

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Vargas v. Nottingham No. COPP 2017-CFP-004-B	<u>Dismissal of Complaint By Application of <i>De Minimis</i> Principle</u>
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On September 13, 2017, Leza Vargas, a resident of Fromberg, Montana, filed a complaint against Timothy Nottingham, a 2017 candidate for City Council, Town of Fromberg. Ms. Vargas alleged in her complaint that Mr. Nottingham violated campaign practice laws by failing to disclose in-kind contributions of campaign signs and participation in a parade float.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign practice law addressed by this decision is the proper filing of the Statement of Candidate form and attribution, with enforcement measured by application of *de minimis* principle.

FINDING OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: The town of Fromberg, MT. will hold its municipal general election on November 7, 2017. (Montana Secretary of State website.)

Finding of Fact No. 2: On May 5, 2017, Timothy Nottingham filed a C-1A Statement of Candidate form

declaring he was running for City Council in the Town of Fromberg and certifying he would not receive or expend any funds in support of his candidacy. (Commissioner's Records.)

DISCUSSION

The complaint alleges that Candidate Nottingham placed a campaign sign that included his candidacy on his residence, and participated in a Town of Fromberg parade float on August 26, 2017. Under Montana law, a contribution includes "receipt by a candidate ... of anything of value to support or oppose a candidate" §13-1-101(9)(a)(i) MCA. Candidates who originally file a Statement of Candidacy certifying they will not "receive or expend any funds" should amend the filing within five business days upon change of status. 44.11.304 ARM. The Commissioner makes the following further Findings related to this Complaint:

Finding of Fact No. 3: An individual, Niki Elliot, ordered and purchased 40 campaign signs and five banners supporting the candidacy of Mr. Nottingham and 3 other local candidates on or about August 26, 2017. Each sign/banner included the names of four candidates running in the Town of Fromberg election. Ms. Elliot also assembled a campaign float for the four candidates in a local parade. (COPP interview with Ms. Elliot.)

Finding of Fact No. 4: Niki Elliot did not include any sort of "paid for by" language on the signs and banners. (Commissioner's Records.)

Finding of Fact No. 5: Ms. Elliot stated the cost of the signs, banners, and materials was \$750.00, or approximately \$17 per sign/banner, which was paid for on her personal credit card. Ms. Elliot estimated \$5.00 as the cost of gas and materials she used in the parade float. (COPP interview with Ms. Elliot.)

Finding of Fact No. 6: On or about September 4, 2017, Candidate Nottingham placed on his residence one of Ms. Elliot's signs. (COPP interview with Candidate Nottingham.)

Finding of Fact No. 7: Candidate Nottingham participated in a float in a Town of Fromberg parade, which included hand painted campaign signage, on August 26, 2017. (Commissioner's Records.)

Finding of Fact No. 8: Candidate Nottingham filed an amended C-1A certifying contributions and expenditures for his candidacy would not exceed \$500.00 on September 29, 2017. (Commissioner's Records.)

Citizen Niki Elliot purchased, as an individual, campaign signs and banners, each of which supported four candidates in the local election for the Town of Fromberg (FOF No. 3). Ms. Elliot also arranged for a parade float for the same four candidates for a Town of Fromberg parade (FOF No. 3). The COPP investigation concluded Ms. Elliot acted alone (FOF No. 5). While Ms. Elliot was not required as an individual to form a political committee or report expenditures, she did fail to properly attribute the signs and banners. §13-35-225, MCA; (FOF No. 4).

A sign was placed on the residence of Candidate Nottingham, and Candidate Nottingham participated in the parade float (FOF Nos. 6, 7). By doing so, Candidate Nottingham received in-kind contributions from Ms. Elliot. The maximum value assigned each candidate would be \$17.92¹ for any of the four candidates who placed a sign on their residence and participated on the float (FOF No. 3, 5). Candidate Nottingham did not amend his Statement of Candidacy form until 33 days after he received an in-kind contribution from

¹ Calculated at \$750 divided by 45 signs/banners = \$16.67 plus \$5 parade float gas divided by 4 = \$1.25, for a total in-kind contribution of \$17.92.

Ms. Elliot (FOF Nos. 6-8). Candidate Nottingham failed to comply with Montana's campaign finance law by failing to timely amend the C-1A Statement of Candidacy form certifying he would be accepting contributions following the acceptance of in-kind campaign materials within five days. 44.11.304 ARM.

