

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Hill Smith v. Triepke No. COPP 2017-CFP-005	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE VIOLATION; DISMISSAL OF VIOLATION APPLYING PRINCIPAL OF DE MINIMUS; and DISMISSAL OF ALLEGED VIOLATION
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On September 21, 2017, Missoula resident Ellie Hill Smith filed a campaign practices complaint against Lisa Triepke, candidate for Missoula City Mayor, for failure to properly disclose and report details regarding expenditures, failure to report campaign sign expenditures, failure to report fundraiser activities, the improper labeling of a returned campaign contribution, and for failure to file C-7 financial reports as required.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: The City of Missoula, Montana will hold its municipal general election on November 7, 2017. (Montana Secretary of State website.)

Finding of Fact No. 2: On June 21, 2017, the City Council of Missoula voted not to hold a primary election. (City of Missoula website.)

Finding of Fact No. 3: Lisa Triepke filed a C-1A Statement of Candidate as a candidate for Mayor of Missoula with the COPP on April 20, 2017. (Commissioner's Records.)

Finding of Fact No. 4: Municipal candidates running for election in Missoula 2017 are required to file C-5 campaign finance reports on the following dates: October 3, 2017 (covering all activity from opening of campaign - September 27, 2017); October 26, 2017 (period from September 28 – October 21, 2017); and November 27, 2017 (period October 21 – November 22, 2017). C-7 campaign finance reports are due within 48 hours upon receipt of a \$100 contribution from a single source between October 21 – November 7, 2017. (Commissioner’s Records.)

DISCUSSION

The Complaint alleges that the Triepke campaign failed to timely report, failed to provide expenditure details, failed to disclose expenditures (specifically signs and fundraiser activity), improperly labeled a returned contribution, and failed to file C-7 campaign finance reports as required. The Commissioner examines each of these allegations.

1. Failure to fully and timely report and disclose expenditures

Finding of Fact No. 5: On August 21, 2017, the Triepke campaign filed an amended initial C-5 report in CERS that listed all contribution and expenditure activities for the campaign between the dates of April 20 - August 13, 2017.¹ Included in this report was an expenditure dated July 25, 2017 for \$10,923.50 to Spiker Communications listed only as “advertising.” (Commissioner’s Records.)

Finding of Fact No. 6: On August 22, 2017, a COPP inspection report reviewing the initial C-5 finance report was emailed to the Triepke campaign treasurer requesting more detail as to what type of advertising was provided by Spiker Communications, including ad quantity information be provided. (Commissioner’s Records.)

Finding of Fact No. 7: On September 22, 2017, the complainant provided photographs of various campaign signs promoting the Triepke campaign in Missoula. (Commissioner’s Records.)

¹ CERS is an acronym for Campaign Electronic Reporting System, the e-filing system used by candidates and political committees to submit campaign finance reports and other required forms to COPP.

Finding of Fact No. 8: Candidate Triepke's August 21, 2017, campaign finance report does not contain an expenditure for campaign signs. (Commissioner's Records.)

Finding of Fact No. 9: The Triepke campaign filed additional C-5 financial reports with the COPP on the following dates: August 31, 2017 (amended September 19), September 6, 11, 12, 15, 18 and 21, 2017. None of these reports specifically list the purchase of campaign signs as an expenditure activity by the campaign. (Commissioner's Records.)

Finding of Fact No. 10: On September 28, 2017, the Triepke campaign responded to the campaign complaint. Included in the response were three invoices from Spiker Communications dated April 30, 2017 (See Table 1). (Commissioner's Records.)

Finding of Fact No. 11: The response also included six invoices from Spiker Communications dated June 30, 2017 (see Table 1, below). (Commissioner's Records.)

Finding of Fact No. 12: The response also included an invoice from Spiker Communications dated July 25, 2017 (see Table 1). (Commissioner's Records.)

Finding of Fact No. 13: Triepke campaign's response letter included a statement that, as of September 28, 2017, campaign yard signs had been ordered but the invoice for them had not yet been received. (Commissioner's Records.)

Finding of Fact No. 14: On its August 21, 2017 C-5 campaign finance report, the Triepke campaign reported 14 separate Facebook boosts to promote Facebook postings made by the campaign. None of these 14 disclosures provided sufficient detail as to the nature of what activity was boosted, quantity, or timeframe these boosts were made. (Commissioner's Records.)

