

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Caferro v. Cooper No. COPP 2016-CFP-033	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On October 7, 2016, Mary Caferro of Helena, Montana filed a complaint against Ruth (Caron) Cooper of Livingston, Montana for failing to properly report and disclose certain campaign contribution information.

Discussion

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

Finding of Fact No. 1: The Montana Public Service Commission (PSC) is an agency of Montana State Government. The PSC is run by an elected Board of five Commissioners. (PSC Website.)

Finding of Fact No. 2: Ruth (Caron) Cooper is a 2016 Independent candidate for election as a PSC Commissioner from PSC District No. 3. Also running for 2016 election to serve as PSC District No. 3 Commissioner are Roger Koopman

(R) and Pat Noonan (D). (Montana Secretary of State Website.)

Under Montana law a candidate for state district government office, including Candidates for seats on the PSC, must file campaign finance reports with the COPP on the 35th and 12th day before election and the 20th day following the election. §13-37-226(2), MCA. Montana's 2016 primary election was held June 7, 2016 thus requiring that Candidate Cooper file both a 35-day pre-primary (due May 3, 2016) and a 12-day pre-primary election report (due May 26, 2016) as well as a 20-day post-primary election report (due June 27, 2016).

Finding of Fact No. 4: Candidate Cooper timely filed the information required in the 35-day pre-primary campaign finance report (due May 3, 2016) on May 2, 2016 and the 12-day pre-primary campaign finance report (due May 26, 2016) on May 22, 2016. Candidate Cooper, however, did not file separate campaign finance reports but instead filed a composite report, amending an earlier filed campaign finance report at each reporting period. (COPP records.)

Finding of Fact No. 5: Candidate Cooper late filed the 20-day post-primary election report (due June 27, 2016) on October 6, 2016. Candidate Cooper did so by filing a single report amending an earlier filed campaign finance report. (COPP records.)

Finding of Fact No. 6: Candidate Cooper has not yet filed her 35-day pre-general campaign finance report (due October 4, 2016). (COPP records.)

Reporting and disclosure is required so that the public, press and opposing candidates understand the contribution and expenditure of funds used in support of a particular candidacy. A candidate for Montana public office, including Candidate Cooper, is required to report at the times specified in §13-37-226(2), MCA.

Sufficiency Finding No. 1: The Commissioner finds that there are sufficient facts to show that Candidate Cooper did not timely file the 20-day post-primary campaign finance reports as required by Montana law. This report was filed on October 6, 2016, that date being 102 days late.

Sufficiency Finding No. 2: The Commissioner finds that there are sufficient facts to show that Candidate Cooper has failed to timely file the 25-day pre-general campaign finance report, which was due October 4, 2016.

The Commissioner next examines the method that Candidate Cooper used in filing campaign finance reports.

Finding of Fact No. 7: Candidate Cooper has filed campaign finance reports that combine and merge information from past and current campaign finance reporting periods into a composite report (FOF No. 4), doing so by amending a previously filed report. (COPP records.)

Candidate Cooper's method of filing campaign finance reports does not comply with Montana law explicitly defining the time periods covered: "reports must cover the period of time from the closing of the previous report to five days before the date of filing of [the next] report." §13-37-228(2), MCA.

Sufficiency Finding No. 3: The Commissioner finds that there are sufficient facts to show that Candidate Cooper has failed to file campaign finance reports in the form required by law.

Candidate Cooper may contend that her campaign finance reports provided the required information, albeit merged into information set out in prior reports. The Commissioner rejects that contention. Montana law requires period-by-period reporting. §13-37-228(2), MCA. The COPP report forms follow the law by requiring that a candidate end one reporting period with a cash-in-bank balance and begin the next reporting period with that same balance. This

period-by-period method of reporting allows the press, public and opposing candidates to track campaign activity on a reporting period basis, something that is difficult to do when all contributions and expenditures are merged into a single report without regard to reporting period.

Having found a campaign practice violation the Commissioner now considers and applies the principle of excusable neglect to this Sufficiency Decision. The Commissioner applies excusable neglect to Sufficiency Finding No. 3 because Candidate Cooper's filing of past and current reports as part of a single, merged campaign finance report was achieved through use of the CERS electronic filing system.¹ Other candidates also took this approach, using an amended campaign finance report to merge past and current reporting periods into a new campaign finance report.² Because the CERS system was first implemented in this election cycle, the Commissioner hereby excuses (dismisses) Candidate Cooper from a campaign practice violation for the deficiencies examined in the above section. This dismissal is based on the principle of excusable neglect.³ Excusable neglect principles will not be applied to excuse future campaign practice violations based on a failure to file separate, periodic campaign finance reports as required by law.⁴

¹ The COPP's electronic reporting system for candidates (CERS) allows a candidate to use the "amend" report function to prepare merged reports as Candidate Cooper did.

² At least six additional candidates filed similar campaign finance reports containing merged reporting periods (Commissioner's investigator's findings).

³ Excusable neglect was similarly applied in *Thomas v. Gianforte*, COPP-2016-CFP-001 and *MDP v. MRLCC*, COPP-2016-CFP-029.

⁴ COPP staff will work with candidates to deal with improperly merged campaign finance reports.

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 Cooper’s 2016 campaign for election to the PSC from District 3 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.

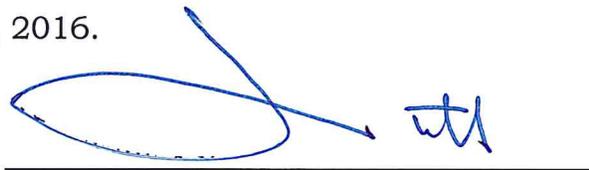
A finding of excusable neglect was made in this Decision as to Sufficiency Finding No. 3 but not as to Sufficiency Findings Nos. 1 and 2. Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to those certain Sufficiency Findings, civil/criminal prosecution and/or a civil fine is justified. §13-37-124, MCA. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying civil prosecution of Candidate Cooper. 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 or criminal 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.

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*.

DATED this 17th day of October, 2016.



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