

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Crews v. Dewey  No. COPP 2020-CFP-008	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN FINANCE VIOLATION, DISMISSAL OF ALLEGATIONS
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On April 23, 2020, James V. Crews, a resident of Stevensville, MT, filed a campaign practices complaint against Brandon Dewey, the current Mayor of the Town of Stevensville. The complaint alleges that Mayor Dewey engaged in reportable election activity and failed to register as a candidate with the COPP. The complaint also alleges that candidate Dewey utilized public time and resources to oppose a recall petition.

**SUBSTANTIVE ISSUES ADDRESSED**

Filing requirements by an elected official under a recall petition.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Brandon Dewey currently serves as the Mayor for the Town of Stevensville, a position he was elected to in 2017. Mayor Dewey did not file a C-1 or C-1A Statement of Candidate as a candidate for any other elected office in 2020. (Commissioner's Records.)

Finding of Fact No. 1A: The office of Mayor of Stevensville is a four-year term. The office will next be up for regular election in 2021. (Commissioner's Records.)

Finding of Fact No. 2: On March 30, 2020, a petition seeking to recall Mayor Dewey was submitted. Ravalli County Deputy Attorney Royce McCarty found the petition met “the grounds and form for a recall petition”, and the petition was approved for circulation by the Ravalli County Clerk and Recorder on April 7.<sup>1</sup> The petitioner was provided ninety (90) days to gather the signatures necessary to place the petition on the ballot. (Commissioner’s Records.)

Finding of Fact No. 3: This Complaint included a photograph of a campaign yard sign supporting Mayor Dewey that allegedly was placed for display after the recall petition was approved for circulation. (Commissioner’s Records.)

Finding of Fact No. 4: On May 1, 2020, Mayor Dewey emailed the COPP with an initial response to this Complaint. This response stated that “supporters of me have taken it upon themselves to place the signs” referenced in this Complaint. During a follow-up telephone conversation held with the COPP on May 4, Mayor Dewey clarified that the yard signs were purchased and distributed by a previous campaign of his (the 2017 Mayoral campaign), that 2017 campaign distributed signs to members of the public who requested them, and that they had remained in the possession of these community members who had requested them. Mayor Dewey again stated that the individuals who possessed the yard signs provided by his 2017 campaign had personally and voluntarily chosen to display those signs once more in response to the 2020 recall petition. A follow-up email response from Mayor Dewey received by the COPP on May 7 again stated that the signs in question were purchased by a prior campaign of his, and that the individuals who chose to display them in response to the recall petition had done so of their own volition. (Commissioner’s Records.)

Finding of Fact No. 4A: During his 2017 campaign for the office, Mayor Dewey reported the purchase of one hundred (100) campaign yard signs meant to support his candidacy, at a cost of \$611.65. (Commissioner’s Records.)

Finding of Fact No. 5: The Town of Stevensville’s official website contains a page titled “Recall Facts and Questions”.<sup>2</sup> The page was first posted on the Town’s website on April 22, and states that:

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<sup>1</sup> <https://bitterrootstar.com/2020/04/petition-circulating-to-recall-stevensville-mayor/>

<sup>2</sup> <https://www.townofstevensville.com/mayor/page/recall-facts-and-questions>

This communication aims to answer citizen questions and dispel misinformation about the petition being circulated by Leanna Rodabaugh to recall Stevensville Mayor Brandon E. Dewey. The recall petition alleges violations of Montana Code and Town Code as well as the Mayor's Oath of Office. These allegations have not been charged against Mayor Dewey but have been thoroughly reviewed by legal counsel and investigated by the City Attorney and found to be unsubstantiated.

The reverse side of this document provides general information about the recall process, and details about Town's the IT Services. (Commissioner's Records.)

Finding of Fact No. 6: On May 22, 2020, the Stevensville Mayoral recall petition was approved by the Ravalli County Clerk and Recorder.<sup>3</sup> During a May 26, 2020 phone discussion, Ravalli County Elections Administrator Regina Plattenberg confirmed that the petition was approved on May 22, and that Mayor Dewey was notified of the petition's approval that day. Mayor Dewey was then told that he had either five (5) days to resign the office or ten (10) days to provide a written notice (stating why he should not be recalled) to the elections office for placement on the recall election ballot. She noted that the County was planning to hold the election as a mail-only election and was targeting August 4, 2020, as election day. (Commissioner's Records.)

