

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Blatnick v. Garcia No. COPP 2018-CFP-025	FINDING OF SUFFICIENT FACTS SUPPORT A CAMPAIGN FINANCE VIOLATION
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On July 2, 2018, Jeff Blatnick of Billings filed a campaign practices complaint against Rodney Garcia, also of Billings. The complaint alleged that candidate Garcia failed to timely file two required campaign financial reports.

SUBSTANTIVE ISSUES ADDRESSED

This decision addresses the timely filing of campaign finance reports, loans to a candidate's campaign from a candidate and from others, and properly reporting expenditure detail.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Rodney Garcia filed a C-1 Statement of Candidate as a candidate for House District 52 in Yellowstone County with COPP on February 29, 2018. (Commissioner's Records.)

Finding of Fact No. 2: In 2018, State District candidates had C-5 campaign financial reports due on or before May 7 (covering all financial activity from the beginning of the campaign through at least May 1), May 29 (May 2 through May 24), and June 25 (May 25 through June 20), 2018. (Commissioner's website.)

Finding of Fact No. 3: Candidate Garcia did not file a campaign financial report on or before May 7, 2018. (Commissioner's Records.)

Finding of Fact No. 4: On May 24, 2018, Tony O'Donnell called COPP to inquire on how a candidate [Garcia] should properly report a loan Mr. O'Donnell had made to the Garcia campaign in April of 2018. Mr. O'Donnell's question was forwarded to Commissioner Mangan who returned the call that day and explained to Mr. O'Donnell that such a loan was not allowed by Montana law, why it was not allowed, and that the money he provided to the campaign would have to be returned to Mr. O'Donnell from candidate Garcia immediately. (Commissioner's Records.)

Finding of Fact No. 5: On May 25, 2018 candidate Garcia submitted a campaign financial report covering the dates of May 3 through May 24, 2018, although the reported included items dated in April of 2018. This report contained one personal loan on April 20 from candidate Garcia to the campaign in the amount of \$3,000.00. The report also included a contribution in the amount of \$180.00 from Tony O'Donnell. (Commissioner's Records.)

Finding of Fact No. 6: A June 4, 2018 email from Commissioner Mangan to candidate Garcia referenced the May 24 telephone call from Tony O'Donnell asking how to "best report a loan from Mr. O'Donnell to the campaign in the amount of \$3000 in April." The email requested candidate Garcia provide documentation explaining the origination of the loan reported on his May 25 report (see FOF No. 5). (Commissioner's Records.)

Finding of Fact No. 7: Candidate Garcia came in person to the COPP Office on Tuesday, June 12, 2018, to discuss the campaign loan with Commissioner Mangan and COPP Attorney Jaime MacNaughton. A June 18 follow-up email from candidate Garcia to Commissioner Mangan stated that "Tony O'Donnell loaned me 3,000 dollars as a personal loan. I told Tony that I was going to use it for my campaign. It was a personal loan, not a campaign loan." Candidate Garcia was directed to reimburse the \$3000 loan to Mr. O'Donnell and provide documentation of the reimbursement to the COPP within the week. (Commissioner's Records.)

Finding of Fact No. 8: Candidate Garcia has not at any time provided bank records, emails, other written statements, or any other documentation explaining the origination of the \$3,000.00 personal loan he reported making to his campaign from any source other than Mr. O'Donnell. (Commissioner's Records.)

Finding of Fact No. 9: Candidate Garcia did not file a campaign financial report as required on or before June 25, 2018. (Commissioner's Records.)

Finding of Fact No. 10: On July 7, 2018, candidate Garcia filed a campaign financial report covering the dates of May 25 through June 20, 2018. This report did not list any expenditure or contribution activity. (Commissioner's Records.)

DISCUSSION

The complaint alleges candidate Garcia failed to file his post-primary election campaign finance reports. Records indicate candidate Garcia did not file the June 25 report (FOF No. 10), as well as failed to timely file his May 7, 2018 campaign finance report (FOF No. 3). An additional complication, upon filing his first report on May 25, 2018 candidate Garcia indicated a reporting period of May 3 to May 24, 2018. It is unclear if all reportable activity has been reported¹ from the beginning of the campaign to May 25, 2018 (FOF No. 5). Candidate Garcia did file a campaign finance report covering the period of May 25 to June 20, 2018 in response to the complaint (FOF No. 10).

Montana law sets statutory deadlines for filing campaign finance reports specific to the office sought. Mont. Code Ann. § 13-37-226. For example, state district candidates must report on the 12th and 35th day preceding an election. *Id.*, at (2)(a). The required deadlines are calculated and published by COPP each election. (FOF No. 2.)²

Sufficiency Finding No. 1: Candidate Garcia failed to timely file campaign finance reports due May 7 and June 25, 2018, as required by Mont. Code Ann. § 13-37-226(2) (FOF No. 3, 10).

The Commissioner finds candidate Garcia failed to file timely campaign finance reports in violation on Montana's campaign finance law.

¹ Candidate Garcia's May 25, 2018 campaign finance report included one loan, 10 contributions, and seven expenditures, several dated prior to May 3, 2018.

² See Reporting Calendars, <http://politicalpractices.mt.gov/calendars>.

Once a complaint is filed, the Commissioner “shall investigate any other alleged violation” Mont. Code Ann. § 13-37-111(2)(a). This investigative authority includes authority to investigate “all statements” filed with COPP, inspect a variety of records and require their production for purposes of the investigation, and examine “each statement or report” filed with the COPP. *Id.*, §§ 13-37-111, -123. The Commissioner is afforded discretion in exercising this authority. *Powell v. Motl*, OP-07111, Supreme Court of Montana, November 6, 2014 Order.

