

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Bondy v. Fallon No. COPP 2021-CFP-008	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On April 5, 2021, Lloyd Bondy of Lakeside, Montana, filed a campaign practices complaint against Jack Fallon. The complaint alleges that the respondent failed to properly register as a candidate with the COPP despite participating as a candidate for election in past school trustee election.

SUBSTANTIVE ISSUES ADDRESSED

The proper and timely filing as a candidate with the Commissioner of Political Practices office.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Jack Fallon is a current member of the Kalispell School District #5 Board of Education.¹ (Commissioner's Records.)

Finding of Fact No. 2: On May 2, 2017, Kalispell School District #5 held a school trustee election.² (Commissioner's Records.)

Finding of Fact No. 3: On April 7, 2021, Kalispell School District #5's Director of Business Services Gwyn Anderson emailed the

¹ <https://www.sd5.k12.mt.us/Board/Members/11>

²

<https://www.sd5.k12.mt.us/userfiles/1147/my%20files/pr/election%20results.pdf?id=7135>

COPP a copy of a Declaration and Oath of Candidacy for Trustee Candidates signed by John 'Jack' Fallon and dated February 2, 2017, signaling his participation as a candidate in the Kalispell School District's May 2, 2017, school trustee election. The email also included a copy of a Certificate of Election of Trustee by Acclimation issued May 9, 2017, stating that candidate Fallon "was duly elected by acclamation to fill the position of Trustee". (Commissioner's Records).

At no time did candidate Fallon file a C-1A Statement of Candidate as a candidate for election to a school trustee position in Kalispell School District #5's May 2, 2017, election with the COPP. (Commissioner's Records.)

Finding of Fact No. 4: Kalispell School District #5 did not provide the COPP with a list of candidates who had registered to participate in the May 2, 2017, election at any time prior to the completion of that election, nor a list of winning candidates after the completion of that election.

Finding of Fact No. 5: On May 5, 2020, Kalispell School District #5 held a school trustee election.

Finding of Fact No. 6: On April 7, 2021, Kalispell School District #5's Director of Business Services Gwyn Anderson emailed the COPP a copy of a Declaration and Oath of Candidacy for Trustee Candidates signed by John 'Jack' Fallon and dated January 14, 2020, signaling his participation as a candidate in the Kalispell School District's May 5, 2020, school trustee election. A copy of a hard copy (paper) C-1A signed by candidate Fallon was also included. While the C-1A was signed and dated January 14, 2020, it was not provided to the COPP by candidate Fallon at that time. Finally, the email included a copy of a Certificate of Election of Trustee by Acclimation stating that candidate Fallon "was duly elected by acclamation" to a position on the Board of Education in this election.

At no time did candidate Fallon file a C-1A Statement of Candidate as a candidate for election to a school trustee position in Kalispell School District #5's May 5, 2020, election with the COPP. (Commissioner's Records.)

Finding of Fact No. 7: Kalispell School District #5 did not provide the COPP with a list of candidates who had registered to participate in the May 5, 2020 election at any time prior to the completion of

that election, nor a list of winning candidates after the completion of that election. (Commissioner's Records.)

Finding of Fact No. 8: On April 7, 2021, Kalispell School District #5 Director of Business Services Gwyn Andersen contacted the COPP via email. The email reads:

I am in need of some clarification on the campaign practices as they relate to school district trustees.

As I stated in an earlier email, in the past I have printed the C1a form and ask the candidates to complete it and return it to me so that I knew they had done the paperwork. I then sent them on to the commissioner of political practices office in one mailing.

In the cases of the election being cancelled, because there was only one candidate for each open seat I did not send the paperwork on to the COPP office, because the election was cancelled. No election, no campaign, no campaign finance reports. That may have been my error.

Now of course it is an electronic only process. Going forward should I be advising them to complete that information even though the election has been cancelled?

Thank you for your guidance.

(Commissioner's Records.)

DISCUSSION

The complaint alleges Jack Fallon failed to register with the COPP as candidate for a 2017 and 2019 school trustee election.

Mont. Code Ann. §13-37-201 requires that candidates seeking election to public office register as such with the COPP "within 5 days after becoming a candidate". While some school trustee candidates are exempted from this requirement under Mont. Code Ann. §13-37-206(1), Kalispell School District #5 is not among the exempted districts. School trustee candidates in Kalispell

School District #5 need to register as a candidate with the COPP under applicable Montana campaign finance law.

In this matter, Kalispell School District #5 confirmed that Jack Fallon had registered with the district as a candidate for election to a school trustee position in both 2017 and 2020 (FOF Nos. 3, 6) Mr. Fallon became a candidate as the term is defined under Mont. Code Ann. §13-1-101(8) by filing a Declaration and Oath of Candidacy for Trustee candidates with the school district signaling their intent to run as a candidate for election to a school trustee position in a given election.