Finding of Fact No. 7: During a June 10, 2020 phone discussion, Ravalli County Elections Administrator Regina Plattenberg stated that Mayor Dewey provided his written notice to her office arguing why he should not be recalled on June 1, 2020 rather than resign. Election Administrator Plattenberg stated that the Ravalli County elections office submitted its written plan for conducting the Stevensville recall election to Montana's Secretary of State's office on June 3, 2020, and that this plan was approved. She ended the call by stating that the recall election was scheduled to take place August 4, 2020. (Commissioner's Records.)

Finding of Fact No. 8: Mayor Dewey did not file a C-1A Statement of Candidate as a candidate seeking to maintain the office of Mayor after the Stevensville recall petition was approved. A COPP review conducted on August 20, 2020, concluded Mayor Dewey had not

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<sup>3</sup> [https://www.montanarightnow.com/missoula/stevensville-residents-petition-to-recall-mayor-brandon-dewey-approved/article\\_e676d8ac-9c6c-11ea-9fe9-e35a39aadcd1.html](https://www.montanarightnow.com/missoula/stevensville-residents-petition-to-recall-mayor-brandon-dewey-approved/article_e676d8ac-9c6c-11ea-9fe9-e35a39aadcd1.html)

filed a C-1A Statement of Candidate as of that date. (Commissioner's Records.)

Finding of Fact No. 9: On June 22, 2020, Mayor Dewey filed a lawsuit with the Montana Twenty-First Judicial District Court in Ravalli County contesting the recall election in Stevensville.<sup>4</sup> A temporary restraining order was placed on the matter so it could be argued in court. On July 9, 2020, Ravalli County Elections Administrator Regina Plattenberg was quoted in the Ravalli Republic stating that if the court determined the recall election can proceed, it could not occur on August 4 as originally planned and would instead likely happen in November as part of the General election.<sup>5</sup> (Commissioner's Records.)

Finding of Fact No. 10: On August 13, 2020, Ravalli County District Judge Howard Recht ruled that the Stevensville Mayoral recall election could proceed.<sup>6</sup> Election Administrator Plattenberg stated that the election would appear on November's General election ballot. (Commissioner's Records.)

Finding of Fact No. 11: Montana's General election will take place on November 3, 2020. (Commissioner's Records.)

## **DISCUSSION**

*Part One: Was Mayor Dewey required to file as a candidate with the COPP because of the recall petition?*

To consider this Complaint's allegations in their entirety, a determination must first be made as to if Mayor Dewey qualifies as a candidate under Montana campaign finance law. §13-1-101(8), MCA, defines the term candidate as:

(8) "Candidate" means:

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<sup>4</sup> [https://ravallirepublic.com/news/local/article\\_109b7e93-dc32-57cd-9e06-72b4395be977.html](https://ravallirepublic.com/news/local/article_109b7e93-dc32-57cd-9e06-72b4395be977.html)

<sup>5</sup> [https://ravallirepublic.com/news/local/article\\_ddd222f3-29fd-510e-8e48-5679674509f3.html](https://ravallirepublic.com/news/local/article_ddd222f3-29fd-510e-8e48-5679674509f3.html)

<sup>6</sup> Montana 21<sup>st</sup> Judicial District Court Ravalli County, Cause No. DV-20-231 <https://bloximages.chicago2.vip.townnews.com/ravallirepublic.com/content/tncms/assets/v3/editorial/7/0c/70cda413-eff8-556e-9a59-c163469bb85a/5f36c3c779bc4.pdf.pdf>

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

(c) an officeholder who is the subject of a recall election.

Mayor Dewey would not qualify as a candidate under either subsections (a) or (b) because he is not running for election to a public office as part of either June's Primary election or November's General election (FOF No. 1). Mayor Dewey currently serves as the Stevensville Mayor, a position he was duly elected to in 2017, and he has at no time indicated that he will be seeking election to any other office in Montana's 2020 elections.

The question becomes if Mayor Dewey qualifies as a candidate under subsection (c). A petition seeking to recall Mayor Dewey was submitted in Ravalli County and approved for signature collection on March 30, 2020 (FOF No. 2). The petition was approved on May 22, 2020, with Mayor Dewey receiving notice of the approval that same day (FOF No. 6).

