

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

White v. Lamb No. COPP 2020-CFP-029	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN FINANCE VIOLATION
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On July 15, 2020, John White of McAllister, MT filed a campaign practices complaint against John Lamb of Bozeman. The complaint alleged that candidate Lamb did not include the required “Paid for by” attribution message on campaign materials and failed to disclose campaign expenditure activity as required.

SUBSTANTIVE ISSUES ADDRESSED

Montana’s attribution statute and the timely and proper reporting of contributions and expenditures.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: John Lamb filed a C-1 Statement of Candidate as a Libertarian candidate for Senate District 36 in Gallatin County with the COPP on March 9, 2020. (Commissioner’s Records.)

Finding of Fact No. 2: On July 13, 2020, the COPP sent a letter to candidate Lamb notifying him that this Complaint had been received. The letter informed candidate Lamb that the attribution portion specifically was merited, as the campaign yard sign mentioned by the Complaint did not contain the full ‘paid for by’ attribution as required, and provided candidate Lamb two (2)

business days to bring the material into compliance. (Commissioner's Records.)

Finding of Fact No. 3: On July 15, 2020, candidate Lamb called the COPP Investigator and spoke with him over the phone regarding this Complaint. COPP Investigator reminded Mr. Lamb of the requirement to add the full 'Paid for by' attribution to his campaign yard signs and walked through the required elements of this message (name, address, and partisan affiliation). Candidate Lamb indicated he had personally paid for the yard signs out of pocket, so it was explained to him that any out of pocket expenditures he incurred on behalf of his campaign needed to be included on campaign financial reports as either in-kind loans or candidate contributions. Candidate Lamb also indicated he had made other out of pocket campaign expenditures and was reminded that these would also require full attribution and need to be reported as loans/contributions on the relevant campaign financial report. (Commissioner's Records.)

Finding of Fact No. 4: On July 15, 2020, candidate Lamb emailed the COPP a photo of the campaign sign referenced by this Complaint showing he had added an attribution message stating "Paid for by John Lamb (L) 1627 W. Main St. STE 101 Bozeman, MT 59715" and that "I will stamp all my signs with that information from this day forward". The email additionally stated that "My campaign signs are entirely self-funded except for the amounts I've reported" but did not provide a total cost for the signs nor the number of signs purchased. (Commissioner's Records.)

Finding of Fact No. 5: On April 20, 2020, candidate Lamb filed his initial C-5 campaign finance report, dated March 5, 2020 through March 20, 2020. This report did not disclose any contributions received or any expenditures made by candidate Lamb. This report was due on March 20, 2020. (Commissioner's Records.)

Finding of Fact No. 6: On April 20, 2020, candidate Lamb timely filed a periodic C-5 campaign finance report, dated March 21, 2020 through April 20, 2020. This report did not disclose any contributions received or expenditures made by candidate Lamb. (Commissioner's Records.)

Finding of Fact No. 6A: On August 6, 2020, candidate Lamb filed an amended version of his March 21, 2020 through April 20, 2020 C-5 campaign finance report. This amended version of the report disclosed one monetary contribution from himself in the amount of

\$4,000.00, given an additional in-kind description of “campaign materials”. (Commissioner’s Records.)

Finding of Fact No. 7: On May 18, 2020, candidate Lamb timely filed a periodic C-5 campaign finance report, dated April 21, 2020 through May 20, 2020. This report disclosed candidate Lamb as receiving three monetary contributions from individual contributors totaling \$410.00, as well as one in-kind contribution for a “Voter’s List” valued at \$180.00 from an individual contributor. This report did not disclose any expenditures made by candidate Lamb. (Commissioner’s Records.)

Finding of Fact No. 7A: On August 6, 2020, candidate Lamb filed an Amended version of his April 21, 2020 through May 20, 2020 C-5 campaign finance report. The amended version of the report included each of the four contributions originally disclosed on May 18, but added two expenditures: one at \$119.65 to an entity named Float Hosting with Purpose description of “website, domain, etc” and Platform/Subject Matter both described as “johnlambforsenate.com”, dated May 4; and one at \$2,932.50 to an entity named My Campaign Store with Purpose description of “signs, cards”, Platform “printed materials”, Quantity “300 signs, 10000 cards, 5000 door hangers”, and Subject Matter “introduction and voting”, dated May 16. (Commissioner’s Records.)

Finding of Fact No. 8: On June 18, 2020, candidate Lamb timely filed a periodic C-5 campaign finance report, dated May 21, 2020 through June 20, 2020. This report did not disclose any contributions received or expenditures made by candidate Lamb. (Commissioner’s Records.)

Finding of Fact No. 8A: On August 6, 2020, candidate Lamb filed an amended version of his May 21, 2020 through June 20, 2020 C-5 campaign finance report. This amended version of the report did not disclose any contributions received by candidate Lamb, but did disclose one expenditure made at \$57.02 to Amazon with Purpose description “Labels”, Platform “for mailing cards”, Quantity “two packets”, and Subject Matter “voter’s addresses”, dated June 16. (Commissioner’s Records.)

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DISCUSSION

The Commissioner examines each of the allegations.

Attribution

Montana law requires an accelerated review (“as soon as practicable”) of a campaign practice complaint alleging an attribution violation. Accordingly, Candidate Lamb was contacted by the Commissioner’s office upon receipt of the complaint. Candidate Lamb responded saying that the omission of an attribution was an oversight. Candidate Lamb followed up the conversation with the COPP with an email taking responsibility for the oversight and detailing corrective measures taken.

