

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Eaton v. Hamilton No. COPP 2018-CFP-040	DISMISSAL OF COMPLAINT BASED ON APPLICATION OF PRINCIPLE OF EXCUSABLE NEGLIGENCE; FINDING OF SUFFICIENT FACTS SUPPORT A CAMPAIGN FINANCE VIOLATION
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On August 27, 2018, Jake Eaton of Billings filed a campaign practices complaint against James Hamilton of Bozeman. The complaint alleged that candidate Hamilton failed to provide the proper level of reporting detail to describe expenditures made by his 2016 campaign, and that candidate Hamilton failed to properly report 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: James Hamilton filed a C-1 Statement of Candidate as a candidate for House District 61 in Gallatin County

with the COPP on January 16, 2016. All 2016 campaign financial reports were timely filed by candidate Hamilton. (Commissioner's Records.)

Finding of Fact No. 2: On his periodic campaign finance report dated September 30 through October 22, 2016, candidate Hamilton reported making one expenditure on October 24, 2016 to Artcraft Printers for 'Mailshop services for 3,600 campaign mailers' at a cost of \$746.00. This report was originally filed on October 27, 2016, and most recently amended on June 19, 2017.

Finding of Fact No. 3: On his periodic campaign finance report dated October 23 through November 23, 2016, candidate Hamilton reported making one expenditure on November 1, 2016 to Mailing Technical Services, Inc. for 'Postage for 3,565 letter for campaign mailer' at a cost of \$951.50. This report was originally filed on November 28, 2016, and most recently amended on April 28, 2017.

DISCUSSION

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

A review of candidate's Hamilton's campaign finance reports and the expenditures in question concluded the following: candidate Hamilton incurred a printing and mailing expense of \$746.00 for 3600 campaign mailers on or about October 19, 2016. The expenditure for printing the campaign mailers was timely reported on his October 27, 2016 campaign finance report (FOF No. 2). The expenditure for the \$951.50 expense for mailing of the October 19, 2016 campaign piece, however, was reported on candidate's November 28, 2016 campaign finance report (FOF No. 3). No debt was reported to Mailing

Technical Services on the campaign's October 27, 2016 campaign finance report.

“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 Hamilton campaign failed to timely report a debt in the amount of \$951.50 on his October 27, 2016 campaign finance report.

Candidate Hamilton failed to timely report or estimate a debt as required by Montana law. The Commissioner finds candidate Hamilton violated Montana campaign finance law.

The expenses reported as ‘3600 campaign mailers’ and ‘3,565 letter for campaign mailer’ require additional detail, specifically subject matter. Such generic expenditure descriptions are more akin to a list or category than a description and do not provide the “purpose, quantity, subject matter” of the expense which are the details required to be reported by 44.11.502(7), ARM. Nor, do the disclosures meet Montana’s statutory requirement of detail required for expenditures to consultants, or other persons who perform services for or on behalf of a candidate; the law requires that such expenditures “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.

Sufficiency Finding No. 2: There are sufficient facts to show that Hamilton 2016 campaign finance reports failed to disclose sufficient detail describing campaign expenditures (FOF No. 4).

Similar problems of insufficient detail in expenditure reporting under the current rules and statutes was first substantively addressed on October 3, 2016 in *MDP v. MRLCC*, COPP-2016-CFP-029, by then-Commissioner Jonathan Motl. While MRLCC’s lack of expenditure reporting detail was a violation, such a finding was, at the time (2016 election cycle) a further application of the rule and statute at issue. Thus, the violation was dismissed under the “excusable neglect” principle:

[G]iven the first time nature of this determination and the likelihood that there are other candidates and committees in a similarly deficient reporting status.

Id., at 7.

The Commissioner incorporates herein by reference the in-depth review of the *MDP v. MRLCC* decision recently set out in *Eaton v. Dunwell*, 2018-CFP-018. This Complaint against Representative Hamilton will be dismissed for the same reasons and pursuant to the same two safeguards.

First, no later than January 1, 2019, Representative Hamilton is directed to file amended campaign finance reports providing the required “sufficient detail” for the specific expenditures noted in this decision. Second, contingent on amended campaign finance reports being filed, the Commissioner hereby

excuses (dismisses) Representative Hamilton from a campaign practice violation for the deficiencies identified above based on the principle of excusable neglect.¹

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 Hamilton’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

¹ The Commissioner notes that Representative Hamilton has agreed to amend the campaign’s 2016 finance reports to fulfill the requirements set out by the Commissioner for dismissal.

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. 2.

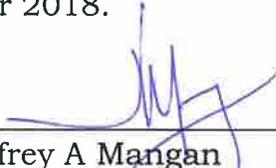
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to Sufficiency Finding No. 1, a civil fine is justified. § 13-37-124, MCA. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil enforcement of Candidate Hamilton. 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 28th day of September 2018.



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