Jack Fallon became a candidate in the Kalispell School District's May 2, 2017, school trustee election on February 2, 2017, by filing a Declaration and Oath of Candidacy for Trustee Candidates with the school district (FOF No. 3). COPP has never been provided a C-1A completed and signed by candidate Fallon for this election, either by the candidate directly or from the district (FOF No. 3). Under Montana law, candidate Fallon was required to file no later than February 7, 2017. The complainant filed the formal campaign practices complaint on April 5, 2021, placing the alleged violation outside the four year statute of limitation, " an action may not be brought ... 4 years after the occurrence of the facts that give rise to the action" found in Mont. Code ann. §13-37-130. The allegation is hereby dismissed.

Candidate Fallon also became a candidate in the Kalispell School District's May 5, 2020 school trustee election on January 14, 2020 by filing a Declaration and Oath of Candidacy for Trustee Candidates with the school

district (FOF No. 6). While candidate Fallon appears to have completed and signed a hard copy C-1A Statement of Candidate for this 2020 election indicating his candidacy, he did not provide this document to the COPP (FOF No. 6). Candidate Fallon failed to meet the requirements of Mont. Code Ann. §13-37-201 by failing to register as a candidate with the COPP for the 2020 election in which he had participated as a candidate. Candidate Fallon's failure to timely file a Statement of Candidate is a violation of statutory requirements of Mont. Code Ann. §13-37-201.

Sufficiency Finding No. 1: Candidate Fallon failed to file his Statement of Candidate with the COPP within 5 days of becoming a 2020 candidate for Kalispell School District #5 Trustee as required by Montana law.

The Commissioner finds candidate Fallon failed to properly and timely file a C-1A Statement of Candidate with the COPP indicating his candidacy for a 2020 school trustee position, a Montana campaign practices violation.

After the completion of the elections in which he had participated in, candidate Fallon was issued a Certificate of Election of Trustee by Acclimation by Kalispell School District #5, indicating that he had been "duly elected by acclimation to fill the position of Trustee" (FOF Nos. 3, 6).

At no time was the COPP notified that candidate Fallon had registered as a candidate for election to a school trustee position with the Kalispell School District #5. Had the COPP been made aware of the candidacy, the agency would have contacted the individual immediately to notify of their requirement to register on forms filed with the COPP and provide any necessary assistance in completing this process, as it routinely does with all candidates.

Ultimate responsibility in meeting the requirements of Mont. Code Ann. §13-37-201, falls on the candidate, not the COPP or any other entity or agency which the candidate interacts with. Like any other candidate, school trustee candidates assume all responsibility for complying with applicable Montana campaign finance law regardless of what contact (if any) the candidate has with COPP staff.

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 candidate Fallon 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).

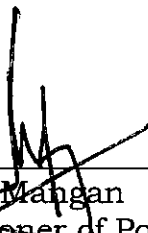
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of candidate Fallon. 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. *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 19th day of April 2021.



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

CERTIFICATE OF ELECTION OF TRUSTEE (BY ACCLAMATION)

THIS IS TO CERTIFY that the candidate John "Jack" Fallon
was duly elected by acclamation to fill the office of Trustee for the Kalispell (High)
School District No. 5 of Flathead County, State of Montana, for a term of
3 years, beginning on the 9th day of May, 2017 and ending at the
Trustee organizational meeting in May, 2020.

Gwyn Andersen *Gwyn Andersen*
Print District Clerk's Name Signature of District Clerk

Kalispell (High) School District No. 5
Flathead County, State of Montana
DATED this 9th day of May, 2017

Please file the following oath with the county superintendent within fifteen (15) days of your receipt of this Certificate of Election. Upon completion of taking and filing the oath of office, you will have the rights and obligations of a Trustee of the School Board pursuant to Montana law and in accordance with 20-3-324, MCA. You will hold this position until your successor has been qualified.

OATH OF OFFICE

I do solemnly swear (or affirm) that I will support, protect and defend the Constitution of the United States, and the Constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God).

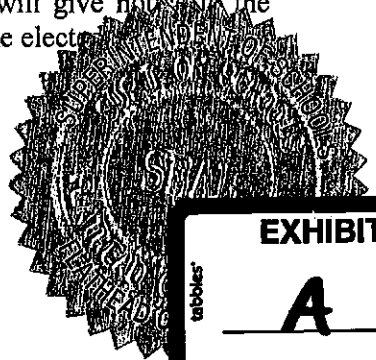
John "Jack" Fallon *John Fallon*
Print newly elected Trustee's Name Signature of newly elected Trustee

Subscribed and sworn to before me this 9th day of May, 20 17

Jack Eggenesperger *Jack Eggenesperger*
Print County Superintendent's Name Signature of County Superintendent

Note: Canvassed results must be published once in a newspaper that will give notice to the largest number of people of the district. Give the certificate and oath to the elector and the county superintendent.