The Triepke campaign disclosed on its August 21, 2017, C-5 campaign finance report one generic expenditure to Spiker Communications on July 25, 2017 in the amount of \$10,923.50 for advertising (FOF No. 5). The Commissioner notes the campaign did not respond to the August 22, 2017 COPP request for additional information regarding the July 25th Spiker expenditure prior to the filing of the campaign complaint (FOF No. 6). On

September 21, 2017, the COPP requested the Triepke campaign to respond to the complaint, including that it “provide a detailed explanation of all products or services received from Spiker Communications, including Invoices.” In response, the Triepke campaign provided 10 invoices from Spiker communications totaling \$10,923.50 (FOF Nos. 10-12) (see Table 1).

Table 1: Triepke Campaign’s itemized expenditures to Spiker Communications, as compiled by the COPP²

Vendor	Invoice Date	Invoice #	Description	Date Cost Incurred	Total Cost
Spiker Communications	04/30/17	19343	Print Hand Outs (1,000- \$625.00) and Photo Usage Fees (\$160.00)	unknown	\$785.00
Spiker Communications	04/30/17	19345	Business Cards (1,000)	unknown	\$114.50
Spiker Communications	04/30/17	19346	24” Lag Bolts/Screws (100- \$634.00), Shipping Charges (\$100.00)	unknown	\$734.00
Spiker Communications	06/30/17	19521	Media training research and execution, press release research, writing and execution, brainstorming future events and fundraisers, interview scheduling and researching, training/grooming	unknown	\$2,000.00
Spiker Communications	06/30/17	19522	Agency development copy, design and production (\$750.00), Burma shave signs (18- \$450.00)	unknown	\$1,200.00
Spiker Communications	06/30/17	19523	Agency development of campaign logo with Triepke focus	unknown	\$1,000.00
Spiker Communications	06/30/17	19524	Agency development campaign strategy	unknown	\$2,500.00
Spiker Communications	06/30/17	19525	Name Tags (1)	unknown	\$45.00

² This itemized list was provided by the Triepke campaign with its September 28, 2017 response to COPP’s request that it answer the Complaint. The expenditures itemized above were originally reported as one \$10,923.50 expenditure, dated 7/25/17, and described only as “advertising” on the 8/21/17 C-5 report.

Vendor	Invoice Date	Invoice #	Description	Date Cost Incurred	Total Cost
Spiker Communications	06/30/17	19527	Agency development and production (\$250.00), #10 envelopes with logo (1,000- \$203.00), Remittance mailer (1,000-\$392.00), Lisa Triepke ask letter (1,000- \$400.00)	unknown	\$1,245.00
Spiker Communications	07/25/17	19562	Agency development and production (\$300.00), 384 printed letters, envelopes, addressing/handling, with postage (\$600.00), additional 1,000 #10 envelopes for immediate use (\$400.00)	unknown	\$1,300.00

The complaint included photographs of both ‘burma shave’ style signage and yard style signs.³ An included Spiker invoice detailed burma shave signage expenditures, however no invoice included yard style sign expenditures. The Triepke campaign’s response letter included a bullet point stating, “Campaign Yard Signs – As these were ordered in September and the campaign has not received the invoice at this time.” (FOF No. 13.) It is unclear why the campaign did not, at a minimum, disclose the more-detailed ten Spiker invoices on its August 21, 2017 C-5 or subsequent campaign finance reports; that same C-5 disclosed 14 separate expenditures for Facebook boost advertising (FOF No. 14).

The invoices appear to be dated at or near the end of each month. “An obligation to pay for a campaign expenditure is incurred on the date *the*

³ “Burma shave” style signs refers to a vintage advertising campaign first used in the 1920s, several consecutive signs (usually six), each with part of a message, were placed along a roadside for sequential reading by passers-by. See, <https://en.wikipedia.org/wiki/Burma-Shave>.

obligation is made, and shall be reported as a debt of the campaign until the campaign pays the obligation by making an expenditure.” ARM 44.11.502(2) (emphasis supplied). Further, “An expenditure is made on the date payment is made, or in the case of an in-kind expenditure, on the date the consideration is given.” ARM 44.11.502(3). “The date of each expenditure shall be reported in the reporting period during which it is made.” ARM 44.11.503(4). Any invoices, whether paid or obligated by the Triepke campaign for services provided should have been reported in the manner prescribed by the quoted Rules.

Finding of Fact No. 15: On its timely-filed C-5 campaign finance report covering the dates of opening of campaign – September 28, 2017, the Triepke campaign reported a \$5,000.00 expenditure to Spiker Communications, listed again only as “advertising.” (Commissioner’s Records.)

Finding of Fact No. 16: On October 3, 2017, a COPP inspection report was emailed to the Triepke campaign requesting an itemized list of goods or services provided by Spiker Communications for the \$5000.00 expenditure, including detailed descriptions in addition to quantity information. (Commissioner’s Records.)

