

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Baker, et al. v. Anderson No. COPP 2014-CFP-017	Summary of Facts and Finding of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act
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On April 22, 2014, Christopher Hindoien, Chair of the Teton County Republican Central Committee (TCRCC), filed a complaint with the Commissioner of Political Practices against James Anderson, the Registered Agent of the Teton County Republican Shrimp Peel Incorporated (TCRSP, Inc.), a newly formed corporation. On April 25, 2014, Mr. Hindoien rescinded the original complaint in the name of the TCRCC, and a new complaint was filed on the same day by Vicki Baker, former treasurer of the TCRCC. Ms. Baker adopted the same allegations against Mr. Anderson as those contained in Mr. Hindoien's complaint. On April 30, 2014, Ms. Baker also provided the notarized signatures of six more individuals joining in making the complaint. On May 2, 2014, Mr. Hindoien added his signature to the complaint.

The complaint alleges that James Anderson violated Montana campaign finance and practice laws by:

1. Failure to register as a political committee, citing ARM 44.10.327;
2. Failure to properly attribute as a political committee in advertisements, Facebook, and YouTube, citing § 13-35-225, MCA;

3. Making illegal corporate contributions to candidates, citing § 13-35-227, MCA; and
4. Failure to include proper disclaimers on election materials funded by anonymous contributors, citing § 13-35-237, MCA.

SUBSTANTIVE ISSUES ADDRESSED

The substantive areas of campaign finance law addressed by this decision are: 1) the requirement that political committees register and report with COPP; 2) the prohibition against corporate contributions to candidates; and 3) reporting and disclosure, including attribution of source of funding of election material.

FINDINGS OF FACTS

The foundation facts necessary for this Decision are as follows:

Finding of Fact No. 1: The Teton County Republican Central Committee (TCRCC) has been registered with the Commissioner of Political Practices Office (COPP) as a Political Party Committee since at least 2003. (COPP available records).

Finding of Fact No. 2: For the past two decades TCRCC has held an annual fundraising event known as the “Shrimp Peel.” The Shrimp Peel is a shrimp dinner and gathering for local and regional Republicans and candidates. COPP campaign finance report records for TCRCC go as far back as 2004 and the committee has reported Shrimp Peel expenditures for each year, including rent for the event site, advertising, food, servers, bar beverages, and supplies. (COPP records).

Finding of Fact No. 3: TCRCC held the Shrimp Peel event in the “Pavilion,” a public building in Choteau available for rent for various functions. (COPP records).

Finding of Fact No. 4: Through 2009 TCRCC's campaign finance reports were signed each year by Joyce Curtis as treasurer. (COPP records).

Finding of Fact No. 5: From 2010 through 2013, TCRCC's campaign finance reports were signed by Vicki Baker, as treasurer. (COPP records).

THE TWO 2014 TETON COUNTY "SHRIMP PEEL" EVENTS

Teton County, Montana is strongly Republican in political orientation, voting an unblemished Republican slate in the 2014 general elections. (SOS website). As shown below, the more contested 2014 election in Teton County was the Republican Party primary election.

For the past several decades the Teton County Republican Party has held an annual social and political event called a "Shrimp Peel", named after the shrimp buffet meal that is part of the event. In 2014 for the first time Teton County Republicans held two, competing shrimp peel events. The findings of fact related to the two shrimp peel events are as follows:

Finding of Fact No. 6: On January 23, 2014, Christy Clark, the incumbent representative representing Teton County at the Montana legislature, filed as a Republican candidate for House District (HD) 17 (Teton County) in the 2014 election. Ms. Clark listed Vicki Baker as treasurer of her campaign. (COPP records)

Finding of Fact No. 7: At the time of filing Ms. Clark and Ms. Baker were both members of TCRCC. (COPP records).

Finding of Fact No. 8: On February 4, 2014, TCRCC submitted its end of year (2013) finance report to the COPP. The report listed expenses for the 2013 TCRCC Shrimp Peel and was signed by Vicki Baker as treasurer for TCRCC. (COPP records).

Finding of Fact No. 9: Sometime in February TCRCC scheduled its 2014 shrimp peel event to occur in April of 2014, in advance of the primary election. (Choteau Acantha newspaper).

Finding of Fact No. 10: On March 11, 2014, Vicki Baker submitted two separate letters: 1) resigning as treasurer for TCRCC, and 2) resigning as treasurer for Christy Clark's 2014 HD 17 campaign. Vicki Baker said she was doing so because of "the friction and disunity caused by Jim Anderson and other members of the central committee..." (COPP records).