20-20-416 and 20-3-307, MCA



DECLARATION OF INTENT AND OATH OF CANDIDACY FOR TRUSTEE CANDIDATES

To the School District Clerk/Election Administrator of School District No. 5, Flathead County, State of Montana:

Filing for the office of School District Trustee: For a 3-year term at the Annual Regular School District Election to be held on the 2nd day of May, 2017.

Candidate Name (Print): John T. Fallon

Mailing address: 629 Shadow Lane

City and State: Kalispell, MT 59901 Zip Code: _____

Residence address: SAME

City and State: _____ Zip Code: _____

Contact Phone: 406.752.1490 Email Address: jackfallon@centarykl.net

I hereby affirm that I possess, or will possess, within the constitutional and statutory deadlines, the qualifications prescribed by the Constitution and law of the United States and the State of Montana.

DATED this 2 day of February, 2017

John T. Fallon
(Signature of Candidate)

Candidate must sign and acknowledge this Declaration of Intent before a Notary Public, if mailed, or before the Election Administrator or Deputy, if delivered in person.

State of Montana, County of Flathead

Signed and sworn to before me this 2nd day of Feb, 2017, by John T. Fallon
Printed Name of Candidate

Gwyn M. Andersen
Signature of Notary or Public Official

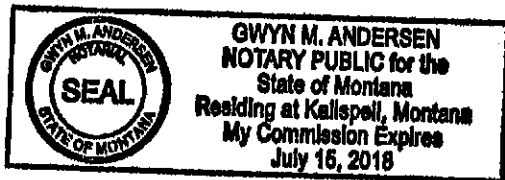
Gwyn M. Andersen
Printed name of Notary or Public Official

Notary Public for the State of Montana

Residing at: _____

My Commission Expires: _____, 20____

SEAL/STAMP



DECLARATION OF INTENT AND OATH OF CANDIDACY FOR TRUSTEE CANDIDATES

Candidate Name (Print): John T. Fallon

This Declaration of Intent for a trustee position must be submitted to the school district clerk/election administrator no later than 40 days before the election. 20-3-305, MCA

Pursuant to 13-37-206, MCA, all candidates for trustee positions in first-class districts located in counties with populations of 15,000 or more OR in county high school districts having student enrollments of 2,000 or more must report their campaign finance activities to the Montana Commissioner of Political Practices. Current forms are available at:

<http://politicalpractices.mt.gov/5campaignfinance/candidateinfo.mcp.x>.

Please return this form to:

Name of Election Official: Gwyn M. Andersen
Representing: Kalspell Public Schools
Address: 233 1st Ave East City, State, Zip Kalspell, MT 59901
Fax: (406) 751-3425 Email: anderseng@sd5.k12.mt.us

CERTIFICATE OF ELECTION OF TRUSTEE BY ACCLAMATION

THIS IS TO CERTIFY that **JACK FALLON** was duly elected by acclamation to fill the office of Trustee for the **FLATHEAD HIGH SCHOOL (DISTRICT II), KALISPELL** District No. 5, Flathead County, Montana, for the term of **THREE (3)** years, beginning on the **12TH** day of **May, 2020**, and ending at the trustee organizational meeting in **May, 2023**, or until a successor has been elected or appointed and has been qualified.

ISSUED THIS **12TH** day of **May, 2020**.

Board Chair: **LANCE ISAAK**

Board Chair Signature: *Lance Isak*

District Clerk: **GWYN ANDERSEN**

District Clerk Signature: *Gwyn Andersen*

School District No. 5, Flathead County, Montana

File the following oath of office with the county superintendent within fifteen (15) days of your receipt of this Certificate of Election. Upon completion of taking and filing the oath of office, you will have the rights and obligations of a Trustee of the School Board pursuant to Montana law and in accordance with 20-3-324, MCA. You will hold this position until your successor has been qualified.

OATH OF OFFICE

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution of the United States, and the Constitution of the State of Montana, and that I will discharge the duties of my office with fidelity (so help me God).

Signature of Newly Appointed Trustee: *John T. Fallon*

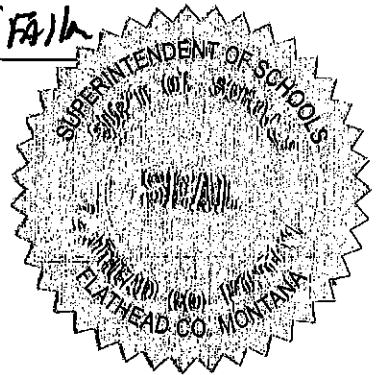
Printed Name of Newly Appointed Trustee: **JACK FALLON** *John T. Fallon*

Signed and sworn to before me this **12TH** day of **MAY, 2020**.

