

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Mattheis v. Cole  No. COPP 2018-CFP-017	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE VIOLATION
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On June 4, 2018, Brenda Mattheis of Eureka filed a campaign practices complaint against Mike Cole, also of Eureka. The complaint alleged that candidate Cole failed to properly file both a C-1A Statement of Candidate and all C-5 campaign finance reports as required, and that he failed to include the required attribution on both Facebook and newspaper advertisements promoting his candidacy.

**SUBSTANTIVE ISSUES ADDRESSED**

This decision addresses timely and complete campaign finance report filings and proper attribution of campaign materials.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: The Primary Election in Lincoln County took place on June 5, 2018. (Montana Secretary of State (SOS) website.)

Finding of Fact No. 2: Michael (Mike) Cole filed a C-1A Statement of Candidate as a candidate for Lincoln County Commission District #3 on February 28, 2018 as a 'C' box candidate.<sup>1</sup> All 'C' box county candidates had required C-5 financial reports due on or before May

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<sup>1</sup> 'C' box candidates indicate that cumulative contribution and expenditure activity will exceed \$500.00, including personal funds.

7 (covering all financial activity from the beginning of the campaign through at least May 1), May 29 (May 2-May 24), and June 25 (May 25 through either June 20 or the end of the campaign, for candidates not advancing past the Primary). (Commissioner's Records.)

Finding of Fact No. 3: Candidate Cole did not file a C-5 campaign finance report on or before May 7, 2018. (Commissioner's Records.)

Finding of Fact No. 4: Candidate Cole did not file a C-5 campaign finance report on or before May 29, 2018. (Commissioner's Records.)

Finding of Fact No. 5: On June 5, candidate Cole filed a C-5 campaign finance report disclosing all campaign financial activity between the dates of January 1 through June 5, 2018. The report indicated candidate Cole spent \$1,570.50 on newspaper ads (see Table 1). The report did not list any expenditures associated with boosting or promoting any Facebook advertisements or posts or the design of any newspaper ads or Facebook posts, nor did candidate Cole report any in-kind contributions to the campaign for design or production. (Commissioner's Records.)

Finding of Fact No. 6: Copies of three newspaper ads, run in the Tobacco Valley News, were provided as part of this complaint, and Tobacco Valley News provided copies of two additional ads run by the newspaper. Western News provided a copy of Cole's advertisement to the COPP. None of these ads contained the required attribution information ("Paid for by"). (Commissioner's Records.)

Finding of Fact No. 7: Copies of two Facebook posts were provided as part of the complaint; one posted on May 29 and one posted on May 21, 2018. The written post accompanying both photos included the statement "Paid for by re-elect Mike Cole, Campaign Treasurer Mike Cole 7925 Tobacco Road Eureka, Mt 59917." (Commissioner's Records.)

Finding of Fact No. 8: The Cole campaign submitted posts to the campaign's Facebook page, but did not pay to promote or boost the posts. (Commissioner's Records.)

Finding of Fact No. 9: Artwork and template design for social media posts and newspaper ads were provided to candidate Cole by a campaign volunteer, Matthew Rumble. (Commissioner's Records.)

Finding of Fact No. 10: Candidate Cole did not file a C-5 post-primary campaign finance report. (Commissioner's Records.)

Finding of Fact No. 11: On the campaign finance report filed on June 5, 2018, candidate Cole reported expenditures to Tobacco Valley News in the amount of \$1,115.50, but failed to provide quantity and description information on five newspaper advertisement expenditures. (Commissioner's Records.)

Finding of Fact No. 12: On that same report, candidate Cole reported an expenditure to Western News in the amount of \$455.00 that also failed to provide quantity and description information on one newspaper advertisement expenditure. (Commissioner's Records.)

Finding of Fact No. 13: Candidate Cole failed to advance from the Primary to the General election, losing to opposing candidate Josh Letcher. (Commissioner's Records.)

Finding of Fact No. 14: Candidate Cole has not filed a closing campaign finance report. Cole's June 5, 2018 report indicates a \$213.47 remaining balance. (Commissioner's Records.)

## **DISCUSSION**

The complaint alleges candidate Cole failed to file campaign finance reports as required and failed to properly attribute paid advertising on social media and in local newspapers. The Commissioner examines each of the allegations.

### *1. Failure to file campaign finance reports*

Because candidate Cole's Statement of Candidate indicated he would receive contributions and/or make expenditures exceeding \$500.00 he was required to report campaign finance reports. Mont. Code Ann. § 13-37-226(3). There is a pre-set schedule for when such reports are due. *Id.*; (FOF No. 2).<sup>2</sup>

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<sup>2</sup> To assist candidates, every election cycle COPP also calculates and publishes the reporting calendars for each candidate category set out in § 13-37-226. See <http://politicalpractices.mt.gov/calendars>.

