

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Luckey v. Brown  No. COPP 2020-CFP-037	DISMISSAL
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On September 14, 2020, Montana Democratic Party Executive Director Sandi Luckey filed a campaign practices complaint against James Brown, a candidate for Montana Public Service Commission. The complaint alleged that candidate Brown falsely declared his residency on his declaration of candidacy filed with the COPP.

**SUBSTANTIVE ISSUES ADDRESSED**

Candidate residency and deceptive election practices.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: James Brown filed a C-1 Statement of Candidate as a candidate for Montana Public Service Commission (PSC) District 3 with the COPP on May 20, 2019. Candidate Brown listed 108 S. Pacific in Dillon, MT as his campaign's physical address. The campaign's mailing address was listed as PO Box 1003, Dillon, MT. His campaign bank account is listed as Stockman Bank of Dillon, MT. (Commissioner's Records.)

Finding of Fact No. 1A: Candidate Brown filed as a candidate for PSC District 3 with Montana's Secretary of State's Office on January 9, 2020. Candidate Brown listed 108 S. Pacific, Dillon, MT as his address on this registration. (Commissioner's Records.)

Finding of Fact No. 1B: Dillon, MT is the county seat of Beaverhead County, and is included in PSC District 3. (Commissioner's Records.)

Finding of Fact No. 2: Candidate Brown currently owns and operates his own law firm, James Brown Law Office, PLLC, a registered Domestic Limited Liability Company in Active Good Standing. Candidate Brown is listed as the Registered Agent for the company, which lists both a street and mailing address of 1822 E Broadway, Helena, MT. The business mailing address is provided as 30 S Ewing St. STE 100, Helena, MT. (Commissioner's Records.)

Finding of Fact No. 2B: Helena, MT is the county seat of Lewis & Clark County, and is included in PSC District 5. (Commissioner's Records.)

Finding of Fact No. 3: On September 21, 2020, the Bozeman Daily Chronicle published a story about this Complaint: [https://www.bozemandailychronicle.com/news/complaint-filed-against-psc-candidate-disputing-residency/article\\_b905ad5d-c43e-56b7-b117-115b300681db.html](https://www.bozemandailychronicle.com/news/complaint-filed-against-psc-candidate-disputing-residency/article_b905ad5d-c43e-56b7-b117-115b300681db.html). The story states that the James Brown Law Office has a second office in Dillon. Candidate Brown in the story states that he used his Helena home address (1822 E Broadway) as the home address when registering with the SoS because "he had to pick one and it's near the primary office". When asked how much time he spends at his homes in Helena and Dillon, candidate Brown stated "I'm not going to answer that because it's not relevant". The story notes that candidate Brown registered to vote in Beaverhead County using the 108 S. Pacific address in Dillon listed on his C-1 Statement of Candidate in August of 2019. (Commissioner's Records.)

Finding of Fact No. 4: On September 28, 2020, candidate Brown hand delivered a response to this Complaint to COPP staff. In the response, candidate Brown argued that he resides, in Beaverhead County rather than Lewis & Clark County as alleged. Candidate Brown's response included specific documentation to this claim, including:

- A voter registration application filed by candidate Brown in Beaverhead County dated August 20, 2019. 108 S. Pacific in Dillon, MT is listed as candidate Brown's address;
- Photos of items or personal mail delivered to candidate Brown at the 108 S. Pacific address in Dillon;

- A photo of candidate Brown's U.S. Passport, which lists 108 S. Pacific in Dillon as his address.

The response states that candidate Brown grew up in Dillon but moved to Helena around 2014. He states he moved back to Dillon in the spring of 2019 due to the health concerns of a close family friend, whom he describes as his mother's "longtime companion". He goes on to state that this individual is the owner of the house at 108 S. Pacific in Dillon and is described by candidate Brown as "a second father to me and, as such, he is my "family"". Candidate Brown's response included a copy of a Grant Deed by Estate signed by this individual who, acting as the representative for candidate Brown's deceased mother, named candidate Brown a "tenant in common" to the property at 108 S. Pacific in Dillon. The document was dated April 11, 2007.

Candidate Brown states that he opened a law office in Dillon in May of 2019, and that having a second office allows him "to work out of my Helena office when work requires me to be there" and work "out of the Dillon office at all other times. This has been my working and living circumstance since February/March 2019...as Dillon is where I reside".

The response also included a letter from Beaverhead County Clerk and Recorder/Election Administrator Stacey Reynolds (written in response to a similar non-COPP inquiry into candidate Brown's residency) that it was her understanding that candidate Brown's primary residence was 108 S. Pacific in Dillon, making him eligible to vote in Beaverhead County. Candidate Brown included his voter registration history, which shows that he was registered to vote in Beaverhead County from 2007-at least 2012, Lewis & Clark County from at least 2013-2018, and again in Beaverhead County starting in 2019. (Commissioner's Records.)

