

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

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| Nielsen v. Montana Conservation Voters Action Fund No. COPP 2021-CFP-025 | FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION |
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On December 17, 2021 David Nielsen of Helena, Montana filed a campaign practices complaint against Montana Conservation Voters Action Fund (MCVAF), a registered Montana political committee. The complaint alleged Montana Conservation Voters Action Fund failed disclose certain committee expenditures.

SUBSTANTIVE ISSUES ADDRESSED

Proper and timely filing of political committee finance reports disclosing contributions, expenditures and independent expenditures.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Included with this complaint was a copy of a mailer that states “Montana Conservation Voters is Proud to Support Wilmot Collins, Eric Feaver, and Melinda Reed” and that “Montana Conservation Voters is supporting Wilmot Collins for mayor and Eric Feaver and Melinda Reed for city council”. The mailer included an attribution message of “Paid for by Montana Conservation Voters Action Fund, Sally Ericcson, Treasurer. PO Box 63, Billings, MT 59103”. (Commissioner’s Records)

Finding of Fact No. 1A: Wilmot Collins filed a C-1A Statement of Candidate as a candidate for election to the office of Mayor in the City of Helena on March 31, 2021. (Commissioner's Records)

Finding of Fact No. 1B: Eric Feaver filed a C-1A Statement of Candidate as a candidate for election to a City Council position in the City of Helena on April 18, 2021. (Commissioner's Records)

Finding of Fact No. 1C: Melinda Reed filed a C-1A Statement of Candidate as a candidate for election to a City Council position in the City of Helena on April 15, 2021. (Commissioner's Records)

Finding of Fact No. 2: Montana Conservation Voters Action Fund (MCVAF) is a registered independent political committee in the State of Montana. The committee most recently amended its C-2 Statement of Organization on October 6, 2021, listing Sally Ericsson as committee Treasurer. No candidate/s or issue/s were listed on the C-2 under the "Purpose of Committee and/or Name(s) of Candidate(s) or Ballot Issue(s) Supported or Opposed" section of the Statement of Organization by MCVAF. (Commissioner's Records)

Finding of Fact No. 3: On July 28, 2021, MCVAF filed two periodic C-6 committee finance reports for election year 2021- one dated January 1, 2021 through April 5, 2021, and one dated April 6, 2021 through June 30, 2021. Neither report disclosed any expenditures made by MCVAF meant to support or oppose 2021 municipal (city) candidate/s or ballot issue/s. (Commissioner's Records)

Finding of Fact No. 4: On October 6, 2021, MCVAF filed a periodic C-6 committee finance report, dated July 1, 2021 through September 30, 2021. This report disclosed one (1) expenditure made by MCVAF meant to support or oppose 2021 municipal (city) candidate/s or ballot issue/s: an expenditure in the amount of \$180.00 dated September 15, 2021 to entity "Engen for Mayor" with Purpose described as "Contribution". (Commissioner's Records)

Finding of Fact No. 4A: John Engen filed a C-1A Statement of Candidate as a candidate for election to the office of Mayor in the City of Missoula on April 19, 2021. (Commissioner's Records)

Finding of Fact No. 5: MCVAF did not file any additional C-6 committee finance reports for election year 2021 prior to the COPP's December 17, 2021 receipt of this complaint. (Commissioner's Records)

Finding of Fact No. 6: On December 22, 2021, after its receipt of this complaint, MCVAF filed a periodic C-6 committee finance report, dated October 1, 2021 through October 24, 2021. This report disclosed MCVAF as receiving one (1) contribution in the amount of \$5,000.00, making one (1) expenditure not intended to benefit specific candidate/s or issue/s totaling \$20.00 and five (5) independent expenditures totaling \$16,397.90, intended to benefit 2021 municipal candidates Kristen Jordan, Stacie Anderson, Jordan Hess, Denise Joy, and Ed Gulick, during the reporting period (see Table 1). (Commissioner's Records)

Finding of Fact No. 6A: Kristen Jordan filed a C-1A Statement of Candidate as a candidate for election to a City Council position in the City of Missoula on May 17, 2021. (Commissioner's Records)

Finding of Fact No. 6B: Stacie Anderson filed a C-1A Statement of Candidate as a candidate for election to a City Council position in the City of Missoula on March 31, 2021. (Commissioner's Records)

