

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Dewey v. Committee to Recall the Mayor  No. COPP 2020-CFP-041	FINDING OF SUFFICIENCY FACTS TO SUPPORT A CAMPAIGN PRACTICE VIOLATION, DISMISSAL OF ALLEGATIONS
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On September 30, 2020, Brandon Dewey of Stevensville, MT, filed a campaign practices complaint against Committee to Recall the Mayor, a registered Independent political committee. The complaint alleges that the Committee to Recall the Mayor failed to register as a ballot issue political committee and failed to timely file committee finance reports.

**SUBSTANTIVE ISSUES ADDRESSED**

Timely filing of a committee registration and campaign finance reports.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision is as follows:

Finding of Fact No. 1: Brandon Dewey currently serves as the Mayor for the Town of Stevensville, a position he was elected to in 2017. On May 22, 2020, a petition to recall Mayor Dewey was approved by the Ravalli County Election Administrator.<sup>1</sup> On May 27, 2020, a special recall election was triggered and Mayor Dewey became a candidate in that election. The petition was submitted by an individual named Leanna Rodabaugh. The special election date was originally set as August 4, 2020 by Ravalli County Clerk and Recorder Regina Plettenberg. (Commissioner’s Records)

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<sup>1</sup> [Stevensville residents petition to recall Mayor Brandon Dewey approved | ABC Fox Missoula | montanarightnow.com](#)

Finding of Fact No. 2: On June 17, 2020, Committee to Recall the Mayor (“the Committee”) filed a C-2 Statement of Organization as an Independent political committee with the COPP. The only officer listed on the C-2 was Treasurer Lelsie Tadvick. The committee’s Purpose was listed as “Recall Mayor Dewey”. (Commissioner’s Records)

Finding of Fact No. 2A: On June 17, 2020, COPP Investigator spoke with Treasurer Tadvick via both telephone and email to confirm that the Committee had filed its C-2 Statement of Organization. The COPP’s email message to the Committee included the August 4 special election reporting calendar, which detailed finance reports as due on June 5 (covering the Committee’s first reportable activity through at least May 31), June 30 (June 1-June 25), July 23 (June 26-July 18), August 24 (July 19-August 19), and October 5 (August 20-September 30) of 2020. (Commissioner’s Records)

Finding of Fact No. 3: On June 22, 2020, Mayor Dewey filed a lawsuit with the Montana Twenty-First Judicial District Court in Ravalli County contesting the recall election in Stevensville.<sup>2</sup> On June 30, 2020, a temporary restraining order was placed on the matter so it could be argued in court. On August 13, 2020, Ravalli County District Judge Howard Recht ruled that the Stevensville Mayoral recall election could proceed.<sup>3</sup> Election Administrator Plattenberg stated that the election would appear with Montana’s General election ballot on November 3, 2020. Committees making expenditures meant to support or oppose candidates in the November 3 special recall election had finance reports due on or before September 3 (covering the Committee’s first reportable activity through at least August 30), September 29 (August 31 through September 24), October 22 (September 25 through October 17) and November 23 (October 18 through last activity) of 2020. Because the special recall election was no longer occurring on August 4, the August 4 reporting calendar was no longer in effect as of August 13, 2020. (Commissioner’s Records)

Finding of Fact No. 4: On June 30, 2020, the Committee timely filed a C-6 committee finance report, dated June 17, 2020 through June 30, 2020. This report disclosed the Committee as receiving \$1,050.00 from individual contributors, however Leanna Rodebaugh was not among them. The Committee reported

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<sup>2</sup> [https://ravallirepublic.com/news/local/article\\_109b7e93-dc32-57cd-9e06-72b4395be977.html](https://ravallirepublic.com/news/local/article_109b7e93-dc32-57cd-9e06-72b4395be977.html)

<sup>3</sup> [https://helenair.com/news/state-and-regional/judge-stevensville-mayor-recall-can-proceed/article\\_d6bc1c58-c9df-5b02-9861-279a06e94d32.html](https://helenair.com/news/state-and-regional/judge-stevensville-mayor-recall-can-proceed/article_d6bc1c58-c9df-5b02-9861-279a06e94d32.html)

making two expenditures during this period. The committee's initial expenditure was dated June 19, 2020. An expenditure of \$168.00 dated June 24, 2020 described with Purpose "Political signs paid to Allegra Printing", Quantity "2 vinyl signs" and Subject Matter "Vote to recall mayor" was disclosed as being made to Leanna Rodebaugh. (Commissioner's Records)