Finding of Fact No. 11: On March 13, 2014, James (Jim) Anderson submitted a C-1 Statement of Candidate form to the COPP to run as a Republican candidate for HD #17, meaning that Mr. Anderson was running in the Republican primary election against Ms. Clark. (COPP records).

Finding of Fact No. 12: Candidate Anderson and Candidate Clark were both members of TCRCC at the time that Anderson filed as a candidate running in the primary election against Clark. (COPP records, Investigator's notes).

Finding of Fact No. 13: Sometime in early March TCRCC met and voted to postpone the shrimp peel until after the primary election. Jim Anderson was present at that meeting. New TCRCC treasurer and sister of Jim Anderson, Tammie Baker, was the only committee member in attendance who voted to keep the event scheduled for April. (Investigative notes).

Finding of Fact No. 14: On March 28, 2014, Mr. Anderson filed legal papers creating a non-profit corporation called the "Teton County Republican Shrimp Peel" (TCRSP, Inc.). James E. Anderson of Choteau, MT is listed as the Registered Agent. TCRSP, Inc. is currently active and in good standing. (Montana Secretary of State's Office, Montana Department of Revenue).

Finding of Fact No. 15: On April 5, 2014, Jim Anderson through his corporation (TCRSP, Inc.) held a "Shrimp Peel" event in Choteau, MT. Mr. Anderson advertised the event as "The Teton County Republican Shrimp Peel." Mr. Anderson held his event at the Choteau "Pavilion" where the TCRCC's traditional event took place every April since the mid-1980s. (Choteau Acantha newspaper, COPP records.)

Finding of Fact No. 16: TCRCC scheduled and held its Shrimp Peel on May 2, 2014. The TCRCC advertised its event as "The 'Real' Peel." (Choteau Acantha newspaper).

These basic facts establish that there were competing candidates and groups of people within the Teton County Republican Party. The facts further establish that the competing groups each held a separate shrimp peel event.

DISCUSSION

The complaint alleges that Mr. Anderson's Teton County group (TCRSP, Inc.) held its April 5, 2014 shrimp peel event (FOF No. 14) without properly reporting or disclosing the finances of the event. The following facts were found:

Finding of Fact No. 17: The TCRSP, Inc. shrimp peel event took in at least \$4,410 (\$30 each from 147 people) from admission charged at the door. (Investigator's notes)¹

Finding of Fact No. 18: The TCRSP, Inc. has not registered as a political committee with the Commissioner of Political Practices, and has therefore not filed any campaign finance reports. (COPP records).

These two facts form the core of the complaint in this Matter. Montana law defines an electoral contribution as including: "[t]he purchase of tickets or admissions to...dinner, luncheons, cocktail parties, and rallies held to support or oppose a candidate, issue, or political committee." ARM 44.10.321. A \$30 admission ticket to the TCRSP, Inc. shrimp peel event therefore became an electoral contribution under Montana law if the event was held "to support or oppose a candidate..."

1. The Shrimp Peel Event Was a Electoral Event

Jim Anderson and the TCRSP, Inc. self-determined that its activity

¹ To date James Anderson, the TCRSP, Inc. and its lawyer, Chris Gallus, have refused to produce any records of TCRSP, Inc. or the April 5, 2014 shrimp peel event.

was outside of ARM 44.10.321 as it did not register as a political committee with the COPP (FOF No. 17). Vicki Baker and seven other members of the TCRCC object and complain that the TCRSP, Inc. shrimp peel event was an electoral event requiring that TCRSP, Inc. register as a political committee, subject to the attribution, reporting and disclosure requirements of Montana's campaign practice laws. Mr. Anderson responds that the shrimp peel event was a pre-primary politically neutral community gathering open to all Republican primary election candidates, accompanied by a \$30 charge for admission that simply covered the cost of the food and beverages supplied at the event.

The Commissioner now examines the merit of Mr. Anderson's response. First, Mr. Anderson claims that the \$30 admission to the TCRSP, Inc. shrimp peel event was not a contribution because the event was politically neutral as "there was no effort to support or oppose any candidate or issue." The Commissioner's investigator, however, reviewed the 1 hour and 51 minute video² recording of the speeches made at the TCRSP, Inc. shrimp peel event. The Commissioner looks to the transcript produced by the investigator and determines that the TCRSP, Inc. shrimp peel event emcee (Clark Fee) and Mr. Anderson spoke in opposition to the candidacy of Christy Clark, Republican primary candidate for HD 17. Mr. Anderson was opposing Ms. Clark in the HD 17 Republican primary. (FOF Nos. 6 and 11). The opposition to Ms.

