

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Tenny v. Hedges No. COPP 2022-CFP-024	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On October 21, 2022, Chris Tenny of Virginia City, MT filed a campaign practices complaint against Duncan Hedges, of Ennis. The complaint alleged that candidate Hedges failed to appropriately disclose his reporting status with COPP and file campaign finance reports disclosing campaign contributions received and expenditures made, and that certain campaign material financed by candidate Hedges failed to include the required ‘paid for by’ attribution message.

SUBSTANTIVE ISSUES ADDRESSED

Updating a local candidate ‘C’ Box status; the proper and timely filing of campaign finance reports.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Duncan Hedges filed a C-1A Statement of Candidate as a candidate for election to the position of Coroner/Sheriff in Madison County with the COPP on March 5, 2022. On the Statement of Candidate, candidate Hedges indicated that campaign activity would exceed \$500.00.

On March 31, 2022, candidate Hedges filed an Amended C-1A Statement of Candidate. This version indicated that campaign activity would not meet or exceed \$500.00.

On October 20, 2022, candidate Hedges most recently filed an Amended C-1A Statement of Candidate. This version again indicated that campaign activity would exceed \$500.00. (Commissioner's Records.)

Finding of Fact No. 1A: On March 1, 2022, candidate Hedges filed a Declaration for Nomination and Oath of Candidacy with the Madison County Clerk & Recorder and Election office as a candidate for election to the position of Coroner/Sheriff in the county. In filing with the Madison County Election Administrator, candidate Hedges paid a filing fee in the amount of \$303.45. (Commissioner's Records.)

Finding of Fact No. 1B: Included with this Complaint were copies of newspaper advertisements supporting candidate Hedges, in print materials dated October 6, October 13, and October 20, 2022. Each newspaper advertisement contained an attribution message of "Paid for by the candidate, PO Box 1565, Ennis, MT 59729". The complaint also included pictures of two (2) different campaign yard sign material supporting candidate Hedges. One campaign yard sign material included an attribution message stating "paid for by the candidate", while the other material did not contain any discernable attribution messaging. (Commissioner's Records.)

Finding of Fact No. 2: On October 21, 2022, COPP sent email correspondence to candidate Hedges notifying him that this Complaint had been received. The message informed candidate Hedges that the attribution complaint was merited, as the newspaper advertisements and campaign yard sign material mentioned by the Complaint did not appear to contain the full 'paid for by' attribution message as required and, provided candidate Hedges two (2) business days to bring the material into compliance.

Also on October 21, COPP Compliance Specialists discussed, via telephone conversation, 'paid for by' attribution requirements reiterating that unattributed materials would need to be brought into compliance by adding a full 'paid for by' attribution message within two (2) business days. (Commissioner's Records.)

Finding of Fact No. 2A: On October 24, 2022, candidate Hedges emailed the COPP in response to the attribution portion of this complaint. Candidate Hedge's attribution response stated that his

campaign had financed the unattributed campaign material in question, that he had discussed attribution requirements with COPP Compliance Specialists prior to receipt of this complaint, and that the campaign had ordered stickers with attribution messaging as a result of that conversation. The attribution response further states that “I placed stickers on 82” campaign materials and includes several pictures of campaign yard signs or similar material supporting candidate Hedges that include both a message of “Paid for by the candidate” and an accompanying “Duncan Hedges, PO Box 1565, Ennis, MT 59729”. (Commissioner’s Records.)

Finding of Fact No. 3: On October 20, 2022, candidate Hedges filed an Initial C-5 campaign finance report, dated May 5, 2022 through October 14, 2022. This report disclosed candidate Hedges as receiving \$1,389.65 in campaign contributions, including three (3) personal loans in the amount of \$914.65 (see Table 1). This report also disclosed three (3) campaign expenditures, in the amount of \$546.57 (see Table 2). (Commissioner’s Records.)

Table 1: personal loans provided by candidate Hedges to his campaign, as disclosed on the Initial May 5-October 14 C-5 campaign finance report

Entity	Date	In-Kind Description	Amount
Hedges, Duncan	03/01/2022	Candidate Filing Fee	\$363.45
Hedges, Duncan	06/02/2022		\$551.20
Hedges, Duncan	10/11/2022	Bank account opening deposit	\$60.00

Table 2: campaign expenditures made by candidate Hedges, as disclosed on the Initial May 5-October 14 C-5 campaign finance report

Entity	Date	Purpose	Amount
Diamond Creek Co.	04/06/2022	Campaign signs 18x24 – single side	\$225.60

Hedges, Duncan	05/10/2022	2 – 12x24 Magnets showing campaign info	\$100.00
Hedges, Duncan	05/27/2022	Parade Float supplies	\$220.97
			\$546.57

Finding of Fact No. 4: On October 20, 2022, candidate Hedges filed a C-7E Notice of Pre-Election Expenditures. This C-7E disclosed one (1) expenditure in the amount of \$260.00, dated October 20, 2022 to entity Duncan Hedges for Madison County Sheriff for Purpose “Campaign Banners and Signs” and Specific Services “1 – 2’x4’ sign; 1 – 4’x8’ banner; 2 – 3x5’ banners”. (Commissioner’s Records.)

