

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

O'Hara v. Ponte No. COPP 2014-CFP-014	Summary of Facts and Finding of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act
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David Ponte is a resident of Bozeman, