

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

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| Adams v. Montanans for the 6 Mill No. COPP 2018-CFP-003 | FINDING OF SUFFICIENCY FACTS TO SUPPORT A CAMPAIGN PRACTICE VIOLATION; DISMISSAL OF ALLEGED VIOLATIONS |
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On February 28, 2018, Timothy Adams filed a campaign practices complaint against Montanans for the 6Mill, a registered Montana Ballot Issue committee. The complaint alleges that Montanans for the 6Mill failed to fully detail individual contributions as required, failed to provide expenditure details, and violated the Montana Disclose Act by coordinating and accepting contributions from corporations.

SUBSTANTIVE ISSUES ADDRESSED

The decision addresses ballot committee campaign finance reporting, providing adequate detail when reporting expenditures, properly reporting contributions to a political committee, and coordination.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: The 2017 Montana Legislature, through Senate Bill 85, referred to the voters a “referendum submitting a 6-mill levy for support of the Montana University System,” known as Legislative Referendum 128 (LR-128). LR-128 will appear on the 2018 general election ballot. The bill was passed by the Legislature on March 8, 2017, to appear on the November 6, 2018 ballot. (Montana Legislature, Detailed Bill Information; Montana Secretary of State; Commissioner’s Records.)

Finding of Fact No. 2: Montanans for Higher Education (MHE) filed a C-2 Statement of Organization with the COPP on March 10, 2017, registering as a Ballot Issue committee. MHE listed Mike Frank as the committee Treasurer and gave its purpose as support for the 6-mill levy. Amended C-2 forms were filed by MHE on June 20 and November 8, 2017. A third amended C-2 filed on November 13, 2017 changed the name of the committee to Montanans for the 6Mill.¹ As a Statewide Ballot Issue committee, Montanans for the 6Mill had C-6 committee financial reports due on or before April 5, 2017 (date of first contribution/expenditure through March 31, 2017), July 5, 2017 (April 1 through June 30), October 5, 2017 (July 1 through September 30, 2017), and January 5, 2018 (October 1 through December 31, 2017). (Commissioner's Records.)

DISCUSSION

The Complaint alleges that Montanans for the 6Mill did not provide the occupation and employer information for contributors on at least three occasions, did not provide the required level of detail for expenditures on at least 15 occasions, coordinated directly with members of the Board of Regents and University-affiliated groups who stood to benefit from passage of the 6-mill levy, and violated Montana's Disclose Act by accepting contributions from corporate sources. Each of these allegations is examined below.

1. Failure to properly report contributions

The Complaint alleges Montanans for the 6Mill's November 8, 2017 and March 7, 2018, reports failed to provide the occupation and employer information of seven total individual contributors, in violation of § 13-37-229(1)(b), MCA.

Finding of Fact No. 3: Montanans for the 6Mill filed its initial C-6 committee finance report on November 8, 2017, covering March 10 through October 30, 2017. The committee reported receiving contributions from three incorporated entities, a 2008 ballot committee, and 17 individuals of \$35 or more. Of the individual contributors, three had both occupation and employer

¹ For purposes of this decision, the committee will be referred to exclusively by its current name, Montanans for the 6Mill.

information listed as “Information requested.” (Commissioner’s Records.)

Finding of Fact No. 4: On March 7, 2018, Montanans for the 6Mill filed a periodic committee finance report covering January 1 through February 25, 2018. It reported receiving contributions from two associations and eight individuals of \$35 or more. Four of the individual contributors had both occupation and employer information listed as “Information requested.” (Commissioner’s Records.)

Finding of Fact No. 5: On March 14, 2018, the COPP received Montanans for the 6Mill’s official response to the Complaint. The response included three letters Montanans for the 6Mill had sent to those individual contributors on the November 8, 2017 report who did not provide either occupation or employer information; which outreach occurred prior to the Complaint being filed. The committee’s letter(s) explained that it was required to report this information to the COPP and provided an opportunity for these individuals to supply the missing information. (Commissioner’s Records.)

Finding of Fact No. 6: The March 14 response also contained a copy of a letter Montanans for the 6Mill sent to all corporate or nonprofit donors explaining the need for these groups to register as incidental committees with the COPP and offering guidance and suggestions for how to complete the registration process using the CERS system. (Commissioner’s Records.)

