

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Marking and Fauth v. Lesnik No. COPP 2018-CFP-026	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN FINANCE VIOLATION DISMISSAL OF ALLEGATIONS
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On July 2, 2018, Shirley Marking and Teresa Fauth, both of Roundup, filed campaign practices complaints¹ against Shawn Lesnik, also of Roundup. The complaints alleged that Lesnik actively campaigned while at work, repeatedly intimidated and/or harassed individuals he felt did not support his campaign, and that Lesnik had access to the room where election ballots were being maintained.

SUBSTANTIVE ISSUES ADDRESSED

The issues addressed by the decision include public employee soliciting support or opposition for a candidate while on the job and the coercion and undue influence of voters.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Montana's 2018 Primary elections were held on June 5, 2018. (Commissioner's Records.)

Finding of Fact No. 2: Shawn Lesnik filed a C-1A Statement of Candidate as a Republican candidate for county sheriff/coroner in

¹ Because each complaint made the same (or substantially similar) allegations, they have been combined into one accepted complaint by the COPP.

Musselshell County with the COPP on January 16, 2018. (Commissioner's Records.)

Finding of Fact No. 3: Lesnik is currently employed as the Undersheriff in the Musselshell County Sheriff's Department. (Commissioner's Records.)

Finding of Fact No. 4: Ronald Burns filed a C-1A Statement of Candidate as a Republican candidate for county sheriff/coroner in Musselshell County with the COPP on Jan 18, 2018. (Commissioner's Records.)

Finding of Fact No. 5: William Seamster filed a C-1A Statement of Candidate as a Republican candidate for county sheriff/coroner in Musselshell County with the COPP on February 28, 2018. (Commissioner's Records.)

Finding of Fact No. 6: Shirley Marking is a citizen of Roundup, Montana. (Commissioner's Records.)

Finding of Fact No. 7: Teresa Fauth is currently employed as the Office Administrator in the Musselshell County Attorney's Office. (Commissioner's Records.)

Finding of Fact No. 8: On May 21, 2018, Musselshell County Attorney Kevin Peterson delivered a letter to the Musselshell County Commissioners concerning two complaints citizens had made against Undersheriff Lesnik. Each complaint alleged Lesnik had campaigned while on shift, had used public property for the purpose of campaigning, and intimidated or harassed the complaining individual. The incidents noted in this letter were both included in the complaint/s filed against Lesnik with the COPP. (Commissioner's Records.)

Finding of Fact No. 9A: The complaint filed with the COPP contained a statement from Teresa Fauth, which was originally provided to Mr. Peterson and was included with his May 21, 2018 letter to the County Commissioners (see FOF No. 8). The statement alleged that, in mid-April, Teresa Fauth received a call from candidate Lesnik at her workplace in the County Attorney's office. Lesnik asked why a Seamster sign had been placed in her father's front yard and who had put it there. (Commissioner's Records.)

Finding of Fact No. 9B: In response to this allegation Lesnik confirmed that he had called Teresa Fauth at work on or around April 14, 2018, to inquire about the presence of a Seamster campaign sign on her father's property. Lesnik said he made this

call “because I had previous knowledge of Mr. Seamster or his supporters putting up signs in locations they did not have permission to do so”. Lesnik could not remember if he was on duty for the Musselshell County sheriff’s department at the time he made the call or not. (Commissioner’s Records.)

Finding of Fact No. 9C: Dispatch logs provided by Lesnik show that he was not on shift on the dates of April 12 through April 22, 2018. (Commissioner’s Records.)

Finding of Fact No. 9D: Teresa Fauth spoke via telephone with the COPP on August 20, 2018. During this conversation, Fauth stated that, in late March or early April, prior to the mid-April phone call, Lesnik had approached her at her desk in the County Courthouse to ask if he could place a campaign sign at her father’s place of residence. Fauth stated that Lesnik was in his sheriff’s department uniform at the time of this request, and, to the best of her knowledge, was on duty at the time. (Commissioner’s Records.)

Finding of Fact No. 10A: Teresa Fauth’s statement alleged that, on May 14, 2018, at around 5:00 PM, she was approached by Lesnik in the Courthouse parking lot, where he demanded to know why a campaign sign supporting his candidacy had been removed from her father’s yard. Lesnik was alleged to have been driving a marked sheriff’s department vehicle at the time, as well as wearing his sheriff’s department uniform. Fauth stated that “It was very intimidating. Lesnik was visibly angry...I was scared of any further confrontation with Lesnik”. Another individual by the name of Tara Kinsey was noted as a potential witness to the interaction. (Commissioner’s Records.)

