

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Eaton v. Jacobson No. COPP 2018-CFP-027	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 July 12, 2018, Jake Eaton of Billings, Montana filed a campaign practices complaint against Tom Jacobson of Great Falls, MT. The complaint alleged that candidate Jacobson failed to provide the proper level of reporting detail to describe one expenditure made and three debts owed by his 2016 campaign.

SUBSTANTIVE ISSUES ADDRESSED

This decision addresses the sufficiency of expense detail when reporting campaign expenditures and services. A portion of this Complaint will be dismissed for the same reasoning and analysis set forth in *Eaton v. Dunwell*, COPP-2018-018. Timely reporting of campaign expenditures, debts, and loans are also addressed.

FINDINGS OF FACT

The foundational fact necessary for the Decision is as follows:

Finding of Fact No. 1: Tom Jacobson filed a C-1 Statement of Candidate as a candidate for House District 21 in Cascade County with COPP on August 12, 2015. All 2016 campaign finance reports were timely filed by candidate Jacobson. (Commissioner's Records.)

DISCUSSION

The Complaint asserts that expenditures and loans reported by candidate Jacobson failed to include sufficient detail. The Commissioner thus examines candidate Jacobson's campaign finance reports. Representative Jacobson reported expenditures on his 2016 campaign finance reports in the following detail:

Finding of Fact No. 2: On his campaign financial report covering the dates of June 28 through October 3, 2016, candidate Jacobson did not provide the required level of reporting detail to describe campaign expenditures on one occasion and the required level of reporting detail to describe loans he made to his campaign on two occasions (see Table 1). (Commissioner's Records.)

Table 1: Expenditures and Loans as reported by candidate Jacobson on his June 28, 2016 through October 3, 2016 Periodic campaign financial report that did not contain the required level of reporting detail. Report was amended and filed November 28, 2016.

Entity	Date	Purpose	Amount
Artcraft Printers	08/17/2016	WALKING CARDS PRINTING	\$449.30
Jacobson, Tom*	08/26/2016	Credit Card Payment to Vendor	\$594.86
Jacobson, Tom*	08/20/2016	Credit Card Payment to Vendor	\$170.00

*Reported as a Loan

Finding of Fact No. 3: On his campaign financial report covering the dates of October 28, 2016 through November 28, 2016, candidate Jacobson did not provide the required level of reporting detail to describe a loan he made to his campaign (see Table 2). (Commissioner's Records.)

Table 2: Loans as reported by candidate Jacobson on his October 28, 2016 through November 28, 2016 campaign financial report that did not contain the required level of reporting detail. Report was filed November 28, 2016.

Entity	Date	Purpose	Amount
Jacobson, Tom	11/04/2016	Signs Printing PSC Marketing	\$595.40

The expenses and loans described in the foregoing Tables require additional detail. 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 listings 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. 1: There are sufficient facts to show that Jacobson 2016 campaign finance reports failed to disclose sufficient detail describing campaign expenditures (FOF No. 2, 3).

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 of the 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 allegation against Rep. Jacobson will be dismissed for the same reasons and pursuant to the same two safeguards.

As Representative Jacobson has amended and filed his 2016 campaign finance reports with the detail information as requested during this investigative period,¹ it is unnecessary to set the contingency found in *Eaton*. The Commissioner hereby excuses (dismisses) Representative Jacobson from a campaign practice violation for the deficiencies in detail identified above based on the principle of excusable neglect.

As evidenced by candidate Jacobson's campaign finance report, a loan for signs was recorded as November 4, 2016 (see Table 2).

Finding of Fact No. 4: Candidate Jacobson informed COPP the expenditure to PSC Marketing (Table 2) was incurred on or about September 15, 2016 and was subsequently paid the date the campaign received the invoice, November 4, 2016. (Commissioner's Records.)

Finding of Fact No. 5: No debt, loan, or expenditure in the amount of \$595.40 to PSC Marketing for signs was included on the campaign's October 4, 2016 campaign finance report covering the period of June 23 to September 29, 2016. Candidate Jacobson reported the \$595.40 PSC Marketing expenditure for signs as a

¹ The Commissioner notes that Representative Jacobson has provided the expenditure detail as required as part of his complaint response and has amended his campaign's 2016 finance reports to fulfill the requirements set out by the Commissioner for dismissal.

loan on the campaign's November 28, 2016 campaign finance report (Table 2). (Commissioner's Records.)

Candidate Jacobson informed COPP the November 4, 2016 invoice was likely incurred on approximately September 15, 2016, as the campaign needed additional signage near the end of the campaign. Candidate Jacobson explained the expenditure was reported upon the invoice date, an oversight.

"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. 2: There are sufficient facts to show that the Jacobson campaign failed to timely report a debt in the amount of \$545.40 on his October 4, 2016 campaign finance report (FOF Nos. 4, 5).

Candidate Jacobson failed to timely report a debt as required by Montana law. The Commissioner notes while the expenditure was reported, it was not reported until following the election. The Commissioner finds Candidate Jacobson 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 Jacobson’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 Jacobson. 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 § 13-37-225, MCA. *See id.*, at § 13-37-128.

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Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 13th day of August 2018.



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