

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Joel Krautter v. Doctors for a Healthy Montana No. COPP 2020-CFP-006	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN FINANCE VIOLATION
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On April 7, 2020, Joel Krautter of Sidney, MT filed a campaign practices complaint against Doctors for a Healthy Montana, a registered Independent political committee. The complaint alleged that the name Doctors for a Healthy Montana fails to identify the economic or other special interest of a majority of the committee's contributors as required.

SUBSTANTIVE ISSUES ADDRESSED

Montana's naming and labeling of political committees.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Doctors for a Healthy Montana filed a C-2 Statement of Organization as an Independent Political Committee with the COPP on February 24, 2020. Matt Regier was named as the committee's Treasurer. (Commissioner's Records.)

Finding of Fact No. 2: On March 29, 2020, Doctors for a Healthy Montana timely filed its initial C-6 committee finance report, dated January 1 through March 25, 2020. This report disclosed Doctors for a Healthy Montana as receiving four contributions of \$35 or more from individuals during this time period. The contributors had listed occupations of Retired, Physician, Retired, and Construction. (Commissioner's Records.)

Finding of Fact No. 2A: One additional contribution of \$30 was reported as being received from an individual whose occupation was listed as Physician.¹ (Commissioner's Records.)

Finding of Fact No. 3: On April 30, 2020, Doctors for a Healthy Montana timely filed a periodic C-6 committee finance report, dated March 26 through April 25, 2020. This report disclosed Doctors for a Healthy Montana as receiving four contributions of \$35 or more from individuals during this time period; three of these individuals had not previously contributed to the committee. These three new contributors had listed occupations of Physical Therapist, Retired Doctor, and Manager (of an apartment complex). The name provided for the Physical Therapist included the title of Dr. (Commissioner's Records.)

Finding of Fact No.4: Contributors Matt Regier (HD4), Keth Regier (SD3), and Dan Bartel (HD29) currently serve in Montana's 66th Legislature. (Montana Legislative Services)

DISCUSSION

This Complaint alleges that the name Doctors for a Healthy Montana fails to identify the committee's economic or other special interest and misleads the public as to its contributor makeup.

Mont. Code Ann. §13-37-210(1)(a)(i)(ii) states:

(1) Any political committee filing a certification and organizational statement pursuant to 13-37-201 shall:

(a) name and identify itself in its organizational statement using a name or phrase:

(i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and

(ii) if a majority of its contributors share a common employer, that identifies the employer

¹ Because the contribution was less than \$35, this contributor's name, occupation, and employer information is not available on the public version of this report.

An October 1999 Advisory Opinion issued by the COPP summarized three previous Decisions to establish that “The source of the majority of the contributions received is not the test for determining if a violation has occurred”. Instead, “Determinations of shared economic or special interest will be based on the ‘name of the employer’ and ‘occupation’ information provided by the contributor and listed in the political committee’s C-6 report”. It is the occupation of the majority of contributors, not the occupation of those contributors who provided the majority of funds, that was determined as the test for compliance with Mont. Code Ann. §13-37-210(1)(a), and has been utilized by the COPP in addressing complaints and issuing decisions involving the naming statute for the past 20 years.

In the matter of *Eaton v. Build Montana PAC*, COPP-2016-CFP-042, Commissioner Mangan found that as more than half of the contributors to ‘Build Montana’ were associated with organized labor, Commissioner Mangan ruled that the phrase “organized labor” needed to be included in the committee’s name to satisfy Mont. Code Ann. §13-37-210(1)(a)(i). The Decision also discussed how previous Commissioners have applied this test in previous matters to determine the shared economic or other special interest of a committee.

In its initial finance report, Doctors for a Healthy Montana reported receiving contributions of \$35 or more from four individuals. The occupations of those individuals were reported as Retired, Physician, Retired, and Construction (FOF No. 2). One additional contribution of \$30 was received by

the committee from an individual with the listed occupation of Physician (FOF No. 2A). Of the five contributions reported on its March 30, 2020 committee finance report, two of the contributors were identified as a 'Doctor'. The complaint alleges of the contributors identified in the March 30 report, three are politicians. Records indicate three of the committee's contributors currently serve in Montana's 66th Legislature (FOF No. 4).

In its April 30 report, the committee reported receiving contributions from three individuals, whose occupations were reported as Physical Therapist, Retired Doctor, and Manager of an apartment complex (FOF No. 3). The name provided for the Physical Therapist included the Dr. title, indicating that this individual is a Doctor of Physical Therapy.

In reviewing both finance reports, Doctors for a Healthy Montana has reported receiving contributions from eight individuals. Four of these contributors had listed occupations as doctor/physician or were otherwise identified as doctors, while four did not (see Table 1). The shared economic or special interest of the committee would be Doctors as of April 20, 2020.

Table 1 – Occupation and date of contribution

Occupation (date of contribution ²)	
Physician (February 3, 2020)	Physician/Doctor ³ (contributions received February 28 & April 10, 2020)
Construction/Legislator (February 22, 2020)	Retired Doctor (April 17, 2020)

² Dates of contribution as the committee provided on the committee finance reports; Montana law does not require a date of contribution and is not found on the public report

³ Contributions from this individual were listed on both the March 30 and April 30 committee finance reports

Retired/Legislator (February 22, 2020)	Physical Therapist ⁴ (April 20, 2020)
Retired/Legislator (February 25, 2020)	Manager (April 22, 2020)

Applying the standard interpretation of the naming and labeling statute, the Commissioner finds Doctors for a Healthy Montana in violation of Montana’s campaign finance law for the period of February 24 to April 19, 2020 and came into compliance with the naming and labeling statute on April 20, 2020.

Sufficiency Finding No. 1: The ‘Doctors for a Healthy Montana’ name did not meet the requirements of Mont. Code Ann. §13-37-210(1)(a)(i)(ii) at the time of filing as a political committee on February 24, 2020 through April 19, 2020.

On April 20, 2020, Doctors for a Healthy Montana came into compliance with Montana’s naming and labeling statute. As of that date, Doctors/physicians make up half (50%) of the committee’s individual contributors, a larger share than any other single occupation. As name ‘Doctors for a Healthy Montana’ now “identifies the economic or other special interest” of the majority of the committee’s contributors, the committee is in compliance with Mont. Code Ann. §13-37-210(1)(a)(i).

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.

⁴ Identified with the title of ‘Dr.’ in the April 30 committee finance report

§ 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 Doctors for a Healthy Montana 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).

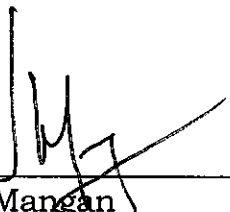
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124.

The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Doctors for a Healthy Montana. 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. § 13-37-210(1)(a)(i) *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 15th day of May 2020.



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