## 1. Introduction

Residency requirements for Montana candidates support two compelling state interests providing for representation of the people by elected officials, *see Chimento v. Stark*, 353 F. Supp 1211(D.C.N.H), affirmed by 414 U.S. 802 (1973). The first is to ensure that a candidate "is exposed to the problems,

needs and desires of the people” of the state or district. *Id.* at 1217. The second is to provide an opportunity to the people of the state or district “to observe him and gain firsthand knowledge about his habits and character.” *Id.*

Court determinations of a candidate’s residency rely on objective facts that support the candidate’s subjective claimed residence. Based on the facts provided by Mr. Brown, he has been a resident of Dillon when he was growing up, and again became a resident in the spring of 2019. Mr. Brown maintains a residence, an office, a bank account, and has registered to vote in Dillon, MT. Based on these objective facts, Mr. Brown is familiar with the district and the people of PSC District 3 should have ample opportunity to interact with him.

## 2. Allegations

In this matter, complainant Luckey alleges that candidate James Brown “has sworn that he is a resident” of Beaverhead County but that “In fact, Mr. Brown is a resident of Lewis and Clark County”. Mont. Code Ann. §13-35-207, the statute complainant Luckey alleges candidate Brown has violated, defines deceptive election practices:

Deceptive election practices. A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person:

- (1) falsely represents the person's name or other information required upon the person's voter registration form and causes registration with the form;
- (2) signs a voter registration form knowingly witnessing any false or misleading statement;...

(5) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;... or

(10) makes a false oath or affidavit where an oath or affidavit is required by law.

The complaint argues that, by presenting himself as a resident of Dillon on his candidate registration while actually residing in Helena, candidate Brown has violated this portion of Montana campaign finance law.

### 3. Residency Requirements for Public Service Commission Candidates

The Montana Public Service Commission consists of five elected Commissioners, each of whom must be a qualified electors of the district which they represent, Mont. Code Ann. § 69-1-103. The Montana Constitution, Article IV, section 2 provides: “Qualified elector. Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.” In order to be registered voter of Dillion, Mr. Brown must be a US citizen, 18 years of age, a resident of the state and county for at least 30 days, and registered to vote with the proper election official, Mont. Code Ann. § 13-1-111(1). Mr. Brown provided a copy of his voter registration application, dated August 20, 2019, and has become a qualified elector of PSC District 3 since that time (FOF 4).

### 4. Objective Factual Evidence of Mr. Brown’s Declared Residence

Candidate Brown filed a C-1 Statement of Candidate with the COPP as a candidate for Montana Public Service Commission (PSC) District 3 listing a

physical address of 108 S. Pacific in Dillon, MT and a campaign PO box also in Dillon (FOF No. 1). Candidate Brown also filed as a candidate for PSC District 3 with Montana's Secretary of State office using the 108 S. Pacific address in Dillon (FOF No. 1A).

Montana PSC District 3 includes most of Southwest Montana, including Beaverhead County; Lewis & Clark County is not a part of that district (FOF No. 1B). By virtue of being in Lewis & Clark County, Helena is not a part of PSC District 3.

Candidate Brown owns a home in Helena and operates a law firm (James Brown Law Office, PLLC) that has its primary office located in Helena (FOF Nos. 2, 3). The James Brown Law Office, PLLC also operates a second office in Dillon, which candidate Brown states opened in May of 2019 (FOF No. 4). Candidate Brown states that he works from each office as necessary, but that the bulk of his working time has been spent at the Dillon office since it opened.

In response to this complaint, candidate Brown maintains that he resides in Dillon, not Helena. He states that he grew up in Dillon and moved back there in the spring of 2019 due to the health concerns of a close friend whom he considers family (FOF No. 4). He states this individual is the owner of the house at 108 S. Pacific, and that Mr. Brown resides with him at that location. Candidate Brown registered to vote in Beaverhead County in August 2019 using the 108 S. Pacific address, and his United States Passport lists his address as 108 S. Pacific in Dillon. Candidate Brown also provided evidence that his personal mail is delivered to the 108 S. Pacific address in Dillon.

The 2009 matter of *Motta v. Laslovich*<sup>1</sup>, decided by Commissioner Unsworth, serves as the only real point of comparison for the particular allegation leveled by this complaint. That matter contained an allegation that 2008 legislative candidate Jesse Laslovich had committed a deceptive election practice as defined under §13-35-207 MCA by filing a Statement of Candidate with the COPP listing himself as a candidate of Anaconda when in fact he was truly a resident of Helena.

In that Decision, Commissioner Unsworth examined both §13-1-112 and §1-1-215, MCA to determine candidate Laslovich's residency. Commissioner Unsworth determined that candidate Laslovich had not become a resident of Helena during the time he lived there for work but remained a resident of Anaconda. This conclusion was reached in large part because (to quote):

- Laslovich's vehicle is licensed in Anaconda-Deer Lodge County;
- he banks in Anaconda;
- he is registered to vote in Anaconda; and
- he is the part owner of his family's construction business in Anaconda.