² The video recording has been removed for viewing by the public. The COPP, however, made a transcript of the event before the recording was removed for viewing.

Clark's HD 17 primary election candidacy, alone, makes the TCRSP, Inc. shrimp peel event a "support or oppose" event triggering contribution inclusion under ARM 44.10.321.

Further, the Commissioner determines that both Mr. Anderson and Mr. Fee spoke against the candidacy of Llew Jones and in favor of the candidacy of Joe Large. Mr. Jones and Mr. Large were competing Teton County primary election candidates for the Republican nomination for election from SD 9. For example, Mr. Fee introduced Mr. Large as "...the man who is going to make beef stew out of Llew, make no bones, he is going to beat Llew Jones..." Neither Candidate Clark nor Candidate Jones were present at the event.³ The opposition to Mr. Jones's SD 9 primary election candidacy makes the TCRSP, Inc. shrimp peel event a "support or oppose" event triggering contribution inclusion under ARM 44.10.321.

Still further, the Commissioner determines that the TCRSP, Inc. shrimp peel event presented one faction of the Republican Party. The TCRSP, Inc. shrimp peel event's keynote speaker was state Senator Art Wittich, one of the leaders of the "conservative" Republican faction that was openly urging defeat of the "moderate" Republicans like Candidates Clark and Jones.⁴ The opposition by conservative Republicans to the 2014 primary election candidacy of moderate Republicans makes the

³ Candidate Christy Clark states that she was not invited to Anderson's event.

⁴ On March 17, 2014, Mr. Anderson started a Facebook Page titled "*Jim Anderson, the conservative choice Republican, Jim Anderson: the conservative choice for Montana, HD 17, Political Organization.*" (COPP records).

TCRSP, Inc. shrimp peel event a “support or oppose” event triggering contribution inclusion under ARM 44.10.321.

Based on these facts the Commissioner finds as follows:

Sufficiency Finding No. 1: The Commissioner determines that sufficient facts exist to show that the TCRSP, Inc. shrimp peel event supported or opposed certain 2014 Teton County Republican primary election candidates, making admission tickets electoral contributions under ARM 44.10.321.

In making this Finding the Commissioner further notes that the shrimp peel event had a decade’s long history of treatment as a local Republican Party electoral fundraising event, with reporting and disclosure of all event contributions and expenses (FOF Nos. 1 through 6). Anderson embraced this history by appropriating the shrimp peel name (FOF No. 14). As shown above, Anderson did not structure the event as a politically neutral “League of Women Voters” style information event, but instead made the event even more political than a normal Republican Party fundraiser by displaying one side of the factions within the Republican Party just in advance of the 2014 Republican primary election. Anderson’s argument and position are wrong and are rejected by Sufficiency Finding No. 1.

Further, the Commissioner notes that Mr. Anderson represents that the TCRSP, Inc. shrimp peel event “lost” money.⁵ Any such “loss” circumstance is not important however as the event took in contributions and made expenditures for electoral purposes and those need be

⁵ The Commissioner does not accept this representation as Mr. Anderson, through his attorney, refused to produce any records of the shrimp peel event or TCRSP, Inc.

reported and disclosed in full regardless of profit or loss. If this were not the case then every campaign could claim it would not have to report rallies and events that “cost” the campaign money. This is exactly why the language of ARM 44.10.321 requires reporting and disclosure for “...dinners, luncheons, cocktail parties, and rallies held to support or oppose a candidate, issue, or political committee....”

2. TCRSP, Inc. Failed to Register, Report or Disclose

Having sponsored an electoral event with unquestioned contribution and expenses TCRSP, Inc. became a political committee (§13-1-101(22) MCA) and, accordingly, was required to register within 5 days of making its first expenditure or taking in its first contribution for the shrimp peel event. (§13-37-201 MCA)

TCRSP, Inc. and/or Mr. Anderson somehow self-determined that it was outside of the reach of Montana campaign practice law that groups representing so many other civic minded Montanans, including the TCRCC, strive to follow. As a result, TCRSP, Inc. has not reported or disclosed any of the campaign finance information as required by (§13-37-225, 226 MCA).

Sufficiency Finding No. 2: The Commissioner determines that sufficient facts exist to show that TCRSP, Inc. failed to register as a political committee as required by §13-1-101(22) and §13-37-201 MCA.

Sufficiency Finding No. 3: The Commissioner determines that sufficient facts exist to show that TCRSP, Inc. failed to attribute, report and disclose as required by §§13-37-225, 226 MCA.

As explained further below, Sufficiency Findings No. 2 and 3 apply equally to Mr. Anderson, as to TCRSP, Inc.