Finding of Fact No. 6C: Jordan Hess filed a C-1A Statement of Candidate as a candidate for election to a City Council position in the City of Missoula on April 16, 2021. (Commissioner's Records)

Finding of Fact No. 6D: Denise Joy filed a C-1A Statement of Candidate as a candidate for election to a City Council position in the City of Billings on April 19, 2021. (Commissioner's Records)

Finding of Fact No. 6E: Ed Gulick filed a C-1A Statement of Candidate as a candidate for election to a City Council position in the City of Billings on January 1, 2021. (Commissioner's Records)

Finding of Fact No. 7: On December 22, 2021, after its receipt of this complaint, MCVAF filed a periodic C-6 committee finance report, dated October 25, 2021 through November 25, 2021. This report disclosed MCVAF as making two (2) expenditures not intended to benefit specific candidate/s or issue/s totaling \$420.00 and four (4) independent expenditures totaling \$13,206.39, intended to benefit candidates Collins, Feaver, Reed, Jordan, Anderson, Hess, Joy, and Gulick, during the reporting period (see Table 2). (Commissioner's Records)

Finding of Fact No. 8: On December 23, 2021, MCVAF emailed its formal response in this matter to the COPP. The response states that, after the complaint was filed, MCVAF "discovered that certain independent expenditures...were not timely reported" and that the committee had since "submitted two type C6 reports through the

Montana Campaign Electronic Reporting System, covering all relevant activity”. (Commissioner’s Records)

DISCUSSION

The complaint alleges that Montana Conservation Voters Action Fund (MCVAF) failed to disclose report certain expenditures made by the committee in conjunction with Montana’s 2021 municipal (city) elections. As evidence, the complainant includes a copy of a campaign mailer supporting candidates in the City of Helena that includes both language referencing MCVAF and a disclaimer indicating that MCVAF had financed the material (FOF No. 1). The complaint indicates that MCVAF had failed to disclose the mailer as an expenditure on committee finance reports filed with the COPP.

Part One: Reporting Expenditures

MCVAF is a registered independent political committee in the State of Montana, having filed a C-2 Statement of Organization with the Commissioner of Political Practices (FOF No. 2). As a registered political committee, MCVAF is required to periodically file finance reports with the COPP disclosing contributions received and expenditures made, Mont. Code Ann. §§13-37-225 and 226.

Prior to its receipt of this complaint, MCVAF had filed three C-6 committee finance reports disclosing contributions received and expenditures made in 2021, covering activity from January 1, 2021 through September 30, 2021 (FOF Nos. 3, 4). MCVAF’s first reported expenditure relating to Montana’s 2021 municipal elections occurred on September 15, 2021, when the

committee made a contribution of \$180.00 to the campaign of Missoula Mayoral candidate John Engen (FOF Nos. 4, 4A). After receipt of this complaint, MCVAF did file additional C-6 finance reports covering the periods of October 1-October 24 and October 25-November 25, 2021 (FOF Nos. 6, 7).

Mont. Code Ann. §13-37-226(2) specifically provides the date/s political committees such as MCVAF are to file required campaign finance reports. For election years in which a committee does not directly participate by making expenditures, the committee is to file finance reports “quarterly, due on the 5th day following a calendar quarter, beginning in the calendar quarter following a year of an election in which the political committee or the joint fundraising committee participates”, Mont. Code Ann. §13-37-226(2)(e). Prior to September 15, 2021, MCVAF did not directly participate in Montana’s 2021 municipal elections, meaning it would have campaign finance reports due on April 5 (covering all activity from January 1, 2021 through March 31, 2021) and July 5 (covering all activity from April 1, 2021 through June 30, 2021). MCVAF did not meet either of these statutory deadlines, instead filing its first two finance reports for election year 2021 on July 28, 2021 (FOF No. 3).

Sufficiency Finding No. 1: MCVAF failed to timely file two required quarterly committee finance reports. The committee late filed the report due on April 5, 2021 by ninety-one (91) days and late filed the report due July 5, 2021 by twenty-three (23) days.

The Commissioner finds there are sufficient facts to show the MCVAF political committee late filed two required quarterly committee finance reports; one due on April 5 by ninety-one (91) days; and late filed the report due July 5 by twenty-three (23) days, Montana campaign finance and practice violations.