Montana law requires committees to report and disclose “the full name, mailing address, occupation, and employer” of each person making aggregate contributions of \$35 or more. § 13-37-229(1)(b), MCA. Here, occupation and employer of seven individual contributors was not provided. (FOF Nos. 3-4.) However, Montanans for the 6Mill noted the missing details as “Information requested” on the respective reports. (*Id.*) The committee also sent, prior to the Complaint, letters to each of these individuals specifically requesting this information be provided to the committee. (FOF No. 5.)

2. Failure to detail expenditures

The complaint alleges Montanans for the 6Mill failed to provide the required level of detail for expenditures listed the committee's the financial reports.

Finding of Fact No. 7: Montanans for the 6Mill disclosed on its November 8, 2017 report the seven expenditures to Hilltop Public Solutions (see Table 1). (Commissioner's Records.)

Finding of Fact No. 8: On its January 5, 2018 report, Montanans for the 6Mill reported two expenditures to CMW Strategies, LLC and reported three expenditures to Strategies 360 (see Table 2). (Commissioner's Records.)

Finding of Fact No. 9: On February 27, 2018, two COPP inspection reports were provided to committee Treasurer Mike Frank via email. The first inspection covered the November 8, 2017 committee finance report amended on January 3, 2018; this report requested additional information as to the expenditures to Hilltop Public Solutions. The second inspection report covered the January 5, 2018 committee financial report; it requested additional information regarding the expenditures to CMW Strategies, LLC and Strategies 360. (Commissioner's Records.)

Finding of Fact No. 10: On March 7, 2018, Montanans for the 6Mill filed a second amended version of its November 8, 2017 committee finance report. This report listed ten separate reimbursement expenditures to Hilltop Public Solutions, each detailing the specific item(s) purchased. A COPP compliance inspection completed on March 9, 2018 determined that these expenditures included the necessary level of detail and that no further action was required. The March 7, 2018, second amended report included the following four additional expenditures to Hilltop Public Solutions (see Table 3). (Commissioner's Records.)

Finding of Fact No. 11: On March 6, 2018, Montanans for the 6Mill filed an amended version of its January 5, 2018 periodic committee finance report listing two expenditures to CMW Strategies, LLC three expenditures to Strategies 360 (see Table 4). (Commissioner's Records.)

Finding of Fact No. 12: The March 7, 2018 report (amending the November 8, 2017 report) listed three expenditures to Strategies 360(see Table 5). (Commissioner's Records.)

Finding of Fact No. 13: On March 9, 2018, COPP emailed Montanans for the 6Mill the inspection reports of the twice amended November 8, 2017, the amended January 5, 2018, and the March 7, 2018 committee finance reports. These inspection reports requested more information describing the expenditures to Hilltop Public Solutions, CMW Strategies, LLC, and Strategies 360. (Commissioner's Records.)

Finding of Fact No. 14: On March 13, 2018, Montanans for the 6Mill filed a third amended November 8, 2017 committee finance report, a second amended January 5, 2018 committee finance report, and an amended March 7, 2018 committee finance report. The compliance inspection report COPP completed on March 19, 2018 determined that all listed expenditures included the necessary level of detail, and that all issues or concerns noted on the March 9, 2018 inspection report had been addressed. (Commissioner's Records.)

A certain level of details is required of committees when reporting expenditures to consultants and the like.

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. Montanans for the 6Mill failed to provide this level of detail on seven expenditures on its November 8, 2017 committee finance report (see Table 1), five expenditures on its January 5, 2018 committee finance report (see Table 2), and three expenditures on its March 7, 2018 committee finance report (see Table 5). (FOF Nos. 7, 8, 12.) COPP inspection reports alerted the committee to these errors before this Complaint was filed, and Montanans for the 6Mill worked to provide the information requested; however, the first set of subsequent amended reports (see Tables 3 and 4) failed to

provide the level of detail required by § 13-37-229(2)(b), MCA. (FOF Nos. 10, 11.)

