

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Ellsworth v Bullock No. COPP 2016-CFP-041	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On October 28, 2016, Jason Ellsworth of Hamilton, Montana filed a complaint against Steve Bullock's candidate committee, Friends of Steve Bullock, candidate for Governor in the 2016 election, for failure of the Friends of Steve Bullock to fully reimburse airfare related costs to the State of Montana.

Discussion

The Complaint alleges that the Friends of Steve Bullock failed to properly report and disclose airfare expenses involved in a 2016 general election campaign.

Finding of Fact No. 1: On January 6, 2016, Steve Bullock filed an amended statement of candidate form (Form C-1)

with the Commissioner of Political Practices (COPP).
(Commissioner's Records.)

Finding of Fact No. 2: On December 9, 2016, Friends of Steve Bullock referenced Governor Bullock's policy (herein, the Reimbursement Policy) for use of the state plane when campaign events occurred while traveling on state business. The Reimbursement Policy states that the primary pilot is a full-time salaried employee of the State of Montana and that after 40 hours, if involved in a campaign event, Bullock would reimburse the state for overtime spent. The co-pilots are not full-time employees, and therefore, "If they were on the job for extra time based on waiting for the Governor while he attended a campaign related activity, the cost of that extra time (at the co-pilots' hourly rates and benefits) was billed to the Bullock campaign." (Commissioner's Records.)

Finding of Fact No. 3: No flights occurred using the state plane solely for campaign events.¹ (Commissioner's Records.)

Finding of Fact No. 4: Steve Bullock used the state plane to travel for official state government business and also attended campaign events on the following dates:² April 6, 12, and 13 2016; July 11, 2016; August 3, 17, 18, and 25 2016; September 22 and 25, 2016; October 3, 6, 13, and 21 2016. (Commissioner's Records.)

Finding of Fact No. 5: Steve Bullock used the state plane for official state government business and did not attend campaign events on the following dates:³ August 6, 2016 and October 20, 2016. (Commissioner's Records.)

Finding of Fact No. 6: Steve Bullock used the state plan to travel for official state government business and attend campaign events on the following dates:⁴ April 20 and 30, 2016; May 4, 5, 11, 16, and 25, 2016; June 15, 2016; July 8, 19, and 20, 2016; August 5, 16, and 23, 2016; September 1, 8, 12, 13, 15, 21, 23, 26, and 29, 2016; October 12 and 28, 2016. (Commissioner's Records.)

¹ Review of the period stated in the complaint April 1, 2016 to October 28, 2016.

² Dates specifically included in the complaint

³ Dates specifically included in the complaint

⁴ Dates included on invoices to the Steve Bullock campaign, not specifically included in the complaint

Finding of Fact No. 7: The Friends of Steve Bullock's August 1, 2016 campaign finance report notes an expenditure of \$1,155.56 to the State of Montana for airfare. Invoice records for that expenditure indicates state plane related travel reimbursement for the following dates: April 12, 13, 20, and 30, 2016; May 4, 5, 11, and 25, 2016; and June 15, 2016. (Commissioner's Records.)

Finding of Fact No. 8: The Friends of Steve Bullock's October 24, 2016 campaign finance report notes an expenditure of \$2,964.25 to the State of Montana for airfare. Invoice records for that expenditure indicates state plane related travel reimbursement for the following dates: July 8, 11, 19, and 20, 2016; August 3, 5, 16, 17, 18, 23, and 25, 2016; September 1, 8, 12, 13, 15, 21, 22, 23, 25, 26, and 29, 2016. (Commissioner's Records.)

Finding of Fact No. 9: The Friends of Steve Bullock's November 28, 2016 campaign finance report notes an expenditure of \$2,964.25 to the State of Montana for airfare. Invoice records for that expenditure indicates state plane related travel reimbursement for the following dates: October 3, 6, 12, 13, 21, and 28, 2016. (Commissioner's Records.)

Finding of Fact No. 10: In response to the Compliant, the Friends of Steve Bullock reported the April 6, 2016 and May 16, 2016 airplane use did not require co-pilot reimbursement as the co-pilot for those flights was not the regular part-time co-pilot but rather a full-time pilot from the Department of Transportation, and that reimbursement was not necessary as a reciprocal agreement was in place. (Commissioner's Records.)

Finding of Fact No. 11: No airfare expenditures, estimated or actual, were reported on the Friends of Steve Bullock's May 1, 2016 campaign finance report, covering the period March 28, 2016 to April 26, 2016. (Commissioner's Records.)

Finding of Fact No. 12: No airfare expenditures, estimated or actual, were reported on the Friends of Steve Bullock's May 23, 2016 campaign finance report, covering the period April 27, 2016 to May 18, 2016. (Commissioner's Records.)

Finding of Fact No. 13: No airfare expenditures, estimated or actual, were reported on the Friends of Steve Bullock's

June 1, 2016 campaign finance report, covering the period May 19, 2016 to May 27, 2016. (Commissioner's Records.)

