

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Montana Democratic Party v. Workman No. COPP 2016-CFP-45	Summary of Facts and Finding of Sufficient Evidence to Show a Violation of Montana’s Campaign Practices Act
--	--

Mr. Ed Workman was a resident of Billings, Montana¹ and a supporter of Don Roberts, a candidate in the 2016 election for Montana State Senate, Senate District 26.

On December 9, 2016, the Montana Democratic Party filed a complaint against Workman alleging violations of Montana’s campaign practices law.

SUBSTANTIVE ISSUES ADDRESSED

The substantive areas of campaign finance law addressed by this decision are: independent expenditures; political committee registration; naming and labeling of political committees; and attribution.

FINDINGS OF FACTS

The facts necessary for this Decision are as follows:

Finding of Fact 1: The 2016 General Election in Montana was held on November 8, 2016. (Secretary of State (SOS) website)

¹ Mr. Workman has since relocated to Colorado

Finding of Fact 2: Don Roberts was a candidate in the November 8, 2016 General Election for the position of Montana State Senator representing Senate District 26 in Billings, Montana. (SOS website.)

Finding of Fact 3: The Office of the Commissioner of Political Practices (COPP or the Office) received a hand written note on November 1, 2016 from Mr. Robert's opponent, Representative Margie McDonald, questioning the expenditure of a pro Don Roberts advertisement which included a copy of the ad. (Commissioner's records.) A copy of the ad (Ad) accompanies this Decision as Exhibit 1.

Finding of Fact 4: The Ad was published in the Billings Gazette on October 26, 2016, with the attribution reading "Paid for by Ed Workman, 3247 Flora, Billings, MT 59102." (Commissioner's records.)

Finding of Fact 5: The Ad itself reads "We Support Don Roberts" and lists 27 individuals including Workman who support Roberts. (Commissioner's records.)

Finding of Fact 6: Upon examination of the Ad, the COPP staff contacted Mr. Workman by telephone to have him file as an Independent Committee (PAC). (Commissioner's records.)

Finding of Fact 7: Mr. Workman organized 28 individuals to support Roberts, who were listed on the public Ad. (Commissioner's records.)

Finding of Fact 8: The Ad was run under the Billings Gazette's 5 day repeat contract rate, appearing 5 times initiating the week of 10/10/16. (Commissioner's records.)

Finding of Fact 9: On November 10, 2016; the COPP received the C2, Statement of Organization form, for "Friends of Don Roberts." (Commissioner's records.)

Finding of Fact 10: Also on November 10, 2016, the Friends of Don Roberts committee filed a C6 finance report, which

was also a closing report, listing \$1,342 in contributions and \$1,342 in expenditures. The one expenditure listed on the report was to the Billings Gazette on October 7, 2016 for \$1,342.00 for the Ad. (Commissioner's records.)

Finding of Fact 11: On December 9, 2016, the Montana Democratic Party filed a complaint with the COPP alleging Mr. Workman failed to file as an Independent Committee and report expenditures. (Commissioner's records.)

Finding of Fact 12: The Office received an amended C-2 from the Friends of Don Roberts committee on December 20, 2016. (Commissioner's records.)

Finding of Fact 13: Al Littler² contributed \$400.00 of the \$1342.00, the rest of the 27 individuals listed on the ad, including Workman, contributed \$34.99 or less. (Commissioner's records.)

DISCUSSION

The complaint in this Matter alleges that Mr. Workman's actions violate Montana's campaign finance laws regarding organization and expenditure reporting.

Mr. Workman organized a group of Billings citizens who together, with a small sum of money from each, placed the Ad in support of the political candidacy of Mr. Roberts in the Billings Gazette the week of 10/10/17 and appearing 5 times (FF No 8.) Mr. Workman did not register a political committee nor did he report and disclose the money raised and spent. The Commissioner's regulations require that the Independent political committee (thus, the Friends of Don Roberts) file a statement of organization within 5

² Mr. Littler is not listed on the Ad

days of making, or authorizing, an expenditure if more than \$250.00. §13-37-201(2)(b), MCA; ARM 44.11.201.202(3).

Sufficiency Finding No. 1: The Commissioner finds there are sufficient facts to show Ed Workman did not file as an Independent Committee in a timely fashion after making an expenditure on the Ad which appeared in the Billings Gazette and repeated four (4) times.

In total the Friends of Don Roberts raised and spent \$1,342 in running the Ad in the Billings Gazette (FF No. 8.) The Ad expressly advocated a vote for candidate Roberts. (FF No 5.) The Ad was a “paid advertisement published in a newspaper” and thus constituted an election communication. §13-1-101(14)(a)(iii), MCA.

