

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Barrett v Missoula County Republican Central Committee  No. COPP 2016-CFP-046	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On December 12, 2016, State Senator Dick Barrett of Missoula, Montana filed a complaint against the Missoula County Republican Central Committee (MCRCC) alleging failure to properly report and disclose certain campaign expense information.

**Discussion**

The Complaint alleges that MCRCC failed to timely report and disclose expenses and contributions involved in the 2016 election cycle.

Finding of Fact No. 1: MCRCC filed a campaign finance report on March 9, 2016, reporting dates spanning January 01, 2016 – March 4, 2016 under the Local Reporting calendar<sup>1</sup>. (Commissioner's Records)

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<sup>1</sup> Committees report on the local calendar until they make an expenditure involving a specific election.

Finding of Fact No. 2: Missoula County Republican Central Committee filed its initial C-2 statement of organization form on October 27, 2016. This report should have been filed within five days of June 23, 2016 to reflect expenditures to State District Candidates on June 23, 2016. (Commissioner's Records)

Once the MCRCC made an expenditure to a State District candidate, the MCRCC was then required to report on the "State District Reporting" calendar §13-37-226(2)(a), MCA.

Finding of Fact No. 3: MCRCC filed a campaign finance report on July 11, 2016, covering the dates of March 5, 2016 – July 4, 2016, reporting contributions to candidates on 6/23/16, triggering the use of the State District Reporting calendar. (Commissioner's Records)

Finding of Fact No. 4: MCRCC filed a campaign finance report on July 29, 2016, covering the dates of July 5, 2016 – July 27, 2016, 2016. (Commissioner's Records)

Finding of Fact No. 5: MCRCC filed a campaign finance report on December 2, 2016, covering the dates of July 5, 2016 – November 25, 2016. (Commissioner's Records)

Finding of Fact No. 6: MCRCC previous C2 Statement of Organization form was filed in the year 2000. (Commissioner's Records)

The Complaint alleges that MCRCC failed to timely report candidate expenditures. Reporting and disclosure is required so that the public, press and opposing candidates understand the contribution and expenditure of political committee funds. §13-37-226(4)(a), MCA.

Sufficiency Finding No.1: The Commissioner finds that there are sufficient facts to show that MCRCC did not timely file the campaign finance reports as required by Montana law. (FOF Nos. 3, 4, 5)

A Montana political committee, including MCRCC, is required to report at the times specified in §13-37-226(2)(a), MCA, when funds are used support of a particular campaign.

Sufficiency Finding No. 2: The Commissioner finds that there are sufficient facts to show that MCRCC did not file its initial campaign organizational report when required within 5 days of the June 23, 2016 State District candidate expenditure. (FOF No. 2)

Under Montana law a political committee that receives a contribution or makes a political expenditure shall file reports electronically<sup>2</sup> §13-37-226(1)(b), MCA. In general, timely reporting and disclosure must include “the amount and nature of debts and obligations owed” by the committee at the end of the reporting period, 44.11.302, ARM. Further, campaign finance reports must be timely filed according to statutory deadlines. §13-37-226, MCA.

Statement of Organization forms are required “within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first” §13-37-206, MCA. Records indicate the MCRCC had not filed a Statement of Organization since the year 2000.

Any material change in information previously submitted in a statement of candidate or statement of organization filed pursuant to 13-37-201 or 13-37-205, MCA, and ARM 44.11.201 and 44.11.220 shall be reported by filing an amended statement with the commissioner within 5 business days after the change

44.11.303 ARM. It is difficult to believe a political party committee had no material changes in a 16 year span. (FOF No. 6)

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<sup>2</sup> A waiver may be granted ARM 44.11.302 (2)

In this matter, the Commissioner finds that the MCRCC failed to timely file both the required Statement of Organization and campaign finance reports as required for its election activity during the 2016 election cycle.

### **ENFORCEMENT OF SUFFICIENCY FINDINGS**

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. §13-37-111(2)(a), MCA. The mandate to investigate is followed by a mandate to take action. The law requires; where there is “sufficient evidence” of a violation the Commissioner must (“shall notify,” see §13-37-124, MCA) 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, as set out in this Decision, to show that the Missoula County Republican Central Committee 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*. *See Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing *de minimis* principles).

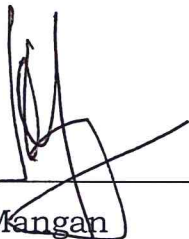
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. §13-37-124, MCA. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Missoula County Republican Central Committee. Because of the nature of the violations (the failure to report and disclose occurred in Lewis and Clark County), this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. §13-37-124(1), MCA. Should the County Attorney waive the right to prosecute (§13-37-124(2), MCA) or fail to prosecute within 30 days (§13-37-124(1) MCA) 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* §13-37-124(1), MCA) 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.

While it is expected that a mitigated 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 §13-37-226, MCA. See §13-37-128, MCA. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 5<sup>th</sup> day of June, 2017.



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