign practice violations for failure to properly attribute paid social medial posts—i.e., via boosting, promoting or advertising on a social media platform.

News Coverage

KGVO Radio in Missoula covered this story, so it was clearly in the news and should have been known by all political candidates. KGVO quoted the Commissioner Mangan as saying, “Basically [excusable neglect] is like a one time only, putting everyone else on notice that in the future, as in this case, all social media posts that are election or electioneering related, need to be properly attributed.” Here is a link to that news coverage: <http://newstalkkgvo.com/facebook-trolling-and-memes-involved-in-new-montana-political-practices-decision/>

Other Consideration

In his 2014 finding in **Clark versus McDermott**, then Montana Commissioner of Political Practices Jonathan Motl stated, “Candidate McDermott’s campaign finance reports must contain all contributions received and all expenditures made (13-37-208 MCA) within the reporting period.” Another part of Commissioner Motl’s finding stated, “The commissioner determines that McDermott campaign had first-hand knowledge, by direct participation of the in-kind activity engaged in by DM&L.” The same can be said about the in-kind contribution of campaign signs from the 2014 McDermott campaign.

Another part of Commissioner Motl’s finding in **Clark versus McDermott** stated, “The McDermott campaign has a second campaign practice violation (in addition to accepting an illegal corporate contribution) in its failure to report and disclose in-kind value contributed to the campaign. This failure to report and disclose shows actions contrary to 13-35-201, 225 and 226 MCA.

Commissioner Motl’s finding in **Clark versus McDermott** further stated, “The Commissioner determines that sufficient facts exist to show that the McDermott campaign failed to disclose and report expenses in the detail required by 13-37-230(2) MCA.” For this portion of the finding, Commissioner Motl used the example of the McDermott campaign listing an expense to Westridge Creative of \$11,105 on the May 22, 2014 campaign finance report. Commissioner Motl stated that Westridge Creative charged the McDermott campaign \$40 per hour for its services and submitted a detailed invoice to the McDermott campaign, but despite the explicit information set out in the invoice, the McDermott campaign chose to omit disclosure and reporting of mailing, printing, radio and management services listed in the invoice which is the detail required by 13-37-230(b) MCA. McDermott’s 2018 campaign finance report for the period of 01-05-18 to 05-01-18 reported a debt to Westridge Creative for Proj Mgt in the amount of \$3,360 with no detail.

Having been found to have violated Montana campaign finance laws for similar actions in 2014, McDermott should be strictly held to the highest standard of following all campaign finance laws in 2018.

In the recent past, Sheriff McDermott has stated publicly that he is the chief law enforcement officer in Missoula County. As the chief law enforcement officer of Missoula County it is his duty to know and strictly follow all Montana Campaign Finance laws.

Complaints

Complaint Number 1

MCA 13-35-225 requires all election communications, electioneering communications, and independent expenditures to clearly and conspicuously include the “paid for by” attribution and in a partisan election financed by a candidate or a political committee organized on the candidate’s behalf to state the candidate’s party affiliation or include the party symbol. In his finding in **Bennett versus Vent Missoula**, Montana Commissioner of Political Practices Jeffrey A. Mangan stated that boosted Facebook identified as “sponsored” posts promoting political content must be attributed under Montana Political Campaign Finance law. Commissioner Mangan also stated excusable neglect will not be applied to excuse future campaign practice violations for failure to properly attribute paid social medial posts—i.e., via boosting, promoting or advertising on a social media platform. **As of the date of this complaint, the McDermott campaign has boosted and sponsored four separate Facebook posts. None of the four had a “Paid For By” attribution and one of the three did not have a political party designation. During the time that the McDermott Campaign held their campaign kickoff fundraiser and paid for a banner ad on the Missoulian.com that was a link to the McDermott campaign website, the website did not have a “Paid For By” attribution and did not have any political party designation. Based on the prior campaign complaint ruling against McDermott, it was determined that McDermott had direct knowledge of the activities relating to an in-kind contribution by his direct participation in these activities. The Facebook page displaying these sponsored posts is the page “TJ McDermott for Sheriff”. This page lists TJ McDermott’s cell phone number, website, and email address indicating that TJ McDermott has some level of control over the page and participates directly in the content associated with the page.**

Complaint Number 2

MCA 13-35-225 requires all election communications, electioneering communications, and independent expenditures to clearly and conspicuously include the “paid for by” attribution followed by the name and address of the person who made or financed the expenditure for the communication and in a partisan election financed by a candidate or a political committee organized on the candidate’s behalf to state the candidate’s party affiliation or include the party symbol. **The signs currently being used by the McDermott campaign have the attribution “Paid For By The Committee To Elect TJ McDermott For Sheriff.” See exhibit A-9. The name registered with the Commissioner of Political Practices for the 2018 election for the McDermott campaign is “The Committee To Re-Elect TJ McDermott For Sheriff”. See exhibit A-8. The “Paid For By” attribution on the signs currently being used by the McDermott campaign are inaccurate and therefore in violation of MCA 13-35-225 because it is unclear and inconspicuous as to which committee actually made the**

payments for the signs and whether the payment for the signs occurred during the 2014 campaign or the 2018 campaign.

Complaint Number 3

MCA 13-1-101 (17) (a) defines an expenditure as a “Purchase, payment, distribution, loan advance, promise, pledge, or gift of money or anything of value made by a candidate or political committee to support or oppose a candidate or ballot issue.” **The McDermott campaign has not reported expenditures or debt for campaign signs, a PO Box, a website, or website hosting.**

Complaint Number 4

MCA 13-37-229 (b) requires reports of expenditures made to a consultant, advertising agency, polling firm etc. to be itemized and described in sufficient detail to disclose the specific services performed. **The McDermott campaign C5 report for the period of 01-05-18 to 05-01-18 lists a debt to campaign consultant Westridge Creative for Proj Mgt in the amount of \$3,360. This charge is not itemized nor is it described in sufficient detail to disclose the specific services performed. In the ruling of Clark vs. McDermott during the 2014 election, McDermott was found to have violated this same, or a substantially similar MCA requiring itemized and detailed debt reporting.**

Complaint Number 5

ARM 44-11-403 requires candidates and political committees to report In-Kind contributions and to describe what was received and the value reported shall be the fair market value of the contribution at the time of the contribution. **The McDermott Campaign, despite using thousands of dollars in campaign signs from the 2014 campaign, does not show any In-Kind contributions from the 2014 campaign on the 2018 C5 finance report for the period of 01-05-18 to 05-01-18. The value of these signs, when purchased during the 2014 election, was reported to be no less than \$11,105.00 – an in kind value to be reported for the re-use of these signs would likely be thousands of dollars, which is a significant accounting error that should not be overlooked.**