

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Tonkay v. Caferro No. COPP 2022-CFP-003	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On March 22, 2022, Alden Tonkay of Helena, Montana filed a campaign practices complaint against Mary Caferro, also of Helena. The complaint alleged that candidate Caferro failed to disclose payment of the candidate filing fee on C-5 campaign finance reports filed with the COPP.

SUBSTANTIVE ISSUES ADDRESSED

Reporting of candidate filing fee.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Mary Caferro electronically filed a C-1 Statement of Candidate as a candidate for election to House District 82 with the COPP on January 3, 2022. (Commissioner's Records.)

Finding of Fact No. 2: On January 3, 2022, candidate Caferro filed an initial C-5 campaign finance report, dated October 1, 2021 through December 31, 2021. This report did not disclose any contributions received or expenditures made by candidate Caferro. (Commissioner's Records.)

Finding of Fact No. 3: On January 14, 2022, candidate Caferro filed as a candidate for election to House District 82 with Montana's Secretary of State's office. Legislative candidates pay a filing fee of

\$15.00 to the Secretary of State's office as part of that candidate filing.¹ (Commissioner's Records.)

Finding of Fact No. 4: On March 16, 2022, COPP Compliance Specialists emailed all registered 2022 candidates Tip #6: Reporting filing fee. The email noted that "Reporting your filing fee is required" and provided additional information about how candidates would appropriately disclose their filing fee on campaign finance reports filed with the COPP.² (Commissioner's Records.)

Finding of Fact No. 5: On March 21, 2022, candidate Caferro filed a periodic C-5 campaign finance report, dated January 1, 2022 through March 20, 2022. This report did not disclose any contributions received or expenditures made by candidate Caferro. (Commissioner's Records.)

Finding of Fact No. 6: On March 31, 2022, COPP Compliance Specialists emailed candidate Caferro notifying her that the January 1, 2022 through March 20, 2022 C-5 campaign finance report "does not reflect payment for your filing fee. Please amend this report to include payment of the filing fee". Candidate Caferro responded to this email by saying "Will do, thank you". (Commissioner's Records.)

Finding of Fact No. 7: On April 4, 2022, candidate Caferro filed an amended version of her January 1, 2022 through March 20, 2022 C-5 campaign finance report. This version of the report was Amended to disclose an in-kind contribution valued at \$15.00 made by candidate Caferro personally to her campaign described as "SOS Filing fee" dated January 14, 2022. (Commissioner's Records.)

Finding of Fact No. 8: On April 4, 2022, candidate Caferro emailed COPP a formal response to this complaint. The response noted that "not recording my filing fee was unintentional, and I amended my campaign report on 4-4-2022, addressing this complaint". (Commissioner's Records.)

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https://leg.mt.gov/bills/mca/title_0130/chapter_0100/part_0020/section_0020/0130-0100-0020-0020.html

² https://politicalpractices.mt.gov/_docs/Guidance-Docs/Tip-6-Reporting-your-filing-fee.pdf

DISCUSSION

The complainant in this matter alleges that candidate Caferro failed to properly disclose payment of the filing fee when officially filing as a candidate on campaign finance reports with the COPP. This allegation is examined in full.

The 2017 Montana Legislature specifically made payment of the candidate filing fee reportable activity.³ If a candidate pays the filing fee personally using personal funds, the activity would be considered a contribution under Mont. Code Ann. §13-1-101(9), with the candidate required to report it as an in-kind contribution received. If a candidate pays the filing fee using campaign funds, the activity qualifies as an expenditure under Mont. Code Ann. §13-1-101(19), with the candidate required to report it as such. Candidates are required to report contributions received and expenditures made on campaign finance reports filed periodically with the COPP, Mont. Code Ann. §13-37-229.

Since 2017, COPP has provided education and guidance to all candidates about how to properly report and disclose the payment of their candidate filing fee on campaign finance reports. COPP produced Tip #6: Reporting filing fee as educational material and distributed it to all 2022 candidates as part of this continued education and guidance (FOF No. 4). COPP has engaged in similar education and guidance activities pertaining to reporting and disclosure of the candidate filing fee in each election cycle since 2017, and each election year it

³ <https://leg.mt.gov/bills/2017/sesslaws/ch0063.pdf>

is one of the most common questions answered or areas addressed by COPP Compliance Specialists.

In this matter, candidate Caferro failed to timely disclose payment of the candidate filing fee on campaign finance reports filed with the COPP. Candidate Caferro officially filed as a candidate for a Legislative office (House District 82) with Montana's Secretary of State's Office on January 14, 2022, paying a \$15.00 filing fee as part of that filing process (FOF No. 3). Despite this, candidate Caferro did not disclose payment of the candidate filing fee as either a personal in-kind contribution received by her campaign or a campaign expenditure on the relevant C-5 campaign finance report prior to her receipt of this complaint (FOF No. 5). Candidate Caferro did amend the relevant C-5 campaign finance report to include her payment of the candidate filing fee after receipt of this complaint, and in an official response indicated the original failure to include the filing fee was unintentional (FOF Nos. 7, 8).

Sufficiency Finding No. 1: Candidate Caferro failed to timely report a filing fee in the amount of \$15.00 for candidacy to the Montana Legislature.

The Commissioner finds sufficient facts candidate Caferro failed to timely report the \$15.00 filing fee in this matter.

In further examining the matter, the Commissioner notes the following:

1. Candidate filings with both the COPP and the election administrator (in this case, Montana's Secretary of State's Office) are public. Failure to include payment of the candidate filing fee on campaign finance report filed with the COPP does not deprive any interested parties of the knowledge that an individual candidate has filed for election to public office.

2. It is common knowledge that candidates must pay a filing fee when officially filing for office with the Montana Secretary of State and/or an election administrator. The filing fee paid by a candidate when officially filing for office is set under state law, specifically Mont. Code Ann. §13-10-202. While the amount varies by office, this information is publicly accessible online, and could also be obtained by asking the Montana's Secretary of State's Office or local election administrator directly.

While candidate Caferro did fail to timely disclose her payment of the candidate filing fee on campaign finance reports filed with the COPP, this action did not deprive the public the knowledge of the candidate's filing fee. As candidate Caferro has amended the campaign finance report disclosing the filing fee as required, no further enforcement action in this matter will be taken.

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 Caferro 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.

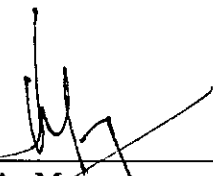
The failure to fully and timely report and disclose cannot generally be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law as it relates to failures to file and report. *See Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing excusable 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 Caferro. 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 also 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. The Commissioner has already determined (*supra*) that in this specific matter the Commissioner will limit enforcement of this action to the issuance of this decision alone, without further settlement or potential litigation findings herein.

DATED this 14th day of April 2022.



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