

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Erickson v. Moore No. COPP 2014-CFP-047	Finding of Sufficient Facts to Show a Violation of Montana's Campaign Practice Act
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On October 27, 2014, Chuck Erickson, a resident of Missoula, Montana filed a complaint against David "Doc" Moore, also a resident of Missoula, Montana and a 2014 candidate for election to the Montana legislature from House District 92 (HD 92). Mr. Erickson's complaint alleged that Mr. Moore violated Montana campaign practice laws by failing to disclose the names and addresses of "pass the hat" contributors who gave over the amount of \$35.

ACCEPTANCE OF COMPLAINT FORM

Mr. Erickson's complaint is filed on an "ethics" complaint form rather than a campaign practice complaint form. The complaint signature is notarized and the body of the complaint states a recognizable campaign finance complaint. The Commissioner, consistent with the COPP policy of accepting and addressing issues raised by complaints, accepts Mr. Erickson's complaint as a campaign practice complaint.

SUMMARY OF RELEVANT FACTS

The facts necessary for this Decision are as follows:

Finding of Fact No. 1: David Moore (Republican) and Dave Strohmaier (Democrat) are candidates in the 2014 general election for election to the Montana legislature from House District 92. (Secretary of State's Website, Commissioner's records).

Finding of Fact No. 2: On October 20, 2014, Candidate Moore submitted a C-5 campaign finance report to the COPP for the period of June 19, 2014 to October 18, 2014. (Commissioner's records).

Finding of Fact No. 3: On October 27, 2014, Chuck Erickson filed a campaign finance complaint against Candidate Moore referencing Candidate Moore's October 20th campaign finance report. Mr. Erickson alleged that Candidate Moore held two "pass the hat" fundraisers that raised in excess of \$35 per person and that Candidate Moore did not disclose the contributors' names and addresses on his C-5 campaign finance report. (Commissioners records).

Finding of Fact No. 4: On October 28, 2014, COPP staff emailed a copy of the complaint to Candidate Moore. (Commissioner's records).

Finding of Fact No. 5: On October 29, 2014, Candidate Moore called the Commissioner's investigator. Candidate Moore stated to the investigator that in all the years he ran for office, he never held a "pass the hat fundraiser" until this year. Candidate Moore stated that he failed to list two other contributors: himself and the person who physically passed the hat. Candidate Moore acknowledged that even if the number of contributors changed by two, if divided by the total funds raised, it would have still exceeded \$35 per person. Candidate Moore assured the investigator he would immediately work with COPP staff to correct and amend the C-5 report. (Investigative notes).

DISCUSSION

Candidate Moore reported three general election pass-the-hat events. The events were held in Missoula restaurants on September 20, 28 and 30, 2014 (Commissioner's records).

Montana law limits the amount that could be contributed by an individual to a 2014 legislative campaign to \$170 per election. See §13-37-216 MCA with amounts adjusted for inflation by 44.10.338 ARM. Consistent with that limitation ARM 44.10.521 sets requirements for mass collections at fundraising events. The rule requires a listing of the “approximate number of individuals in attendance at the fund-raising event” (*Id.*) and it requires that the “name and amount received from each person” over \$35 be kept as a record. Past Decisions have strictly interpreted the contribution limit, holding that any funds received at a pass the hat fundraiser must be counted toward an individual’s limit. *Bongofsky v Wittich* COPP-2010-CFP-031 (Commissioner Motl); *Garver v. Tussing*, February 27, 2008, (Commissioner Unsworth).

Candidate Moore reported:

- 9 anonymous people in attendance at a 9/20/14 “pass the hat” event, with a total amount received of \$340. That contribution amount average is \$37.77 per person, an amount of excess of the \$35 limit.
- 11 anonymous people in attendance at a 9/28/14 “pass the hat” event, with a total amount received of \$355. That contribution amount average is \$32.27 per person.
- 8 anonymous people in attendance at a 9/30/14 “pass the hat” event, with a total amount received of \$338. That contribution amount average is \$41.25 per person, an amount of excess of the \$35 limit.

Candidate Moore violated Montana law when he failed to report the name, address and occupation of the contributors at the September 20 and 30, 2014 pass the hat events. ARM44.10.521, *Bongofsky v Wittich*, *Garver v. Tussing*.

Sufficiency Finding No. 1: As shown by the above listed facts there is sufficient evidence to justify civil prosecution of Candidate Moore for failing to disclose and report to the public the names and addresses of up to 17 contributors to his 2014 campaign.¹

In making this sufficiency Decision the Commissioner considered and distinguished this Matter from the dismissal issued in *Wells v. Lowy*, COPP 2014-CFP-049. This Matter involves the failure to identify contributors in a required campaign finance report, including the possibility that proper assignment of contributions might put some contributors over the allowed limits. The reporting deficiencies identified in this Matter were made in Candidate Moore's publicly filed campaign finance report and therefore constitute general harm to the public. While Candidate Moore has apologized and indicated he will promptly correct the deficiency, the delay in time causes harm that is general and cannot be fully corrected.

In contrast, the attribution deficiency in *Wells v. Lowy* was made to an identified list of 215 email addresses and it was specifically corrected as to all 215 recipients within 24 hours. The correction of the specific harm, even before the complaint was filed, allows a different decision in *Wells v. Lowy*.

ENFORCEMENT OF SUFFICIENCY FINDINGS

The Commissioner has limited discretion when making the determination

¹ The number of undisclosed contributors can vary as one contributor could have put up to \$170 in the "hat."

as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must act on, an alleged campaign practice violation 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. 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 Moore has, as a matter of law, violated Montana’s campaign practice laws, including, but not limited to §13-37-216 MCA and all associated ARMs. 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.

Candidate Moore was directly engaged in the fundraisers. Excusable neglect cannot be applied to such choices. *See* discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. Likewise, the failure to report at least 17 contributors cannot be excused as *de minimis*. *See* discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009.

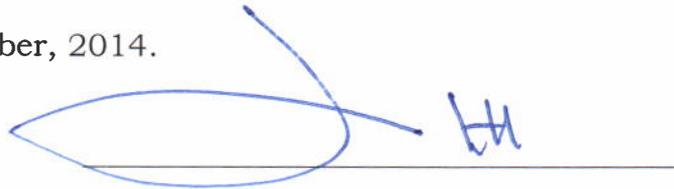
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil/criminal prosecution and/or a civil fine is justified [See §13-37-124 MCA]. This Commissioner hereby, through this decision, issues a “sufficient evidence” Finding and Decision justifying civil prosecution under §13-37-124 MCA. Because of nature of violations (the failure to report occurred at the COPP offices 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. 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 law, including those of §13-35-225(1) 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*.

At the point this Matter is returned for negotiation of the fine or for litigation, mitigation principles will be considered. The forthright acknowledgment of error by Candidate Moore is appreciated. Candidate Moore is hereby directed to file an amended campaign finance report providing the missing contributor information. Candidate Moore's actions in providing the missing information will be a factor considered as part of any mitigation discussion. See discussion of mitigation principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009.

DATED this 31st day of October, 2014.



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