Finding of Fact No. 10B: Tara Kinsey spoke via telephone with the COPP on October 5, 2018. During this conversation, Kinsey stated that, while she did witness a discussion or interaction between Lesnik and Teresa Fauth on or around May 15, she was not sure what was being discussed, and it seemed like just a normal conversation to her. Kinsey stated the only reason she witnessed this interaction is because, moments before, she mistakenly thought Lesnik motioned for her to pull over as a part of his patrol, so she stopped her vehicle in the Courthouse parking lot. She recalled Lesnik was driving his sheriff’s department pickup truck and was wearing his patrol uniform at the time she pulled over. Ms. Kinsey spoke with Lesnik after pulling into the parking lot, to let him know that she would be placing yard signs on her property for any Sheriff candidate who asked her to do so (including one for Lesnik), and he seemed to understand and approve of that

decision. Kinsey noticed that Lesnik had begun to speak with Fauth after he finished speaking with her, however she was unsure of what was discussed as she drove off while the interaction with Fauth was taking place. (Commissioner's Records.)

Finding of Fact No. 10C: Lesnik's July 17, 2018, response confirmed that he had pulled up to and spoken with Fauth in the parking lot outside the Courthouse on or around May 14, 2018 at around 5:00 PM (his response recalled the date of this interaction as May 15), and that he was on work duty for the Sheriff's Department at the time of this interaction. Lesnik stated that he was "investigating the theft of my personal property", and simply inquired if she knew anything about a sign of his that had gone missing. Lesnik denied intimidating, harassing, or threatening Fauth in any way- "I have always been polite, professional, and respectful. I have no idea where this sudden 'fear' has manifested itself". (Commissioner's Records.)

Finding of Fact No. 10D: Dispatch logs provided by Lesnik show that he was on shift from 7:00 AM until approximately 6:30 PM on May 14, 2018, and approximately 7:15 AM until 6:00 PM on May 15, 2018. (Commissioner's Records.)

Finding of Fact No. 11A: The complaint filed with the COPP contained a statement from Shirley Marking describing an alleged interaction between Lesnik and a citizen by the name of Heidi Taylor on May 15, 2018. Marking stated during this incident Lesnik "drove into [Taylors] yard in his county patrol vehicle and confronted her about the Burns for Sheriff sign affixed to her fence. She felt very intimidated by Lesnik". (Commissioner's Records.)

Finding of Fact 11B: On May 18, 2018, Heidi Taylor spoke with Musselshell County Attorney Kevin Peterson, and allowed him to tape this conversation. Taylor stated that on or around May 15 she was out by her mailbox when Lesnik drove up to her, uninvited, to inquire about the Burns for Sheriff sign on the fence of the property where she lives. Taylor stated that Lesnik was continually rude and huffy about the presence of the Burns sign and mentioned that he did not think Burns was a good candidate, and how he felt he was a better candidate because he was from the area. Should he not win the election, he was claimed to have said, he was planning on leaving. Taylor also stated that Lesnik questioned how she was planning to vote in that election and was clearly trying to contrast his candidacy with that of candidate Burns to promote himself as the superior option. Lesnik was wearing a sheriff's department uniform and driving a Department vehicle at the time, she recalled.

Lesnik was stated to have seemed 'annoyed' about the presence of the Burns sign on the property where Taylor resided. Taylor did specifically mention that she did not feel threatened or intimidated by Lesnik during this interaction but did feel he was trying to 'campaign' for a vote from her in a roundabout way that she did not like. (Commissioner's Records.)

Finding of Fact 11C: Lesnik's July 17, 2018, response confirmed that he had spoken with Heidi Taylor on or around May 15, recalling that he drove up to her and joked "what's up with that Burns sign!" While he says he did not speak of Burns any further, he did proceed to tell her that "I was giving the public an opportunity to hire me as Sheriff...and that training and experience should be a benefit and utilized by the citizens of Musselshell County". He stated that the "real purpose" of meeting was to perform a welfare check on Heidi Taylor and was not related to his campaign. Lesnik stated that he was on patrol (on duty) at the time. (Commissioner's Records.)

Finding of Fact No. 11D: Dispatch logs provided by Lesnik show that he was on shift from approximately 7:15 AM until 6:00 PM on May 13, May 14, and May 15, 2018. (Commissioner's Records.)