COPP records show candidate Cole failed to file required campaign finance reports on May 7 and May 29, 2018 (FOF Nos. 3, 4). Candidate Cole, in response to the complaint, filed a campaign finance report on June 5, 2018, covering a period from January 1 to June 5, 2018 (FOF No. 5).

On his June 5, 2018 report, candidate Cole reported several newspaper advertisement expenditures (Table 1) and did not report any paid social media expenditures.

**Table 1: Expenditure information as reported by candidate Cole on his June 12, 2018 finance report requiring additional information.**

Entity	Date	Purpose	Cost
Tobacco Valley News*	4/23/2018	Newspaper adds	\$90.00
Tobacco Valley News*	5/7/2018	Newspaper adds	\$116.50
Tobacco Valley News*	5/14/2018	Newspaper adds	\$234.75
Tobacco Valley News*	5/21/2018	Newspaper adds	\$234.75
Tobacco Valley News*	6/1/2018	Newspaper adds	\$439.50
Western News	5/28/2018	Newspaper adds	\$455.00

\*Entered as one expenditure on the report. Five different dates and amounts provided.

Reports of contributions and expenditures are required to be disclosed and must be timely filed. Mont. Code Ann. §§ 13-37-225, 226, 228.

Reports filed under 13-37-225 and 13-37-226 must be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report must cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee, as defined in 13-1-101, until the 5th day before the date of filing of the appropriate initial report pursuant to 13-37-226(1) through (5). Reports filed by political committees organized to support or oppose a statewide ballot issue must disclose all contributions received and expenditures made prior to the time an issue becomes a ballot issue by transmission of the petition to the proponent of the ballot issue or referral by the secretary of state even if the issue subsequently fails to garner sufficient signatures to qualify for the ballot.

(2) Subsequent periodic reports must cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through (5). For the purposes of this subsection, the reports required under 13-37-226(1)(d), (2)(b), (4)(b), (4)(c), (5)(b), and (5)(c) are not periodic reports and must be filed as required by 13-37-226(1)(d), (2)(b), (4)(b), (4)(c), (5)(b), and (5)(c), as applicable.

(3) Closing reports must cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which the candidate or political committee participates whenever all debts and obligations are satisfied and further contributions or expenditures will not be received or made that relate to the campaign unless the election is a primary election and the candidate or political committee will participate in the general election.

Mont. Code Ann. § 13-37-228. The Cole campaign did not advance to the General election (FOF No. 13) and failed to file its post-primary campaign finance report on June 25, 2018 (FOF No. 10). Candidate Cole has yet to file a closing finance campaign report (FOF No. 14).

Sufficiency Finding No. 1: Candidate Cole did not file a C-5 campaign finance reports on or before May 7, May 29, or June 25, 2018 as required. (Commissioner's Records.)

Candidate Cole failed to file campaign finance reports, violating Montana campaign finance law.

2. *Failure to attribute paid campaign social media and newspaper advertisements*

Of the six newspaper ads candidate Cole reported, three were referenced in the complaint as having an incorrect attribution. Montana law requires all election communications, which includes newspaper and paid social media ads, must include an attribution identifying who made or financed the

expenditure and the address of that person or of the campaign. Mont. Code Ann. § 13-35-225(1)(a).

COPP's investigation determined that the social media posts provided as part of the complaint contained a correct attribution (FOF No. 7). However, none of the six reported newspaper advertisements contained a complete attribution; they each omitted the candidate or candidate's campaign address (FOF No. 6).

Sufficiency Finding No. 2: The Commissioner determines that sufficient facts exist to show that Candidate Cole failed to properly attribute election communications on six newspaper ads as required by Montana law.

Full and complete attribution of campaign materials has been and continues to be a requirement specifically defined by the Montana Legislature: "all election communications...must clearly and conspicuously include the attribution 'paid for by' followed by the name and address of the person who made or financed the expenditure for the communication." *Id.*, at (1). Candidate Cole did not meet these attribution requirements on six occasions, a campaign finance and practice violation.

Additionally, the newspaper advertisement expenditures as reported (*see* Table 1) require additional detail. Candidate Cole reported two separate expenditures as "Newspaper Adds" and failed to provide quantity and description information (FOF Nos. 11, 12). 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.

Sufficiency Finding No. 3: There are sufficient facts to show that Cole's 2018 campaign finance report failed to disclose sufficient detail describing campaign expenditures.

Reporting and disclosure is required so that the public, press, and opposing candidates understand the contribution and expenditure of funds used in support of a particular campaign. The Commissioner encourages local candidates to be aware of the appearance to the public of a candidate's failure to report and disclose expenditures to their campaigns, and to update their filings in a timely manner with COPP. Utilizing a proper attribution allows the public, press, and opposing candidates to determine whether a candidate or a political committee was responsible for the election campaign material. Candidate Cole failed to provide sufficient detail in the reporting of six newspaper advertisement expenditures, a Montana campaign finance violation.

### **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 Michael Cole 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 Michael Cole. 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. §§ 13-37-225, 238, and § 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 20<sup>th</sup> day of September 2018.



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