Finding of Fact No. 5: On August 31, 2020, the Committee filed a C-7 Notice of Pre-Election Contributions<sup>4</sup>, dated July 1, 2020 through August 31, 2020. This report disclosed the Committee as receiving \$340.00 from individual contributors, however Leanna Rodebaugh was not among them. (Commissioner's Records)

Finding of Fact No. 6: The Committee did not file a C-6 committee finance report on or before September 3, 2020. (Commissioner's Records)

Finding of Fact No. 7: On September 19, 2020, the Committee filed a C-6 committee finance report, dated July 1, 2020 through September 30, 2020. This report disclosed the Committee as receiving \$2,541.00 from individual contributors, however Leanna Rodebaugh was not among them. The committee reported making four expenditures during this period. No expenditure was disclosed as being made to Leanna Rodebaugh or to otherwise help finance a recall petition. This report was most recently amended on November 5, 2020. (Commissioner's Records)

Finding of Fact No. 8: On October 10, 2020, the Committee filed a C-6 committee finance report, dated October 1, 2020 through October 24, 2020. This report disclosed the Committee as receiving no contributions. The committee reported making three expenditures during this period. No expenditure was disclosed as being made to Leanna Rodebaugh or to otherwise help finance a recall petition. This report was most recently amended on November 5, 2020. (Commissioner's Records)

Finding of Fact No. 9: On November 3, 2020, the Committee filed a C-6 committee finance report, dated October 25, 2020 through November 3, 2020. This report disclosed the Committee as receiving no contributions. The committee reported making one

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<sup>4</sup> Form C-7, the Notice of Pre-Election Contributions, is meant to disclose contributions received of \$500.00 or more "within 2 business days of receiving a contribution, except as provided in **13-37-232**, of \$500 or more if received between the 25th day of the month before an election in which the political committee participates and the day of the election", §13-37-226(2)(c), Mont. Code Ann. Form C-7 is not meant to disclose expenditures and does not provide an option to do so.

expenditure during this period. No expenditure was disclosed as being made to Leanna Rodebaugh or to otherwise help finance a recall petition. (Commissioner's Records)

## **DISCUSSION**

### *Part One: Committee Registration*

The first allegation raised in this complaint is that the Committee to Recall the Mayor ("the Committee") did not timely file its committee registration as a Ballot Issue committee with the COPP.

A political committee is defined under Mont. Code Ann. §13-1-101(31):

(31) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

Neither the complainant nor the Committee disputes that the Committee qualifies as a political committee.

The Committee registered as an Independent political committee with the COPP on June 17, 2020, by filing a C-2 Statement of Organization (FOF No. 2). The Committee lists its purpose as “Recall Mayor Dewey”. The Committee classified itself as an Independent committee on the registration.

The complainant in this matter contends that the Committee qualifies as a ballot issue committee because the group supported a recall question submitted to voters at an election, Mont. Code Ann. §13-1-101(6). A ballot issue committee is required to file C-2 Statement of Organization within five (5) days after an issue becomes a ballot issue. The complainant cites this provision of Mont. Code Ann. §13-37-201(2)(c) as the basis for their allegation, stating that “there is no question that Committee to Recall the mayor sought to place the recall issue before the voters of Stevensville”.

In examining Mont. Code Ann. §13-37-201(2)(c), the statute specifically identifies a ballot issue committee as a political committee “seeking to place a ballot issue before the electors”. In this matter, Leanna Rodabaugh, an individual, was responsible for submitting a recall petition, and on May 27 a special recall election was triggered (FOF No. 1). The Committee was formed on June 17, 2020, after a special recall election had already been triggered (FoF No. 1). An examination of the committee’s finance reports do not include any activity or any expenditures meant to place this recall action before electors (FOF Nos. 4-9). While one expenditure dated June 24, 2020 listed Leanna Rodebaugh as

the entity, the Committee described the expenditure as “Political signs paid to Allegra Printing” (FoF No. 4).