Finding of Fact No. 17: On October 6, 2017, the Triepke campaign responded to the COPP email inquiry with information not contained in the September 21 response. The Triepke campaign provided invoice details (though not an actual invoice) for the purchase of signs and banners from three vendors, none of which were identified as Spiker Communications. (*See* Table 2.) (Commissioner’s Records.)

The Triepke campaign disclosed on its September 28, 2017, C-5 campaign finance report one generic, lump sum expenditure of \$5000.00 to Spiker Communications dated September 25 for “advertising” (FOF No. 15). In response to COPP’s request for clarification and invoices detailing the

expenditure, the Triepke campaign did not include any actual invoice/s, rather it provided a letter outlining five invoice details for vendors Alphagraphics, George Lake, and Missoula Copy Center (see Table 2).

Table 2: Triepke campaign invoice information compiled by the COPP, provided in response to COPP’s October 3, 2017 Inspection Report⁴

Vendor	Invoice Date	Invoice #	Description	Date Cost Incurred as a Debt	Total
Alphagraphics	08/25/17	11207-2	Burma Shave Signs (72)	07/21/17 and 08/11/17	\$1,578.00
George Lake	08/25/17	11207-3	1 vinyl for placement (\$520.00), 1 billboard (\$2,000.00)	08/25/17	\$2,520.00
Alphagraphics	09/26/17	11207	Burma Shave Signs (16)	08/21/17	\$375.00
Alphagraphics	09/26/17	11207	12x18 Coroplast Signs (400)	08/29/17	\$4,158.36
Missoula Copy Center	09/26/17	11286	Weatherproof Double Sided Banners 48x31 (3)	09/25/17	\$480.00

The Commissioner notes the Triepke campaign’s October 6 response did not include a \$5,000.00 invoice from Spiker Communications—*i.e.*, the original entry about which COPP asked the campaign to provide additional details. Instead, and additionally, the Triepke campaign’s response detailed expenditures totaling \$9,111.36, for three separate vendors, none of which were Spiker Communications (FOF No. 17). The invoices and expenditures therein were not disclosed or reported on any of the campaign’s C-5 campaign finance reports.

Finding of Fact No. 18: In response to an October 13, 2017, COPP Inspection Report again requesting invoices to explain in detail

⁴ The expenditures itemized above were originally reported as one lump-sum “advertising” expenditure; the information shown in Table 2 was provided by the Triepke campaign on October 6, 2017, in response to COPP’s follow-up inspection.

the \$5,000.00 'Advertising' Spiker Communications expenditure, the COPP that same day received a Business Statement from Spiker Communications that noted four invoices dated August 25, 2017 (*See Table 3*). These invoices were not at any point listed on a C-5 report filed by the Triepke campaign. (Commissioner's Records.)

Finding of Fact No. 19: The October 13 response also included five invoices from Spiker Communications dated September 26, 2017 (*See Table 3*). These items were not specifically mentioned on any C-5 reports filed by the Triepke campaign. (Commissioner's Records.)

Finding of Fact No. 20: The October 13 response also included invoice information for two items from Spiker Communications dated August 25, 2017 and two items dated September 26, 2017 for signs and banners. These activities, totaling \$9,111.36, had previously been provided to the COPP on October 6, 2017 and attributed to vendors *other than* Spiker Communications. (Commissioner's Records; *see also* FOF No. 17).

Finding of Fact No. 21: The Business Statement from Spiker Communications provided on October 13, 2017, indicated \$5,000.00 payments were made to Spiker Communications on August 3 and September 26, 2017, as well as a payment for \$5,923.50 on September 26, 2017, totaling \$15,923.50. According to the Business Statement, as of September 26, all aggregate invoices from Spiker Communications for items and services provided to the campaign totaled \$34,237.17, of which \$32,278.25 constituted activity that should have been previously reported on campaign financial reports.⁵ As of October 17, 2017, only \$15,923.50 in payments made to Spiker Communications has been reported, and none with the proper level of reporting detail required. As of September 26, 2017, the balance still owed by the Triepke campaign to Spiker Communications as provided in the investigation was \$18,313.63; this amount has yet to be disclosed on a campaign finance report. (Commissioner's Records.)

Finding of Fact No. 22: The 72 Burma Shave Signs, 1 Billboard, 400 Coroplast Signs, 16 Burma Shave Signs, and 3 Banners detailed in FoF's 18-22 were included on the list of invoices from Spiker Communications provided on October 13, 2017 and

⁵ This amount includes ads being run in the Missoula Independent on October 5, 12, and 19, 2017, at a total cost of \$1,958.88; these dates are covered by periodic campaign finance reports that are not yet due.

contributed to the \$34,237.17 total balance. (Commissioner's Records.)

