

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Reeves v. Edwards No. COPP 2018-CFP-015	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On May 29, 2018, Cory Reeves of Great Falls, MT filed a campaign practices complaint against Bob Edwards also of Great Falls, MT. The complaint alleges that candidate Edwards failed to provide a copy of a video, referred to herein as the “Serious Concerns” video, published within ten days of an election that specifically referenced his opponent, Jesse Slaughter, to the Slaughter campaign as required by the Clean Campaign Act.

SUBSTANTIVE ISSUE ADDRESSED

This decision addresses the Fair Notice Provision of Montana’s Clean Campaign Act.

FINDINGS OF FACT

The foundational facts are necessary for this Decision:

Finding of Fact No. 1: Montana’s Primary elections were held on Tuesday, June 5, 2018. (Montana Secretary of State.)

Finding of Fact No. 2: Bob Edwards filed a C-1A Statement of Candidate as a Democratic candidate for Cascade County Sheriff with the COPP on March 15, 2018. (Commissioner’s Records.)

Finding of Fact No. 3: Jesse Slaughter filed a C-1A Statement of Candidate as a Democratic candidate for Cascade County Sheriff with the COPP on February 1, 2018. (Commissioner’s Records.)

Finding of Fact No. 4: The 10-day Fair Notice period before Montana's primary election ran from May 26 through June 4, 2018. (Commissioner's Records.)

Finding of Fact No. 5: The Edwards campaign paid Don Ayers \$700 for video production, including the "Serious Concerns" video. (Commissioner's Records.)

Finding of Fact No. 6: The Edwards campaign published the "Serious Concerns" video on Facebook for the first time on May 30, 2018. (Commissioner's Records.)

DISCUSSION

Montana law requires a candidate to notify an opposing candidate of any new "campaign advertising in print media, in printed material, or by broadcast media that is intended for public distribution in the 10 days prior to an election day" that names or include the likeness of the candidate's opponent. Mont. Code Ann. § 13-35-402(1)-(2).

The associated Fair Notice regulation, Admin. R. Mont. 44.11.607, explains that "campaign advertising" is a reference to "reportable election activity," which is in turn defined as follows:

"Reportable Election Activity" includes but is not limited to accepting a contribution, a contribution in response to an appeal, or a designated contribution, or making an expenditure, a contribution, a coordinated expenditure, an independent expenditure, or an in-kind contribution or expenditure, or making an election communication or electioneering communication.

Admin. R. Mont. 44.11.103(31). With regard to campaign material published by broadcast or digital media, the fair notice regulation further provides,

the date used to determine the date "intended for public distribution" for material distributed by:

* * *

(b) broadcast media, digital media, or published material is "at the time" the material is published or broadcast or disseminated to the public.

(i) "At the time" means at or before the earliest date and time the message is scheduled to be published, broadcast, or disseminated to the public.

Admin. R. Mont. 44.11.607(2)(b).

In this case, the Edwards campaign paid to have videos produced for publication and broadcast, including the "Serious Concerns" video (FOF No. 5). The 10-day Fair Notice Period for Montana's 2018 primary election was May 26 to June 4, 2018 (FOF No. 4). *See also* Admin. R. Mont. 44.11.607(2). The video 'Serious Concerns' was first published on May 30, 2018 (FOF No. 6), within the Fair Notice Period. Thus the Edwards' campaign was required to give notice of the video to any identified or mentioned opposing candidate, in this case candidate Slaughter,¹ at or before the earliest date and time the video was posted to facebook.

Sufficiency Finding No. 1: Candidate Edwards failed to notify opponent Jesse Slaughter of the May 30, 2018 publication of the "Serious Concerns" video his campaign paid for and published (FOF Nos. 5-6).

The Commissioner finds candidate Edwards violated Montana's campaign finance and practices law by failing to notify opponent Slaughter under the Fair Notice Provision of Montana's Clean Campaign Act.

Upon receipt of the complaint, the Commissioner contacted the Edwards campaign and directed the campaign to provide notice to the opposing

¹ There are three candidates seeking the Democratic nomination for Cascade County Sheriff: Bob Edwards; Jesse Slaughter; and George Kynnett.

campaign/s identified in any new videos published May 26, 2018 or later, as required by Mont. Code Ann. § 13-35-402(4):

(4) The copy of the material that must be provided to the candidates listed in subsection (2) must be provided by electronic mail, facsimile transmission, or hand delivery, with a copy provided by direct mail if the recipient does not have available either electronic mail or facsimile transmission. If the material is for broadcast media, the copy provided must be a written transcript of the broadcast.

In response, the Edwards campaign provided the Commissioner's office a partial transcript and the publication information as directed by June 1, 2018. The COPP subsequently forwarded that notification information to the opposing campaign.

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. The law requires that 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 Edwards 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*. See *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (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 Edwards. Because of the nature of the violation (the failure to notify the opposing candidate occurred in Cascade County), this matter is referred to the County Attorney of Cascade County for his consideration as to prosecution. *Id.*, at § 13-37-124(1). Should the County Attorney waive the right to prosecute (*id.*, at § 13-37-124(2)) or fail to prosecute within 30 days (*id.*, at § 13-37-124(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.*, at § 13-37-124(1)) 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. § 13-37-226. *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 6th day of June 2018.



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