

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Ward v. Short No. COPP 2022-CFP-001	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On March 14, 2022, John Ward of Helena, Montana filed a campaign practices complaint against Trent Short of Great Falls. The complaint alleged that candidate Ward failed to disclose certain contributions received and expenditures made by his campaign on C-5 campaign finance reports filed with the COPP.

SUBSTANTIVE ISSUES ADDRESSED

Proper and timely filing of a campaign in-kind contribution.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: For election year 2022, Trent Short electronically filed a C-1 Statement of Candidate as a candidate for election to House District 20 with the COPP on August 1, 2021. (Commissioner's Records.)

Finding of Fact No. 1A: Candidate Short had not filed as a candidate for election to public office with the COPP for any previous election year. (Commissioner's Records.)

Finding of Fact No. 2: As included with this complaint, on July 31, 2021, the Great Falls Pachyderm Club posted a picture from the

2021 Montana State Fair that included a campaign sign supporting candidate Short. (Commissioner's Records.)

Finding of Fact No. 3: On October 5, 2021, candidate Short timely filed an initial C-5 campaign finance report, dated August 1, 2021 through September 30, 2021. Candidate Short did not disclose any contributions received or expenditures made on this report. (Commissioner's Records.)

Finding of Fact No. 4: On March 24, 2022, candidate Short emailed the COPP his official responses to this Complaint. The responses stated that "No funds were used to make the sign and were put together with materials I was recycling...I amended the report to show the materials for an in-kind contribution" and that "[t]he sign was provided to another person no different than a yard sign and moved to" its display at the 2021 Montana State Fair. (Commissioner's Records.)

Finding of Fact No. 5: On March 24, 2022, candidate Short filed an amended version of his initial October C-5 campaign finance report. This amended version of the report included one (1) in-kind contribution valued at \$5.00 provided personally by candidate Short to his own campaign described as "SIGN MAKING SUPPLIES". (Commissioner's Records.)

Finding of Fact No. 6: Candidate Short did not timely file the required monthly C-5 campaign finance report due on or before March 21, 2022. COPP could not certify candidate Short to appear on the official ballot for this reason, Mont. Code Ann. §13-37-126(1). (Commissioner's Records.)

Finding of Fact No. 7: On March 29, 2022, COPP received an email from Michael Polaski, who identified himself as the Chairman of the Cascade County Republicans PAC. The email stated that candidate Short had a sign "we put in our booth" but that candidate Short "had no idea that" it would be included in the organization's fair booth. (Commissioner's Records.)

DISCUSSION

This complaint contends that candidate Trent Short failed to appropriately disclose certain campaign contributions received and expenditures made. Specifically, the complaint argues that candidate Short

failed to report expenditures associated with campaign yard signs utilized by his campaign, and that he failed to report an in-kind contribution received for that sign's display at the 2021 Montana State Fair.

Acquisition and Reporting

In connection with his election year 2022 campaign for election to House District 20, candidate Short acquired and utilized at least one campaign sign supporting his candidacy (FOF Nos. 2, 4). Despite this, candidate Short did not disclose receiving any contributions of or making expenditures for campaign sign material prior to the filing of this complaint (FOF No. 3).

Candidate Short's response to this complaint argues that his campaign did not spend any money to obtain the campaign sign material (FOF No. 4). Instead, he states that his campaign utilized materials already in his possession to create this specific campaign sign, with the material being contributed to his campaign as an in-kind contribution. Once notified of this complaint, candidate Short amended his initial C-5 campaign finance report to disclose the campaign yard sign material as a personal in-kind contribution received (FOF No. 5).

COPP accepts candidate Short's description of the campaign yard sign material as an in-kind contribution made personally by himself to his own campaign. Review of the specific campaign yard sign material determines this campaign yard sign material is a reportable contribution received by candidate Short's HD 20 campaign. The sign can only be described as an item "of value" provided by candidate Short to his campaign in support of his candidacy,

making it a contribution received, Mont. Code Ann. §13-1-101(9)(a)(i). Montana candidates are required to disclose all contributions received on campaign finance reports filed with the COPP, Mont. Code Ann. §13-37-229(1).

In this case, candidate Short only disclosed his campaign's receipt of a yard sign material as an in-kind contribution after a formal complaint was filed. Candidate Short did fail to timely disclose a contribution received by his campaign, in violation of Mont. Code Ann. §13-37-229(1).

Candidate Short, in responding to this complaint, has valued the campaign yard sign material at \$5.00 (FOF No. 5). The Commissioner questions the \$5.00 valuation provided to the sign by candidate Short, as nothing about the sign- either its design, or its assembly, specifically- indicate that it was cheaply handmade using secondhand materials. Regardless, the campaign yard sign material does not qualify as *de minimis* under Mont. Code Ann. §13-1-101(11),¹ or 44.11.603, ARM. The time, materials, and expertise needed to produce this specific campaign sign election communication hold fair market values compelling disclosure and attribution and was ultimately used as an election communication. Failure to report the value of the election communication is a Montana campaign finance violation.

Sufficiency Finding No. 1: Candidate Short did not properly and timely report the value of an in-kind contribution of a campaign sign.

¹ "De minimis act" means an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.

The Commissioner finds sufficient facts to conclude candidate Short failed to properly and timely report the value of an in-kind contribution.

Display

A July 31, 2021, Facebook post made by the Great Falls Pachyderm Club states that the sign supporting candidate Short was displayed in a booth at the 2021 Montana State Fair in Great Falls (FOF No. 2). In his response, candidate Short states that the sign included in the social media post was “provided to another person...and moved to that place” (the fair booth) by that individual. Later correspondence received by COPP from the Cascade County Republicans PAC corroborates the idea that candidate Short was not directly involved in the decision to publicly place the sign at a fair booth (FOF No. 7).

COPP accepts the explanation provided by candidate Short and the Cascade County Republicans PAC that candidate Short was not involved in the placement of the campaign yard sign in question. COPP would not consider the placement of a yard sign in a fair booth provided to an individual or other entity by a candidate as a contribution received by the candidate from that individual/entity upon placement when the activity is not coordinated. The allegation that candidate Short failed to report an in-kind contribution received regarding the placement of a single sign supporting his candidacy in a public place is hereby dismissed.

Additional considerations

Ultimately, candidate Short could not be certified by COPP to appear as a candidate on the official ballot in election year 2022 because he did not file all

required documents by the Secretary of State's ballot certification deadline (FOF No. 6). Candidate Short failed to file a campaign finance report required under Montana Code Annotated Title 13, Chapter 37 prior to the COPP's March 22, 2022, certification deadline, and therefore his name "may not appear on the official ballot", Mont. Code Ann §13-37-126(1) and (3)(b)(i). As candidate Short was not certified to appear on the ballot and the in-kind contribution was reported upon notice of the complaint, the Commissioner has determined that although there is a finding of a violation of campaign finance laws, that the COPP will not pursue any additional enforcement beyond issuing this decision.

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 Short 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 Short. 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 6th day of April 2022.



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