

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Healthy Montana for I-185 v. Montanans Against Tax Hikes  No. COPP 2018-CFP-016A	DISMISSAL OF ALLEGATIONS; SUFFICIENT FACTS TO SUPPORT A CAMPAIGN FINANCE VIOLATION
---	--

On June 4, 2018, Tara Veazey, Treasurer for Healthy Montana for I-185, filed a campaign practices complaint against Montanans Against Tax Hikes (MATH). The complaint alleges MATH failed to properly report alleged robocalling, survey, and focus group activities as either expenditures made, or in-kind contributions received by the committee.

**SUBSTANTIVE ISSUES ADDRESSED**

Proper and timely filing of committee finance reports and reporting of expenditures and in-kind contributions.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: I-185 is an initiative petition that would raise tobacco taxes to fund health care programs; it was submitted to Montana's Secretary of State on February 22, was approved for signature collection on April 16, and qualified for the ballot on July 27, 2018. (Montana Secretary of State.)

Finding of Fact No. 2: Healthy Montana filed a C-2 Statement of Organization as a ballot issue committee in support of I-185 on April 8, 2018. The committee purpose provided was "Healthy Montana/Tobacco Tax support." An amended statement of

organization filed on April 18, 2018 changed the name of the committee to Healthy Montana for I-185. (Commissioner's Records.)

Finding of Fact No. 3: Montanans Against Tax Hikes (MATH) filed a C-2 Statement of Organization as a ballot issue committee on May 17, 2018. The committee purpose provided was "I-185 – Oppose." As a ballot issue committee opposing a statewide ballot issue (I-185), MATH had an initial committee finance report due on or before June 1, as well as a monthly report due on July 2, 2018. (Commissioner's Records.)

Finding of Fact No. 4: MATH timely filed its initial C-6 committee finance report on June 1, covering all activity between May 17 and May 27, 2018. MATH did not report receiving any in-kind contributions or making any expenditures during this time. This report included one debt for \$1,700.00 owed to The Montana Group for "Consulting" that did not contain the required level of reporting detail. On July 6, 2018, a COPP inspection report was emailed to MATH Treasurer Charles Denowh requesting more information to fully describe this debt.<sup>1</sup> (Commissioner's Records.)

Finding of Fact No. 5: In a June 22, 2018, written response to this complaint, Mr. Denowh stated that MATH received its first monetary contribution on May 21, but that, as of the filing of its initial committee finance report (FOF No. 4), MATH had "no website, no Facebook page, no Twitter account or any other social media account" and had "not purchased advertisements whatsoever or otherwise placed any advertisements in any type of media." He did state MATH was aware that both Altria Client Services LLC and RAI Services Company were actively polling and conducting focus groups pertaining to I-185, but that this activity "was for the sole benefit of Altria Client Services LLC and RAI Services Company and was not an attempt to influence voters." (Commissioner's Records.)

Finding of Fact No. 6: MATH's response also stated that on June 15 Treasurer Denowh and Amanda Klump of Altria Client Services LLC attended a meeting with the Montana Chamber of Commerce, where they urged the Chamber to oppose I-185. While RAI Services Company did not have a representative at this meeting, Mr. Denowh stated RAI helped prepare and review materials used at the meeting. Mr. Denowh stated that prior to the June 15, 2018 meeting it was his "understanding that neither Altria Client Services LLC nor RAI

---

<sup>1</sup> MATH responded and on August 1, 2018 updated its campaign finance report with requested additional detail.

Services Company had engaged with Montana residents advocating support or opposition” to I-185. (Commissioner’s Records.)

Finding of Fact No. 7: MATH timely filed a periodic committee finance report on July 2, covering the dates of May 28 through June 26, 2018. This report included two in-kind committee contributions, one received from Altria Client Services LLC and one from RAI Services Company for initial exploratory work, including polling and focus groups efforts (see Table 1). (Commissioner’s Records.)

Table 1: In-Kind Committee Contributions received, as reported on MATH’s July 2, 2018 committee finance report.

<b>Entity</b>	<b>Date</b>	<b>Purpose</b>	<b>Value</b>
Altria Client Services LLC	06/16/18	Initial exploratory work including staff time, legal research, polling, focus groups, coalition building, consulting fees and compliance	\$672,675.96
RAI Services Company	06/16/18	Initial exploratory work including staff time, legal research, polling, focus groups, coalition building, consulting fees and compliance	\$180,668.34

Finding of Fact No. 8: Altria Client Services LLC<sup>2</sup> (ACS or Altria) filed a C-2 Statement of Organization as an incidental committee on June 20, 2018. The committee purpose provided was “I-185- Oppose.” (Commissioner’s Records.)