Table 3: Triepke campaign invoices compiled by the COPP, provided in response to COPP's Second Inspection Report of October 6, 2017⁶

Vendor	Invoice Date	Invoice #	Description	Date Cost Incurred as a Debt	Total
Spiker Communications	08/25/17	19649	Fund Raising Mailer/Letter/Envelopes*	Unknown	\$605.00
Spiker Communications	08/25/17	19654	Lisa Triepke- Social Media*	Unknown	\$1,750.00
Spiker Communications	08/25/17	19660	Press/Publicity Program*	Unknown	\$3,467.00
Spiker Communications	08/25/17	19661	Lisa Triepke- Website Update	Unknown	\$1,800.00
Spiker Communications	09/26/17	19669	Business Cards (1,000)- Reprint	Unknown	\$114.50
Spiker Communications	09/26/17	19671	Agency Development and Production (\$200.00), Photo Usage Fees- Mayor John Engen (\$468.00), Lisa Triepke- 2/5 Page Ad (09/21, 09/28, 10/05, 10/12/10/19- \$652.96 each)	Unknown	\$3932.80
Spiker Communications	09/26/17	19672	Creative Dir/Strategic Planning*	Unknown	\$500.00
Spiker Communications	09/26/17	19701	Facebook Ad Charges*	Unknown	\$232.97
Spiker Communications	09/26/17	19710	Agency Development and Production (\$200.00), Half Page Flyers Two Versions (4,000- \$1,600.00)	Unknown	\$1,800.00
Spiker Communications	08/25/17	19662	Burma shave signs (72)	07/21/17 and 08/18/17	\$1,578.00
Spiker Communications	08/25/17	19664	1 Vinyl for placement (\$520.00), 1 billboard (\$2,000.00)	08/25/17	\$2,520.00
Spiker Communications	09/26/17	19668	Burma Shave Signs (16)	08/21/17	\$375.00
Spiker Communications	09/26/17	19668	12x18 Coroplast Signs (400)	08/29/17	\$4,158.36
Spiker Communications	09/26/17	19706	Weatherproof Double Sided Banners 48x31 (3)	09/25/17	\$480.00

⁶ The information shown in Table 3 was provided by the Triepke campaign on October 13, 2017, in response to COPP's second follow-up inspection.

*Invoice not itemized or listing detail not provided.

In response to COPP's second request, on October 13, 2017, for an invoice detailing the \$5000 Spiker Communications expenditure, the Triepke campaign promptly provided a written narrative and included a Business Statement from Spiker Communications (FOF No. 18). The Statement indicated three payments totaling \$15,923.50 to Spiker Communications; and thirteen entries of Spiker Communication invoices (FOF Nos. 19-21). The response included five actual Spiker Communications invoices; written reference to another four invoices; and written reference to four Spiker Communication invoices which appear to be the expenses provided in the Triepke campaign's initial response under three separate vendors (FOF Nos. 18-21). The \$9,111.36 obligation has not been disclosed as either debts or expenditures to the three vendors described in Table 2, to Spiker Communications as described in Table 3, or both.

In summary, the Commissioner's investigation shows that the Triepke campaign has been provided goods and services by Spiker Communications, received approximately 23 invoices from Spiker Communications from April 30 to September 26, 2017,⁷ totaling \$34,237.13. The campaign has paid Spiker Communications \$15,923.50 during that same period in roughly equal payments dated August 3 and two on September 26, 2017 (FOF No. 21).

Meanwhile, the Triepke campaign has reported two campaign expenditures to Spiker Communications totaling \$15,923.50, disclosing a

⁷ Date of invoices, not the date of services/products provided.

\$10,923.50 expenditure on July 25 and \$5000.00 on September 25, 2017. The campaign has not reported any of the 23 individual invoices on its campaign finance reports as either expenditures, estimated expenses, or campaign debt. By the October 3, 2017 reporting deadline (FOF No. 4), the campaign should have disclosed, in appropriate detail, the dates of all obligations and the dates of all expenditures, rather than a date of payment.⁸

While the responses, invoices, and additional information provided during COPP's investigation provided much more detail than the two generic expenditures originally reported, the Commissioner notes that additional detail will still be necessary as the campaign will be required to list all obligations and expenditures, provide quantity, purpose and the required distinguishing details in all reporting to the public, ARM 44.11.502. As an example, one invoice provided to the COPP was for "agency development campaign strategy" dated June 30, 2017 for \$2500. Such a description is vague, does not provide detail as to what specifically the services provided were and when the services were provided, ARM 44.11.502(7).

