

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Regier v. Compassion for Montana Families: No on LR-131 No. COPP 2022-CFP-033	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION ATTRIBUTION VIOLATION DISMISSAL
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On November 4, 2022, Matt Regier of Kalispell, MT filed a campaign practices complaint against Compassion for Montana Families: No on LR-131. The complaint alleged that certain campaign material financed by Compassion for Montana Families: No on LR-131 failed to include the full ‘paid for by’ attribution statement as required, and that the committee failed to timely or appropriately file campaign finance reports disclosing expenditures made.

SUBSTANTIVE ISSUES ADDRESSED

Timely reporting of a campaign debt; Committee attribution remedy

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Compassion for Montana Families: No on LR-131 filed a C-2 Statement of Organization as a ballot issue committee with the COPP on September 2, 2022. (Commissioner’s Records.)

Finding of Fact No. 2: On November 4, 2022, COPP sent email correspondence to Compassion for Montana Families: No on LR-131 and committee Deputy Treasurer Abbey Cook notifying them

that this Complaint had been received. The message informed Compassion for Montana Families: No on LR-131 that the attribution complaint was merited, as the newspaper advertisement mentioned by the Complaint did not appear to include the full 'paid for by' attribution statement, and provided the committee twenty-four (24) hours to bring the material into compliance. (Commissioner's Records.)

Finding of Fact No. 2A: On November 4, 2022, Compassion for Montana Families: No on LR-131 Campaign Coordinator & Communications Lead Hillary-Anne Crosby emailed the COPP in response to the attribution portion of this complaint. This attribution response stated that Compassion for Montana Families: No on LR-131 had financed the newspaper ad in question, and that

For attribution, that should have been:

Paid for by Compassion for Montana Families

Tom Roberts, Treasurer, PO Box 1101, Helena, MT 59624

(Commissioner's Records.)

Finding of Fact No. 3: On November 6, 2022, Campaign Coordinator & Communications Lead Crosby emailed COPP an additional response to this Complaint. This additional response stated of the ad that "We haven't received the correct invoice from Lee Enterprises just yet, but our accounting team has told me they've gone ahead and reported the debt while we wait for it", further adding that the ad ran in the Daily Inter Lake newspaper on October 30, 2022, at a cost of \$4,000.00. (Commissioner's Records.)

Finding of Fact No. 3A: A November 9, 2022 COPP review of all finance reports filed by Compassion for Montana Families: No on LR-131 determined that none disclosed the committee's October 30, 2022 newspaper ad in the Daily Inter Lake newspaper. (Commissioner's Records.)

DISCUSSION

Attribution

Under Montana law all "election communications, electioneering communications, or independent expenditures financed by a political

committee” must include a ‘paid for by’ attribution statement followed by the name of the committee, the name of the committee treasurer/other committee officer and the address of the committee or the named committee officer, §13-35-225(1)(b), MCA. The complaint attached photo/s of a newspaper advertisement financed by Compassion for Montana Families: No on LR-131 that failed to include the full ‘paid for by’ attribution message.

Montana law requires an accelerated review (“as soon as practicable”) of a campaign practice complaint alleging an attribution violation. Accordingly, Compassion for Montana Families: No on LR-131 was immediately contacted by the Commissioner’s office (FOF No. 2). The committee responded saying that the omission of full attribution messaging on campaign materials was an error and took responsibility for the omission (FOF No. 2A).

The law governing complaints of failure to properly attribute political communications provides precise directions to the Commissioner:

1. The Commissioner is to immediately assess the merits of the attribution Complaint. §13-35-225(5), MCA. The Commissioner found merit to the attribution Complaint and hereby memorializes that finding (FOF No. 2).
2. The Commissioner shall notify the committee of the merit finding, requiring the committee to bring the material into compliance. §13-35-225(6)(a), MCA. The COPP, by providing Notice of Non-compliant Election Communication, did this and hereby memorializes the Notice (FOF No. 2).
3. The committee is provided 24 hours to bring the material into attribution compliance §13-35-225(6)(a)(ii), MCA. (FOF No. 2).

Under Montana law the committee with the attribution deficiency is relieved of a campaign practice violation, provided they promptly carry out the

attribution correction. Compassion for Montana Families: No on LR-131 has met these duties by notifying COPP of the full 'paid for by' attribution message that should have been included on the material, and is therefore relieved of a campaign practice violation under §13-35-225(6), MCA (FOF No. 2A). The attribution complaint is dismissed.

Timely Filing of Campaign Finance Reports

This complaint also alleges that Compassion for Montana Families: No on LR-131 failed to timely and appropriately file campaign finance reports disclosing certain campaign contribution and expenditure activity, including required pre-election disclosures. This allegation is considered in full.

In its November 7, 2022 message to COPP, Compassion for Montana Families: No on LR-131 disclosed to COPP that it had purchased a full page newspaper advertisement in the Daily Inter Lake's October 30 publication, at a total cost of \$4,000.00 (FOF No. 3). A November 9, 2022 COPP review of all committee finance reports filed by Compassion for Montana Families: No on LR-131 determined that this activity was not included on any report filed with COPP by the committee (FOF No. 4).

§ 13-37-229(2), Mont. Code Ann. And 44.11.502, ARM both require that committees disclose all expenditures made and debts owed during a given reporting period. Compassion for Montana Families: No on LR-131's November 7 response indicates that the advertisement would have appropriately been disclosed as a debt owed by the committee (FOF No. 3). COPP notes 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), ARM. In other words, the October 30 newspaper advertisement should have been disclosed as a debt owed by Compassion for Montana Families: No on LR-131 at the time the obligation was incurred or the activity was otherwise agreed to. By failing to disclose its October 30 newspaper advertisement on any committee finance reports, Compassion for Montana Families: No on LR-131 failed to timely and appropriately disclose a debt owed as required by Montana law.

Sufficiency Finding No. 1: Compassion for Montana Families: No on LR-131 failed to report a committee debt as required by Montana law.

The Commissioner finds sufficient facts to determine Compassion for Montana Families: No on LR-131 failed to timely and appropriately disclose a debt in the amount of \$4,000.00 as required by Montana campaign finance law.

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 Compassion for Montana Families: No on LR-131 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).

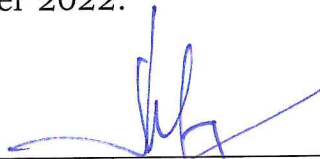
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a "sufficient evidence" Finding and Decision justifying a civil fine or civil prosecution of V. 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. § 13-37-229. *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 15th day of November 2022.



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