

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Lore v. Kerr No. COPP 2021-CFP-018	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
---------------------------------------	--

On July 27, 2021, Juliane Lore of Laurel, Montana filed a campaign practices complaint against Jean Kerr, also of Laurel; an Amended version of the complaint was filed on August 2, 2021. The Amended complaint alleges that candidate Kerr failed to file campaign finance reports as required.

**SUBSTANTIVE ISSUES ADDRESSED**

Timely filing of campaign finance reports with the Commissioner of Political Practices.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: On May 15, 2021, Jean Kerr filed a Declaration of Nomination and Oath of Candidacy as a candidate for election to the position of City Judge in the City of Laurel with the Yellowstone County elections department. (Commissioner's Records.)

Finding of Fact No. 2: On July 7, 2021, Jean Kerr filed a C-1A Statement of Candidate as a candidate for election to a City Judge position in the City of Laurel with the COPP. Under Reporting Status, candidate Kerr certified that the campaign "Will spend more than \$500.00". (Commissioner's Records.)

Finding of Fact No. 3: Candidates for election to municipal (city) office who certified that the campaign “Will spend more than \$500.00” had C-5 campaign finance reports due on or before Monday, June 21, 2021<sup>1</sup> and Wednesday, July 20, 2021. (Commissioner’s Records.)

Finding of Fact No. 4: Candidate Kerr did not file a C-5 campaign finance report on or before June 21, 2021. (Commissioner’s Records.)

Finding of Fact No. 5: Candidate Kerr did not file a C-5 campaign finance report on or before July 20, 2021. (Commissioner’s Records.)

Finding of Fact No. 6: On July 30, 2021, candidate Kerr filed an initial C-5 campaign finance report, dated May 15, 2021 through July 15, 2021. This report disclosed one (1) in-kind loan made by candidate Kerr to her campaign in the amount of \$431.00, described as “Yellowstone County Elections, filing fee”. The report did not disclose any other contributions received or expenditures made. (Commissioner’s Records.)

Finding of Fact No. 7: On July 30, 2021, candidate Kerr emailed her response in this matter to the COPP. In the response, candidate Kerr writes:

*I filled out the C-5 reporting form on July 20, 2021 for the reporting period of May 15 -July 15, 2021... Also, I forgot to poke the button to certify and file the report that day, only to discover it has been in a pending state all this time. None of this was intentional or meant to be misleading. Today, July 30, 2021, I called the Political Finance office and a kind and professional woman named Deb assisted me.*

(Commissioner’s Records.)

## **DISCUSSION**

### *Campaign Finance Reports*

---

<sup>1</sup> Because July 20 fell on a Sunday, the due date for this report was pushed back to Monday the 21<sup>st</sup>. This reporting calendar for municipal candidates was established under House Bill 71, passed by the 2021 Montana Legislature and signed into law by Governor Gianforte on April 8, 2021. HB 71 was effective upon signage.

The complaint alleges that candidate Kerr failed to file campaign finance reports on June 20, 2021 and July 20, 2021.

The 2021 Montana Legislature passed House Bill 71, which established June 20 as the initial finance report due date for municipal (city) candidates and was made effective upon passage and approval. HB 71 was signed into law by Governor Gianforte and thus took effect on April 8, 2021. HB 71 amended the campaign finance reporting dates for municipal (city) candidates found under Mont. Code Ann. §13-37-226. Specifically, HB 71 added subsection (4)(a), which holds that “A candidate for a municipal office who participates in an election held in an odd-numbered year shall file the reports required in subsection (1) on the 20th day of June, July, August, September, October, and November of the year of the election in which the candidate participates”<sup>2</sup> (emphasis added).

Municipal (city) candidates who anticipate “receiving contributions in a total amount of less than \$500 and anticipates making expenditures in a total amount of less than \$500 for all elections in a campaign” are exempted from filing campaign finance reports, 44.11.304, Administrative Rules of Montana. However, in this case candidate Kerr indicated on her Statement of Candidate that campaign expenditures would exceed \$500.00, meaning the campaign would be required to financial reports under Mont. Code Ann. §13-37-226 (FOF No. 2). Campaign finance reports “must be filed to cover” a specific reporting

---

<sup>2</sup> <https://leg.mt.gov/bills/2021/sesslaws/ch0158.pdf>

period “even though no contributions or expenditures may have been received or made during the period”, Mont. Code Ann. §13-37-228.

