

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Ward v. O'Neil No. COPP 2020-CFP-020	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On May 29, 2020, John Ward of Helena, MT filed a campaign practices complaint against Jerry O'Neil of Columbia Falls. The complaint alleged that candidate O'Neil failed to properly or timely file required campaign financial reports.

SUBSTANTIVE ISSUES ADDRESSED

The proper and timely filing of candidate campaign finance reports.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Jerry O'Neil filed a C-1 Statement of Candidate as a candidate for Senate District 2 in Flathead County with the COPP on January 10, 2020. Candidate O'Neil had filed with Montana's Secretary of State for this position on January 9, 2020. Candidate O'Neil withdrew as a candidate for this position. Candidate O'Neil did not file any financial reports with the COPP in association with this candidacy. (Commissioner's Records).

Filing of Fact No. 1A: The filing fee for a State District office (such as the State Senate or State House) candidates must pay when registering as a candidate with the SOS is \$15.00. (Commissioner's Records).

Finding of Fact No. 2: Jerry O'Neil filed a C-1 Statement of Candidate as a candidate for House District 7 in Flathead County

with the COPP on January 13, 2020. Candidate O'Neil filed with Montana's Secretary of State for this position on March 9, 2020. All campaign finance reports filed by candidate O'Neil were filed under this profile, for this campaign. (Commissioner's Records).

Finding of Fact No. 3: Candidates for State District offices had campaign finance reports due on or before March 20 (covering all contribution and expenditure activity from the beginning of the campaign through March 15, 2020), April 20 (March 16 through April 15, 2020), and May 20 (April 16 through May 14) of 2020. (Commissioner's Records).

Finding of Fact No. 4: Candidate O'Neil did not file a campaign finance report for his HD 7 candidacy on or before March 20, 2020. (Commissioner's Records).

Finding of Fact No. 5: On March 27, 2020, candidate O'Neil filed his initial C-5 campaign finance report for his HD 7 candidacy, dated March 9, 2020 through March 20, 2020. (Commissioner's Records).

Finding of Fact No. 6: Candidate O'Neil did not file a campaign finance report for his HD 7 candidacy on or before April 20, 2020. (Commissioner's Records).

Finding of Fact No. 7: Candidate O'Neil did not file a campaign finance report for his HD 7 candidacy on or before May 20, 2020. (Commissioner's Records).

Finding of Fact No. 8: On May 28, 2020, candidate O'Neil filed a periodic C-5 campaign finance report for his HD 7 candidacy, dated March 21, 2020 through May 14, 2020. (Commissioner's Records).

Finding of Fact No. 9: On June 20, 2020, candidate O'Neil timely filed a periodic C-5 campaign finance report for his HD 7 candidacy, dated May 15, 2020 through June 19, 2020. (Commissioner's Records).

DISCUSSION

The first allegation raised by the complainant in this matter concerns Jerry O'Neil's candidacy for Senate District 2. Specifically, the complaint alleges that candidate O'Neil failed to file required campaign finance reports associated with this candidacy.

Candidate O'Neil registered with Montana's Secretary of State as a candidate for SD 2 on January 9 and followed that up by registering with the COPP as a candidate for the office on January 10 (FOF No. 1). While the candidate did not notify the COPP, candidate O'Neil withdrew as a candidate for this office with the SOS shortly after filing. Candidate O'Neil did not file any campaign financial reports detailing contribution or expenditure activity associated with his SD 2 candidacy with the COPP (FOF No. 1).

When candidate O'Neil registered as a candidate for SD 2 with the SOS, he paid a \$15.00 filing fee (FOF No. 1A). Mont. Code Ann. §13-37-225(1) requires that "each candidate and political committee shall file with the commissioner periodic electronic reports of contributions and expenditures made by or on the behalf of a candidate or political committee". The filing fee paid by candidates is a reportable campaign activity, and must be included as either an expenditure (if paid using campaign funds) or in-kind contribution received/loan made to the campaign (if paid by the candidate using personal funds) on finance reports filed with the COPP. As a registered candidate for SD 2, no matter how briefly, candidate O'Neil was required to file periodic finance reports with the COPP disclosing all contribution and expenditure activity (such as the payment of the filing fee to the SOS) under Mont. Code Ann. §13-37-225(1). Candidate O'Neil filed no such reports for his SD 2 candidacy.