Finding of Fact No. 12A: Lesnik's response stated that he did not appear on local radio on May 25, as alleged in the complaint. Lesnik stated he took this day off from work. Lesnik further stated that, while he did appear on public radio on two occasions in April of 2018 while on duty, that these appearances were to promote Musselshell County's 'Prescription Drug Take Back' program, and that he "specifically cautioned the talk show hosts...to avoid" his candidacy for elected office "because I was in uniform". (Commissioner's Records.)

Finding of Fact No. 12B: Dispatch logs provided by Lesnik do not show him as on shift on May 25, 2018. (Commissioner's Records.)

Finding of Fact No. 13: Lesnik advanced from the Primary election as the Republican candidate for Sheriff/Coroner in Musselshell County, garnering 38% of the vote to candidate Burns' 35% and candidate Seamster's 27%. (Commissioner's Records.)

Finding of Fact No. 14: At the Commissioner's request, the Montana Department of Justice Division of Criminal Investigation and Yellowstone County Attorneys office, conducted an investigation and subsequent review of the allegations and facts regarding Lesnik's potential access to voted ballots. The COPP was

notified of the conclusion of the investigation and YCA's review on October 5, 2018. The YCA concluded "while some of the behavior in this file is troubling nothing within the file rises to the level of Official Misconduct". The Commissioner incorporates the October 5, 2018 results of Montana Department of Justice Division of Criminal Investigation and Yellowstone County Attorneys office's investigation and review and accepts the resulting determination that the occurrences did not rise to the level of criminal official misconduct. (Commissioner's Records.)

DISCUSSION

The Commissioner examines each of the allegations specified in the complaint: campaigning while on duty as a public employee; harassment and intimidation of potential voters; and access to official ballots.

Campaigning while on duty as a public employee

Public employees cannot carry out activities intended to cultivate support for or opposition to candidates for elected office while they are on the job, including their own candidacy.

Montana's Campaign Finance and Practices laws provides that:

A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to perform activities properly incidental to another activity required or authorized by law or to express personal political views.

Mont. Code Ann. § 13-35-226(4). The Campaign Finance law incorporates by reference the Montana Code of Ethics, which defines a public employee as "any temporary or permanent employee of a local government", Mont. Code Ann. § 2-2-102(7)(b). As the current Undersheriff of Musselshell County, Lesnik is an employee of local government, and therefore a public

employee. As a public employee, Lesnik is prohibited from engaging in activities that support his own candidacy while on shift, at work, or otherwise serving the County in his law enforcement capacity. Lesnick is also prohibited from opposing the candidacy of other candidates while on shift or otherwise serving the County in his law enforcement capacity.

Mont. Code Ann. § 13-1-101(50) defines “support or oppose” as:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election

There are five identified alleged instances where Lesnik campaigned while on shift: a late March/early April visit to Teresa Fauth’s workplace at the Musselshell County Courthouse; a mid-April phone call he made to Teresa Fauth; a May 14 interaction with Teresa Fauth in the parking lot of the County Courthouse; a May 15 interaction with Heidi Taylor; and a May 25 radio interview.

Instance # 1: Late March/Early April visit at Fauth Workplace

The first allegation of Lesnik campaigning while on shift occurs when Lesnik approached Teresa Fauth at her desk in her workplace in the Musselshell County Courthouse in late March/early April asking if he could

place a campaign sign at her father's residence. Fauth stated Lesnik was in his uniform and to the best of her knowledge was on duty (FOF No. 9D). Lesnik was unable to recall the date of his visit. As neither Fauth or candidate Lesnik could identify the specific date the visit occurred, the COPP cannot definitively determine if Lesnik was on shift as the Undersheriff at the time of the visit.

Instance #2: Mid-April phone call

The second allegation of campaigning while on shift raised against Lesnik concerns a phone call he made to Teresa Fauth in mid-April questioning why a campaign sign supporting another candidate for Sheriff, Jason Seamster, had been placed in her father's yard (FOF No. 9A). Lesnik stated that he did in fact make such a telephone call on or around April 14 (he could not provide the specific date he had made this call) and he could not recall if he was on shift at the time or not (FOF No. 9B). During a follow up phone call with the COPP, Fauth still could not provide a specific date or time as to when this interaction occurred. A COPP review of dispatch call logs provided by Lesnik determined that he was not on shift during the period of April 12 through April 22, 2018, dates where the call in question was most likely to have taken place (FOF No. 9C). As neither Fauth or Lesnik could identify the specific date this call had occurred, the COPP cannot definitively determine if Lesnik was on shift as the Undersheriff at the time this call was made.

