

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Eaton v. Curtis No. COPP 2018-CFP-029	DISMISSAL OF ALLEGATIONS; FINDING OF SUFFICIENT FACTS SUPPORT A CAMPAIGN FINANCE VIOLATION
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On July 19, 2018, Jake Eaton of Billings filed a campaign practices complaint against Amanda Curtis of Butte. The complaint alleged that candidate Curtis failed to provide the proper level of reporting detail to describe two expenditures made by her 2016 campaign, and that candidate Curtis failed to properly report three debts owed by the campaign.

SUBSTANTIVE ISSUES ADDRESSED

This decision addresses the sufficiency of expense detail when reporting campaign expenditures and services. The proper and timely reporting of campaign expenditures and debts are also addressed.

FINDINGS OF FACT

The foundational fact necessary for the Decision is as follows:

Finding of Fact No. 1: Amanda Curtis filed a hard-copy C-1 Statement of Candidate as a Democratic candidate for HD 74 in Silver Bow County with the COPP on October 30, 2015. All 2016

campaign finance reports were timely filed by candidate Curtis. (Commissioner's Records.)

DISCUSSION

The Complaint asserts that certain expenditures should have been reported as a debt and expenditures and debts reported by candidate Curtis failed to include sufficient detail. The Commissioner thus examines each of the allegations.

Finding of Fact No. 2: On her initial campaign financial report covering the dates of October 28, 2015 through April 25, 2016, candidate Curtis reported making two expenditures to the MDLCC (Montana Democratic Legislative Campaign Committee) listed as "deposits". (see Table 1). (Commissioner's Records.)

Table 1: Expenditures reported by candidate Curtis on her October 28, 2015 through April 25, Report was Amended and filed November 20, 2016.

Entity	Date	Purpose	Amount
MDLCC	12/30/2015	Remit Envelopes- Deposit	\$25.00
MDLCC	12/30/2015	Walk Cards- Deposit	\$50.00

Finding of Fact No. 3: A July 26, 2018 e-mail sent from Trent Bolger, CFO of the Montana Democratic Party, to the COPP stated that each of the two expenditures candidate Curtis reported making to the MDLCC (see FOF No. 2) were for "offsets" for graphic design work the Democratic Party had already hired. Mr. Bolger said that "We ask for the design fees to pay for the graphic design from each candidate so that it not an in-kind to the candidates...it was not a deposit but an offset for the work the graphic designer had to do to put her card together". (Commissioner's Records.)

Finding of Fact No. 4: On July 31, 2018, candidate Curtis filed an amended version of her October 28, 2015 through April 25, 2016 campaign financial report. This report amended the Purpose description of each of the two campaign expenditures made to the MDLCC to properly describe them (see Table 2). (Commissioner's Records.)

Table 2: Expenditures reported by candidate Curtis on her October 28, 2015 through April 25, 2016 Initial campaign finance report that provided all required reporting detail. Report was Amended and filed July 31, 2018 in response to this complaint.

Entity	Date	Purpose	Amount
MDLCC	12/30/2015	Remit Envelopes- Design Fee	\$25.00
MDLCC	12/30/2015	Walk Cards- Design Fee	\$50.00

The COPP concluded the expenditures described in Table 1 were improperly described as a deposit when they were a fee for service (FoF No. 3). The improperly labeled expenditures were corrected as part of the response to the complaint (FOF No. 5). The Commissioner finds the expenditures as reported did not constitute a debt. The allegation is hereby dismissed.

Finding of Fact No. 5: On her campaign financial report covering the dates of April 26, 2016 through May 22, 2016, candidate Curtis reported making one expenditure on May 3, 2016 to Artcraft Printers, described as “6,050 walk cards (2nd and final payment) at \$292.16”. Candidate Curtis did not report owing or incurring any Debts to Artcraft Printers or any other entity. (Commissioner’s Records.)

As evidenced by candidate Curtis’s campaign’s May 21, 2016 finance report, a \$292.16 expenditure for walk cards was recorded May 3, 2016, further described as “2nd and final payment”. No debts were reported to Artcraft Printers on the campaign’s initial campaign finance report (FOF No. 5).

Finding of Fact No. 6: Candidate Curtis May 2, 2016 campaign finance report includes a \$600.00 expenditure to Artcraft Printers on February 12, 2016 for 6,050 door cards and an \$109.76 expenditure to Artcraft Printers on February 12, 2016 for 250 remit envelopes. (Commissioner’s Records.)

Finding of Fact No. 7: Candidate Curtis informed COPP the expenditure to Artcraft Printers was incurred on February 12, 2016 and the balance was subsequently paid the date the campaign received an invoice, May 3, 2016. (Commissioner’s Records.)

Finding of Fact No. 8: Representative Curtis amended her 2016 initial campaign finance report on July 31, 2018 to properly indicate a campaign debt owed to Art Craft Printers dated February

12, 2016 for “Balance due on 6,050 walk cards” at \$292.16. (Commissioner’s Records.)

Candidate Curtis incurred the total Artcraft Printers walk card expense on February 12, 2016 (FOF No. 7), reporting \$600 towards the total cost of the walk cards as an expenditure on that date. Candidate Curtis reported the balance due of \$292.16 as an expenditure when paid on May 3, 2018 (FOF No. 5). As part of Representative Curtis’s response to the complaint, her 2016 initial campaign finance report was amended to properly indicate the Artcraft Printer debt (FOF No. 8).

“An obligation to pay for a campaign expenditure is incurred on the date the obligation is made, and shall be reported as a debt of the campaign until the campaign pays the obligation by making an expenditure.” ARM 44.11.502(2). Further, “[a]n expenditure is made on the date payment is made, or in the case of an in-kind expenditure, on the date the consideration is given.” *Id.*, at (3). “The date of each expenditure shall be reported in the reporting period during which it is made.” *Id.*, at 503(4).

Sufficiency Finding No. 1: There are sufficient facts to show that the Curtis campaign failed to timely report a debt in the amount of \$292.16 on her May 2, 2016 initial campaign finance report (FOF Nos. 5-7).

Candidate Curtis failed to timely report or estimate a debt as required by Montana law. The Commissioner notes while a portion the expenditure was timely reported, the campaign failed to report or estimate the balance due as a campaign debt. The Commissioner finds Candidate Curtis violated Montana campaign finance law.

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; if 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, as set out in the Decision, to show that Candidate Curtis’s 2016 campaign practices 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* discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009. In this Matter, however, application of excusable neglect

is appropriate for the reasons set out above and is therefore applied to dismiss Sufficiency Finding No. 1.

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to Sufficiency Finding No. 2, 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 enforcement of Candidate Curtis. Because of the nature of the violation, this matter is referred to the County Attorney of Lewis & 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 timely reporting of the expenditure and cooperation in correcting issues 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 § 13-37-229, MCA. *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 17th day of August 2018.



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