By certifying on the Statement of Candidate that campaign expenditures would exceed \$500, candidate Kerr was required to file campaign finance reports on or before June 21 and July 20, 2021. The initial report, due June 21, 2021 was required to cover all contribution and expenditure activity from the beginning of the campaign through at least June 15, 2021, and the periodic July 20 report was required to cover all contribution and expenditure activity from June 16 through at least July 15, 2021, Mont. Code Ann. §13-37-228(1) and (2), (FOF No. 3).

Candidate Kerr did not file a C-5 campaign finance report on or before June 21 or July 20 (FOF Nos. 4, 5). After receipt of this complaint, candidate Kerr contacted COPP compliance staff for assistance filing campaign finance reports and was able to file an initial campaign finance report (FOF Nos. 6, 7). Candidate Kerr’s initial C-5 campaign finance report was filed on July 30, 2021, dated May 15, 2021 through July 15, 2021 (FOF No. 6).

The dates that were to be covered by the initial June 21 report (May 15, 2021 through June 15, 2021) were included on candidate Kerr’s campaign finance report filed July 30, thirty-nine (39) days late (FOF No. 4). The dates that were to be covered on the periodic July 20, 2021 report (June 16, 2021 through July 15, 2021) were also included on candidate Kerr’s campaign finance report filed July 30, that report was filed ten (10) days late (FOF No. 5).

Candidate Kerr late filed two (2) campaign finance reports, in violation of Mont Code Ann. §13-37-226(4)(a).

Sufficiency Finding No. 1: Candidate Kerr failed to timely file the required campaign finance reports with the COPP due June 21 and July 20, 2021.

There are sufficient facts to determine Candidate Armstrong filed her June and July 2021 campaign finance reports on July 30, 2021, later than required under law. Candidate Kerr failed to timely and properly file both June 21 and July 20, 2021, C-5 campaign finance reports, Montana campaign finance violations.

*Statement of Candidate*

All candidates for election to a municipal (city) office are required to file a Statement of Candidate with the COPP “within 5 days of becoming a candidate”, Mont. Code Ann. §13-37-201(2)(a). Actions that would lead to one becoming a candidate include filing a declaration or petition for nomination as a candidate for public office, soliciting/receiving contributions, or making expenditures, Mont. Code Ann. §13-1-101(8). In other words, candidate Kerr was required to file a Statement of Candidate with the COPP within 5 days of filing a declaration or petition for nomination as a candidate for public office, soliciting/receiving contributions, or making expenditures, whichever came first.

Jean Kerr filed a Declaration of Nomination and Oath of Candidacy as a candidate for election to the position of City Judge in the City of Laurel with the Yellowstone County elections department on May 15, 2021 (FOF No. 1). By

filing a Declaration of Nomination and Oath of Candidacy for an elected municipal (city) position in the City of Laurel, candidate Kerr became a candidate on May 15, 2021, Mont. Code Ann. §13-1-101(8). As noted under Mont. Code Ann. §13-37-201(2)(a), the Statement of Candidate must be filed with the COPP “within 5 days of becoming a candidate”. Candidate Kerr filed a C-1A Statement of Candidate with the COPP on July 7, 2021, outside the required 5 days (FOF No. 2).

Sufficiency Finding No. 2: Candidate Kerr failed to timely file the required Statement of Candidate record with the COPP within 5 days of becoming a candidate for Municipal Judge.

There are sufficient facts to show candidate Kerr violated the requirements of Mont. Code Ann. §13-37-206(1) by failing to file a Statement of Candidate with the COPP within five days, a Montana campaign finance and practice violation.

## **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 Jean Kerr 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 Kerr. 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. §§13-37-206(1). 13-37-226(4)(a). *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 5<sup>th</sup> day of August 2021.



---

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