

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Rhoades v. Engen No. COPP 2017-CFP-008	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE VIOLATION
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On November 1, 2017, Quentin Rhoades, a Missoula resident filed a complaint with the Office of the Commissioner of Political Practices (COPP) against John Engen, candidate for Mayor of Missoula, Montana. Mr. Rhoades alleges the Engen for Mayor campaign failed to provide sufficient detail when reporting campaign expenditures.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: John Engen filed a C-1A Statement of Candidate as a candidate for Mayor of Missoula with the COPP on February 16, 2017. (Commissioner's Records.)

Finding of Fact No. 2: The City of Missoula, Montana held its municipal general election on November 7, 2017. (Montana Secretary of State website.)

Finding of Fact No. 3: The Engen campaign timely filed C-5 campaign financial reports on the following dates: August 18, August 31, October 3, and October 26, 2017. (Commissioner's Records.)

DISCUSSION

The complaint alleges the Engen campaign failed to provide sufficient detail when reporting certain campaign expenditures. The Commissioner examines all expenditure activity in general, including those expenses cited as examples in the complaint.

Reporting expenses in sufficient detail on campaign finance reports

The complaint alleges the Engen campaign failed to provide sufficient detail when reporting the following expenses: rent; campaign services, and; campaign compliance.

Finding of Fact No. 4: On its August 18, 2017 campaign finance report, the Engen campaign reported five expenditures to Brock Consulting LLC for “Campaign Services” totaling \$15,000. (Commissioner’s Records.)

Finding of Fact No. 5: On its August 18, 2017 campaign finance report, the Engen campaign reported one expenditure to Callie Monroe for “Event entertainment” totaling \$250.00. (Commissioner’s Records.)

Finding of Fact No. 6: On its August 18, 2017 campaign finance report, the Engen campaign reported two expenditures to the United States Post Office (USPS) for “Postage” totaling \$254.80. (Commissioner’s Records.)

Finding of Fact No. 7: Also on its August 18 report, the Engen campaign reported five expenditures to Tammy Bodlovic for “Campaign Compliance Services” totaling \$3,750. (Commissioner’s Records.)

Finding of Fact No. 8: On September 14, 2017, a COPP Compliance Inspection of the August 18, 2017 report was emailed to campaign Treasurer Emily Bentley; the Inspection requested clarification as to the specific nature of each of the five Brock Consulting LLC expenditures for “campaign services”, the Callie Monroe expenditure for “event entertainment”, and the USPS “postage” expenditure. (Commissioner’s Records.)

Finding of Fact No. 9: Also on its October 3, 2017 campaign finance report, the Engen campaign reported one expenditure to ZillaState RE for “Office Rent August 15 to September 15,” at a total cost of \$300. (Commissioner’s Records.)

Finding of Fact No. 10: On its October 26, 2017 campaign finance report, the Engen campaign reported one expenditure to Tammy Bodlovic, again for “campaign compliance services,” totaling \$750. (Commissioner’s Records.)

Finding of Fact No. 11: On its October 26 report, the Engen campaign reported one expense to ZillaState RE for “Office Rent September 15-November 15,” at a total cost of \$600. (Commissioner’s Records.)

Finding of Fact No. 12: On November 10, 2017, the Engen campaign filed an amended version of its August 18, 2017 report; the purposes for the five expenditures to Brock Consulting LLC were changed to, “coordination and implementation of campaign strategy, outreach, and fundraising.” (Commissioner’s Records.)

Finding of Fact No. 13: On November 16, 2017, the Engen campaign filed a newly amended version of its August 18, 2017 financial report, with the purpose for the expenditure to Callie Monroe revised as “Music for 1.5 hour campaign event” and two expenditures to USPS revised as “postage- 320 stamps” and “postage- 200 stamps”. (Commissioner’s Records.)

In reviewing this matter, the Commissioner examined the most recent decision containing similar facts related to sufficiency detail of expenditures: *Montana Democratic Party v. Montana Republican Legislative Campaign Committee*, No. COPP 2016-CFP-029 (*MDP v. MRLCC*). In that decision, Commissioner Motl determined “the use of the word or words ‘bookkeeping’ or ‘bookkeeping and compliance reporting’ sufficiently describe and thereby disclose the specific services.” Further, the COPP office has routinely accepted the terms “campaign compliance” and “office rent” when used to describe expenditures in campaign finance reports. However, when campaigns have

more than one location or use several consultants for a specific service, such as accounting, compliance services, etc., the COPP does request additional detail.