If he was not on shift at the time he made this call, candidate Lesnik would not have been subject to the provisions of Mont. Code Ann. § 13-35-226(4), MCA. Montana campaign finance laws and Montana's Code of Ethics

make it clear that public employees are allowed to have political opinions and work to support or oppose candidates for election on their own time, Mont. Code Ann. § 2-2-121(3); 13-35-226(4). As Lesnik could have been off-shift at the time, and not acting as a public employee, he would have been free to engage in activities for the advancement of his campaign or opposing Seamster and would not have violated Montana campaign finance law by making this call. However, Lesnik should have been mindful of the same prohibitions on Fauth's (or any other public employee similarly engaged) time at work.

Instance #3: May 14 interaction with Teresa Fauth

The third allegation of campaigning while on shift raised concerns about an interaction between candidate Lesnik and Teresa Fauth in the parking lot of the Musselshell County Courthouse on or about May 14, 2018 (see FOF No. 10A-D). Both Fauth and Lesnik stated that this interaction occurred on that date and agreed the subject of the interaction was Lesnik questioning Fauth as to why one of his campaign signs had been removed from her father's residence, and if she knew anything about the sign's whereabouts (FOF 10A, C). Lesnik stated that he was on-shift at the time of this interaction (FOF No. 10C). Dispatch logs provided to the COPP also show Lesnik on-shift May 14, 2018 (FOF No. 10D).

Based on the response provided by Lesnik, it was Lesnik, not Fauth's father, who noticed a campaign sign promoting Lesnik had been removed. It does not appear that the sign was called in to the Sheriff's Department as missing property by the land owner; rather, it appears Lesnik assumed the sign

had been damaged, stolen or otherwise vandalized when he did not see it displayed in its previous location. Lesnik also stated he spent time that day looking “in the trash cans located in the alley behind [the] residence” and “patrolled through the alley looking for the missing sign”.

Lesnik ensuring his campaign sign is publicly visible would certainly be an activity to “solicit support for” his candidacy. Lesnik deemed it worthy while on duty to ensure a campaign sign supporting his candidacy was accounted for and visible at the location. Lesnik would have been free to question individuals about the whereabouts of his campaign materials and search for those he thought were missing while off shift or duty, on his own personal time. The fact that he both searched for these materials and later engaged a private citizen with questions as to what had happened to them while on shift is a violation of Mont. Code Ann. § 13-35-226(4).

Instance #4: May 15 interaction with Heidi Taylor

The fourth allegation of campaigning while on shift raised concerns about a May 15, 2018 interaction Lesnik had with Heidi Taylor (*see* FOF No. 11A-D). Ms. Taylor stated that, throughout the interaction, Lesnik repeatedly differentiated his candidacy from that of his opponents in a manner intended to make his candidacy look more positive and promote himself as the best candidate (FOF No. 11B). Lesnik did not deny that his candidacy came up during this interaction. As stated in his response, he opened the interaction by asking Ms. Taylor “What’s up with that Burns sign!” and that he told Ms. Taylor “I was giving the public an opportunity to hire me as Sheriff...and that

training and experience should be a benefit and utilized by the citizens of Musselshell County” (FOF No. 11C). Lesnik confirmed to the COPP that he was on shift at the time of the interaction (FOF No. 11C), and the dispatch call logs he provided support this fact (FOF No. 11D).

Based on the description provided by both Taylor and Lesnik, he was advocating for his own candidacy while opposing the candidacies of competing candidates throughout his interaction with Taylor. As previously discussed, Lesnik would have been free to have such a discussion with a voter/potential voter on his own time. Lesnik, as a private citizen, is free to meet with other individuals as a candidate and explain to them why he thinks he’s the best candidate for the office, a routine interaction for candidates seeking election to office. However, Mont. Code Ann. § 13-35-226(4) prohibits candidates from engaging in such discussions while on the job if they are a public employee. As Lesnik was functioning as a public employee at the time of this interaction, the topic of his candidacy should have been avoided at all reasonable costs. Instead, Lesnik repeatedly touted his candidacy to Taylor in violation of Mont. Code Ann. § 13-35-226(4).

Instance #5: May 25 radio interview

The final allegation of campaigning while on duty as a public employee raised against Lesnik concerns a May 25 radio interview alleged to have been supporting his candidacy while on duty and representing the Sheriff’s Department. Lesnik denied appearing on radio on May 25 (FOF No. 12A), and the dispatch call logs he provided do not show him as having been working

that day (FOF No. 12B). As a result, no violation could have occurred. Even if Lesnik did give a radio interview that day supporting his own campaign, he would have done so in his capacity as an individual on his time and not as a public employee.

