

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Bondy v. Warnell No. COPP 2021-CFP-009	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 Scott Warnell. 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: Scott Warnell is a current member of the Kalispell School District #5 Board of Education.¹ (Commissioner's Records.)

Finding of Fact No. 2: On May 5, 2020, Kalispell School District #5 held a school trustee election. (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 COPP a copy of a Declaration and Oath of Candidacy for Trustee Candidates signed by Scott Warnell and dated March 12, 2020,

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

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 Warnell was also included. While the C-1A was signed and dated March 11, 2020, it was not provided to the COPP by candidate Warnell at that time. Finally, the email included a copy of a Certificate of Election of Trustee by Acclimation issued May 12, 2020, stating that candidate Warnell "was duly elected by acclamation to fill the office of Trustee".

At no time did candidate Warnell 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. 4: 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. 5: 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 Scott Warnell failed to register with the COPP as candidate for a 2020 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 Scott Warnell had registered with the school district as a candidate for election to a school trustee position in 2020 (FOF No. 3) Mr. Warnell 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.

Scott Warnell became a candidate in the Kalispell School District #5's May 5, 2020 school trustee election on March 19, 2020 by filing a Declaration and Oath of Candidacy for Trustee Candidates with the school district (FOF No. 3). While candidate Warnell appears to have completed and signed a hard copy C-1A Statement of Candidate indicating his candidacy in that election, he did not provide this document to the COPP (FOF No. 3). Candidate Warnell failed to

meet the requirements of Mont. Code Ann. §13-37-201 by failing to register as a candidate with the COPP for a 2020 election in which he had participated as a candidate. Candidate Warnell'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 Warnell 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 Warnell 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 election in which he had participated in, candidate Warnell 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 No. 3).

At no time was the COPP notified that candidate Warnell 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 Warnell 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

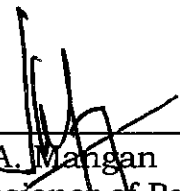
neglect principles). Likewise, the Commissioner does not normally accept that failures to file or report be excused as *de minimis*. *Id.* (discussing *de minimis* principles).

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 Warnell. 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 Scott 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 Scott 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

THIS IS TO CERTIFY that at the Annual School Election of the **KALISPELL ELEMENTARY** District No. **5**, Flathead County, Montana, held on the **5th day of May, 2020**, **SCOTT WARNELL** was duly elected to fill the office of Trustee 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: *Scott Warnell*

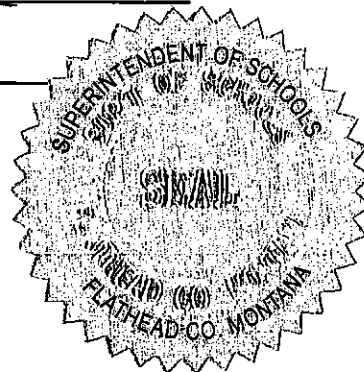
Printed Name of Newly Appointed Trustee: **SCOTT WARNELL**

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

Jack Eggenesperger
Signature of County Superintendent

JACK EGGENSPPERGER

Printed Name of County Superintendent



Canvassed results 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):

Scott Warnell

Mailing address: 1290 Foys Lk. Rd.

City and State: Kalispell, MT Zip Code: 59901

Residence address: 1290 Foys Lk. Rd.

City and State: Kalispell, MT Zip Code: 59901

Contact Phone: 406-212-5510 Email Address: ScottWarnell68@gmail.com

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 12th day of March, 2020

[Signature]

(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 12th day of March, 2020, by Scott Warnell Printed Name of Candidate

[Signature]

Signature of Notary or Public Official

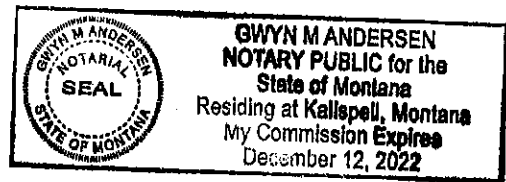
Gwyn M Andersen

Printed Name of Notary or Public Official

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

Residing at:

My Commission Expires: , 20



DECLARATION OF INTENT AND OATH OF CANDIDACY FOR TRUSTEE CANDIDATES

Candidate Name (Print): SCOTT Warnell

This Declaration of Intent for a trustee position must be submitted to the school district clerk 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: [Link to the MT Political Practices webpage](#)

Please return this form to:

District Clerk: Gwyn M. Andersen
District: Kalispell Elementary School
Address: 233 First Ave. East City, State, Zip Kalispell, MT 59901
Fax: (406) 751-3425 Email: anderseng@sd5.k12.mt.us

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 Scott Warnell

COMPLETE DESCRIPTION OF OFFICE SOUGHT School District #5 Board Member

PARTY AFFILIATION, if any _____ COUNTY OF RESIDENCE Flathead

COMPLETE MAILING ADDRESS 1290 Fous Lk. Rd.; Kalispell, MT 59901
(Including City, State, Zip Code)

COMPLETE STREET ADDRESS 1290 Fous Lk. Rd.; Kalispell, MT 59901
(Including City, State, Zip Code)

scottwarnell68@gmail.com 406.212.5510 406.212.5510 _____
E-Mail Address (Please Print) Home Telephone Number Work Telephone Number Facsimile Number

FULL NAME OF CAMPAIGN TREASURER Jana Warnell

COMPLETE MAILING ADDRESS 1290 Fous Lk. Rd.; Kalispell, MT 59901
(Including City, State, Zip Code)

COMPLETE STREET ADDRESS 1290 Fous Lk. Rd.; Kalispell, MT 59901
(Including City, State, Zip Code)

janawarnell@hotmail.com 406.253.1239 406.751.3839 _____
E-Mail Address (Please Print) Home Telephone Number Work Telephone Number Facsimile Number

FULL NAME OF DEPUTY TREASURER, if any N/A
(Must be registered to vote in Montana)

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

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

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

B 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.

C 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.

Scott Warnell 3-11-20
Candidate's Signature Date