

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Scholl v. Montanans for Limited Government  No. COPP 2020-CFP-013	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN FINANCE VIOLATION
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On May 13, 2020, Katherine Scholl of Florence, MT filed a campaign practices complaint against Montanans for Limited Government, a registered Independent political committee. The complaint alleged that Montanans for Limited Government failed to file its required C-6 committee finance report.

**SUBSTANTIVE ISSUES ADDRESSED**

The proper and timely reporting of a committee finance report.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Montanans for Limited Government filed a C-2 Statement of Organization as an Independent Political Committee with the COPP on June 30, 2016. The C-2 was most recently amended on August 24, 2016. Kathryn Kay was named as the committee's Treasurer. (Commissioner's Records.)

Finding of Fact No. 2: For election year 2020, registered Independent committees had C-6 committee finance reports due one or before January 5, 2020 (covering all committee activity from October 1, 2019 through December 31, 2019), March 30, 2020 (covering all activity from January 1, 2020 through March 25, 2020) and April 30, 2020 (March 26 through April 25). (Commissioner's Records.)

Finding of Fact No. 3: Montanans for Limited Government did not file a C-6 committee finance report for the period of October 1, 2019 through December 31, 2019 on or before January 5, 2020. (Commissioner's Records.)

Finding of Fact No. 3A: On January 29, 2020, Montanans for Limited Government filed a C-6 committee finance report, dated October 1, 2019 through December 31, 2019. (Commissioner's Records.)

Finding of Fact No. 4: Montanans for Limited Government did not file a C-6 committee finance report for the period of January 1, 2020 through March 25, 2020 on or before March 30, 2020. (Commissioner's Records.)

Finding of Fact No. 4A: On April 27, 2020, Montanans for Limited Government filed a C-6 committee finance report, dated January 1, 2020 through March 31, 2020. (Commissioner's Records.)

Finding of Fact No. 5: Montanans for Limited Government did not file a C-6 committee finance report for the period of March 26, 2020 through April 25, 2020 on or before April 30, 2020. (Commissioner's Records.)

Finding of Fact No. 6: On May 13, 2020 Montanans for Limited Government filed the committee's C-6 finance report for the period of April 1, 2020 through April 30, 2020. (Commissioner's Records.)

## **DISCUSSION**

This complaint alleges that Montanans for Limited Government failed to file its required C-6 committee finance report.

Reporting timelines for Montana political committees are found in Mont. Code Ann. §13-37-226(2). Subsections (2)(a) and 2(b) specifically state that:

Except as provided in 13-37-206, 13-37-225(3), and 13-37-227, a political committee shall file reports required by 13-35-225(1)(a) containing the information required by 13-37-229, 13-37-231, and 13-37-232 as follows:

(a) quarterly, due on the 5th day following a calendar quarter, beginning with the calendar quarter in which the political

committee receives a contribution or makes an expenditure after an individual becomes a candidate or an issue becomes a ballot issue, as defined in 13-1-101(6)(b), and ending in the final quarter of the year preceding the year in which the candidate or the ballot issue appears on the ballot;

(b) the 30th day of March, April, May, June, August, September, October, and November in the year of an election in which the political committee participates

The Commissioner's office routinely provides all candidates who file with COPP a reporting calendar which includes reporting periods and timelines, notice committee reporting dates was posted on the COPP's website and social media accounts (Facebook and Twitter) and provide directly to any committee who requests additional information or guidance. Additional reminder emails are sent by COPP staff to all active committees in the days leading up to the January 5, March 30, and April 30 reporting dates to assist with compliance of Mont. Code Ann. §13-37-226.

The COPP initiated a review of all financial reports filed by Montanans for Limited Government. Montanans for Limited Government did not file a quarterly report for the last quarter of 2019 on or before January 5, 2020 as required under Mont. Code Ann. §13-37-226(2)(a); it filed this report on January 29, twenty-four days late (FOF Nos. 3, 3A). The committee did not file on or before the March 30, 2020 due date; that required report was filed on April 27, twenty-eight days late (FOF Nos. 4, 4A). Further, Montanans for Limited Government did not file a C-6 financial report on or before the April 30, 2020 C-6 reporting date (FOF No. 5). Upon contact with the committee, the committee filed its April

30 report on May 13 (FOF No. 6), thirteen days late, a violation of Mont. Code Ann. §13-37-226(2)(b).

Sufficiency Finding No. 1: Montanans for Limited Government failed to timely file its C-6 committee finance reports due January 5, 2020, March 30, 2020 and April 30, 2020.

The Commissioner finds Montanans for Limited Government failed to timely file three campaign finance reports as required by Montana campaign finance 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 Montanans for Limited Government 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).

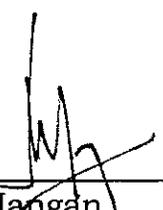
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Montanans for Limited Government. 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. § 13-37-226. *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 18<sup>th</sup> day of May 2020.



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