

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Fisher v. MT Association of Realtors / Realtors for Better Government No. COPP 2017-CFP-002	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On January 25, 2017, Amy Jo Fisher of Helena, Montana filed a complaint against the Montana Association of Realtors PAC, and by extension Realtors for Better Government PAC, of Helena, Montana for failing to properly report and disclose certain campaign contribution information.

DISCUSSION

The Complaint alleges that the Montana Association of Realtors failed to timely report and disclose expenses and contributions involved in the 2016 general election.

Finding of Fact No. 1: Montana Realtors Political Action Committee, also known in the CERS system as Montana Realtors PAC aka Montana Assn. of Realtors PAC (herein, MAR PAC), filed its initial C-2, Statement of Organization form, on July 2, 2014. (Commissioner's Records)

Finding of Fact No. 2: MAR PAC filed its pre-general report on October 25, 2016, one day late. (Commissioner's Records)

Finding of Fact No. 3: MAR PAC also missed the November 1, 2016 reporting date and filed its next report on November 28, 2016. (Commissioner's Records)

Finding of Fact No. 4: MAR identified four staff members who provided in-kind work for the RBG PAC and failed to attribute \$1,521.08, the value of the in-kind contribution. (Commissioner's Records)

Finding of Fact No. 5: Realtors for Better Government Political Action Committee, filed its initial C2 as an Independent Political Committee on 2/5/16. (Commissioner's Records)

Finding of Fact No. 6: Realtors for Better Government filed its C-2 statement of organization on 2/3/16 showing support for Gianforte, a statewide candidate which puts the committee into the Statewide reporting calendar, 13-37-226(1), MCA. (Commissioner's Records)

Finding of Fact No. 7: Realtors for Better Government produced digital ads in support of Gianforte using the company ACCES, LLC. This expenditure was on 10/24/16. (Commissioner's Records)

Finding of Fact No. 8: RBG PAC did not file its pre-election report due October 1, 2016 until November 17, 2016. (Commissioner's Records)

Finding of Fact No. 9: RBG PAC filed its next pre-election report, which was due October 24, 2016, on November 18, 2016. (Commissioner's Records)

Finding of Fact No. 10: RBG PAC also missed the November 1, 2016 reporting date and filed its next report on November 28, 2016, with reporting dates spanning 10/23/16 – 11/23/16. (Commissioner's Records)

Finding of Fact No. 11: On March 3, 2017, Realtors for Better Government amended its November 28, 2016 report to show MAR staff time as an in-kind contribution to the committee and provided an addendum with the breakdown of that staff time. (Commissioner's Records)

Under Montana law a political committee that receives a contribution or makes a political expenditure shall file reports electronically §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. As relevant to the 2016 general election held on November 8, 2016, campaign finance reports were due on the first of the month in October and November, and 15 days before the election, *i.e.* October 24, 2016. §13-37-226(1)(b),(c), MCA.

Sufficiency Finding No. 1: The Commissioner finds there are sufficient facts to show that the MAR PAC failed to timely report on two (2) occasions. (FOF Nos 2, 3.)

Sufficiency Finding No. 2: The Commissioner finds there are sufficient facts to show that the RBG PAC failed to timely report on three (3) occasions. (FOF Nos. 8, 9, 10.)

Under Montana law, a political action committee must report in-kind contributions, including the value “to be calculated and reported in writing.” 44.11.403(4), ARM. 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.)

The Commissioner finds the use of staff time on behalf of a specific candidate is considered an in-kind contribution as it provides value to said campaign. §13-1-101(9)(a)(i), MCA. A political committee shall report an in-kind contribution on the appropriate reporting schedule and shall describe what was received consistent with the reporting requirements. 44.11.302,

ARM. The RBG PAC acknowledged that it did not include the time expended by four (4) staff persons on earlier reports and subsequently amended its November 28, 2016 report (FOF No. 11).

Sufficiency Finding No. 3: The Commissioner finds there are sufficient facts to show that the RBG PAC failed to report staff time as an in-kind contribution or assign value to the in-kind contribution. (FOF No 4.)

The Realtors for Better Government have filed an amended campaign finance report correcting the error of failure to attribute in-kind staff time. The Montana Association of Realtors and Realtors for Better Governments' forthright manner of dealing with this Complaint will be a factor in the mitigation of any fine which may be assessed in this Matter.

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 both the Montana Association of Realtors and Realtors for Better Government 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 Montana Association of Realtors PAC and Realtors for Better Government PAC. 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 the fact that the political committee was forthright in correcting 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 25th day of May, 2017.

A handwritten signature in black ink, appearing to read 'Jeffrey A. Mangan', is written over a horizontal line. The signature is stylized and somewhat cursive.

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