

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Mitchell v. Wood No. COPP 2022-CFP-014	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On June 13, 2022, Braxton Mitchell of Columbia Falls, MT filed a campaign practices complaint against Lorena Wood of Martin City. The complaint alleged that candidate Wood failed to timely file campaign finance reports and failed to include ‘paid for by’ attribution messaging on campaign material as required.

SUBSTANTIVE ISSUES ADDRESSED

Timely filing of campaign finance reports.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Lorena Wood filed a C-1 Statement of Candidate with the COPP as a candidate for election to House District 3 on March 11, 2022. Candidates for State District offices had pre-primary campaign finance reports due on or before March 21¹, April 20, and May 20 of 2022, and a post-primary campaign

¹ March 20, 2022 was a Sunday. Under Montana law, Sundays are a legal holiday, Mont. Code Ann. § 1-1-216(1)(a). When a requirement of law is to be “performed upon a particular day, which day falls upon a holiday or a Saturday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed,” Mont. Code Ann. § 1-1-307. Therefore, if a campaign finance report is due on a Saturday, Sunday, or holiday, it will be accepted as timely filed if received by the following business day

finance report due on or before June 20, 2022. (Commissioner's Records.)

Finding of Fact No. 2: Candidate Wood timely filed an Initial C-5 campaign finance report on March 21, 2022. (Commissioner's Records.)

Finding of Fact No. 3: Candidate Wood did not file a C-5 campaign finance report on or before April 20, 2022. (Commissioner's Records.)

Finding of Fact No. 3A: On April 21, 2022, candidate Wood filed a Periodic C-5 campaign finance report, dated March 22, 2022, through April 15, 2022. (Commissioner's Records.)

Finding of Fact No. 4: Candidate Wood timely filed a Periodic C-5 campaign finance report on May 20, 2022. (Commissioner's Records.)

Finding of Fact No. 5: Included with this complaint were two (2) pictures of campaign yard sign material supporting candidate Wood that did not contain the full 'paid for by' attribution message. (Commissioner's Records.)

Finding of Fact No. 6: Candidate Wood did not advance as a Republican candidate for House District 3 from Montana's June 7, 2022, primary election, receiving 27% of the vote to challenger Braxton Mitchell's 73%.² Candidate Mitchell advanced to the November general election as the Republican candidate for House District 3. (Commissioner's Records.)

Finding of Fact No. 7: Candidate Wood did not file a C-5 campaign finance report on or before June 20, 2022. (Commissioner's Records.)

DISCUSSION

Part One: Timely filing of campaign finance reports

The first allegation made by this complaint is that candidate Lorena Wood failed to timely file C-5 campaign finance reports. The complaint did not specify any specific report or reports that were late filed by candidate Wood.

² <https://electionresults.mt.gov/ResultsSW.aspx?type=CTYALL&cty=15&map=CTY>

As a candidate for a State District office participating in Montana's June 7, 2022 primary election, candidate Wood had pre-primary campaign finance reports due on or before March 21, April 20, and May 20 of 2022, and a post-primary report due on or before June 20, 2022 (FOF No. 1). These reporting dates are found in Mont. Code Ann. §13-37-226(1)(b). Candidate Wood timely filed both the March 20 and May 20 C-5 campaign finance reports (FOF Nos. 2, 4). Candidate Wood failed to file the April 20 report in a timely fashion (FOF No. 3). This report was filed on April 21, one day late (FOF No. 3A). Candidate also Wood failed to file the June 20, 2022 report (FOF No. 7).

Montana's campaign finance report filing requirements are mandatory: "shall file" (See §13-37-226 MCA). The filing date requirements are date certain. In *Bradshaw v. Bahr*, COPP 2018-CFP-008, Commissioner Mangan found candidate Bahr had filed two days late and wrote "any failure to meet a mandatory, date-certain filing date is a violation of §13-37-226, MCA." In this matter, Candidate Wood failed to timely file the campaign's finance report due on April 20 and failed to file the campaign's finance report due on June 20. Timely and proper reporting is essential to provide the public, press, and opposing candidates the opportunity to view and review a campaign's finances. Candidate Wood's late filing of the April 20 financial report and failure to file the June 20 financial report each constitute a campaign finance violation under Mont. Code Ann. §13-37-226(1)(b).

Sufficiency Finding No. 1: Candidate Wood did not timely file a C-5 campaign finance report on or before April 20, 2022. (Commissioner's Records.)

Sufficiency Finding No. 2: Candidate Wood did not file a C-5 campaign finance report on or before June 20, 2022. (Commissioner's Records.)

The Commissioner finds sufficient facts that candidate Wood failed to timely file her April 20, 2022, campaign finance report and, as of the date of this decision, has not filed her June 20, 2022, campaign finance report. Candidate Wood did file the April 20 campaign finance report prior to the receipt of the complaint, a mitigating factor in any civil penalty assessed by the COPP. The Commissioner further orders candidate Wood to file her June 20, 2022, campaign finance report within 5 days of receipt of this decision.

Part Two: Attribution

The second allegation raised in this complaint is that candidate Wood failed to include the required 'paid for by' attribution message on materials supporting her campaign. The complaint included pictures of campaign yard sign materials supporting candidate Wood that did not appear to include attribution (FOF No. 5). The complaint, without providing evidence, also alleged that candidate Wood's campaign website failed to include attribution messaging.

Under Montana law "all election communications...must clearly and conspicuously include the attribution 'paid for by' followed by the name and address of the person who made or financed the expenditure for the communication." Mont. Code Ann. §13-35-225(1). Montana law requires an accelerated review ("as soon as practicable") of a campaign practice complaint alleging an attribution violation. Mont. Code Ann. §13-35-225(6) provides a

specific remedy process and timeline for attribution complaints- the candidate/committee subject to an attribution complaint is provided 2 business days to bring unattributed material into compliance by adding full attribution messaging if more than 7 days from an election, or 24 hours to bring unattributed material into compliance by adding full attribution messaging if 7 days or less prior to an election. If unattributed material is brought into compliance in the time provided by law, the Commissioner is to dismiss the attribution complaint.

In this matter, the attribution complaint was not filed with COPP until after the election in which candidate Wood was participating as a candidate had been completed. COPP was not provided with this complaint until Montana's June 7, 2022, primary election had been conducted. Candidate Wood was defeated in the Republican primary for HD 3, meaning she will not participate as the nominee in November's general election (FOF No. 6). Because the election in which candidate Wood was participating as a candidate- Montana's June 7, 2022, primary election - had already been completed by the time COPP received this attribution complaint, the time period and process for remedying unattributed materials provided under Mont. Code Ann. §13-35-225(6) had passed.

Had the attribution complaint or concerns been addressed to COPP prior to completion of the primary election, COPP would have contacted candidate Wood and worked with the campaign to bring unattributed material into compliance as provided for by Mont. Code Ann. §13-35-225(6). For any

attribution complaint, formal or informal, it is standard practice for COPP Compliance Specialists to contact the candidate and work with them to bring unattributed material into compliance in the timeline and process as provided by Montana law. The allegation is hereby dismissed.

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 Wood 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 Wood. 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(1)(b). *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 23rd day of June 2022.



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