Finding of Fact No. 9: RAI Services Company<sup>3</sup> (RAI) filed a C-2 Statement of Organization as an incidental committee also on June 20, 2018. The committee purpose provided was “I-185- Oppose.” (Commissioner’s Records.)

Finding of Fact No. 10: MATH’s response included the affidavit of Amanda Klump, the Senior District Director, State Government Affairs for ACS. Ms. Klump affirmed she was aware of ACS’s internal meetings, research, and discussions to review I-185 and determine if Altria would officially oppose the initiative, and that these activities were meant to obtain the opinions of Montana residents on the initiative to better inform Altria’s official position. Ms. Klump further stated that the meeting with the Montana Chamber of Commerce on June 15, 2018 (FOF No. 6) was her “first contact with Montana residents regarding the Company’s opposition to I-185,” and that, to

---

<sup>2</sup> Altria Client Services operates as a subsidiary of Altria Group Inc, the parent company for Philip Morris USA, John Middleton, U.S. Smokeless Tobacco Company, Ste. Michele Wine Estates and Philip Morris Capital Corporation. See [www.altria.com](http://www.altria.com).

<sup>3</sup> RAI Services Company operates as a subsidiary of Reynolds American Inc., British American Tobacco. See [www.reynoldsamerican.com](http://www.reynoldsamerican.com).

her knowledge, no Altria employees “made any external communications to Montana residents, or were otherwise involved in any communications to Montana residents, regarding the company’s position on I-185 prior to the meeting with the Montana Chamber of Commerce.” (Commissioner’s Records.)

Finding of Fact No. 11: MATH’s response also included the affidavit of John Hogan, the Senior Director of State Government Relations for RAI. Mr. Hogan affirmed he was aware of RAI’s internal meetings, research, and discussions to review I-185 and determine if RAI would officially oppose the initiative, and that these activities were meant to obtain the opinions of Montana residents on the initiative to better inform RAI’s official position. Mr. Hogan further stated that, while he did not attend the meeting with the Montana Chamber of Commerce on June 15, 2018 (FOF No. 6), he “assisted with the preparation for the meeting and the development and review of materials regarding the shortcomings with I-185” presented to the Chamber, and that, to his knowledge, no RAI employees “made any external communications to Montana residents, or were otherwise involved in any communications to Montana residents, regarding the company’s position on I-185 prior to the meeting with the Montana Chamber of Commerce.” (Commissioner’s Records.)

Finding of Fact No. 12: As of July 23, 2018, MATH did not have its own Facebook page or Twitter account, nor did the committee have a website or webpage. (Commissioner’s Records.)

Finding of Fact No. 13: Altria timely filed its initial committee finance report on July 2, 2018. The report included the committee’s expenditure and contribution activity, including in-kind contributions to MATH. (Commissioner’s Records.)

Finding of Fact No. 14: RAI timely filed its initial committee finance report on July 2, 2018. Like Altria, the report disclosed the committee’s various expenditure and contribution activity, including in-kind contributions to MATH. (Commissioner’s Records.)

Finding of Fact No. 15: On July 25, 2018, COPP Compliance Specialist Supervisor Kym Trujillo spoke via telephone with Altria Treasurer, Ms. Klump, as well as the individual tasked with completing and submitting to COPP the Montana committee finance reports for both Altria and RAI. Ms. Trujillo was informed that Altria and RAI were directly responsible for paying for all survey, polling, focus group, and consulting activity, and that the results of these activities were later reported as having been contributed in-kind to MATH. (Commissioner’s Records.)

## DISCUSSION

The Commissioner examines the allegations that MATH failed to properly and timely report expenditures and in-kind contributions.

*1. Did MATH fail to properly report expenditures or in-kind contributions?*

Political committees must report all expenditures and contributions, including those made or received in-kind. Mont. Code Ann. §§ 13-37-225(1), 229, 231; *see also, e.g.*, Admin. R. Mont. 44.11.401, .402, .403 (contributions), .501, .502, .503 (expenditures). Heathy Montana for I-185 has alleged that MATH failed to report contributions from Decision Point Consulting.

MATH filed its C-2 Statement of Organization as a ballot issue Committee opposing I-185 on May 17 (FOF No. 3), and timely filed C-6 committee finance reports on June 1 and July 2, 2018 (FOF No. 4). MATH reported phone calls, survey/polling, or focus group activities as in-kind contributions from Altria and RAI (FOF No. 7). Both Altria and RAI have registered with the COPP as incidental committees (FOF Nos. 8, 9). MATH's response to this complaint emphasized that it did not pay and was not responsible for the expenditure activity alleged in the complaint, as that activity was the work product of Altria and RAI (FOF No. 5). Affidavits from officials at Altria and RAI supported this assertion (FOF Nos. 10, 11), as did subsequent investigation (FOF No. 15).