Table 1: Expenditures to Hilltop Public Solutions as reported November 8, 2017, and as amended January 3, 2018

| Entity | Date of Expenditure | Purpose | Amount |
|--------------------------|---------------------|---|-------------|
| Hilltop Public Solutions | 11/29/2016 | Nov and Dec 2016 management fees | \$10,000.00 |
| Hilltop Public Solutions | 08/15/2017 | Reimbursed expenses (tracking down specific line items) | \$1,748.80 |
| Hilltop Public Solutions | 08/15/2017 | April 15- July 15, 2017 management fee | \$11,000.00 |
| Hilltop Public Solutions | 08/15/2017 | January 15, 2017- April 15, 2017 management fees | \$15,000.00 |
| Hilltop Public Solutions | 08/15/2017 | Reimbursed expenses (tracking down specific line items) | \$423.85 |
| Hilltop Public Solutions | 05/15/2017 | Dec 15, 2017- Jan 15, 2017 management fee | \$5,000.00 |
| Hilltop Public Solutions | 05/15/2017 | Reimbursed expenses (tracking down specific line items) | \$2,169.83 |

Table 2: Expenditures to CMW Strategies, LLC and Strategies 360 as reported January 5, 2018

| Entity | Date of Expenditure | Purpose | Amount |
|---------------------|---------------------|-----------------------------------|-------------|
| CMW Strategies, LLC | 11/21/2017 | October fundraising fee | \$2,500.00 |
| CMW Strategies, LLC | 12/06/2017 | Nov and Dec fundraising fee | \$5,000.00 |
| Strategies 360 | 11/21/2017 | October management fee | \$5,000.00 |
| Strategies 360 | 11/21/2017 | Fee for initial assessment survey | \$20,000.00 |
| Strategies 360 | 12/06/2017 | Nov and Dec mgmt fees | \$10,000.00 |

Table 3: Expenditures to Hilltop Public Solutions as reported March 7, 2018 (second amended November 8, 2017 report), per COPP Inspection Report

| Entity | Date of Expenditure | Purpose | Amount |
|--------------------------|---------------------|---|-------------|
| Hilltop Public Solutions | 11/29/2016 | Nov and Dec 2016 day to day campaign management fee | \$10,000.00 |
| Hilltop Public Solutions | 08/15/2017 | April 15- July 15, 2017 day to day campaign management fees | \$11,000.00 |
| Hilltop Public Solutions | 05/15/2017 | January 15, 2017 – April 15, 2017 day to day campaign management fees | \$15,000.00 |
| Hilltop Public Solutions | 05/15/2017 | Dec 15, 2016 – Jan 15, 2017 day to day campaign management fee | \$5,000.00 |

Table 4: Expenditures to CMW Strategies, LLC and Strategies 360 as reported March 6, 2018 (amended January 5, 2018 report), per COPP Inspection Report

| Entity | Date of Expenditure | Purpose | Amount |
|---------------------|----------------------------|--|---------------|
| CMW Strategies, LLC | 11/21/2017 | October fundraising program management and execution fee | \$2,500.00 |
| CMW Strategies, LLC | 12/06/2017 | Nov and Dec fundraising program management and execution fee | \$5,000.00 |
| Strategies 360 | 11/21/2017 | October day to day campaign management fee | \$5,000.00 |
| Strategies 360 | 11/21/2017 | Fee for initial assessment survey | \$20,000.00 |
| Strategies 360 | 12/06/2017 | Nov and Dec 2017 day to day campaign management fee | \$10,000.00 |

Table 5: Expenditures to Strategies 360 as reported March 7, 2018, per COPP Inspection Report

| Entity | Date of Expenditure | Purpose | Amount |
|----------------|----------------------------|--|---------------|
| Strategies 360 | 02/05/2018 | February 2018 day to day campaign management fee | \$5,000.00 |
| Strategies 360 | 01/15/2018 | January 2018 day to day campaign management fee | \$5,000.00 |
| Strategies 360 | 01/25/2018 | Assessment survey of MT expense | \$21,300.00 |

Representatives of Montanans for the 6Mill have been in consistent contact with the COPP regarding the level of statutorily-required detail regarding the “Purpose” of expenditures that must be provided going forward. The amended March 13, 2018, committee finance reports did in fact provide the appropriate level of detail for all expenditures, as requested by the COPP (see Table 6).