3. TCRSP, Inc. and Its Attorney Failed to Keep or Provide Records

Montana's campaign practice laws were examined and dissected by federal courts following the 2010 U. S. Supreme Court decision in the famous *Citizens United* case.⁶ The holdings and comments in the *Citizens United* decision were followed by 3 years of federal court litigation in Montana. Judicial intervention by federal courts into Montana's campaign practice laws was observed to be extensive so as to become "...the most significant federal constitutional intervention in Montana politics..." in the last 50 years.⁷

Federal Court intervention following the *Citizens United* ruling included rulings that invalidated Montana's: ban (since 1912) on corporate independent expenditures⁸; ban (since 1935) on political party endorsement of judicial candidates;⁹ requirement of accurate reporting of a candidate's voting record,¹⁰ political civil liability cause of action,¹¹ and ban on religious or corporate directives to vote in a certain way.¹²

It is notable, then, that even with the momentum of interventionist judicial scrutiny, Montana's Federal Courts unquestionably sustained the constitutionality of Montana's political committee registration and disclosure requirements finding that "...the public's interest in

⁶ *Citizens United v. Fed. Election Comm.* 130 S. Ct. 876 (2010).

⁷ Johnstone, *Montana Law Review*, Vol. 74, p. 707.

⁸ *American Tradition Partnership v. Bullock*, 132 S. Ct. 2490 (2012).

⁹ *Sanders County Republican Party v. Bullock*, 698 F3d 741 (9th Cir, 2012).

¹⁰ *Lair v. Murray*, 871 F. Supp. 2d. 1058 (D. Mont. 2012).

¹¹ *Id.*

¹² *Zastrow v. Bullock*, No-CV-18-BLG-RFC, 2012 WL 3066362 (D. Mont. 2012)

transparent political funding outweighs the minimal burden the incidental disclosure requirements impose...”*Nat’l Ass’n for Gun Rights, Inc. v. Murry*, CV-12-95-H-DLC (D. Mont.), 2013 U. S. Dist. Lexis 132922, ¶18. There is no legal excuse for TCRSP Inc.’s failure to register, attribute, report and disclose.

Consistent with transparency Montana campaign practice law requires that political committees maintain a campaign depository (§13-37-205), deposit contributions in a depository (§13-37-207), appoint a treasurer (§13-37-201) and keep records through the treasurer (§13-37-208). TCRSP, Inc. was such a political committee and it should have engaged in transactions through a depository and treasurer so as to insure that transparency was met, as required by law.

Sufficiency Finding No. 4: The Commissioner determines that sufficient facts exist to show that TCRSP, Inc. failed to engage a depository, treasurer and record keeping required by §§13-37-201, 205, 207, and 208 MCA.

As a corollary to the record keeping requirements, the Commissioner next addresses the actions of Jim Anderson and his attorney Chris Gallus in regard to production of requested records. The Commissioner is provided the authority to “inspect any records, accounts or books that must be kept...” pursuant to the Montana campaign practice act. §13-37-111 MCA. The Commissioner may act within the authority provided by statute or regulation. *Powell v. Motl*, OP-071111, Supreme Court of Montana, November 6, 2014 Order.

The Commissioner, within the authority of law, requested access to the records and accounts of the shrimp peel event.¹³ Those records were refused, first by Mr. Anderson and then again directly by his attorney Chris Gallus. Their reasons offered for this refusal was that TCRSP, Inc. was a “corporation” and did not have to provide these records and that there was no express advocacy triggering reporting and disclosure. The Commissioner has determined that these refusals were taken without a reasonable basis in fact or law. Accordingly, the Commissioner determines:

Sufficiency Finding No. 5: The Commissioner determines that sufficient facts exist to show that TCRSP, Inc. and/or Jim Anderson illegally refused a request for documents and information made under the authority of §13-37-111 MCA and associated law.

4. TCRSP, Inc. Engaged in Illegal Corporate Contributions

Under Montana law a corporation “may not make a contribution or an expenditure in connection with a candidate...” §13-35-227 MCA. That is exactly what TCRSP, Inc. and/or Jim Anderson did in this Matter and that is in violation of Montana law.

Montana has a constitutionally sound, minimally burdensome system of political committee registration and reporting. The shrimp peel event could have formed, registered, reported and disclosed under the political committee structure thereby providing transparency and

¹³ The Commissioner’s request included the issuance of a subpoena demanding the records and documents. Jim Anderson, TCRSP, Inc. and Chris Gallus refused to honor the request and the subpoena.

promoting civic involvement with that transparency. It is hard to imagine what sort of “in the bunker” mentality would attempt a corporate based approach to an event that was so unquestionably an electoral event triggering registration, reporting and disclosure. But, that is exactly what happened. To the extent possible the Commissioner will limit the implications of this approach to the people responsible, including Jim Anderson, and avoid tying any issue to candidates.