Harassment and Intimidation of Potential Voters

The complaint also contained two specific allegations of harassment or intimidation of potential voters in Musselshell County: the May 14 interaction with Teresa Fauth in the parking lot of the Musselshell County courthouse; and the May 15 interaction with Heidi Taylor. The Commissioner further examines these alleged incidents.

Mont. Code Ann. § 13-35-218(1) MCA:

Coercion or undue influence of voters. (1) A person, directly or indirectly, individually or through any other person, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may not:

- (a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or
- (b) inflict or threaten to inflict, individually or with any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

Said another way: the statute disallows the use of brute force, bullying, intimidation, or other ‘scare tactics’, either physical or emotional, to secure a vote for a certain candidate or candidates.

Allegation of intimidation #1: May 14 interaction with Teresa Fauth

As discussed above, during the May 14 incident (see Interaction #3, page 9), Fauth stated that Lesnik was “very intimidating”, and that his anger was

visible. Fauth said she was concerned and feared that other similar interactions would occur, and that, as a direct result, she felt she had to avoid Lesnik whenever possible (FOF No. 10A).

Despite the angry rhetoric and intimidating demeanor described of Lesnik, this incident does not appear to rise to the level of coercion or undue influence of a voter. Both Fauth and Lesnik have described the incident as centered around Lesnik's search for a campaign sign he thought was missing. While Lesnik was advocating support of his own candidacy throughout the interaction, neither party described this incident as having anything to do with 'compelling' Fauth to vote a certain way. As described, Fauth's voter status did not come up during the discussion, nor does she report having been asked who she was planning to vote for. While Fauth felt intimidated and harassed by Lesnik, he did not do so for the purpose of ensuring that she either vote for him or refrain from voting for one of his opponents, and therefore not a violation of Mont. Code Ann. § 13-35-218(1). To be clear, the behavior ascribed to Lesnik is troubling and did appear to cause Fauth harm. While I firmly believe the interaction occurred as described by Fauth, I determine Lesnik's actions did not violate this campaign finance and practice law.

Allegation #2: May 15 interaction with Heidi Taylor

As previously discussed (*see* Interaction #4, page 10) Lesnik stopped to interact with Taylor to promote his candidacy for Sheriff. While the Complaint stated that Taylor was "very intimidated" by Lesnik, no evidence could be found to corroborate this claim. In fact, in the statement given to the Musselshell

County Attorney, Taylor clearly says she did not feel ‘threatened or harassed’ by Lesnik (FOF No. 11B). While she did not like the fact that he came up to her unsolicited to promote his own campaign (FOF No. 11B), she stated that he seemed more annoyed than anything throughout the discussion. As Taylor states Lesnik did not act in a threatening manner, or use or intend to use force, and did not try to coerce or intimidate her into voting a certain way, the Commissioner dismisses the allegation that he violated Mont. Code Ann. § 13-35-218(1) during this interaction.

Alleged ballot access by Lesnik

The final allegation raised within this complaint states that Lesnik, on more than one occasion, was provided with access to already cast primary ballots at the Musselshell County Courthouse. Lesnik vehemently denied this allegation. The COPP referred the issue to the Montana Department of Justice’s Division of Criminal Investigation (DCI) and to the Yellowstone County Attorney’s office for review. As part of the DCI investigation and Yellowstone County Attorney’s office review, it was determined there was no probable cause to file criminal charges as a result of the investigation (FOF No. 14).

FINDINGS

In his public employment as Undersheriff of Musselshell County, Lesnik, “may not solicit support for or opposition to any political committee, the nomination or election of any person to public office ... while on the job or at the place of employment” Mont. Code Ann. § 13- 35-226(4). On at least two confirmed occasions or about May 14 and 15, 2018, Lesnik engaged in

soliciting support for his candidacy as Sheriff while on duty in is public employment as Undersheriff of Musselshell County.

Sufficiency Finding No. 1: Shawn Lesnik solicited support for his campaign for Sheriff while on duty as a public employee on at least 2 occasions.

The Commissioner finds Lesnik improperly solicited support for his candidacy and opposition to his opponents while on duty as Undersheriff of Musselshell County, Montana campaign finance and practice violations.

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 Shawn Lesnik 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.

Using public time and resources to campaign while on duty cannot be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law. *See Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing excusable neglect principles). Likewise, the Commissioner does not accept that such behavior 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 Shawn Lesnik. Because of the nature of the violation, this matter is referred to the County Attorney of Musselshell 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.

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. § 13-35-226(4). *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 28 day of October 2018.



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