Under Montana law the Friends of Don Roberts became a political committee when it received contributions or made expenditures to support or oppose a candidate. §13-1-101(30)(a)(i), MCA. It was an independent committee in that it was “a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled ... by a candidate ...” §13-1-101(23), MCA.

The Commissioner has determined that the expenditure was an election communication. This finding is consistent with the definition of an independent expenditure as “an expenditure for an election communication to support or oppose a candidate.” §13-1-101(26), MCA. Accordingly, this Commissioner determines that this Matter concerns the application of Montana’s campaign practices law to the independent expenditures of an independent political committee.

As an independent committee, the Friends of Don Roberts was required to register and file a report according to rules established by the Commissioner. §13-37-226, MCA. In turn, the Commissioner's rules require an independent political committee to file a statement of organization, ARM 44.11.202(7), and, when a "political committees that ... make expenditures to support or oppose a particular state district candidate" §13-37-226(2)(a), MCA. The Friends of Don Roberts failed to file the required C-6, campaign finance report, on October 27, 2016 as required by Montana law.

Sufficiency Finding No. 3: The Commissioner finds that there are sufficient facts to show the Friends of Don Roberts did not timely file a campaign finance report following the State District reporting calendar.

Finally, because the Ad was an election communication, an attribution was required. §13-35-225, MCA.

Sufficiency Finding No. 4: The Commissioner finds that the Friends of Don Roberts did not properly attribute the Ad as required by Montana law.

The Ad fails to meet this requirement because it identified the "paid for by" entity as Mr. Workman when, in fact, the entity was the Friends of Don Roberts. (FOF No 13.)

FINDINGS OF CAMPAIGN PRACTICE VIOLATION

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must make, a decision as the law mandates that 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 that 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. In this Matter the registration requirements for political committees are mandatory, requiring that the committee “shall file” a statement of organization with the Commissioner. §13-37-201(2)(b), MCA; ARM 44.11.201. Montana’s campaign finance report filing requirements, including the requirements for independent committee election expenditures, are also mandatory: “shall file[.]” §13-37-226, MCA; ARM 44.11.402. The filing date requirements are date-certain. Therefore, any failure to meet a mandatory, date-certain filing date is a violation of §13-37-226, MCA. Likewise, the attribution statute requires that all election communications “must” include “the name and address of the person who made or financed the expenditure for the communication.” §13-35-225, MCA.

This Commissioner, having been charged to investigate and decide, hereby determines that Mr. Workman has, as a matter of law, committed a violation of Montana’s campaign practice laws, including §§13-35-225, 13-37-201(2)(b), 226, MCA and ARM 44.11.201, 44.11.402. The violations are failing to register as a political committee, failing to properly report expenditures, and failing to

attribute properly.

Having determined that a campaign practice violation has occurred, 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.

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). These principles do not apply because Mr. Workman intended to publish the Ad that lead to the violation.

CONCLUSION

Based on the preceding discussion as Commissioner, I find and decide that there is sufficient evidence to show that Mr. Workman and the Friends of Don Roberts group violated Montana's campaign practices laws, including §§ 13-35-225, 13-37-201(2)(b), 226, MCA and ARM 44.11.201, 44.11.402.

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to these certain Sufficiency Findings, civil prosecution and/or a civil fine is justified. §13-37-124, MCA. The Commissioner hereby issues a "sufficient evidence" Finding and Decision justifying civil adjudication of Mr. Workman and Friends of Don Roberts for the violations set forth above. Because of the nature of the violations (the failures to register, and to report and disclose occurred in Lewis and Clark County),

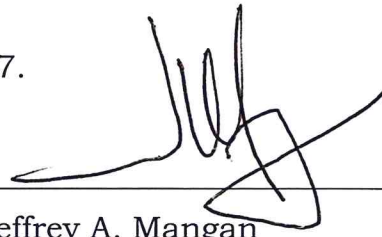
this matter is referred to the County Attorney of Lewis and Clark County³ for his consideration as to prosecution. §13-37-124(1), MCA. Should the County Attorney waive the right to prosecute (§13-37-124(2), MCA) or fail to prosecute within 30 days (§13-37-124(1), MCA) this Matter returns to this Commissioner for possible adjudication.

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.

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

³ As multiple violations occurred, the Commissioner has chosen to refer to Lewis and Clark County as they have jurisdiction over the majority of the violations.

DATED this 30th day of May, 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
P. O. Box 202401
1209 8th Avenue
Helena, MT 59620
Phone: (406)-444-2942