The investigation of this Complaint revealed other possible campaign finance violations stemming from the \$3,000 loan disclosed on candidate Garcia’s May 25, 2018 report. (FOF No. 5.) Loans are considered contributions, and subject to campaign contribution limits.

Loans to a candidate are subject to the same limits as contributions and are aggregated into a candidate's total contributions pursuant to 13-37-216 and 13-37-218, MCA; except limits do not apply to contributions or a loan made by a candidate to his or her own campaign.

Admin. R. Mont. 44.11.405(1).

In response to the specific inquiry of Mr. O’Donnell on May 24, 2018, the Commissioner told him the \$3,000 loan he made to candidate Garcia was not permissible, could not be used and needed to be returned (to O’Donnell) immediately (FOF No. 4). Candidate Garcia reported on his May 25, 2018 report a \$3,000 loan from himself to the campaign (FOF No. 5). In a later email exchange and in-person meeting, candidate Garcia acknowledged the \$3,000 came from Mr. O’Donnell but characterized it as a “personal” loan to Garcia

that he elected to use for his campaign, not a campaign loan (FOF No. 7). Candidate Garcia also reported receiving a \$180.00 contribution from Mr. O'Donnell (FOF No. 5), the maximum amount of an individual contribution to a Montana state district campaign in 2018. Mont. Code Ann. § 13-37-216(1)(a)(iii), (3); Admin. R. Mont. 44.11.227(1)(c). On June 12, 2018, candidate Garcia was directed to return the \$3000 to Mr. O'Donnell within the week and provide appropriate documentation of the reimbursement to the COPP (FOF No. 7).

Sufficiency Finding No. 2: Candidate Garcia accepted a loan in the amount of \$3,000 from Tony O'Donnell in excess of Montana's contribution limits (FOF Nos. 5, 7, 8).

The April 20, 2018 loan remains on the campaign finance report and candidate Garcia has not provided COPP with documentation showing the \$3,000 was returned or proving the loan originated from himself, as directed (FOF No. 8). The Commissioner finds candidate Garcia's acceptance of a loan in the amount of \$3,000 in excess of Montana campaign finance limits from Mr. O'Donnell, a violation of Montana's campaign finance law.

Further, a review of the campaign finance reports submitted by candidate Garcia indicated his expenditure reporting did not contain the required detail.

Finding of Fact No. 11: Candidate Garcia's 2018 campaign finance reports show three expenditures described with only generic detail (see Table No. 1). (Commissioner's Records.)

Table 1: Expenditures reported by candidate Garcia on his May 3, 2018 through May 24, 2018 Initial campaign financial report that do not contain the required level of reporting detail.

Entity	Date	Purpose	Amount
EconoPrint	04/23/2018	Printing, 2,500 ea	\$503.55

Sage Advertising	04/18/2018	Artwork, 250 yard signs, 25 larger signs	\$1,858.43
Transitional Marketing	04/06/2018	Print, 2,500 fliers	\$438.20

Finding of Fact No. 12: On June 12, 2018 COPP provided candidate Garcia a campaign finance inspection report detailing deficiencies in his May 25, 2018 disclosure (including expenditures that lack sufficient detail), with instructions to remedy within 10 days. (Commissioner’s Records.)

Candidates must report their expenditures with details of the “purpose, quantity, subject matter” of each expense. Admin. R. Mont. 44.11.502(7).³

Montana’s campaign finance statutes also require a certain level of detail:

“[r]eports 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.” Mont. Code Ann. § 13-37-229(2)(b).

Candidate Garcia described three of his campaign expenditures with only generic, nonspecific detail. (FOF No. 11.) For example, the April 23, 2018 expenditure to EconoPrint described as, “Print, 2,500 ea” (*id.*, Table 1) fails to disclose not only the subject matter of what was printed, but also even *what* was printed (*e.g.*, nail files, buttons, flyers, handouts, yard signs, t-shirts, etc., or some combination thereof). Candidate Garcia was notified of these deficiencies on June 12, 2018 and provided 10 days to address the issue (FOF No. 12), however the May 25 report has yet to be amended.

³ COPP’s *Accounting and Reporting Manual for Candidates*, at 20, adds that “[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, 13-37-229(b), MCA.” (Emphasis in original.)

Sufficiency Finding No. 3: Candidate Garcia failed to sufficiently detail three campaign expenditures (see Table 1) with the detail required by Montana campaign finance law (FOF Nos. 11, 12).

The Commissioner finds candidate Garcia failed to provide the required expenditure detail on his May 25, 2018 campaign finance report, a violation of Montana's campaign finance reporting laws.

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. Mont. Code Ann. § 13-37-111(2)(a). The mandate to investigate is followed by a mandate to take action; where there is "sufficient evidence" of a violation the Commissioner must ("shall notify," see *id.*, at § 13-37-124) 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 candidate Garcia 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*. *Id.* (discussing *de minimis* principles).

Because there are findings of violations and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of candidate Garcia. Because of the nature of the violation this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. *Id.*, at (1). Should the County Attorney waive the right to prosecute (*id.*, at (2)) or fail to prosecute within 30 days (*id.*, at (1)) 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 id.*) 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 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 of Mont. Code Ann. §§ 13-37-216, 13-37-226, 13-37-229. *See id.*, at § 13-37-128. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 31st day of July 2018.



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