Finding of Fact No. 14: No airfare expenditures, estimated or actual, were reported on the Friends of Steve Bullock's June 27, 2016 campaign finance report, covering the period May 28, 2016 to June 22, 2016. (Commissioner's Records.)

Finding of Fact No. 15: Airfare expenditures were reported on the Friends of Steve Bullock's August 1, 2016 campaign finance report, for nine (9) flight reimbursements from April 12, 2016 to June 15, 2016. No airfare expenditures, estimated or actual, were included in the report for the period it was intended to cover, June 27, 2016 to July 27, 2016. (Commissioner's Records.)

Finding of Fact No. 16: No airfare expenditures, estimated or actual, were reported on the Friends of Steve Bullock's September 1, 2016 campaign finance report, covering the period July 28, 2016 to August 27, 2016. (Commissioner's Records.)

Finding of Fact No. 17: No airfare expenditures, estimated or actual, were reported on the Friends of Steve Bullock's October 1, 2016 campaign finance report, covering the period August 28, 2016 to September 26, 2016. (Commissioner's Records.)

Finding of Fact No. 18: Airfare expenditures were reported on the Friends of Steve Bullock's October 24, 2016 campaign finance report, for twenty-two (22) flight reimbursements from July 8, 2016 to September 29, 2016. No airfare expenditures, estimated or actual, were included in the report for the period it was intended to cover, September 27, 2016 to October 19, 2016. (Commissioner's Records.)

Finding of Fact No. 19: No airfare expenditures, estimated or actual, were reported on the Friends of Steve Bullock's November 1, 2016 campaign finance report, covering the period October 20, 2016 to October 27, 2016. (Commissioner's Records.)

Finding of Fact No. 20: Airfare expenditures were reported on the Friends of Steve Bullock's November 28, 2016 campaign finance report, for six (6) flight reimbursements from October 3, 2016 to October 28, 2016. The report was intended to

cover the October 28, 2016 to November 23, 2016 period.
(Commissioner's Records.)

In general, timely reporting and disclosure must include “the amount and nature of debts and obligations owed” by the campaign at the end of the reporting period. (§13-37-229(2)(a)(vi), MCA.) Further, “[i]f the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported.” (44.11.506, ARM.) Past Commissioners have applied these laws to require that campaigns “estimate their debts when they are incurred,” not after an election when the bill is paid, *Akey v. Clark*, March 26, 1999 (Commissioner Vaughey), because “the public has a right to full disclosure of all debts and estimated debts incurred by a candidate during the appropriate reporting periods,” *Ream v. Bankhead*, September 10, 1999 (Commissioner Vaughey). A campaign’s obligation to report debt includes debt owed for services, advertisements and campaign expenses in general (*Wilcox v. Raser*, May 26, 2010 (Commissioner Unsworth); *Williams v Andersen*, COPP 2014-CFP-035 (Commissioner Motl), and even less common expenses, such as those owed musicians (*Hardin v. Ringling* 5, December 17, 2012 (Commissioner Murry).

Reporting and disclosure is required so that the public, press and opposing candidates understand the contribution and expenditure of funds used in support of a particular campaign.

Sufficiency Finding No. 1: The Commissioner finds that there are sufficient facts to show that the Friends of Steve Bullock did not timely report the expense of airfare on multiple campaign finance reports. (FOF Nos. 11 – 20.)

In this Matter, the Friends of Steve Bullock failed to timely disclose the actual expense, and did not estimate the expense for flight reimbursement on the campaign finance reports due on the Statewide election reporting calendar. (§13-37-226(1), MCA; FOF No. 1.) Rather, the campaign appeared to have compiled the data, requested an invoice, and reported the expenditure from the receipt date of the invoice.⁵ Montana law, amplified by consistent Decisions from consecutive Commissioners, required the Friends of Steve Bullock campaign to report and disclose the expenditures when the expense was incurred.

Governor Steve Bullock correctly subjected his campaign to a Reimbursement Policy when use of the state airplane involves a campaign event while on official state business. In this matter, the Reimbursement Policy was followed, including reimbursement by the Friends of Steve Bullock for the increased costs associated with the state aircraft. It is role of this Commissioner to determine that an expenditure was appropriate, reasonable, fully and timely reported on the required schedule. On nine occasions, the campaign failed to timely report actual or estimated expenditures for state plane use reimbursement, thus violating Montana's campaign finance laws for failure to timely report.

⁵ July 2017 invoice not dated, included "4th Quarter – FY2016 Plane Invoice" in RE; October 7, 2016 invoice reported on October 9, 2016; November 22, 2016 invoice reported on November 23, 2016. Note – September 1, 2016 invoice not remitted, rather the Friends of Steve Bullock included it with the October 7, 2016 invoice.

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 to show that Friends of Steve Bullock 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 Friends of Steve Bullock. 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, including whether or not the candidate committee undertook any action to correct the reports at issue when the matter was raised in the Complaint.

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 28th day of June, 2017.

A handwritten signature in black ink, appearing to read 'J. Mangan', is written over a horizontal line.

Jeffrey A. Mangan
Commissioner of Political Practices
of the State of Montana
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