Once a committee becomes involved in a given election, it is to file finance reports on the 30th day of each month as appropriate for the type of election, Mont. Code Ann. §13-37-226. MCVAF's participation in Montana's municipal elections began when the committee provided a reportable financial contribution to candidate Engen on September 15, 2021 (FOF No. 4). MCVAF had monthly reports due on or before September 30, October 30, and November 30 of 2021, Mont. Code Ann. §13-37-226(4)(b). The COPP investigation determined MCVAF failed to meet the statutory reporting deadlines. MCVAF's first committee finance report upon participating in a 2021 municipal election was required on September 30 for the reporting period August 25 to September 25, 2022. MCVAF filed a finance report disclosing all activity through the end of September on October 6, 2021¹ (FOF No. 4). The required committee finance report for the September 26 to October 24 reporting period was due on October 30, 2021. MCVAF filed a report disclosing activity through October 24 on December 22, 2021² (FOF No. 6). The required committee finance report for the October 25 to November 25, 2021 reporting period was due on November 30, 2021. MCVAF filed a report disclosing activity through November 24 on December 22, 2021³ (FOF No. 7). In late filing these three reports, MCVAF failed to timely disclose a \$5,000.00 contribution received by the committee, one (1) expenditure totaling \$180 to candidate Engen, three (3) expenditures totaling \$440.00 not intended to benefit any

¹ This finance report included the \$180 contribution to municipal candidate Engen

² This finance report was 50 days past the November 2, 2021 general election

³ This finance report was 50 days past the November 2, 2021 general election

candidates or ballot issues, and nine (9) independent expenditures totaling \$29,604.29 intended to benefit nine 2021 municipal candidates (FOF Nos. 4, 6, 7 and Tables 1, 2).

Sufficiency Finding No. 2: MCVAF failed to timely file three required monthly committee finance reports as they participated in a 2021 municipal election. The committee late filed the report due September 30 by six (6) days, late filed the report due October 30 by fifty-three (53) days and after the 2021 general election, and late filed the report due November 30 by twenty-two (22) days. The total amount of expenditures and independent expenditures late disclosed in these municipal elections totaled \$30,224.29. The total amount of contributions received late disclosed in these municipal elections totaled \$5000.00.

The Commissioner finds sufficient facts to show the MCVAF committee violated Montana campaign finance and practice law as evidenced: MCVAF late filed the report due September 30 by six (6) days; late filed the report due October 30 by fifty-three (53) days; and late filed the report due November 30 by twenty-two (22) days. The filings failed to timely report contributions received in the amount of \$5000.00 and the timely disclose expenditures and independent expenditures in the amount of \$30,224.29. Of the \$30,224.29, \$30,044.29 was reported 50 days⁴ following the 2021 municipal General election.

The COPP investigation into this matter determined that MCVAF reported three (3) independent expenditures involving phone calls to voters intended to benefit municipal candidates, totaling \$7,116.86, using the date of November 9, 2021. The date provided by MCVAF of November 9, 2021 to disclose these

⁴ This includes \$7,116.86 that was dated after the 11/02/21 general election date.

independent expenditures does not appear to be the date where the actual activity was agreed to and/or occurred, but instead appears to be the date MCVAF was invoiced by or otherwise paid the vendor⁵. Phone calls made by MCVAF intended to benefit municipal candidates on November 9 would have occurred after the conclusion of voting in the municipal general election, which was held on November 2, 2021. In addition, it is likely that had the MCVAF filed properly and according to schedule, pre-election expenditure reporting may have been required for those expenditures that occurred just prior to general election day. The failure of the MCVAF to properly and timely disclose its 2021 municipal election activity deprived Montanans, candidates, the media and all interested persons the transparency provided by Montana's campaign finance and practices laws.

Part Two: Statement of Organization

COPP's investigation into this complaint additionally determined that MCVAF failed to provide all required information on its C-2 Statement of Organization. Specifically, the committee failed to list the names of the candidates it supported in Montana's 2021 municipal elections on its C-2 as required.