Table 6: Examples of Expenditures (see Tables 1-5) reflecting appropriately detailed “Purpose” information, as accepted by the COPP on March 13, 2018.

| Entity | Date of Expenditure | Purpose (as originally reported) | Purpose (as accepted by COPP) | Amount |
|--------------------------|----------------------------|---|---|---------------|
| Hilltop Public Solutions | 11/29/2016 | Nov and Dec 2016 management fees | Nov – Dec 2016 campaign management fee includes development of campaign plan, communications strategy, and steering committee direction | \$10,000.00 |
| Hilltop Public Solutions | 08/15/2017 | April 15- July 15, 2017 management fee | April 15 – July 15, 2017 campaign management fee includes development of campaign plan, communications | \$11,000.00 |

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|---------------------|------------|--|---|-------------|
| | | | strategy, and steering committee direction | |
| CMW Strategies, LLC | 11/21/2017 | October fundraising fee | October '17 fundraising fee for solicitation strategy for mail, calls, email, events and finance committee assistance | \$2,500.00 |
| Strategies 360 | 11/21/2017 | October management fee | October '17 campaign management fee including campaign plan, communications, strategy, and steering committee management | \$5,000.00 |
| Strategies 360 | 02/05/2018 | February 2018 day to day campaign management fee | Feb '18 day to day campaign management fee including campaign plan, communications, strategy, and steering committee management | \$5,000.00 |
| Strategies 360 | 01/25/2018 | Assessment survey of MT expense | Second payment of fee for initial assessment survey providing background info to the committee to help develop campaign communications strategy | \$21,300.00 |

3. Coordinating and accepting corporate contributions

Montanans for the 6Mill is alleged to have violated the spirit of Montana's Disclose Act by accepting corporate contributions².

Finding of Fact No. 17: On January 5, 2018 Montanans for the 6Mill filed a C-6 committee finance report covering the dates of October 1 through December 31, 2017. The committee reported receiving contributions from five corporate or business groups, three registered Montana political committees, two associations, and eight individual contributors of \$35 or more, including \$500.00 from Robert Nystuen, and \$200.00 from Paul Tuss, both listed as current members of the Montana Board of Regents. (Commissioner's Records.)

The Complaint relies specifically on § 13-35-503, MCA, which states that:

² The Commissioner notes that it was Initiative I-166, "Corporations are not entitled to Constitutional Rights", enacted by the people of Montana in November of 2012, not the Disclose Act, that led to the policy referenced in the complaint.

Policy. (1) It is policy of the state of Montana that each elected and appointed official in Montana, whether acting on a state or federal level, advance the philosophy that corporations are not human beings with constitutional rights and that each such elected and appointed official is charged to act to prohibit, whenever possible, corporations from making contributions to or expenditures on the campaigns of candidates or ballot issues. As part of this policy, each such elected and appointed official in Montana is charged to promote actions that accomplish a level playing field in election spending.

(2) When carrying out the policy under subsection (1), Montana's elected and appointed officials are generally directed as follows:

(a) that the people of Montana regard money as property, not speech;

(b) that the people of Montana regard the rights under the United States Constitution as rights of human beings, not rights of corporations;

(c) that the people of Montana regard the immense aggregation of wealth that is accumulated by corporations using advantages provided by the government to be corrosive and distorting when used to advance the political interests of corporations;

(d) that the people of Montana intend that there should be a level playing field in campaign spending that allows all individuals, regardless of wealth, to express their views to one another and their government; and

(e) that the people of Montana intend that a level playing field in campaign spending includes limits on overall campaign expenditures and limits on large contributions to or expenditures for the benefit of any campaign by any source, including corporations, individuals, or political committees.

The foregoing statute is a codified policy statement; it does not have the force of law, nor are the policies applicable to all parties in the election process.

Rather, this statute is a set of guidelines meant to influence the attitudes and behaviors of elected and appointed officials in Montana. As Montanans for the

6Mill is not an elected or appointed official in Montana, § 13-35-503 does not apply here.

The statutory prohibition on corporate contributions, § 13-35-227, MCA, applies specifically, and only, to candidates for public office; the prohibition does not extend to committees, except to the extent that a committee cannot serve as an intermediary to funnel corporate contributions to candidates. Montanans for the 6Mill has not reported making any direct monetary contributions to candidates for elected office. Therefore, § 13-35-227 has not been violated, and this allegation of the Complaint is hereby dismissed.