Finding of Fact No. 5: On October 21, 2022, candidate Hedges filed a C-7 Notice of Pre-Election Contributions, dated October 17, 2022. This C-7 report disclosed three (3) monetary contributions received by candidate Hedges from individual contributors other than himself totaling \$550.00. (Commissioner’s Records.)

Finding of Fact No. 6: On October 21, 2022, candidate Hedges filed a C-7E Notice of Pre-Election expenditures, dated October 21, 2022. This C-7E disclosed one (1) expenditure in the amount of \$60.00, dated October 21, 2022 to entity Main Street Office for Purpose “Name and Address Stickers for Campaign Signs”. (Commissioner’s Records.)

Finding of Fact No. 7: On October 21, 2022, candidate Hedges filed a C-7 Notice of Pre-Election Contributions, dated October 21, 2022. This C-7 report disclosed one (1) monetary contribution received by candidate Hedges from individual contributors other than himself totaling \$400.00. (Commissioner’s Records.)

Finding of Fact No. 8: On October 25, 2022, candidate Hedges emailed COPP a response to the non-attribution portions of this complaint. Included in this response were invoices received by the Hedges campaign from vendors Signs West, The Madisonian, and Diamond Creek Company (see Table 3). (Commissioner’s Records.)

Table 3: Invoices provided to COPP by candidate Hedges, detailing campaign expenditures for campaign yard signs and newspaper advertisements

Entity	Invoice Date	Description of item/service	Amount
Signs West	10/14/2022	2x4' campaign signs, 4x8' banner, 3x5' banner, address stickers	\$278.00
The Madisonian	10/25/2022	¼ page newspaper ads- 10/6, 10/13, 10/20, 10/27 issues	\$751.40
Diamond Creek Company	04/27/2022	500-08 Signs/Banners	\$225.60
Diamond Creek Company	06/02/2022	18"x24" campaign signs, 24"x24" campaign signs	\$553.80

Finding of Fact No. 9: On October 25, 2022, candidate Hedges filed a C-7E Notice of Pre-Election expenditures, dated October 25, 2022. This C-7E disclosed one (1) expenditure in the amount of \$751.40, dated October 25, 2022 to entity The Madisonian for Purpose "Newspaper Campaign Ad - ¼ page full color (10/6, 10/13, 10/20, 10/27)". (Commissioner's Records.)

Finding of Fact No. 10: On October 26, 2022, candidate Hedges filed a C-7E Notice of Pre-Election expenditures, dated October 26, 2022. This C-7E disclosed one (1) expenditure in the amount of \$278.00, dated October 26, 2022 to entity Signs West for Purpose "Campaign Signs/Banners and Stickers" and Quantity "1 - 2x4 sign; 1 - 4x8 banner; 2 3x5 banners; 100 - attribution stickers. (Commissioner's Records.)

DISCUSSION

The Complaint alleges multiple potential violations of Montana campaign finance and practice law. The Commissioner examines each of these allegations.

Part One: Candidate Filing- Status and Reports

The complainant in this matter asserts that candidate Hedges failed to properly file campaign finance reports disclosing contributions received and expenditures made by his campaign. Specifically, the complaint mentions both newspaper advertisements and campaign yard sign material supporting candidate Hedges 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 the office of County Coroner/Sheriff in Madison County, candidate Hedges would be considered a local candidate (FOF No. 1). After originally disclosing that campaign activity would exceed \$500.00, candidate Hedges filed an Amended Statement of Candidate on March 31, 2022 certifying that campaign activity would not meet or exceed \$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 Hedges was not required to file campaign finance reports until campaign contribution or expenditure activity did in fact meet or exceed \$500.00.

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, holds that:

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 Hedges filed an Amended Statement of Candidate with COPP on October 20, 2022, declaring that campaign activity would exceed \$500.00 (FOF No. 1). That same day, candidate Hedges filed an Initial C-5 campaign finance report, dated May 5, 2022 through October 14, 2022 (FOF No. 3). As disclosed in this finance report, candidate Hedges' campaign expenditures, including payment of the candidate filing fee, exceeded \$500.00 no later than May 10, 2022 (FOF Nos 1A, 3, Tables 1 and 2).