Financial reports filed by Altria and RAI indicate expenditures and debts to a number of vendors<sup>4</sup> for opinion polling, focus groups, and other related

---

<sup>4</sup> The vendors included Decision Point Marketing and Research, Inc. and Q & A Research; both are addressed in the companion decision in *Healthy Montana I-185 v. DPMR*, COPP-2018-CFP-016B.



activities (FOF Nos. 13, 14). These campaign finance reports indicate those reported expenditures were then also provided to MATH as in-kind contributions. (*Id.*)

As MATH was not responsible for paying for the activity, it was under no obligation to report these activities as expenditures when they were made. MATH was, however, required to report these activities as in-kind contributions when it received the fruits of the activities, which it did on its July 2, 2018 committee finance report (FOF No. 7). Therefore, the Commissioner concludes that this allegation of failure to properly report expenditures and in-kind contributions by MATH should be dismissed.

*2. Were these activities timely reported by MATH?*

While MATH did not fail to report receiving in-kind contributions, the Commissioner looks more closely to determine if the contributions were timely reported.<sup>5</sup> Political committees must report in-kind contributions on the date the consideration is received, Admin R. Mont. 44-11-402(1).

The investigation concluded that, as of the date of this decision, MATH has not paid for any calls, surveys, or focus groups regarding I-185. At a June 15, 2018 meeting with the Montana Chamber of Commerce MATH, with a representative of Altria and the assistance of RAI, provided the Chamber with documents and information clearly opposing I-185 that had been created using the opinion data collected by Altria and RAI. (FOF Nos. 5, 10-11, 15.) Altria

---

<sup>5</sup> Failure to *timely* report contributions or expenditures was not specifically mentioned in the complaint against MATH; rather, the failure alleged by the complaint was to report them at all.

and RAI contend the first date on which they “supported or opposed” any Montana ballot issue, and on which their first “external communication” to a Montana resident to oppose I-185 occurred, was on June 15, 2018 (FOF Nos. 6, 10, 11).

The Commissioner reviewed the activity conducted in the months prior to the three entities publicly declaring their opposition to I-185 to determine if those activities qualified as reportable contributions received by MATH or reportable expenditures by Altria and RAI requiring disclosure earlier than June 15, 2018 (*id.*).

Under Montana law, a contribution is defined as:

- (i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;
- (ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;
- (iii) the receipt by a political committee of funds transferred from another political committee; or
- (iv) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

Mont. Code Ann. § 13-1-101(9)(a).

MATH, Altria, and RAI contend it was their public opposition to I-185 on June 15, 2018 when they, together, presented to the Montana Chamber of Commerce that triggered Altria and RAI to file as incidental committees and require all reporting of committee expenditures and in-kind contributions.

To be considered a contribution here, the “payment, or distribution of money or anything of value to support or oppose a ... ballot issue” must occur, or there must be “an expenditure, including an in-kind expenditure, that is made in coordination with a ... ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution.” *Id.* For an activity to constitute support or opposition, the activity must use express words calling for passage or defeat of a ballot issue, or the activity must refer to or depict a clearly identified ballot issue “in a manner that is susceptible of no reasonable interpretation other than as a call for ... the passage or defeat of the ballot issue[.]” Mont. Code Ann. § 13-1-101(50).

As stated in the affidavits from Altria and RAI, all telephone, survey, and focus group activities were meant to collect the opinions of Montana voters, not to support or oppose any specific ballot issues, and neither organization “made any external communications to Montana residents, or were otherwise involved in any communications to Montana residents, regarding the company’s position on I-185 prior to” the Chamber meeting. (FOF Nos. 10, 11.) As explained further below, the Commissioner finds such activity would be considered a contribution upon a determination of when the activity became reportable.

Is it the date that a communication to support or oppose a ballot issue is “made public” (as Altria, RAI, and MATH contend) the trigger under which Montana law requires finance disclosure reporting?



The term expenditure must first be defined:

"Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

- (i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or
- (ii) used or intended for use in making independent expenditures or in producing electioneering communications.

Mont. Code Ann. § 13-1-101(18)(a).

MATH's position is that the opinion information obtained by Altria and RAI "was for the sole benefit of Altria Client Services LLC and RAI Services Company" (FOF No. 5), and MATH has not reported independently using this information to create or distribute materials to Montana voters opposing or otherwise mentioning I-185 before June 15, 2018 (FOF No. 6). MATH did not have a webpage or social media accounts in which to distribute or share committee information to the public and there is no evidence to indicate MATH engaged in paid advertising (FOF Nos. 5, 12). Follow-up questions from COPP to MATH revealed the following:

Finding of Fact No. 16: On June 13, 2018, Altria and RAI met in Washington DC and both companies "determined that the pre-initiative, exploratory activity could be expanded to include limited external engagement with Montana residents in opposition to I-185." (Commissioner's Records.)