Commissioner Unsworth noted that "all these acts are consistent with his repeated insistence that Anaconda-Deer Lodge County is his permanent place of residence...Laslovich has combined the necessary acts and intent to

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<https://politicalpractices.mt.gov/Portals/144/2recentdecisions/MottavLaslovichDecision.pdf>

establish that his residence for legislative candidacy, registration, and voting purposes is Anaconda-Deer Lodge County. (§§ 13-1-112(8) and 1-1-215(6), MCA.)”. Commissioner Unsworth reasoned that candidate Laslovich “did not falsely swear that he was a resident of Anaconda in his 2008 Declaration of Candidacy”.

Unlike candidate Laslovich, candidate Brown undoubtedly made Helena his place of residence for a period of several years. Around 2013 candidate Brown physically relocated to Helena, purchasing a home there, registering a business and opening its office space there. Candidate Brown registered to vote in Lewis & Clark County and exercised his right to vote in that county from at least 2013 through 2018 (FOF No. 4). Even if candidate Brown intended to return to Dillon during this time and thus continued to consider himself a Dillon resident, his intent would be irrelevant for the purposes of determining his residency. Candidate Brown forfeited his Dillon residency when exercising “the election franchise” in Lewis & Clark County from 2013 through 2018, §13-1-112(4), MCA. The candidate filing questioned in this complaint came in 2019, with the actual election held in 2020. Only candidate Brown’s residency from the time he filed a Statement of Candidate as a candidate for PSC District 3 in May of 2019 through the present is relevant to this discussion.

Consistent with Commissioner Unsworth’s decision in *Laslovich*, candidate Brown would be considered a resident of Dillon, not Helena, starting in May of 2019. This is when candidate Brown claims he began spending the majority of his working time in Dillon, operating out of the law office he opened

in town that month while living in the house at 108 S. Pacific. In August of that year he registered to vote in Beaverhead County, a registration that candidate Brown maintains; candidate Brown used the 108 S. Pacific address on this voter registration application. Like candidate Laslovich, candidate Brown claims his vehicle is registered in Beaverhead County and that he does his banking in Beaverhead County. Candidate Brown provided evidence that his personal mail is delivered to 108 S. Pacific in Dillon, not his Helena address. Candidate Brown utilized the 108 S. Pacific address in Dillon when applying for his United States Passport.

Just because candidate Brown maintained business and personal ties to Helena after May of 2019 does not by itself mean that he remained a Helena resident. No evidence provided by the complainant in this matter refutes candidate Brown's assertion that he began primarily residing in Dillon starting in the spring of 2019. Evidence provided by candidate Brown in his response indicates that Dillon is the place he chooses to remain "when not called elsewhere for labor or other special or temporary purpose" and that Dillon is the place to which he "returns in seasons of repose", §13-1-215(1), MCA.

Additionally, Candidate Brown has taken actions showing that he has "lost" his Helena residence and "gained" residence in Dillon since May of 2019, §1-1-215(3), MCA. By registering to vote in Beaverhead County, candidate Brown has exercised "the election franchise" of that county in Montana's 2019 municipal elections and 2020 Primary election, §13-1-112(4), MCA. Candidate Brown has lost many, if not all, of the benefits afforded to residents of Lewis &

Clark County through this action, specifically his ability to vote in that county's elections or referendums. At the same time, he gained those benefits in Beaverhead County.

Taken together, in the words of Commissioner Unsworth, these actions represent "the necessary acts and intent to establish that his residence for legislative candidacy, registration, and voting purposes is" in Dillon. Candidate Brown clearly intended to again make Dillon his place of residence in the spring of 2019. Candidate Brown acted upon this intent by opening a law office in Dillon in May of 2019, registering to vote in Beaverhead County in August of 2019, and having personal mail sent to 108 S. Pacific in Dillon rather than his Helena home. Candidate Brown has provided compelling evidence that he had achieved "the union of act and intent" required to change his residence back to Dillon from Helena prior to registering as a candidate for PSC District 3 with the COPP, §1-1-215(7), MCA.

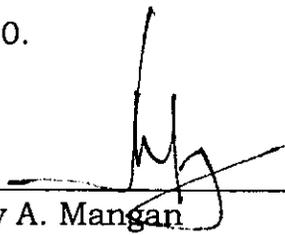
Potential violations of §13-35-207, MCA were more recently considered by Commissioner Mangan in *Wanzenried v Graybill*, a 2020 Declaratory Ruling. In that matter, it was noted that in order for a violation of the deceptive practices statute, it "it would be necessary to prove that Mr. Graybill was acting knowingly or purposefully while making a false statement under oath...when filing his declaration for nomination with information he knew to be untrue". Any future violation, including any committed by candidate Brown, would need to meet this stated threshold.

The Commissioner finds, as a resident of Dillon, candidate Brown did not falsely swear to his residency on his May 20, 2019 Statement of Candidacy for PSC District 3 filed with the COPP. Candidate Brown intended to become a resident of Dillon at the time of registering as a candidate, and he took concrete action to realize this intention as required under applicable statutes. Similarly, no evidence exists that candidate Brown “knowingly or purposefully” represented his residency in a false matter on the Statement of Candidate.

**DECISION**

The complaint is hereby dismissed.

DATED this 13<sup>th</sup> day of October, 2020.



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