

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Loveridge v. Tuxbury No. COPP 2020-CFP-015	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On May 26, 2020¹, Jordan Loveridge of Billings, MT, filed a campaign practices complaint against Scott Tuxbury of Missoula, MT. The complaint alleged that candidate Tuxbury failed to properly and fully disclose an in-kind contribution made to his campaign.

SUBSTANTIVE ISSUES ADDRESSED

The proper reporting of an in-kind contribution to a candidate's campaign and use of an addendum to describe the contribution.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Scott Tuxbury filed a C-1 Statement of Candidate as a candidate for State Auditor with the COPP on February 18, 2020. Lorna Kuney was listed as the campaign Treasurer. (Commissioner's Records).

Finding of Fact No. 2: On May 19, 2020, candidate Tuxbury timely filed a periodic C-5 campaign finance report, dated April 16, 2020 through May 14, 2020. The report disclosed candidate Tuxbury providing one in-kind contribution valued at \$79,324.20 to his campaign during this period, described as "See Addendum:". No

¹ This Complaint was originally received by the COPP on May 22, 2020 via email. May 26, 2020 is when the original signed and notarized document was delivered to the COPP.

addendum detailing the specific items or for the in-kind contribution was provided to the COPP on that date. (Commissioner's Records).

Finding of Fact No. 3: On May 22, 2020, COPP Compliance Specialists contacted Treasurer Kuney regarding the fact that the COPP had not yet received the in-kind contribution addendum referenced on candidate Tuxbury's May 19 finance report. Later that day, an addendum detailing each individual item or service included as part of that In-kind contribution was received by the COPP via email. (Commissioner's Records).

Finding of Fact No. 4: On May 29, 2020, candidate Tuxbury provided a response to this Complaint to the COPP via email. The response stated that "Our treasurer filed the required C-5 on May 19, 2020 with the required addendum... We know that an addendum was sent on May 19, 2020 along with the report. Upon notification from the COPP that the addendum was not placed with the report on CERS on May 22, 2020, our treasurer re-sent the addendum on Friday, May 22, 2020". (Commissioner's Records).

DISCUSSION

The Complaint alleges that candidate Tuxbury failed to fully disclose an in-kind contribution he provided to his own campaign. Candidate Tuxbury's May 19 C-5 campaign finance report disclosed a \$79,324.20 in-kind contribution he personally provided to his own campaign, however the only description provided for this contribution on the campaign finance report was "See Addendum:" (FOF No. 2). No addendum detailing or describing the specific items or services included as part of this in-kind contribution was provided to the COPP at the time of filing. Upon notification by the COPP, Tuxbury's Treasurer provided the relevant addendum to the COPP via email on May 22, three days after the C-5 finance report had been filed (FOF No. 3).

Candidate Tuxbury reported his in-kind campaign contribution in a timely fashion, in accordance with §13-37-229(1), MCA. However, he did not

provide all detail required to describe this activity at the time of filing.

44.11.501(4)(a), ARM, clearly states that

“A campaign expense paid personally by an individual in his or her own campaign is always coordinated with and is a campaign expense under (1)(d) **that must be reported and disclosed with the same information as an expense by the campaign**” (emphasis added).

44.11.502(7), ARM, states that

“For purposes of the disclosure requirements of 13-37-229 and 13-37-232, MCA, the "purpose" of each expenditure as reported on the commissioner's campaign finance reporting forms shall specifically describe the purpose, quantity, subject matter, as appropriate to each expenditure”.

Candidates are required to provide “purpose, quantity, subject matter” information to describe all in-kind contributions made to their own campaign.

By describing the specific items or services personally provided to the campaign in-kind as “See Addendum:” without including the relevant addendum, candidate Tuxbury failed to provide required “purpose, quantity, subject matter” information. Contrary to the Tuxbury campaign’s statements, the addendum was not provided to the COPP when the C-5 report was originally filed on May 19. The addendum was only provided on May 22 after the COPP specifically requested it (FOF No. 3).

Sufficiency Finding No. 1: Candidate Tuxbury failed to properly report an in-kind contribution in the amount of \$79,324.20. (Commissioner’s Records).

The Commissioner finds candidate Tuxbury failed to provide “purpose, quantity, subject matter, as appropriate to each expenditure” when describing the In-kind contribution in this matter, a Montana campaign finance violation.

The Commissioner notes candidate Tuxbury timely reported the amount of the in-kind contribution and provided the necessary detail information when requested.

While allowed, this Complaint illustrates timely disclosure issues relying solely on addendums to describe in-kind campaign contributions received or expenditures made. Asking the public to “See addendum” does not by itself provide “purpose, quantity, subject matter” as required under 44.11.502(7), ARM. In the event a campaign does not provide an addendum at the time of filing a campaign finance report (as happened in this matter), the campaign has deprived the public, opposing candidates, or other interested parties of this required information in a timely manner.

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 Scott Tuxbury

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.

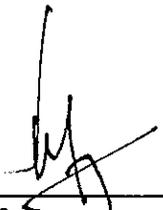
The failure to fully and timely report and disclose cannot generally be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law as it relates to failures to file and report. See *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing excusable 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 Scott Tuxbury. 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. *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 July 2020.



Jeffrey A. Mangan
Commissioner of Political Practices
Of the State of Montana
P.O. Box 202401
1209 8th Avenue
Helena, MT 59620
Phone: (406)-444-3919