2. Failure to fully and timely report and disclose fundraiser activity.

The Complaint also alleges that the Triepke campaign failed to fully or timely report and disclose several fundraisers it had in support of Triepke's run for office.

Finding of Fact No. 23: The 'Fight Night' event held on August 23, 2017 was not a fundraiser for the Triepke campaign. The 'Fight Night' event was in fact organized and sponsored by a different

⁸ The campaign finance reports submitted by Triepke provided dates and amount of payments different than information provided to the COPP during the investigation.

municipal candidate in Missoula with the purpose of raising funds for Missoula area veterans and veterans' groups. Candidate Triepke and her campaign manager attended this event. (Commissioner's Records.)

Finding of Fact No. 24: The complaint includes pictures of Facebook posts promoting fundraisers and other, similar events held by the Triepke campaign on the following dates: May 5, June 14, August 23 (Fight Night, discussed in FOF 23), and September 21, 2017. Expenses associated with two of the fundraisers or other events held by the Triepke campaign were not disclosed on the C-5 reports filed. (See Table 4.) (Commissioner's Records.)

Finding of Fact No. 25: The Triepke campaign's response to this Complaint on September 28, 2017 stated that "a few" small fundraisers were held by the campaign, hosted by private citizens in their place of residence, and that, "where expenses exist, receipts for those events have been requested and some have not been received as of this date." (Commissioner's Records.)

Finding of Fact No. 26: In its October 6, 2017 response to the COPP, the Triepke campaign stated that fundraiser events were held on: September 21 at Westside Lanes, involving \$130.00 in expenditure activity for "appetizers- invoice to be paid upon receipt"; September 19 at Missoula Brewing Company, involving no expenditure activity or in-kind contributions received; September 14 at a private residence, involving a \$290.54 in-kind contribution given to the campaign; September 12 at a private residence, involving a \$200.00 in-kind donation given to the campaign; September 7 at a private residence, involving a \$269.78 in-kind contribution given to the campaign; September 5 at a private residence, involving a \$120.00 in-kind contribution given to the campaign; and June 16, 2017 at a private residence, involving \$300.00 in expenditure activity for "Costco- light appetizers and drinks for 30 approx." Additionally, the Triepke campaign posted a Facebook post for a "Campaign Kick-Off" event, held on May 2, 2017, with no reported expenditure or contribution activity. (Commissioner's Records.)

Finding of Fact No. 27: On September 29, 2017, the Triepke campaign filed amended versions of the following C-5 reports: September 13 – September 15, 2017, detailing the \$290.54 in-kind contribution received September 14, 2017; September 7 - September 9, 2017, detailing the \$269.78 in-kind contribution received on September 7; and August 27 – September 7, 2017,

detailing the \$120.00 in-kind contribution received on September 5, 2017. (Commissioner's Records.)

Finding of Fact No. 28: On October 13, 2017, the Triepke campaign filed an amended C-5 report covering the dates of September 22 – September 28, 2017, detailing the \$200.00 in-kind contribution originally noted as received on September 12, changing the date of this contribution to September 26, 2017. (Commissioner's Records.)

Table 4: Details of fundraisers and other, similar activities held by the Triepke campaign through September 19, 2017, compiled by COPP

Date of Event⁹	Name, Host, or Address of Event	Type of Event	Associated Expenditures	In-Kind Contributions Received	Expenses/ Contributions Reported on C-5?	Monetary Contributions Received/ Reported
05/02/17	Campaign Kick-Off	Unknown	\$0	\$0	N/A	\$0
06/14/17	5205 Laree Court	Hosted Event	\$300.00	\$0	No	\$0
09/05/17	Canyon River Club	Hosted Event	\$0	\$120.00	Yes	\$0
09/07/17	3667 Old Milwaukee Court	Hosted Event	\$0	\$269.78	Yes	\$0
09/12/17 [^]	600 Evans	Hosted Event	\$0	\$200.00	Yes	\$0
09/14/17	11878 Windemere Lane	Hosted Event	\$0	\$290.54	Yes	\$0
09/19/17	Missoula Brewing Co.	Unknown	\$0	\$0	N/A	\$0
09/21/17	Westside Lanes	Unknown	\$130.00	\$0	No	\$0

The COPP investigation found the Triepke campaign held eight known fundraisers from May 2 through September 19, 2017. Of these, none were reported as raising any contributions under \$35. As Montana law does not

⁹ Event dates were obtained upon request from Triepke campaign on October 6, 2017 and from public Facebook search.

