

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Gallatin County Democrats v. Buchanan No. COPP 2018-CFP-055	FINDING OF SUFFICIENT FACTS SUPPORT A CAMPAIGN FINANCE VIOLATION
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On November 1, 2018, the Gallatin County Democrats filed a campaign practices complaint against Kimberly Buchanan of Bozeman. The complaint alleged that candidate Buchanan failed to disclose the acquisition of campaign yard or highway signs and all costs associated with her campaign website on financial reports filed with the COPP as required.

SUBSTANTIVE ISSUES ADDRESSED

The proper reporting of campaign expenditures and in-kind contributions.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: The Gallatin County Democratic Central Committee (Gallatin County Democrats) filed a C-2 Statement of Organization as a Political Party committee with COPP on July 25, 2013. An amended C-2 for election year 2018 was filed on May 10, 2018. (Commissioner's Records.)

Finding of Fact No. 2: Kimberly Buchanan filed a C-1A Statement of Candidate as a "B" box¹ candidate for County Treasurer/Assessor

¹ A so-called "B" box designation means the total amount of expenditures and contributions will not exceed \$500.00

in Gallatin County with COPP on January 12, 2018. Candidate Buchanan filed an amended C-1A with COPP on September 4, 2018 as a “C” box² candidate. Buchanan was the incumbent, seeking her fourth term in office. (Commissioner’s Records.)

Finding of Fact No. 3: The Buchanan campaign timely filed its 2018 campaign finance reports. The reports did not disclose any in-kind contributions or expenditures for new and used campaign signage or campaign website expenses. (Commissioner’s Records.)

Finding of Fact No. 4: As of November 2018, candidate Buchanan’s campaign website, <https://www.votebuchanan18.org/>, is still active and publicly accessible. The website does not contain a “Paid for by” attribution statement. (Commissioner’s Records.)

Finding of Fact No. 5: On November 12, 2018, candidate Buchanan responded to this Complaint, stating that, on August 22, she used a personal credit card to purchase a campaign domain name “for \$12.00 from Google Domains.” Candidate Buchanan’s card was charged \$29.00 for the use of campaign website service, “campaign partner’ on August 20, September 24, and again on October 24. Candidate Buchanan indicated she would be reimbursed by the campaign for these charges. (Commissioner’s Records.)

Finding of Fact No. 6: Candidate Buchanan also explained that “Re-Elect Kimberly Buchanan” campaign yard signs were purchased for a 2010 campaign, and that, “[f]or the 2018 campaign for my fourth term, I reused the signs I had purchased for the 2010 campaign[,]” however, she also “order[ed] additional signs in October 2018.” (Commissioner’s Records.)

DISCUSSION

The complaint alleges candidate Buchanan failed to report expenditures related to her campaign website and certain campaign signage. The Commissioner examines each of these allegations.

² The so-called “C” box designation means the total amount of expenditures and contributions will exceed \$500.00

1. *Failure to report campaign website expenditures*

The first allegation of the complaint is that candidate Buchanan failed to properly disclose costs associated with her campaign website as expenditures on campaign finance reports. Candidate Buchanan did utilize a website for the 2018 campaign found at <https://www.votebuchanan18.org/> (FOF No. 4).

According to COPP records, however, the Buchanan campaign did not detail or disclose any campaign expenditures associated with a campaign website (FOF No. 3).

Candidate Buchanan's response clarified that she personally paid \$12.00 to register the campaign website domain name on August 22, 2018 and paid \$29.00 monthly in associated website costs in August, September, and October using a personal credit card, and also that she expected reimbursement from the campaign account (FOF No. 5). The provision of a campaign website domain name by a candidate to their own campaign would qualify as a contribution because it represents "something of value" to support a candidate. Mont. Code Ann. §13-1-101(9)(a)(i). Similarly, a candidate personally paying for their campaign website could also be a coordinated in-kind expenditure, which is another kind of contribution. *Id.*, (9)(a)(ii). *See also* Admin. R. Mont. 44.11.401(1)(c), (d). As a contribution, the payments would need to be disclosed as an in-kind contribution from the candidate. Mont. Code Ann. § 13-37-229(1); Admin. R. Mont. 44.11.402, 403. If, however, candidate Buchanan expected to be reimbursed by the campaign for the website expenses, the transaction/s should be reported as a candidate loan on

financial reports filed with COPP. Mont. Code Ann. § 13-37-229(1); Admin. R. Mont. 44.11.403(2), 405.

Sufficiency Finding No. 1: Candidate Buchanan failed to properly report campaign website expenses on her 2018 campaign finance reports.

The Commissioner finds candidate Buchanan failed to properly report 2018 campaign website expenses, a violation of Montana campaign finance laws.

Further, the Buchanan campaign website lacked the required attribution “paid for by” followed by the name and address of the person who made or financed the expenditure for the communication.” (FOF No. 5); Mont. Code Ann. § 13-35-225.

Sufficiency Finding No. 2: The Buchanan campaign failed to properly attribute its 2018 campaign website.

The Commissioner finds candidate Buchanan failed ensure the campaign website contained the necessary “paid for by” information, a violation of Montana campaign finance law.

2. Failure to report campaign signage

The Complaint also alleges that candidate Buchanan failed to disclose the acquisition of yard or highway signs used by her campaign. A review of the Buchanan 2018 campaign financial reports filed with COPP provided no record of yard or campaign signs acquired by the campaign, either via expenditure (purchase) or as an in-kind contribution from another source or previous campaign (FOF Nos. 3).

Candidate Buchanan's response stated that some campaign signs used by the 2018 campaign had been purchased by her 2010 campaign and were being re-used. The recent Decision in the matter of *Craft v. Kluesner*, 2018-CFP-036, addressed similar allegations. The *Craft* Decision clarified that re-using old campaign signs is reportable as a contribution to a campaign under Mont. Code Ann. § 13-1-101(9)(a)(i), and that this activity needs to be reported at the time the signs are first used, 44.11.403(1), ARM. *Id.*, at 3-4; *see also Eaton v. Brown*, 2018-CFP-019, 4-6 (discussing requirement to report, as in-kind contribution to current campaign, donation remittance envelopes re-used from prior campaign.) By failing to report the re-use of old campaign signs as in-kind contributions received by the campaign, candidate Buchanan has failed to meet the disclosure requirements of Mont. Code Ann §13-37-229.

Candidate Buchanan also stated that the campaign did, in October, "order additional signs" for the 2018 campaign (FOF No. 6). While her response stated the activity was reported, a review of the campaign's 2018 campaign finance reports do not disclose the purchase new campaign signage. If signs were purchased through the campaign account, they would qualify as an expenditure under Mont. Code Ann. § 13-1-101(18)(a)(i) and require reporting as such under Mont. Code Ann § 13-37-229. If candidate Buchanan personally purchased campaign signs on behalf of the campaign (and did not use the campaign account), that would qualify as an in-kind candidate contribution or loan (if expects to be reimbursed), which also requires disclosure under the same statutes and rules discussed above in Issue 1.

Sufficiency Finding No. 3: Candidate Buchanan failed to properly report in-kind contributions of re-used campaign signs and expenses for new campaign signage on her 2018 campaign finance reports.

The Commissioner finds candidate Buchanan failed to properly report 2018 campaign signage expenses, a violation of Montana campaign finance 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 Buchanan 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 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. 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 Buchanan. 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. § 13-37-229, §13-35-225. *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 20th day of November 2018.



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