Sufficiency Finding No. 1: Jerry O'Neil failed to file a campaign finance report upon withdrawing his candidacy for state district office.

The Commissioner finds candidate O'Neil failed to file a campaign finance report/s as required, a violation of Montana campaign finance law. Candidate O'Neil, did however, subsequently file for another office, House District 7 Representative. As the time period was limited between filings and candidate O'Neil is required to file campaign finance reports in his HD 7 candidacy, the Commissioner will dismiss the violation contingent upon Candidate O'Neil filing a closing campaign finance report for his SD 2 candidacy within 30 days of this decision.

The second allegation raised in this matter is that candidate O'Neil failed to properly file campaign finance reports associated with his candidacy for House District 7. After withdrawing as a candidate for SD 2, candidate O'Neil filed with both the COPP (January 13) and SOS (March 9) as a candidate for HD7 (FOF No. 2). As a candidate for a State District office, candidate O'Neil had campaign finance reports due on or before March 20, April 20, and May 20, 2020, Mont. Code Ann. §13-37-226(1)(b).

Candidate O'Neil did not file his initial campaign financial report on or before March 20; the report was filed on March 27, seven days late (FOF Nos. 4, 5). Similarly, candidate O'Neil did not file campaign finance reports on or before either April 20 or May 20 (FOF Nos. 6, 7). Instead, candidate O'Neil filed one singular report covering the dates of March 21 through May 14, 2020 on May 28, 2020 (FOF No. 8).

The financial report filed by candidate O'Neil includes two separate reporting periods; candidate O'Neil should have filed one C-5 campaign finance

report on April 20, detailing contribution/expenditure activity that occurred between March 16 and April 15, then another on May 20 covering April 16 through May 14, 2020. As candidate O'Neil filed one report covering two reporting periods, the due dates of April 20 and May 20 must both be considered when determining the timeliness of filing. A filing date of May 28 for the report due April 20 would leave that report thirty-eight days late, while a filing date of May 28 for the report due May 20 would leave it eight days late, violations of Mont. Code Ann. §13-37-226(2)(b).

Sufficiency Finding No. 2: Jerry O'Neil failed to timely file his campaign's C-5 campaign finance reports due March 20, April 20, 2020 and May 20, 2020.

The Commissioner finds candidate O'Neil failed to timely file three campaign finance reports as required, violations of Montana campaign finance law.

Candidates for elected office are required to report "all contributions received or expenditures made by a candidate or political committee from the time that a person became a candidate or a political committee, as defined in 13-1-101, until the 5th day before the date of filing of the appropriate initial report" on their initial campaign finance report. In the case of candidate O'Neil, he became a candidate for HD 7 on January 13, the date he filed his Statement of Candidate with the COPP (FOF No. 2). However, candidate O'Neil's initial financial report is dated March 9, 2020 through March 20, 2020. All dates between candidate O'Neil's becoming a candidate (January 13) and March 9 are

omitted from his initial finance report, in violation of Mont. Code Ann. §13-37-228(1), MCA.

Sufficiency Finding No. 3: Jerry O'Neil failed to properly file his campaign's initial C-5 campaign finance reports due March 20, omitting the time period January 13 to March 9, 2020.

The Commissioner finds candidate O'Neil failed to properly file his initial campaign finance report, a Montana campaign finance violation. The Commissioner orders candidate O'Neil to amend his initial campaign finance report to include the time period of January 13 to March 9, 2020, within 30 days of this decision.

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 Jerry O'Neil 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).

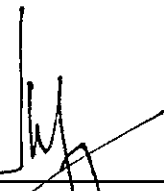
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Jerry O’Neil. 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. § §13-37-226(2)(b), 228(1) *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 14th day of August 2020.



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