[^]On the C-5 report for September 22-29, 2017 (amended and filed October 13, 2017), the date of this event is listed as September 26, 2017.

require dates be reported on contributions of \$35 or more, the COPP is unable to determine the dollar amount, if any, of contributions raised at a specific fundraiser. As to reporting expenses and in-kind contributions associated with the identified fundraisers, three fundraisers reported none,¹⁰ and five reported either expenditures or in-kind contributions. However, two of the five fundraisers were not timely reported and when reported on a subsequent or amended report at a later date, they were disclosed with what appears to be incorrect dates. (See Table 4, FOF Nos. 26-28.) Further, the campaign noted that, “where expenses exist, receipts for those events have been requested and some have not been received.” (FOF No. 25.) The ‘Fight night fundraiser’ was determined to be an event for another candidate in which two people from the Triepke campaign attended (FOF No. 23).

3. Improper labeling of a returned campaign contribution

The Complaint further alleges that the Triepke campaign returned a campaign contribution and improperly labeled this event.

Finding of Fact No. 29: On its August 14–26, 2017 C-5 report, the Triepke campaign reported receiving a \$2,500.00 contribution from individual contributor Tom McCall. This contribution was partnered with a \$2,500.00 ‘return of contribution- too large’ expenditure on August 26, 2017; however, the campaign incorrectly labeled the entity as Missoula Federal Credit Union. (Commissioner’s Records.)

¹⁰ The campaign reported a \$300 in-kind contribution under fundraisers on 9/26/17 from “A. Hardy,” however that date does not match any reported fundraisers; a subsequent response from the campaign indicated a \$300 Costco expense for the 6/14/17 fundraiser, however their response did not indicate it was an in-kind contribution, and they have not reported any expenditure for \$300 on 6/14/17 on any C-5 campaign finance report. Further, the campaign did amend this C-5 on 10/13/17 to indicate there was no \$300 in-kind contribution on 9/26/17 from “A. Hardy.”

Finding of Fact No. 30: The Triepke campaign responded that this contribution was returned to the donor in question by the campaign, as he had unintentionally exceeded the individual contribution limit of \$330 for municipal candidate campaigns. (Commissioner's Records.)

Finding of Fact No. 31: During a phone interview with Tom McCall on October 3, 2017, he stated that the \$2,500.00 contribution was returned by the Triepke campaign within a day or two of the contribution being made. (Commissioner's Records.)

The COPP investigation concluded the individual who originally made the contribution had been refunded the \$2,500.00 (FOF No. 31). The Triepke campaign should amend its C-5 report to correct the error and label Mr. McCall as receiving the refund, as he is the individual in receipt of the expense.

The Commissioner determines this event was a matter of oversight, not intention. The next issue is whether Candidate Triepke's oversight can be excused as *de minimis*. *De minimis* is an established concept of law meaning that "the law does not care for, or take notice of, very small or trifling matters." Black's Law Dictionary 4th Edition.

The COPP began to regularly apply a *de minimis* exception to civil enforcement of a technical or minor violation of Montana's campaign practice, when directed to do so law by the Ninth Circuit Court of Appeals in the matter of *Canyon Ferry Road Baptist Church of East Helena, Inc. v. Unsworth*, 556 F. 3d 1021, 1028-29 (9th Cir. 2009). The *de minimis* actions in *Canyon Ferry* were the limited use of church staff and copying expenditures by a party involved in a ballot issue campaign.

While not always identifying it as *de minimis*, Commissioners have long used the concept to dismiss prosecution of technical violations: no prosecution

for lack of address, *Shannon v. Andrews*, COPP-2012-CFP-035 (Commissioner Murry); no prosecution for failure to list political party affiliation or funding source on a candidate website display, *Fitzpatrick v. Zook*, COPP-2011-CFP-014 (Commissioner Gallik); and no prosecution when full name of committee treasurer omitted, *Ellis v. Yes on CI-97*, April 15, 2008 (Commissioner Unsworth). It has also been applied to excuse technical violations for: omitting a 'paid for by' attribution, *Ulvestad v. Brown*, COPP-2013-CFR-025; accepting a contribution of \$40 over the allowed amount, *Rodda v. Bennett*, COPP-2014-CFR-013; failing to register/attribute as a political committee, *Royston v. Crosby*, COPP-2012-CFP-041; failure to fully attribute on a candidate letter, *Ponte v. Buttrey*, COPP-2014-CFP-007; failure to properly apportion total allowed amount of contribution between husband and wife, *Kenat v. Van Dyk*, No. COPP-2014-CFP-004, and failure to list political party *Strizich v. Loney*, COPP 2014-CFP-034.