Jack Eggensperger
Signature of County Superintendent

JACK EGGENSBERGER
Printed Name of County Superintendent

Canvassed results (if applicable) must be published once in a newspaper that will give notice to the largest number of people of the district. 20-20-416, MCA.



DECLARATION OF INTENT AND OATH OF CANDIDACY FOR TRUSTEE CANDIDATES

To the School District Clerk of School District No. 5, Flathead County, State of Montana:

Filing for the office of School District Trustee: For a 3-year term at the Annual Regular School District Election to be held on the 5th day of May, 2020.

Candidate Name (Print, as it should appear on the ballot):

John T. Fallon

Mailing address: 629 Shadow Lane

City and State: Kalispell, MT Zip Code: 59901

Residence address: same

City and State: Zip Code:

Contact Phone: 406-752-1490 Email Address: jackfallon@centurytel.net

I hereby affirm that I possess, or will possess, within the constitutional and statutory deadlines, the qualifications prescribed by the Constitution and law of the United States and the State of Montana.

DATED this 14th day of January, 2020

Handwritten signature of John T. Fallon

(Signature of Candidate)

Candidate must sign and acknowledge this Declaration of Intent before a Notary Public, if mailed, or before the Election Administrator or Deputy, if delivered in person.

State of Montana, County of Flathead

Signed and sworn to before me this 14th day of January, 2020, by John Fallon Printed Name of Candidate

Handwritten signature of Gwyn M. Andersen

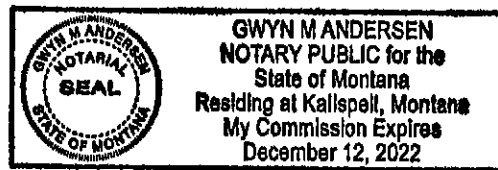
Signature of Notary or Public Official

Printed name of Notary or Public Official: Gwyn M Andersen

Notary Public for the State of Montana (include stamp/seal)

Residing at:

My Commission Expires: /, 20



THE STATE OF MONTANA

COMMISSIONER OF POLITICAL PRACTICES

1209 Eighth Avenue
Post Office Box 202401
Helena, MT 59620-2401
TELEPHONE: 406-444-2942
FAX NUMBER: 406-444-1643
WEBSITE: www.politicalpractices.mt.gov

FOR OFFICE USE ONLY

Date Received and Postmark Date

Form C-1-A (Revised 01/18)

Statement of Candidate

TO BE FILED by CANDIDATE for COUNTY, MUNICIPAL or SCHOOL OFFICE

ORIGINAL FILING AMENDED FILING

TYPE OR PRINT IN INK ALL INFORMATION WITH EXCEPTION OF SIGNATURE

FULL NAME OF CANDIDATE John T. Fallon

COMPLETE DESCRIPTION OF OFFICE SOUGHT Trustee, Flaxhead H.S. District

PARTY AFFILIATION, if any NONE COUNTY OF RESIDENCE Flaxhead

COMPLETE MAILING ADDRESS 629 Shadow Lane, Kalispell, MT 59901
(Including City, State, Zip Code)

COMPLETE STREET ADDRESS SAME
(Including City, State, Zip Code)

jackfallon@centurytel.net 406-752-1440 406-752-0715 N/A
E-Mail Address (Please Print) Home Telephone Number Work Telephone Number Facsimile Number

FULL NAME OF CAMPAIGN TREASURER John T. Fallon

COMPLETE MAILING ADDRESS see above
(Including City, State, Zip Code)

COMPLETE STREET ADDRESS SAME
(Including City, State, Zip Code)

E-Mail Address (Please Print) Home Telephone Number Work Telephone Number Facsimile Number

FULL NAME OF DEPUTY TREASURER, if any NONE

COMPLETE MAILING ADDRESS _____
(Including City, State, Zip Code)

E-Mail Address (Please Print) Home Telephone Number Work Telephone Number Facsimile Number

CAMPAIGN ACCOUNT INFORMATION

FULL NAME OF BANK N/A I will not spend money on campaign

COMPLETE ADDRESS _____
(Including City, State, Zip Code)

AFFIDAVIT OF REPORTING STATUS (Check one) a treasurer and bank must be designated.

I certify that I expect the total amount of contributions or expenditures will not exceed \$500 (including personal funds); however, if more than \$500 is received and/or expended, within 5 days of reaching this threshold I will file an initial financial report (form C-5) and I will file additional financial reports according to schedule.

I expect to receive contributions and/or make expenditures exceeding \$500 (including personal funds). I will file an initial financial report (form C-5) according to schedule.

CERTIFICATION: I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true, complete and correct.

Candidate's Signature

Date

1/14/20