

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Orr v. Tschida No. COPP 2020-CFP-024	FINDING OF SUFFICIENCY FACTS TO SUPPORT A CAMPAIGN PRACTICE VIOLATION
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On June 5, 2020, Susie Orr of Missoula, MT filed a campaign practices complaint against Bradley Tschida, also of Missoula. The complaint alleged that candidate Tschida failed to timely file a required campaign financial report.

**SUBSTANTIVE ISSUES ADDRESSED**

Timely filing of a campaign finance report.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision is as follows:

Finding of Fact No. 1: Bradley Tschida filed a C-1 Statement of Candidate as a candidate for House District 97 in Missoula County with the COPP on January 9, 2020. Candidates for State District offices had campaign finance reports due on or before March 20 (covering all contribution and expenditure activity from the beginning of the campaign through March 15, 2020), April 20 (March 16 through April 15, 2020), and May 20 (April 16 through May 14) of 2020. (Commissioner's Records)

Finding of Fact No. 2: Candidate Tschida timely filed his March 20 (dated January 9, 2020 through March 20, 2020) and April 20 (dated March 21, 2020 through April 20, 2020) campaign finance reports. (Commissioner's Records)

Finding of Fact No. 3: Candidate Tschida did not file a campaign finance report on or before May 20, 2020.

Finding of Fact No. 4: On May 22, 2020, candidate Tschida filed a Periodic C-5 campaign finance report, dated April 21, 2020 through May 20, 2020. (Commissioner's Records)

### **DISCUSSION**

This Complaint alleges that candidate Tschida failed to timely file campaign finance reports. As a candidate for a State District office, candidate Tschida had pre-primary campaign finance reports due on or before March 20, April 20, and May 20 of 2020. These reporting dates are found in Mont. Code Ann. §13-37-226(1)(b). Candidate Tschida timely filed both his initial C-5 campaign finance report March 20, and his periodic report due April 20 (FOF No. 2). Candidate Tschida did fail to file the May 20 report in a timely fashion. This report was filed on May 22, two days late (FOF Nos. 3, 4).

Montana's campaign finance report filing requirements are mandatory: "shall file" (See §13-37-226 MCA). The filing date requirements are date certain. In Bradshaw v. Bahr, COPP 2018-CFP-008, Commissioner Mangan found candidate Bahr had filed two days late and wrote "any failure to meet a mandatory, date-certain filing date is a violation of §13-37-226, MCA." In this matter, Candidate Tschida failed to timely file the campaign's finance report due on May 20, 2020. Timely reporting is essential to provide the public, press, and opposing candidates the opportunity to view and review a campaign's finances. Candidate Tschida's late filing of a financial report constitutes a campaign finance violation under Mont. Code Ann. §13-37-226(1)(b).

## **FINDINGS**

Sufficiency Finding No. 1: Candidate Tschida failed to timely file the campaign's C-5 financial report, due on or before May 20, 2020. Candidate Tschida filed the May 2020 C-5 financial report on May 22, 2020, two days after the campaign finance reporting deadline. (FOF No. 2)

This Commissioner, having been charged to investigate and decide, hereby determines that sufficient evidence exists to show that Candidate Tschida has, as a matter of law, violated Montana's campaign practice laws, specifically § 13-37-226, MCA. Candidate Tschida did file the campaign finance report prior to the receipt of the complaint and be a mitigating factor in any civil penalty assessed by the COPP.

## **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. § 13-37-111(2)(a), MCA. 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 §13-37-124, MCA) 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 Tschida 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).

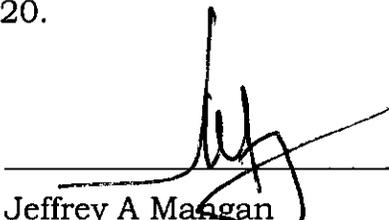
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. § 13-37-124, MCA. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Candidate Tschida. Because of the nature of the violations (the failure to timely report and disclose occurred in Lewis and Clark County), this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. § 13-37-124(1), MCA. Should the County Attorney waive the right to prosecute (§ 13-37-124(2), MCA) or fail to prosecute within 30 days (§ 13-37-124(1) MCA) 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 § 13-37-124(1), MCA) 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 reports at 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 cited above. See § 13-37-128, MCA. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 22<sup>nd</sup> day of June 2020.

  
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