Further, Commissioner Motl, in a January 31, 2014 advisory opinion to Emilie Boyles, generally placed the *de minimis* principle in Montana campaign practice law as follows:

Second, there is a *de minimis* exception to Montana's definition of campaign contribution. This means that costs, fees or charges associated with a minor amount of campaign speech need not be reported. The *de minimis* principle holds that robust election speech is favored such that minimal election speech actions cannot be burdened with any requirements. This principle would apply to except small cost amounts (such as one time electronic campaigning costs) from disclosure or reporting requirements.

COPP-2014-AO-003, Boyles. The constitutional considerations inherent in the “robust election speech issue” raised in the advisory opinion are discussed in *Landsgaard v. Peterson*, COPP-2014-CFP-008. When applied to the Triepke campaign’s error as to the returned contribution, this portion of the Complaint should be, and hereby is, dismissed as a *de minimus* error contingent upon the campaign correcting the report as described.

4. Failure to file C-7 campaign finance reports.

The final allegation of the Complaint is that the Triepke campaign has failed to file reports giving notice of pre-election contributions, so called C-7 campaign finance reports.

Finding of Fact No. 32: The Triepke campaign filed C-5 reports on September 6, 11, 12, and 15, 2017; included on these reports were contributions of \$100 or more received from a single source. (Commissioner’s Records.)

The C-7 Notice of Pre-Election Contribution campaign finance report is required if \$100 or more is received from a single source between the 17th day before an election and the date of the election. MCA § 13-37-226. The City of Missoula voted on June 21, 2017 not to hold a primary election (FOF No. 2), and the general election will be held on November 7 (FOF No. 1). For this election cycle, Sunday, October 21 will be 17 days before the general election. Without a primary election and without it yet being 17 days before the general election, a primary C-7 campaign finance report was not due and a general election C-7 report is not yet due. A campaign may choose to submit primary

campaign finance reports, however, it was not required in the facts of this case.

The COPP notes the Triepke campaign did report individual \$100 or more contributions during the primary 17-day time frame utilizing a C-5 report form. The Commissioner further notes the campaign is required to utilize the C-7 campaign finance reports in the general election during the October 21 – November 7, 2017 time period for contributions received of \$100 or more from a single source. This portion of the complaint is dismissed.

FINDINGS

Montana law requires “each candidate... to file with the commissioner periodic reports of contributions and expenditures made by or on behalf of the candidate” §13-37-225, MCA. Further candidates shall file campaign finance reports including contribution and expenditure disclosure information as required by §13-37-226(3), MCA.

The Commissioner examined the sufficiency of expense detail provided by the Triepke campaign finance reports. The Triepke campaign reported two significant expenditures (FOF Nos. 5, 15) on its campaign finance reports in the following detail: Date, Spiker Communications, Advertising, Amount.

Sufficiency Finding No. 1: There are sufficient facts to show that the Triepke campaign finance reports failed to disclose detail describing the specific services provided by its consultant expenditures. (FOF Nos 5, 15.)

While the Triepke campaign disclosed two expenditures to Spiker Communications, these generic expenditures do not provide the “purpose, quantity, subject matter” expense-reporting detail required by 44.11.502(7),

ARM. Nor, does the report meet Montana’s statutory requirement of detail required for campaign finance reports: “[r]eports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate or political committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.” §13-37-229(2)(b), MCA. Finally, the investigation concluded these two disclosed expenditures were in fact payments to Spiker Communications against an obligation owed by the campaign.

The Commissioner also finds that of the twenty-three Spiker invoices submitted as a response to several COPP requests, none were specifically reported as expenditures (had they chosen to pay from the invoice) or as a campaign debt. (FOF Nos. 10-12, 18-20).

Under Montana law a candidate that receives a contribution or makes a political expenditure shall file reports electronically § 13-37-226(1)(b), MCA. Timely reporting and disclosure must include “the amount and nature of debts and obligations owed” by the candidate at the end of the reporting period, 44.11.302, ARM. Further, campaign finance reports must be timely filed according to statutory deadlines. § 13-37-226, MCA. As relevant to the 2017 Missoula general election to be held on November 8, 2017, campaign finance reports were due on October 3, 26, and November 27, 2017. § 13-37-226(3) MCA.

Sufficiency Finding No. 2: The Commissioner finds there are sufficient facts to show that the Triepke campaign failed to timely

report on its October 3, 2017 C-5 campaign finance report on at least twenty-three (23) occasions. (Tables 1, 3.)

Sufficiency Finding No. 3: The Commissioner finds there are sufficient facts to show that the Triepke campaign failed to timely disclose in-kind contributions and expenditures received for fundraising events on its C-5 campaign finance reports. (FOF Nos. 25-28.)