Mont. Code Ann. §2-16-622(1) provides the officer named in an approved recall petition five days to resign the office; should the officer choose not to

resign, a special recall election must be held. Once such an election is formally noticed, the officeholder would become a candidate under Montana campaign finance law, Mont. Code Ann. §13-1-101(8)(c).

In this case, the recall petition was approved on May 22, 2020. Mayor Dewey did not resign his position as Mayor, instead choosing to submit written notice to appear on the recall election ballot stating why he should not be recalled (FOF No. 7). Because Mayor Dewey did not resign the office, on May 27 the requirement to hold a special recall election was formally triggered under Mont. Code Ann. §2-16-622(1). As of that date candidate Dewey automatically became a candidate as defined by §13-1-101(8)(c), MCA, as he became “an officeholder who is the subject of a recall election”.

The recall election (and, by extension, Mayor Dewey’s status as a candidate in that election) was put on hold, however, as candidate Dewey filed a lawsuit contesting its validity in Ravalli County on June 22, 2020 and a temporary restraining order was granted (FOF No. 9). On August 13, Ravalli County District Judge Howard Recht dissolved the restraining order and ruled that the recall election could proceed (FOF No. 10). Under Mont. Code Ann. §13-1-101(8)(c), candidate Dewey again became a candidate on August 13, 2020, because he again represented “an officeholder who is the subject of a recall election”.

Mont. Code Ann. §13-37-201(2) provides a candidate five days to file the relevant Statement of Candidate with the COPP. As Mayor Dewey first became a candidate on May 27, 2020, his C-1A Statement of Candidate as a candidate

to maintain his office as Mayor of Stevensville was due to the COPP on or before June 3, 2020. Mayor Dewey did not provide a completed Statement of Candidate to the COPP, either electronic or hard copy, prior to that date (FOF No. 8). Mayor Dewey failed to properly file as a candidate in the Stevensville recall election as required under Montana campaign finance law.

Sufficiency Finding No. 1: Mayor Dewey did not submit a C-1A Statement of Candidacy as required in the Stevensville Mayor recall election to be held November 3, 2020.

The Commissioner finds Mayor Dewey failed to file a Statement of Candidacy as required by Montana campaign finance and practice law for the 2020 Recall Election.

As a candidate in a special election, Mayor Dewey is responsible for submitting campaign finance reports as required by Mont. Code Ann. §13-37-226(3)(a)(b),

(3) In addition to the reports required by subsections (1) and (2), if a candidate or a political committee participates in a special election, the candidate or political committee shall file reports as follows:

(a) a report on the 60th, 35th, and 12th days preceding the date of the special election; and

(b) 20 days after the special election

In this matter, campaign finance reports would be required on September 3, September 29, October 22, and November 23, 2020 (Exhibit A). Candidate Dewey failed to submit a campaign finance report on September 3, 2020, a violation of Montana campaign finance law.

Sufficiency Finding No. 2: Mayor Dewey did not submit an initial campaign finance report on September 3, 2020.

The Commissioner finds candidate Dewey failed to file an initial campaign finance report due September 3, 2020, a Montana campaign finance violation.

*Part Two: The Yard Signs*

The complaint also alleges Mayor Dewey was responsible for campaign yard signs supporting Dewey in the recall effort. Candidate Dewey explained to the COPP that he distributed campaign yard signs to members of the public for display as part of his 2017 campaign, however the campaign did not request or stipulate their return or otherwise collect them at the conclusion of the 2017 Mayoral election. Mayor Dewey indicated his belief that the signs became the property of the private individuals to whom his 2017 campaign had given them, as they had remained in their (private) possession for the last approximately three years. No evidence exists to support the notion that Mayor Dewey requested, encouraged, required, or otherwise coerced citizens to publicly display these signs (FOF No. 4).

The yard signs in question were paid for by Mayor Dewey's 2017 campaign and were duly reported to the COPP at that time (FOF No. 4A). The yard signs would not qualify as reportable expenditure activity by Mayor Dewey regarding the special recall election because they had been purchased (and properly reported) by a prior campaign of his.

As there is no evidence the signs were not voluntarily and independently displayed by individuals who privately possessed them, Mayor Dewey would not be obligated to report these yard signs as individual contributions received

on financial reports filed in conjunction with this special recall election. He would, however, be required to report any signs from a previous campaign he himself distributes or otherwise utilizes in the 2020 recall election as in-kind contribution from his previous campaign. The allegation is hereby dismissed.