Under the requirements of 44.11.304(2), ARM, candidate Hedges was required to file an initial campaign finance report within 5 business days of campaign activity exceeding \$500.00. Candidate Hedges' campaign expenditures exceeded \$500.00 no later than May 10, 2022, meaning he was required to file an initial finance report on or before May 17, 2022- 5 business days later. Candidate Hedges did not file an initial C-5 campaign finance report on or before May 17. Instead, candidate Hedges waited until October 20 to file an initial C-5 campaign finance report. Candidate Hedges late-filed the initial C-5 campaign finance report by one hundred and fifty-six (156) days.

Mont. Code Ann. §13-37-226(1)(b) holds that all candidate campaign finance reports must be filed on “the 20th day of March, April, May, June, August, September, October, and November in the year of an election in which the candidate participates” (emphasis added). As a local candidate required by Rule to begin filing finance reports on or before May 17, candidate Hedges was required to begin following the candidate reporting calendar with the May 20 report, followed by reports due on or before June 20, August 20 and September 20. Candidate Hedges failed to file a campaign finance report on or before any of May 20, June 20, August 20 or September 20, as required by law.

Sufficiency Finding No. 1: Candidate Hedges failed to timely file 5 candidate campaign finance reports- the initial report due May 17, and the monthly reports due May 20, June 20, August 20, and September 20, 2022.

The Commissioner finds sufficient facts to determine candidate Hedges failed to timely file his initial report on or before May 17, as well as the monthly May 20, June 20, August 20, and September 20, 2022 campaign finance reports as required by Montana campaign finance and practice law. The Commissioner notes candidate Hedges included the late reporting periods in his October 20, 2022 campaign finance report.

As previously noted, candidate Hedges filed an Amended Statement of Candidate disclosing that campaign activity would meet or exceed \$500.00 on October 20, 2022. 44.11.303(2), ARM requires that “Any material change in information previously submitted in a statement of candidate” filed with the COPP “shall be reported by filing an amended statement with the commissioner within five business days after the change”. A change in the candidate’s

reporting status would qualify as a “material change in information” required to be disclosed via an amended Statement of Candidate. Candidate Hedges’ reporting status changed no later than May 10, 2022, when campaign expenditures exceeded \$500.00; as a result, the updated Statement of Candidate was due to COPP on or before May 10, 2022. Candidate Hedges failed to update his Statement of Candidate within the five (5) business days required.

Sufficiency Finding No. 2: Candidate Hedges failed to amend his C-1A Statement of Candidate form with 5 days of his filing status changing from ‘B’ box to ‘C’ box.

The Commissioner finds sufficient facts to determine candidate Hedges failed to timely his Statement of Candidate to reflect his campaign would be engaged in campaign activity of \$500 or more as required by Montana campaign finance and practice law. The Commissioner notes candidate Hedges amended his Statement of Candidate form on October 20, 2022.

Part Two: Reporting Campaign Expenditures/Debts

Campaign yard signs

Based on the invoices provided to COPP with his complaint response, candidate Hedges made three (3) separate expenditures to obtain campaign yard signs or similar materials. Two expenditures for campaign yard signs or similar materials were made to vendor Diamond Creek Company: one in the amount of \$225.60 and one in the amount of \$553.80 (FOF No. 8, Tables 2 and 3). The third was made to vendor Signs West, in the amount of \$278.00, occurring no later than October 14, 2022 (FOF No. 8, Table 3).

On the initial C-5 campaign finance report filed with COPP, candidate Hedges disclosed only one campaign expenditure for campaign yard signs: the expense to Diamond Creek Company in the amount of \$225.60 (FOF No. 3, Table 2). By not including his June 2 expenditure of \$553.80 to Diamond Creek Company or the October 14 (or earlier) expense of \$278.00 to Signs West on the initial October 20 C-5 report, candidate Hedges failed to disclose “the total sum of expenditures made” by his campaign for the reporting period, Mont. Code Ann. § 13-37-229(2)(a)(iii). COPP notes that Candidate Hedges did not include the June 2 expenditure on any subsequent C-7E reports filed with COPP after his receipt of this complaint, nor was it clearly disclosed as an in-kind contribution received (from himself or any other contributor) on any report filed with COPP (FOF Nos. 3-7, 9).

COPP also notes that candidate Hedges eventually did disclose the October 14 (or earlier) expenditure to Signs West as a campaign expenditure via form C-7E filed on October 26, 2022 (FOF No. 10). Mont. Code Ann. § 13-37-229(2)(vi) requires that candidates disclose “the amount and nature of debts and obligations owed” for each individual reporting period on the relevant campaign finance report. 44.11.502(2), Administrative Rules of Montana adds 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”. In this case, candidate Hedges incurred a debt to Signs West for campaign yard signs and

similar materials no later than October 14¹, the date noted on the invoice. Under applicable campaign finance law and Administrative Rules, candidate Hedges was required to report this obligation as a debt on the initial C-5 campaign finance report, which he failed to do.