Similarly, there is no prohibition on the allowable sources of contributions a committee can accept. Individual donors in Montana are allowed to donate their personal time, money, and other resources to candidates for office or registered political committees, regardless of who their employer is or the type of work they are involved with. While the act of contributing \$250.00 or more to a registered political committee would qualify all University Foundations, Alumni Associations, etc. as Incidental committees under §§ 13-1-101(23) and (31), MCA, the burden of properly registering as a committee falls on the contributing group itself, not Montanans for the 6Mill. As part of its official response, Montanans for the 6Mill included a copy of the letter it send to all such groups that contribute to the committee, alerting them of the requirement to file as an incidental committee and helping walk them through electronic registration and reporting on the CERS system. (FOF No. 6)

Members of the Board of Regents are not prohibited from making a contribution to a ballot issue committee, and similarly, as explained above, a business or organization a member of the Board of Regents may have an involvement or other interest in is not prohibited from contributing to a ballot issue committee.

Based on these facts, the COPP finds no evidence Montanans for the 6Mill has not committed any violations in this regard, and the alleged violation of improperly coordinating a corporate contribution is hereby dismissed.

FINDINGS

The Commissioner examined the sufficiency of individual contributor detail as required on the Montanans for the 6Mill ballot committee finance reports. (Discussion, §1.)

Sufficiency Finding No. 1: There are sufficient facts to show that the Montanans for the 6Mill ballot committee finance reports failed to disclose Occupation and Employer information as required on seven occasions. (FOF Nos 3, 4.)

Montanans for the 6Mill reported these seven contributions as received, but it has been unable to collect all the information about the contributors as required by § 13-37-229(1)(b), MCA, despite its efforts to obtain the missing details. Given the good faith effort on behalf of the committee well in advance of the complaint being filed, the Commissioner will take into account those actions when addressing the violation with the committee. The Commissioner requests the committee continue its efforts to update the contributor information in question.

The Commissioner examined the sufficiency of expense detail provided by the Montanans for the 6Mill ballot committee finance reports. (Discussion, §2.)

Sufficiency Finding No. 2: There are sufficient facts to show that the Montanans for the 6Mill ballot committee finance reports failed to disclose sufficient detail describing the specific services provided by its consultant expenditures. (FOF Nos 7-13.)

While the committee disclosed all its consultant expenditures, the generic descriptions initially reported did not provide the “purpose, quantity, subject matter” expense-reporting detail required by 44.11.502(7), ARM. Nor, did the initial reports and amendments meet Montana’s statutorily-required level of

detail for campaign finance reports, which must be “itemized and described in sufficient detail to disclose the specific services performed[.]” §13-37-229(2)(b), MCA. The Commissioner notes the committee, in response to the COPP inspection reports and subsequent amendment or reports, properly detailed its expenditure reporting to satisfy the requirements of the statute. (FOF Nos. 10, 14-16; Table 6.)

The Commissioner’s examination of the complaint also found additional violations by Montanans for the 6Mill concerning the deadline for filing its periodic committee finance reports.

Sufficiency Finding No. 3: There are sufficient facts to show that the Montanans for the 6Mill filed its first ballot committee finance report in November 2017, covering three prior periods for which it failed to file reports. (FOF Nos. 2, 7.)

Montanans for the 6Mill is a statewide ballot issue committee and had made expenditures or received contributions in at least 2016, but also throughout 2017 (FOF Nos. 2, 7), including during the quarter when SB 85 became a ballot issue (FOF No. 1). Thus, the committee had periodic committee finance reports due quarterly throughout 2017. (FOF No. 2); § 13-37-226(1)(a), MCA.

However, the committee did not file its initial committee finance report until November 8, 2017. The Commissioner’s examination noted the committee failed to file periodic committee finance reports on April 5, July 5, and October 5, 2017, as required by § 13-37-226, MCA. (*Id.*)

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 Montanans for the 6Mill ballot committee 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 the Montanans for the 6Mill ballot committee. 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 cooperation in correcting the reports at issue when the matter was raised 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 cited 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*.

DATED this 27 day of April 2018.



Jeffrey A. Mangan
Commissioner of Political Practices
Of the State of Montana
P. O. Box 202401
1209 8th Avenue
Helena, MT 59620
Phone: (406)-444-3919