The law governing complaints of failure to properly attribute political brochures provides precise directions to the Commissioner:

1. The Commissioner is to immediately assess the merits of the attribution Complaint. §13-35-225(5), MCA. The Commissioner found merit to the attribution Complaint and hereby memorializes that finding.
2. The Commissioner shall notify the candidate of the merit finding, requiring the Candidate to bring the material into compliance. §13-35-225(6)(a), MCA. The COPP, by both telephoning Candidate Lamb and providing Notice of Non-compliant Election Communication, did this and hereby memorializes the Notice.
3. The Candidate is provided 2 business days to bring the material into attribution compliance §13-35-225(6)(a)(ii), MCA.

Under Montana law the Candidate with the attribution deficiency is relieved of a campaign practice violation, provided he promptly carries out the attribution correction as promised. Candidate Lamb has met these duties (FOF No. 4) and is therefore relieved of a campaign practice violation under §13-35-225(6), MCA.

Reporting the Expenditure

The second allegation raised in this Complaint is that candidate Lamb failed to report the purchase of his campaign yard signs as an expenditure on campaign finance reports filed with the COPP. Mont. Code Ann. §13-37-225(1) requires candidates file periodic reports disclosing contributions received and expenditures made by the candidate or candidate's campaign. Mont. Code Ann. §13-37-229 details the specific reporting and disclosure requirements for campaign contributions received or expenditures made.

On his April 20 campaign finance report covering the period of March 21-April 20, 2020, candidate Lamb did not disclose any campaign contributions received (FOF No. 6). Candidate Lamb filed an amended version of this report August 8, 2020, which disclosed that he made a personal monetary contribution of \$4,000.00 to his campaign during this reporting period (FOF No. 6A).

Mont. Code Ann. §13-37-229(1)(b) and (c) states that candidates must report "the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of \$35 or more" to the campaign in addition to "the aggregate amount of contributions made by that person within the reporting period". By not disclosing his personal contribution of \$4,000.00 to the campaign on a campaign finance report for the period of March 21-April 20 prior to this Complaint being filed, candidate Lamb failed to timely and accurately report all campaign contribution information as required by statute.

Sufficiency Finding No. 1: Candidate Lamb failed to timely report a personal contribution to his campaign

The Commissioner finds Candidate Lamb failed to timely disclose a personal contribution of \$4,000.00 to his campaign, a Montana campaign finance and practice violation.

Candidate Lamb's May 18 campaign finance report covering the dates of April 21-May 20 did not disclose any campaign expenditure activities (FOF No. 7). Candidate Lamb did file an amended version of this report on August 6, which disclosed that two campaign expenditures were made during this reporting period, totaling \$3,052.15. One expenditure was for candidate Lamb's purchase of the domain name for his campaign website, with the other being his purchase of 300 campaign yard signs, 10,000 cards, and 5,000 door hangers (FOF No. 7A).

Mont. Code Ann. §13-37-229(2)(a)(i) requires that candidates report "the full name, mailing address, occupation, and principal place of business, if any, of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person", while subsection (iii) additionally requires disclosure of "the total sum of expenditures made by a political committee or candidate during the reporting period". Candidate Lamb violated the requirements of this statute by omitting each of these two expenditure activities on the relevant campaign finance report prior to receipt of this Complaint.

Candidate Lamb's June 18 campaign finance report covering the dates of May 21-June 20 did not disclose any campaign expenditure activities (FOF No.

8). Candidate Lamb filed an amended version of this report on August 6, which disclosed one campaign expenditure of \$57.02 was made during this reporting period (FOF No. 8A). Candidate Lamb violated the requirements of §13-37-229(2), MCA by failing to include this expenditure on the relevant campaign finance report prior to receipt of this Complaint.

Sufficiency Finding No. 2: Candidate Lamb failed to timely report three campaign expenditures on his May 20 and June 20, 2020, campaign finance reports

The Commissioner finds candidate Lamb failed to timely disclose three campaign expenditures in violation of §13-37-229(2), MCA. The Commissioner notes candidate Lamb filed amended campaign finance reports disclosing all contributions received and expenditures made in response to this matter.

Other Issues

Once a complaint is filed the Commissioner “shall investigate any other alleged violation ...” §13-37-111(2)(a), MCA. This investigative authority includes authority to investigate “all statements” and examine “each statement or report” filed with the COPP. §13-37-111, 123 MCA. The Commissioner is afforded discretion in exercising this authority. *Powell v. Motl*, OP-07111, Supreme Court of Montana, November 6, 2014 Order.

A review of the candidate’s campaign finance reports indicate candidate Lamb filed his March 20, 2020 campaign finance report on April 20, 2020, 31 days late, a violation of Mont. Code Ann. §13-37-226(1)(b), (FOF No. 5).

Sufficiency Finding No. 3: Candidate Lamb failed to timely report his initial campaign finance report, due March 20, 2020. Candidate Lamb filed the initial report on April 20, 2020, 31 days late.

The Commissioner finds candidate Lamb failed to timely file his initial campaign finance report due March 20, 2020 and filed April 20, 2020, 31 days late, a Montana campaign finance and practice violation.

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 John Lamb 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*

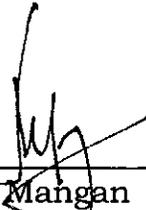
Matters of Vincent, Nos. COPP-2013-CFP-006, 009 (discussing excusable neglect principles). Likewise, the Commissioner does not normally accept that failures to file or report be excused as *de minimis*. *Id.* (discussing *de minimis* principles).

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 John Lamb. 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(1)(b), 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 14th day of August 2020.



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