The Commissioner proceeds to the “campaign services”, “event entertainment”, and “postage” expenditure details in this matter. Prior to the Complaint, the COPP had requested, via internal compliance inspection reports, that the Engen for Mayor campaign provide additional detail as related to the reported “campaign services”, “event entertainment”, and “postage” expenditures (FOF Nos. 4-6, 8). On November 10, 2017, the Engen campaign revised its August 18 campaign finance report to indicate additional and sufficient detail to the five identified “campaign services” expenditure items (FOF No. 12). On November 16, 2017, the Engen campaign revised its August 18 campaign finance report to indicate additional and sufficient detail to both the identified “event entertainment” and “postage” expenditure items (FOF No. 13).

FINDINGS

In this matter, the Engen for Mayor campaign provided sufficient detail when reporting expenditures to Tammy Bodlovic for campaign compliance expenses and ZillaState RE for office rent expenses. (FOF Nos. 7, 9-11.)

With regard to Brock Consulting, LLC, however, the August 18, 2017 campaign finance report listed five payments as merely “campaign services,” (FOF No. 4). The COPP investigation also identified “event entertainment” and “postage” expenditure details as insufficient. These generic expenditure

listings do not meet Montana’s statutory requirement regarding detail of campaign finance reports:

Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate or political committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.

§ 13-37-229(2)(b), MCA. Nor, do the listings provide the “purpose, quantity, subject matter” reporting detail required for expenses by 44.11.502(7), ARM.¹

Sufficiency Finding No. 1: There are sufficient facts to show that the August 18 campaign finance report of the Engen for Mayor campaign failed to disclose sufficient detail to describe the specific services provided by Brock Consulting LLC as campaign services expenditures.

Sufficiency Finding No. 2: There are sufficient facts to show that the August 18 campaign finance report of the Engen for Mayor campaign failed to disclose sufficient detail to describe the specific services provided by Callie Monroe as an event entertainment expenditure.

Sufficiency Finding No. 3: There are sufficient facts to show that the August 18 campaign finance report of the Engen for Mayor campaign failed to disclose sufficient detail to describe the specific payments to USPS as a postage expenditure.

This Finding is supported by the reasoning set forth by

Commissioner Motl in *MDP v. MRLCC*:

[T]here is an affirmative duty on the part of a candidate or committee to use a word or words in their campaign finance report that provide “sufficient detail to disclose the specific services” covered by the expenditure. In this Matter, the use of the word or words “bookkeeping” or “bookkeeping and compliance reporting” sufficiently describe and thereby disclose the specific services

¹ The COPP’s Accounting and Reporting Manual for Candidates, at page 19, draws attention to this requirement, stating, “[a] common [expense reporting] mistake is the reporting of consultants. Reports of expenditures to a consultant ... must be itemized and must be described in sufficient detail to disclose the specific services performed.”

provided [...] In contrast, the use of the words “consulting”, “fundraising” or “reimbursement” are not sufficient to describe or disclose the specific services[.]

No. COPP 2016-CFP-029, at 6-7.

This matter has similar facts. The phrase “campaign services” is found to be so generic it could cover a variety of tasks and expenditures and has little or no meaning other than to the campaign itself. Both “event entertainment” and “postage” are found to be equally as generic. The Commissioner finds the Engen for Mayor campaign failed to provide sufficient detail in reporting its “campaign services”, “event entertainment”, and “postage” expenditures, as discussed above, and this failure is a violation of Montana Campaign Finance Law. That reports from the Engen campaign were subsequently revised to provide sufficient detail and address the concerns identified by the COPP (FOF Nos. 12, 13) and the timing of those revisions is a matter that can be considered with regard to determining the amount of any negotiated fine.

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. § 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. This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence to show that the Engen for Mayor campaign 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 Finding, 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 the Engen for Mayor campaign. 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 cooperation or lack thereof in correcting the reports at issue when the matter was raised by COPP internal compliance inspection reports and in the Complaint.

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 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 11th day of November, 2017.



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