Sufficiency Finding No. 6: The Commissioner determines that sufficient facts exist to show that TCRSP Inc., acting through Jim Anderson, made a contribution or expenditure in connection with a candidate in violation of §13-35-227 MCA.

5. Jim Anderson and John or Jane Does

The Commissioner determines that Jim Anderson is personally involved in each of the sufficiency decisions made in this matter and is therefore personally responsible to the same extent that TCRSP, Inc. is responsible. The Commissioner further determines that currently unknown individuals (John and Jane Does) may also be responsible for one and/or more of the sufficiency decisions and are therefore also personally liable. The Commissioner intends to add the names of these individuals as the same are discovered in further action in this Matter.

FINDINGS OF CAMPAIGN PRACTICE VIOLATION

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must make act on a complaint as the law mandates that the Commissioner (“shall investigate,” *See*, §13-37-111(2)(a) MCA) investigate any alleged violation

of campaign practices law. The mandate to investigate is followed by a mandate to take action as the law requires that if 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. In this Matter Montana’s attribution and campaign finance report filing requirements are mandatory: “must ... include” (§13-35-225 MCA) and “shall file” (see §13-37-201 MCA). The filing date requirements are date certain. Therefore, any failure to meet a mandatory, date-certain filing date is a violation of §13-37-201 MCA. Likewise, the campaign finance report filing is mandatory: “...shall file a statement of organization...” §13-37-226 MCA.

This Commissioner, having been charged to investigate and decide, hereby determines that sufficient facts exist to show that TCRSP, Inc., Anderson and Gallus have, as a matter of law, committed a violation of Montana’s campaign practice laws, including §§13-35-225, 37-201 and 37-226 MCA. Further, the Commissioner directs Mr. Anderson to promptly register TCRSP, Inc. as a political committee and file the required campaign finance reports. Failure to file a required statement or report also triggers the candidacy prohibition of §13-37-126 MCA.

Having determined that a campaign practice violation has occurred, 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.

Excusable neglect does not apply since Mr. Anderson intended to act as he did in creating and using TCRSP, Inc. Ignorance of the law is not an excuse as excusable neglect generally requires justification for error beyond mere carelessness or ignorance of the law. *Empire Lath & Plaster, Inc. v. American Casualty Co.*, 256 Mont. 413, 417, 847 P.2d 276, 278 (1993). See discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009.

The principle of *de minimis* also does not apply to excuse the violation in this Matter. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. The requirement that TCRSP, Inc. file as a political committee, fully attribute and report is designed to provide information to the public via the publicly available statement of organization and a proper attribution.

Because there is a finding of sufficient showing of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil adjudication and/or a civil fine is justified (see §13-37-124 MCA). This Commissioner hereby, through this decision, issues a “sufficient evidence” Finding and Decision justifying civil prosecution under §13-37-124 MCA. This matter will now be submitted to (or “noticed to”)¹⁴ the Lewis and Clark County attorney for his review for appropriate civil action (see §13-37-124(1) MCA). Should the County Attorney waive the right to adjudicate (§13-

¹⁴ Notification is to “...the county attorney in which the alleged violation occurred...” §13-37-124(1) MCA. The failure to attribute occurred in Teton County and the failure to file occurred in Lewis and Clark County. This Commissioner chooses to Notice this matter to the county attorney in Lewis and Clark County.

37-124(2) MCA) or fail to initiate civil action within 30 days (§13-37-124(1) MCA) this Matter returns to this Commissioner for possible adjudication.

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 this Matter is waived back, the Finding and Decision in this Matter does not necessarily lead to civil adjudication 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 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 Chapter 37, including those of §13-37-226. [See 13-37-128 MCA]. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

In regard to any such a fine the Commissioner has discretion to determine if mitigation is appropriate to reduce a fine based on the explanation of why a violation occurred or circumstances of payment. *See In the Matter of the Complaint of MacLaren, COPP-2011-CFP-012*. Mitigation means “abatement or diminution of a penalty or punishment imposed by law.” *Black’s Law Dictionary, Revised 4th Addition*.

CONCLUSION

Based on the preceding discussion as Commissioner I find and decide that there is sufficient evidence to show that John Doe, Jane Doe, Mr. Anderson, and/or TCRSP, Inc. violated Montana's campaign practices laws under the analysis set out above.

DATED this 19th day of November, 2014.



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