In summary, candidate Hedges failed to report one campaign expenditure related to campaign yard signs or similar material in the amount of \$553.80, and failed to timely/properly report a debt owed related to campaign yards signs or similar material in the amount of \$278.00.

Newspaper advertisements

Similarly, candidate Hedges financed multiple newspaper advertisements supporting his candidacy for election to the office of Coroner/Sheriff (FOF No. 1B). Despite this, candidate Hedges failed to disclose several newspaper advertisements as either an in-kind contribution received or expenditure made by the campaign on the initial C-5 report filed with COPP on October 20 (FOF No. 3).

Invoices provided by candidate Hedges in responding to this complaint show that the campaign purchased four (4) newspaper advertisements from The Madisonian. The first advertisement was included in the paper's October 6, 2022 issue, with subsequent ads in the October 13, October 20, and October 27 issues, at a total cost of \$751.40 (FOF No. 8, Table 3).

Mont. Code Ann. § 13-37-229(2)(vi) requires that candidates disclose "the amount and nature of debts and obligations owed" on campaign finance

¹ COPP notes that this obligation was likely incurred prior to October 14

reports. 44.11.502(2), Administrative Rules of Montana adds 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”. In this case, candidate Hedges incurred a debt in the amount of \$741.50 to The Madisonian for his four (4) newspaper no later than October 6, the date the first advertisement was published. Under applicable campaign finance law and Administrative Rules, candidate Hedges was required to report this obligation as a debt on the initial C-5 campaign finance report, which he failed to do. COPP notes that candidate Hedges did disclose this activity as a campaign expenditure via form C-7E filed on October 25, 2022, later and in a manner different than required by law (FOF No. 9).

In summary, candidate Hedges failed to timely/properly report a debt owed related to four (4) newspaper advertisements in the amount of \$751.40.

Sufficiency Finding No. 3: Candidate Hedges failed to report a campaign expenditure for political signs in the amount of \$553.80.

Sufficiency Finding No. 4: Candidate Hedges failed to report campaign debts of \$278.00 for campaign signs and \$751.40 for newspaper advertisements.

The Commissioner finds sufficient facts to determine candidate Hedges failed to properly and timely report a campaign expenditure in the amount of \$553.80 and 5 campaign debts in the amount of \$1029.40 as required by Montana campaign finance and practice law. The Commissioner notes candidate Hedges reported the missing expenditure and 4 of the 5 identified debts following the filing of the complaint.

Part Three: Attribution

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.” §13-35-225(1) MCA. The complaint attached photo/s of various campaign materials financed by candidate Hedges that failed to include a complete attribution (Paid for by).

Montana law requires an accelerated review (“as soon as practicable”) of a campaign practice complaint alleging an attribution violation. Accordingly, Candidate Hedges was immediately contacted by the Commissioner’s office (FOF No. 2). Candidate Hedges responded saying that the omission of an attribution on campaign yard signs and related materials was an error and took responsibility for the unattributed material (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 candidate of the merit finding, requiring the Candidate 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 Candidate is provided 48 hours to bring the material into attribution compliance §13-35-225(6)(a)(ii), MCA. (FOF No. 2A).

Under Montana law the Candidate with the attribution deficiency is relieved of a campaign practice violation, provided he/she promptly carries out the attribution correction. Candidate Hedges has met these duties by adding an attribution message that includes a “paid for by” statement, the candidate’s name, and the candidate’s address, to unattributed campaign yard signs and similar materials, and is therefore relieved of a campaign practice violation under §13-35-225(6), MCA (FOF No. 2A). The attribution portion of the Complaint is dismissed.

The complainant in this matter also refers to newspaper advertisements that contain an attribution message of “Paid for by the candidate, PO Box 1656, Ennis, MT 59729” (FOF No. 1B). COPP notes each advertisement referenced includes the name of the candidate, Duncan Hedges, in the body of the ad, and the included attribution statement clearly and obviously indicates that he was responsible for financing the ad. As each newspaper advertisement named candidate Hedges in the body of the ad and contains an attribution including a statement “paid for by the candidate” with candidate Hedge’s address. The attribution information provided with the newspaper advertisements “provides sufficient disclosure regarding who made or financed the communication” and would qualify as a *de minimis* violation, 44.11.603(2)(f), ARM.

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 Hedges 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.

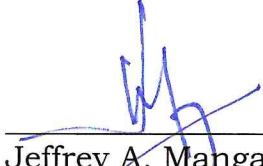
The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of candidate Hedges. Because of the nature of the violation this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. *Id.*, 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, 229 and

44.11.302, ARM *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 2nd day of November 2022.



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