Finding of Fact No. 17: On June 14, 2018, a representative of Altria (and on behalf of RAI) traveled to Montana to attend the Montana Chamber of Commerce event on June 15, 2018. (Commissioner's Records.)

In other words, the respective decisions of Altria and RAI to publicly oppose I-185 and, in coordination with MATH, develop materials for distribution in opposition to I-185 came at a meeting of their representatives

two days prior to the Chamber meeting (FOF No. 16). Further, Altria and RAI's participation in opposing I-185 at the Chamber meeting and subsequent travel expenses were incurred on June 14, 2018 (FOF No. 17), a reportable expense.<sup>6</sup> The Commissioner finds these June 13 and 14 activities of Altria and RAI as described qualify as expenditures and are considered reportable in-kind contributions to MATH prior to June 15, 2018.

The activity became contributions to MATH on June 13, 2018, when all opinions, research (and any other information) collected by Altria and RAI were used to determine opposition, develop and create materials opposing I-185 to present to the Montana Chamber of Commerce meeting (in coordination with MATH). As of June 13, 2018, MATH was required to report this activity as contributions received from both Altria and RAI, because, as their response stated, they were directly involved in both the creation of these materials directly opposing I-185 as well as their distribution and associated presentation to the Montana Chamber of Commerce.

Additionally, travel expenses related to activities in opposition to I-185 are reportable expenses. Altria incurred travel expenses on or about June 14, 2018 and failed to subsequently report any such expenditure (FOF No. 17).

MATH was not responsible for paying for any of the alleged activities prior to June 13 and none of these activities would have met the definition of a contribution before that date. MATH was not obligated to include them on its

---

<sup>6</sup> Travel expenses to Montana were not included on any campaign finance report or subsequent amended campaign finance report due July 2, 2018.

initial committee finance report, covering the committee's financial activity through May 27. MATH waited to report all in-kind contributions received from both Altria and RAI until their second committee finance report, filed on July 2 and covering all activity between May 27 and June 26. This decision was appropriate, as the date where these activities became reportable contributions under Montana law on June 13, 2018 and was appropriately included in the required reporting period.

The same conclusion cannot be reached with regard to Altria and RAI. A political committee is required to file an organizational statement, *i.e.*, register with COPP, within 5 days after it makes an expenditure, Mont. Code Ann. § 13-37-201(2)(b).

Sufficiency Finding No. 1: Altria Client Services LLC filed a C-2 Statement of Organization as an incidental committee with the COPP on June 20, 2018, two days late.

Sufficiency Finding No. 2: RAI Services Company filed a C-2 Statement of Organization as an incidental committee with the COPP on June 20, 2018, two days late.

The Commissioner finds Altria and RAI both failed to file as an incidental committee within 5 days of June 13, 2018, a Montana campaign finance violation. While the two committees filed two days late, they did file committee finance reports as required, which included expenditures that became reportable on June 13, 2018.

The Commissioner also finds a reporting violation with regard to the travel for the Chamber meeting.

Sufficiency Finding No. 3: Altria Client Services LLC failed to report travel-related expenses to Montana to oppose I-185 which were incurred on June 14, 2018.

Altria failed to report these expenses on its July 2, 2018 campaign finance report, a Montana campaign finance violation, Mont. Code Ann. § 13-37-232(2).

Finally, while automated calls (aka “robocalls”) are illegal in Montana, Mont. Code Ann. § 45-8-216(e), the statute is not specific to political campaigning and is not under the jurisdiction of the Commissioner.

### **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. Mont. Code Ann. § 13-37-111(2)(a). The mandate to investigate is followed by a mandate to take action; where there is “sufficient evidence” of a violation the Commissioner must (“shall notify,” *see id.*, at § 13-37-124) 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 Altria Client Services LLC and RAI Services Company 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*. *Id.* (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. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Altria Client Services LLC and RAI Services Company. Because of the nature of the violation, this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. *Id.*, at (1). Should the County Attorney waive the right to prosecute (*id.*, at (2)) or fail to prosecute within 30 days (*id.*, at (1)) 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 id.*) 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 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 Mont. Code Ann. §§ 13-37-201, 232. *See id.*, at § 13-37-128. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 5<sup>th</sup> day of September 2018.



---

Jeffrey A. Mangan  
Commissioner of Political Practices  
Of the State of Montana  
P.O. Box 202401  
1209 8<sup>th</sup> Avenue  
Helena, MT 59620  
Phone: (406)-444-3919