Under Montana law, a candidate “shall disclose all debts and obligations owed by a candidate.” 44.11.506, ARM. Further, “[i]f the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported.” 44.11.506, ARM. The Triepke campaign was provided products and services from Spiker Communications and failed to list these obligations as debts on its campaign finance reports. The campaign failed to report estimated expenditures, specifically campaign yard signs and fundraiser expenses.

Sufficiency Finding No. 4: The Commissioner finds there are sufficient facts to show that the Triepke campaign failed to disclose obligations owed on its October 3, 2017 C-5 campaign finance report. (FOF No. 21).

Sufficiency Finding No. 5: The Commissioner finds there are sufficient facts to show that the Triepke campaign failed to estimate expenditures on its C-5 campaign finance reports. (FOF Nos. 13, 25).

For any fundraisers or other mass collection events held by a candidate, all contributions received that are less than \$35 may be reported together as an aggregate contribution to the campaign. 44.11.406, ARM. In this scenario, the financial report listing must also include “the date and approximate number of individuals in attendance at a fund-raising event, a description of the method utilized to gain the proceeds of a mass collection (i.e.; passing the hat, sale of raffle tickets, auction items, etc.) and the total amount received

from each method utilized.” 44.11.406(1)(b), ARM. Any contributions received of \$35 or more must be reported individually. ARM 44.11.406(2). While the campaign has stated no such under \$35 contributions were collected over the eight fundraisers, the Commissioner recommends maintaining attendance, expenditure, and contribution records per fundraising event as a best practice.

Reports are required to be “verified as true, complete and correct.”

§ 13-37-231(1), MCA. The Commissioner finds the Triepke campaign has filed incorrect and incomplete campaign finance reports.

In all of the above-cited situations, the Triepke campaign failed to properly report campaign expenditures, obligations, and debt with the detail required by Montana law. Ultimately, other candidates and the citizens of the City of Missoula did not and does not have access to complete and accurate Triepke campaign finance data. The Commissioner finds the Triepke campaign has violated Montana’s campaign finance laws by filing incomplete and inaccurate campaign finance reports.

The Commissioner will require that in any enforcement of this matter all Triepke campaign finance reports from the 2017 election be updated with complete campaign finance information as described, electronically updated with correct expenditure (including detail and specificity) and contribution totals as appropriate.

DECISION

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner “shall

investigate” any alleged violation of campaign practices law. § 13-37-111(2)(a), MCA. The mandate to investigate is followed by a mandate to take action. The law requires; where there is “sufficient evidence” of a violation the Commissioner must (“shall notify,” *see* §13-37-124, MCA) initiate consideration for prosecution.

Second, having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice decision. This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence to show that Triepke campaign violated Montana’s campaign practice laws, including, but not limited to the laws set out in the Decision. Having determined that sufficient evidence of a campaign practice violation exists, the next step is to determine whether there are circumstances or explanations that may affect prosecution of the violation and/or the amount of the fine.

The failure to fully and timely report and disclose cannot generally be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law as it relates to failures to file and report. *See Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing excusable neglect principles). Likewise, the Commissioner does not normally accept that failures to file or report be excused as *de minimis*. *See Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing *de minimis* principles).

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above

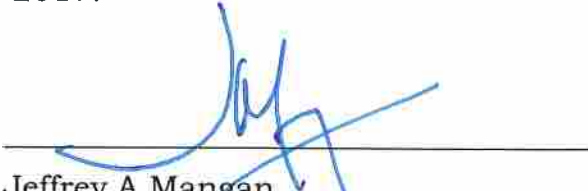
Sufficiency Findings, a civil fine is justified. §13-37-124, MCA. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of the Lisa Triepke for Mayor campaign. Because of the nature of the violations (the failure to report and disclose occurred in Lewis and Clark County), this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. § 13-37-124(1), MCA. Should the County Attorney waive the right to prosecute (§ 13-37-124(2), MCA) or fail to prosecute within 30 days (§ 13-37-124(1) MCA) this Matter returns to this Commissioner for possible prosecution.

Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that the Matter is waived back, this Finding and Decision does not necessarily lead to civil prosecution as the Commissioner has discretion (“may then initiate” *see* § 13-37-124(1), MCA) in regard to a legal action. Instead, most of the Matters decided by a Commissioner are resolved by payment of a negotiated fine. In setting that fine the Commissioner will consider matters affecting mitigation, including the cooperation in correcting the reports at issue when the matter was raised in the Complaint.

While it is expected that a fine amount can be negotiated and paid, in the event that a fine is not negotiated and the Matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of campaign

practice law, including those of §13-37-226, MCA. See § 13-37-128, MCA.
Full due process is provided to the alleged violator because the district court
will consider the matter *de novo*.

DATED this 14th day of October, 2017.



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