

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Guthrie v. Fitzpatrick No. COPP 2022-CFP-005B	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On April 27, 2022, Greg Guthrie of Helena, MT filed a campaign practices complaint against Lois Fitzpatrick, also of Helena. The complaint alleged that candidate Fitzpatrick failed to appropriately file campaign finance reports disclosing campaign contributions received and expenditures made.

SUBSTANTIVE ISSUES ADDRESSED

Candidate proper and timely filing of campaign finance report.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Lois Fitzpatrick filed a C-1A Statement of Candidate as a candidate for election to a School Trustee position with the COPP on March 25, 2022. On the Statement of Candidate, candidate Fitzpatrick indicated that campaign activity would not meet or exceed \$500.00. (Commissioner’s Records.)

Finding of Fact No. 2: On April 27, 2022, candidate Fitzpatrick provided a formal response to this complaint to the COPP via email. In the response, candidate Fitzpatrick stated that “I am self-financing my campaign...I ordered and paid for my campaign materials on 4/11/22, from Allegra in Helena. I paid for it with my credit card” and that she had not received any campaign contributions from sources other than herself. The response included an invoice received by candidate Fitzpatrick’s campaign

from vendor Allegra Printing detailing the purchase of 30 campaign yard signs at a cost of \$520.00 and 500 door hangers at a cost of \$549.00 on April 11, 2022 (total cost of \$1,069.00). (Commissioner's Records.)

Finding of Fact No. 3: On April 27, 2022 candidate Fitzpatrick amended her C-1A Statement of Candidate to indicate that campaign activity would exceed \$500.00. (Commissioner's Records.)

Finding of Fact No. 4: Also on April 27, 2022, candidate Fitzpatrick filed an initial C-5 campaign finance report, dated March 25, 2022 through April 27, 2022. The report included three (3) total entries: one (1) in-kind contribution provided personally by candidate Fitzpatrick to her own campaign in the amount of \$1,069.00, with no In-Kind description provided; one (1) expenditure to entity Allegra, dated April 11, 2022 with Specific Services described as "Print services 30 18x24 yard signs; 500 3.75x8.5 door hangers" in the amount of \$1,069.00; and one (1) debt owed to entity Allegra, dated April 11, 2022 with Purpose described as "Design and layout plus printing of 30 yard signs and 500 door hangers" in the amount of \$1,069.00. (Commissioner's Records.)

DISCUSSION

The complainant in this matter asserts that candidate Fitzpatrick failed to properly file campaign finance reports disclosing contributions received and expenditures made by her campaign. Specifically, the complaint mentions campaign yard signs and campaign door hangers distributed by candidate Fitzgerald as proof that reportable contribution/expenditure activity was not appropriately or timely disclosed. The allegation is considered in full.

44.11.304(1), Administrative Rules of Montana, states that:

If a local candidate or a political committee which is specifically organized to support or oppose a particular local candidate or local issue anticipates 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, the candidate or an officer of the political committee shall file an affidavit of such intent at the same time the statement of candidate or statement of

organization is filed as required by 13-37-201 and 13-37-205, MCA.

As a candidate for election to a School Trustee position in the City of Helena, candidate Fitzpatrick would be considered a local candidate (FOF No. 1). On March 25, 2022, candidate Fitzpatrick filed a Statement of Candidate with the COPP certifying that campaign contribution and expenditure activity would total less than \$500.00 (FOF No. 1). As a local candidate who certified to the COPP that campaign activity would not meet or exceed \$500.00, candidate Fitzpatrick was not required to file campaign finance reports until such activity hit the \$500.00 threshold.

Applicable Administrative Rules hold that local candidates must begin filing campaign finance reports if campaign activity meets or exceeds \$500.00.

44.11.304(2), ARM:

If a local candidate or an officer of a local political committee files an affidavit pursuant to this rule and subsequently receives contributions in a total amount or makes expenditures in a total amount in excess of \$500 for all elections in a campaign, such candidate or officer shall, within five business days of the date when such expenditures or contributions exceed \$500, file an initial report disclosing all contributions and expenditures to that date and shall file all future reports required by 13-37-226, MCA.

In this case, candidate Fitzpatrick's campaign received a reportable in-kind contribution valued at \$1,069.00 from herself, in the form of 30 campaign yard signs and 500 campaign door hangers purchased personally from Allegra (FOF No. 2). Under the requirements of 44.11.304(2), ARM, candidate Fitzpatrick was required to file an initial campaign finance report within 5 business days of campaign activity exceeding \$500.00. In this case, candidate

Fitzpatrick received a reportable in-kind contribution exceeding \$500.00 on April 11, meaning the initial finance report was due on or before April 18, 2022 (5 business days later). Candidate Fitzpatrick did not file an initial C-5 campaign finance report on or before April 18. Candidate Fitzpatrick did file an initial C-5 campaign finance report, dated March 25, 2022 through April 27, 2022, following receipt of this Complaint (FOF No. 4) on April 27, 2022. Candidate Fitzpatrick late-filed the initial C-5 campaign finance report by nine (9) days, a Montana campaign finance and practice violation.

Candidate Fitzpatrick exceeded \$500 in campaign activity on April 11, 2022, requiring the candidate to amend her Statement of Candidate form C1A from 'B' box status to 'C' box status within 5 days of April 11, 2022. Candidate Fitzpatrick failed to amend the Statement of Candidacy to properly reflect her candidate status, a Montana campaign finance and practice violation.

Sufficiency Finding No. 1: Candidate Fitzpatrick failed to disclose her candidate status within 5 days of exceed \$500 in campaign activity.

Sufficiency Finding No. 2: Candidate Fitzpatrick's initial campaign finance report was due April 18, 2022. Candidate Fitzpatrick filed her campaign's initial campaign finance report 9 days late.

There are sufficient facts to show candidate Fitzpatrick failed to timely amend and submit campaign statements and finance reports as required by Montana law upon exceeding \$500 in reportable campaign finance activity.

In an attempt to disclose the campaign finance activity identified in this decision, candidate Fitzpatrick filed an initial campaign finance report that included sign and door hanger activity in the amount of \$1069.00 as both an

expense and debt of the campaign. The COPP has concluded the activity reported should be reported as an in-kind contribution from the candidate in the amount of \$1069.00. The COPP orders the candidate to correct the finance report within 5 days of the receipt of this decision to properly reflect the activity.

COPP reminds all 2022 school district candidates that the next required C-5 campaign finance report will be due on or before May 23, 2022, 20 days after the election, Mont. Code Ann. §13-37-226(3)(a).

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 Lois Fitzpatrick 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).

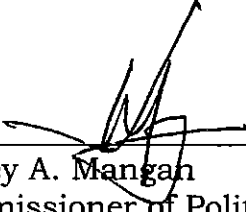
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Lois Fitzpatrick. 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, 226]. *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 7th day of May 2022.



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