The complainant’s argument in this matter that the Committee qualifies as a ballot issue committee and needed to register as such by June 3, 2020, is incorrect. The committee is appropriately classified as an Independent committee, §13-1-101(24), MCA and 44.11.202(7), ARM. The stated purpose of the committee was to oppose a candidate in the November 3, 2020, special recall election. No evidence indicated the committee was organized to “place a ballot issue before electors”, but rather to support a previously approved recall ballot action and oppose a candidate participating in it. The allegation the committee failed to properly register as a ballot issue committee is hereby dismissed.

As an Independent committee, the Committee would be required to register with the COPP within five (5) days of its first reportable contribution or expenditure activity, Mont. Code Ann. §13-37-201(2)(b). According to finance reports filed with the COPP, the Committee made its first expenditure on June 19, 2020, meaning its committee registration was required on or before June 24, 2020 (FOF No. 4). As previously noted, the Committee filed its registration with the COPP on June 17, 2020. The allegation that the Committee failed to timely register is hereby dismissed, as the Committee complied with the registration requirements of Mont. Code Ann. §13-37-201.

*Part Two: Finance Reports*

This complaint also alleges that the Committee failed to timely file C-6 committee finance reports in violation of Montana campaign finance law. Because the Stevensville recall election was a special election, committees participating via contribution or expenditure activity had finance reports due 60, 35, and 12 days preceding the election, Mont. Code Ann. §13-37-226(3). Using the special election date of November 3, 2020, the committee had C-6 finance reports due on or before September 3 (covering the committee's first activity through at least August 30), September 29 (August 31-September 24), and October 22 (September 25-October 17) of 2020.

The Committee did not timely file the required September 3, 2020, finance report (FOF No. 6). The Committee filed a C-7 finance report disclosing contributions (FOF No. 5) but failed to disclose expenditures within the required time period. The committee did file a C-6 finance report on September 19, 2020, disclosing all activity from July 1 through September 30, 2020. By submitting the report in this manner, all disclosure requirements due September 3, 2020, were reported sixteen days late, a violation of Mont. Code Ann. §13-37-226(3), while the required activity disclosure for the period August 31 through September 24, 2020, due on or before September 29, 2020, was timely reported.

While not excusing the committee's failure to timely file a committee finance report, reasons exist to explain why the Committee may have late filed. When the Committee registered, the Stevensville special recall election was scheduled to take place on August 4, 2020. Using that election date, finance reports were

due for the Committee on June 30, July 23, August 24, and October 5 of 2020. The Committee timely filed the June 30 C-6 report under this calendar (FOF No. 4). Due to litigation surrounding the recall petition, the special election date was pushed back to November 3, changing the reporting calendar in this matter. This confusion does not excuse the Committee's late filing of a required committee finance report but will be considered in the settlement as a mitigating factor.

Montana's campaign finance report filing requirements are mandatory: "shall file" (See Mont. Code Ann. §13-37-226). The filing date requirements are date certain. Therefore, any failure to meet a mandatory, date-certain filing date is a violation of Mont. Code Ann. §13-37-226. In this matter, Committee to Recall the Mayor failed to timely file its September 3, 2020, committee finance report.

### **FINDINGS**

Sufficiency Finding No. 1: Committee to Recall the Mayor failed to timely file a committee C-6 financial report, due on or before September 3, 2020.

This Commissioner, having been charged to investigate and decide, hereby determines that sufficient facts exist to show that Committee to Recall the Mayor has, as a matter of law, violated Montana's campaign practice law, specifically Mont. Code Ann. § 13-37-226 on one occasion. The Committee to Recall the Mayor did file its committee finance reports prior to the receipt of the complaint, which will also be a mitigating factor in any civil penalty assessed by the COPP.



## **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 that 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 Committee to Recall the Mayor 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

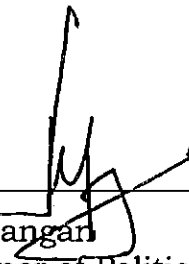
failures to file or report be excused as *de minimis*. See *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing *de minimis* principles).

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 Committee to Recall the Mayor. Because of the nature of the violations (the failure to timely 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 cited above. 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 4<sup>th</sup> day of May 2021.



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