

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Buyan v. Schulz  No. COPP 2016-CFP-037	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On October 19, 2016, Peggy Buyan of Sheridan, Montana filed a complaint against David Schulz of Sheridan, Montana for failing to properly report and disclose certain campaign contribution information.

**Discussion**

The Complaint alleges that Mr. Schulz, as a 2016 Candidate for public office in Montana, failed to timely report and disclose expenses and contributions involved in his campaign for election to public office.

Finding of Fact No. 1: Madison County operates under a County Commission form of government with three county commissioners elected, each from one of three districts. The County seat, and Commissioners' office, is located in Virginia City, Montana. (Madison County Website.)

Finding of Fact No. 2: David Schulz currently serves as a Madison County Commissioner from District 1. (Madison County Website.)

Finding of Fact No. 3: Daniel Allhands, David Schulz and Ellis Thompson were 2016 primary election candidates for election to Madison County Commissioner, District 1. The candidates received 2016 primary election votes as follows: Allhands (463), Schulz (441) and Thompson (199). As the two top primary election vote getters Candidates Allhands and Schulz pass on as candidates in the 2016 general election for Madison County Commissioner, District 1. (Montana Secretary of State (SOS) webpage, 2016 primary election results.)

Under Montana law a candidate for local government office, including Candidate Schulz, does not need to file campaign finance reports with the COPP, so long as campaign financial activity (that is both expenses and contributions) does not exceed \$500. §13-37-226(3), MCA.<sup>1</sup> Candidate Schulz, however, exceeded the \$500 limit and filed campaign finance reports.<sup>2</sup>

Finding of Fact No. 4: Candidate Schulz filed campaign finance reports on May 26, July 18 and October 4, 2016 disclosing contributions and expenditures to his campaign. (COPP records.)

Finding of Fact No. 5: Candidate Schulz's campaign finance reports do not disclose any expenses or debt for ads placed in the *Madisonian*. (COPP records.)

The Complaint alleges that the campaign finance reports filed by Candidate Schulz did not (FOF No. 5) but should have disclosed the cost of campaign ads that ran in a local newspaper, the *Madisonian*. The Commissioner's investigator spoke to Candidate Schulz's treasurer who confirmed that there was a primary election debt of \$447.75 plus a general election debt of \$244.80

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<sup>1</sup> Candidate Schulz initially checked the box (B Box) on his Statement of Candidacy pledging to spend under \$500.

<sup>2</sup> Candidate Schulz late filed his initial campaign finance report (Yency v. Schulz COPP-2016-CFP-033), paying a \$100 fine for the violation.

for campaign ads placed in the Madisonian.

Sufficiency Finding No. 1: The Commissioner finds that there are sufficient facts to show that Candidate Schulz did not timely report the expense of certain campaign advertising in the Madisonian.

In general, timely reporting and disclosure must include “the amount and nature of debts and obligations owed” by the campaign at the end of the reporting period. (§13-37-229(2)(a)(iv), MCA.) Further, “[i]f the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported.” (44.11.506, ARM.) Past Commissioners have applied these laws to require that campaigns “estimate their debts when they are incurred”, not after an election when the bill is paid, *Akey v. Clark*, March 26, 1999 (Commissioner Vaughey); because “the public has a right to full disclosure of all debts and estimated debts incurred by a candidate during the appropriate reporting periods.” *Ream v. Bankhead*, September 10, 1999 (Commissioner Vaughey). Campaign reporting of debt includes debt owed for services, advertisements and campaign expenses in general (*Wilcox v. Raser*, May 26, 2010 (Commissioner Unsworth); *Williams v Andersen*, COPP 2014-CFP-035 (Commissioner Motl) and even the expenses owed musicians (*Hardin v. Ringling* 5, December 17, 2012 (Commissioner Murry). Less than a month ago the Commissioner found a campaign practice violation for failure to report the contracted debt owed for billboard space. *Krause v. Safe Montana*, COPP-2016-CFP-028.

The Commissioner notes that Candidate Schulz and his treasurer have apologized, explaining that they thought that disclosure was required based on the date of payment, rather than the date of obligation. They did not quarrel with the disclosure law set out above once its purpose was explained to them. The Schulz Campaign has already filed amended campaign finance reports correcting the error. Candidate Schultz's forthright manner of dealing with this Complaint will be a factor in the mitigation of the fine assessed in this Matter.

### **ENFORCEMENT OF SUFFICIENCY FINDINGS**

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 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. This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence, as set out in this Decision, to show that Candidate Schulz's 2016 campaign for election to the Madison County Commission from District 1 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 discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009. Likewise, the Commissioner does not normally accept that failures to file or report be excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009.

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to Sufficiency Finding 1, 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 Schulz. Because of the nature of the violations (the failure to 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. *Id.*

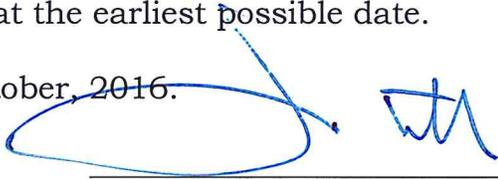
Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that this Matter is waived back, the Finding and Decision in this

Matter does not necessarily lead to civil 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 fact that the candidate named in the sufficiency finding was forthright in describing his campaign activity.

While it is expected that a mitigated fine amount will 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 §13-37-226 MCA. (See §13-37-128, MCA.) Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

This Decision is simultaneously released to the press, public and the parties. Montanans are already voting on the Initiative addressed in this Decision requiring a full release at the earliest possible date.

DATED this 24th day of October, 2016.



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