The Commissioner recognizes that a *de minimis* application must be made when required by the facts of a given Matter.

Previous Commissioners have applied the principle of *de minimis* to an indefinite expenditure of potentially up to \$428 by an incidental committee, *Raffiani v Montana Shrugged*, COPP- 2010- CFP 17, and a definite amount of \$273, *Royston v. Crosby*, COPP-2012-CFP-041. Further, 44.11.603(1)(e) ARM allows the Commissioner to consider "limited value" and 44.11.603(2)(b) "the provision by an individual... of personal property, food, or services with a cumulative value of less than \$35." In *Royston v. Crosby*, COPP-2012-CFP-041, Commissioner Motl found "the legislature had already established a *de minimis* amount of \$500 in regard to reporting requirements for local candidate races." See §13-37-226(3), MCA (2017).

FINDINGS

As Ms. Elliot acted alone, she is under no requirement to individually report campaign finance expenditure or in-kind contributions to a candidate. Attribution, however, is required on the campaign finance materials Ms. Elliot provided. §13-35-225, MCA. The COPP reached out to Ms. Elliot and requested the proper attribution be placed on the materials, and Ms. Elliot

agreed to do so. By correcting the attribution omission, the Commissioner applies the principle of *de minimis* to the initial omission, pursuant to the provisions of Mont. Code Ann. §13-35-225(5), MCA.

Turning to Candidate Nottingham's activity, the Commissioner notes the signs supporting four candidates were designed and purchased by a local resident independent of Candidate Nottingham or the other candidates. Candidate Nottingham did participate in the parade float and allowed a sign to be placed on his residence, making Candidate Nottingham a recipient of an in-kind contribution from Ms. Elliot. Assigning a maximum value of \$17.92 to this in-kind contribution, would trigger only a change in candidate status (from 'A' box to a 'B' box), which does not require campaign finance reporting of the contribution information to the public as the amount remains well under the \$500.00 reporting threshold. §13-37-226(3), MCA. Further, the in-kind contribution from Ms. Elliot to Candidate Nottingham was under the \$35 reporting threshold.

Candidate Nottingham corrected the error 34 days late by amending the C-1A Statement of Candidate form to 'B' box status². With these (and the above) considerations in mind, the Commissioner dismisses as *de minimis* Candidate Nottingham's violation of failing to file an amended Statement of Candidacy within the five day period for change in receipt of contributions or making an expenditure in this Matter.

Because there is a finding of violation and a determination that the *de*

² B box status indicates the candidate will "certify that I expect the total amount of contributions or expenditures will not exceed \$500".

minimis principles are applicable, the Commissioner exercises his discretion and determines that civil prosecution and/or a civil fine is not justified under the facts in this matter. See §13-37-124 MCA. The Commissioner therefore will not refer this matter for prosecution.

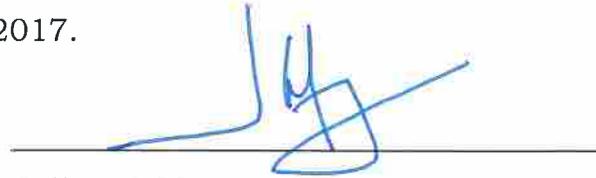
While the facts of this Matter allow application of the *de minimis* principle, most Matters before the Commissioner do not allow application of such a principle resulting in a Sufficiency Finding. See e.g. *Baker v. Key*, COPP-2011-CFP-32. Montana's laws and rules require complete and timely reporting and disclosure of campaign expenditures or contributions. The Commissioner, subject to the specific fact here in, applies the principle of *de minimis* to the activities discussed above. The Commissioner notes that the law requires reporting and disclosure to the people of Montana. Enforcement of these laws promotes fair speech leading to better civic discourse which, in turn, leads to more effective governance. The Commissioner encourages local candidates to be aware of the appearance to the public of a candidate's failure to report and disclose contributions to their campaigns, and to update their filings in a timely manner with the COPP.

DECISION

This Commissioner, having duly considered the matters raised in the Complaint, and having completed his review and investigation, hereby holds and determines, under the above stated reasoning, that the above described violation of failure to timely file is dismissed as *de minimis*. The Commissioner

hereby dismisses this complaint.

DATED this 11th day of October 2017.



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