44.11.201(2), Administrative Rules of Montana, requires that political committees include the "name, office sought, and party affiliation (if any) of

⁵ COPP reminds candidates and political committees that "an obligation to pay for a campaign expenditure is incurred on the date the obligation is made, and shall be reported as a debt of the campaign until the campaign pays the obligation by making an expenditure", 44.11.502(2), Administrative Rules of Montana. In other words, candidates and committees must report obligations owed to a vendor as a debt at the time the obligation is incurred, not as an expenditure at the time payment is made.

each candidate on whom the committee makes a reportable election expenditure". In this case, MCVAF first made a reportable election expenditure by providing a campaign contribution to candidate John Engen (FOF No. 4). MCVAF made an additional nine (9) reportable independent expenditures intended to benefit municipal candidates Kristen Jordan, Stacie Anderson, Jordan Hess, Denise Joy, Ed Gulick, Wilmot Collins, Eric Feaver, and Melinda Reed (FOF Nos. 6, 7 and Tables 1, 2).

Sufficiency Finding No. 3: MCVAF failed to properly and timely update and file its Statement of Organization. MCVAF participated in several Montana municipal elections in which the committee's independent expenditures benefited nine (9) municipal candidates not reported on the committee's Statement of Organization.

The Commissioner finds there are sufficient facts to show the MCVAF political committee participated in multiple Montana municipal elections through independent expenditures benefitting nine Montana municipal candidates. MCVAF failed to name each of these nine candidates on its Statement of Organization, a Montana campaign finance and practice violation.

Table 1: Expenditures & Independent Expenditures as reported by Montana Conservation Voters Action Fund on its October 1, 2021 through October 24, 2021 C-6 committee finance report.

Expenditures

| Entity | Purpose | Date | Amount |
|--------------------------|-----------------------------|------------|---------|
| Paragon Payment Solution | Contribution processing fee | 10/04/2021 | \$20.00 |
| | | | \$20.00 |

Independent Expenditures

| Entity | Candidate/Issue | Specific Services | Date | Amount |
|-------------|-----------------|--------------------------------|------------|------------|
| Dover Group | Kristen Jordan | Mail piece design, production, | 10/07/2021 | \$3,409.36 |

| | | | | |
|-------------|-----------------|--|------------|-------------|
| | | postage, and shipping | | |
| Dover Group | Stacie Anderson | Mail piece design, production, postage, and shipping | 10/07/2021 | \$3,852.62 |
| Dover Group | Jordan Hess | Mail piece design, production, postage, and shipping | 10/07/2021 | \$1,680.37 |
| Dover Group | Denise Joy | Mail piece design, production, postage, and shipping | 10/07/2021 | \$5,488.60 |
| Dover Group | Ed Gulick | Mail piece design, production, postage, and shipping | 10/07/2021 | \$1,966.95 |
| | | | | \$16,397.90 |

Table 2: Expenditures & Independent Expenditures as reported by Montana Conservation Voters Action Fund on its October 25, 2021 through November 25, 2021 C-6 committee finance report.

Expenditures

| Entity | Purpose | Date | Amount |
|--------------------------|------------------------------|------------|----------|
| Clark Schaefer Hackett | Organizational/hr consulting | 11/09/2021 | \$400.00 |
| Paragon Payment Solution | Contribution Processing Fees | 11/02/2021 | \$20.00 |
| | | | \$420.00 |

Independent Expenditures

| Entity | Candidate/Issue | Specific Services | Date | Amount |
|---------------|--|--|------------|------------|
| Dover Group | Wilmot Collins, Eric Feaver, Melinda Reed | Mail piece design, production, postage, and shipping | 11/01/2021 | \$6,089.53 |
| Stones Phones | Jordan Hess, Stacie Anderson, Kristen Jordan | Live phone calls to voters | 11/09/2021 | \$1,967.94 |
| Stones Phones | Eric Feaver, Melinda Reed | Live telephone calls to voters | 11/09/2021 | \$3,745.17 |

| | | | | |
|---------------|-----------------------|----------------------------|------------|-------------|
| Stones Phones | Ed Gulick, Denise Joy | Live phone calls to voters | 11/09/2021 | \$1,403.75 |
| | | | | \$13,206.39 |

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 Montana Conservation Voters Action Fund 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*

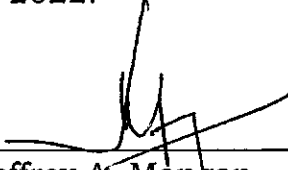
Matters of Vincent, Nos. COPP-2013-CFP-006, 009 (discussing excusable neglect principles). Likewise, the Commissioner does not normally accept that failures to file or report be excused as *de minimis*. *Id.* (discussing *de minimis* principles).

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 Montana Conservation Voters Action Fund. 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, 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 4th day of January 2022.



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