

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Bradshaw v. Bahr No. COPP 2018-CFP-008	FINDING OF SUFFICIENCY FACTS TO SUPPORT A CAMPAIGN PRACTICE VIOLATION
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On May 10, 2018, Joshua Bradshaw of Billings, MT filed a campaign practices complaint against Jade Bahr of Billings, MT, alleging that she did not timely file a C-5 candidate campaign financial report.

SUBSTANTIVE ISSUES ADDRESSED

Timely filing of a campaign finance report.

FINDINGS OF FACT

The foundational facts necessary for this Decision is as follows:

Finding of Fact No. 1: Joshua Bradshaw filed a C-1 Statement of Candidate for House District 50 with the COPP on August 21, 2017. Brenna 'Jade' Bahr filed a C-1 Statement of Candidate for House District 50 with the COPP on August 9, 2017. As a candidate for a State District Office, candidate Bahr had an initial C-5 financial report due with the COPP on or before May 7, 2018. (Commissioner's Records)

Finding of Fact No. 2: Candidate Bahr did not file a C-5 financial report with the COPP on or before May 7. Candidate Bahr filed an initial C-5 financial report using the CERS system on May 9, 2018, two days after the reporting deadline for State District candidates. (Commissioner's Records)

DISCUSSION

Initial campaign finance reports for State District Candidates were due in the COPP office no later than Monday, May 7, 2018 for the reporting period ‘beginning of campaign through May 1, 2018’. Candidate Bahr filed the campaign’s finance report for that period on Wednesday, May 9, 2018 using the CERS¹ online reporting portal. Timely reporting is essential to provide the public, press, and opposing candidates the opportunity to view and review a campaign’s finances.

Montana’s campaign finance report filing requirements are mandatory: “shall file” (See §13-37-226 MCA). 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. In this matter, Candidate Bahr failed to timely file the campaign’s finance report due on May 7, 2018.

FINDINGS

Sufficiency Finding No. 1: Candidate Bahr failed to timely file the campaign’s C-5 financial report, due on or before May 7, 2018. Candidate Bahr filed the initial C-5 financial report on May 9, 2018, two days after the reporting deadline for State District candidates. (FOF No. 2)

This Commissioner, having been charged to investigate and decide, hereby determines that sufficient evidence exists to show that Candidate Bahr has, as a matter of law, violated Montana’s campaign practice laws, specifically § 13-37-226, MCA. Candidate Bahr did file the campaign finance report prior

¹ CERS is an acronym for Campaign Electronic Reporting System, the e-filing system used by candidates and political committees to submit campaign finance reports and other required forms to COPP.

to the receipt of the complaint and be a mitigating factor in any civil penalty assessed by the COPP.

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 Candidate Bahr 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 Candidate Bahr. Because of the nature of the violations (the failure to timely 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 18th day of May 2018.



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