*Part Three: The website*

The complaint contains a final allegation pertaining to the Town of Stevensville's website. Specifically, an allegation that Mayor Dewey improperly utilized public time and resources to oppose the recall petition. As stated by the complaint, the allegation specifically notes potential violations of Montana's Code of Ethics rather than campaign finance law. A copy of the complaint was passed along by the COPP to the Ravalli County Attorney for his consideration.<sup>7</sup>

In regard to Montana campaign finance law, §13-35-226(3), MCA states that "A person may not coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue". During this Investigation, no evidence was uncovered to suggest that Mayor Dewey directly coerced, commanded, or required any individual Town employee/s oppose the recall petition or support his candidacy in the special recall election. Nor did the complaint contain any concrete examples (specific incidents, name/s of employees involved, etc.) of this occurring.

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<sup>7</sup> The County Attorney being provided jurisdiction under §2-2-144, MCA

Mont. Code Ann. §13-35-226(4) states 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” (emphasis added). As determined in the case of *Vick v. Dewey*, COPP-2019-CFP-007, Mayor Dewey does not qualify as a public employee when operating in his capacity as Mayor, and he would not be bound by the provisions of this specific statute.<sup>8</sup>

Unlike Mayor Dewey, all non-elected Town employees would be subject to the prohibitions established under §13-25-226(4), MCA. A ballot issue is defined under §13-1-101(6) as (emphasis added):

(a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment, recall question, school levy question, bond issue question, or ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement on the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

In Stevensville, the special recall election completed “the legal procedure necessary for its qualification and placement on the ballot on May 22.

By not resigning the office of Mayor, Mayor Dewey triggered a special recall election on November 3, 2020. As previously discussed, Mayor Dewey did

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<http://politicalpractices.mt.gov/Portals/144/2019%20Decisions/Vick%20v%20Dewey%20Dismissal.pdf?ver=2019-12-03-112000-680>

not qualify as a candidate under Montana's definition until May 27, 2020. Any support for or opposition to Mayor Dewey's candidacy in the special recall election by public employees on the job or at the place of employment occurring after May 27, 2020 would be prohibited.

The FAQ webpage referenced by this Complaint was created and first displayed on the Town of Stevensville's website on April 22, 2020 (FOF No. 5). The recall petition was still in the signature gathering process in April, and the special recall election was over a month away from being triggered. As the webpage did not concern "any political committee, the nomination or election of any person to public office, or the passage of a ballot issue" at the time of its creation, it would not be considered a violation of §13-35-226(4), MCA. The allegation is hereby dismissed. The Commissioner cautions the Town of Stevensville, however, that should such a FAQ page be utilized once the petition process resulted in the call for a recall election, in this case May 27, 2020, any statements or communications that support or oppose Mayor Dewey using Town of Stevensville resources after that date may very well place the Town of Stevensville in violation of Montana campaign finance and practice 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. 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 Brandon Dewey 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).

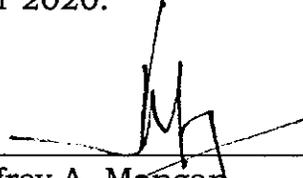
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision

justifying a civil fine or civil prosecution of Brandon Dewey. 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. §§13-37-201(2), 13-37-226(3)(a). *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 18<sup>th</sup> day of September 2020.



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# November 3<sup>rd</sup> Special Election

## 2020 Candidate Finance Report Calendar Special Election

Report form C-5 must be filed for each reporting period to disclose all transactions, if any, that occurred during the specific reporting period.

Filing Deadline	Reporting Period
September 3, 2020	Pre-Election/Date of first activity through August 30
September 29, 2020	August 31 through September 24
October 22, 2020	September 25 through October 17
October 18 <sup>th</sup> through November 3 <sup>rd</sup> (C-7 and C-7E Reporting Period)	File a C-7 (within 48 hours) each time a \$100 contribution from a single source is received between October 18 through November 3
	File a C-7E (within 48 hours) each time an expenditure of \$100 or more is made between October 18 through November 3
<b>Special Election: November 3, 2020</b>	
November 23, 2020	Post- Election/October 18 through November 18 <i>(May also be the closing report if all debts are paid and no more campaign activity is anticipated; otherwise a closing report must be filed later.)</i>
	Reference <u>13-37-226(3)</u> and <u>13-37-226(1)(e)</u> for 2021+ reporting dates.

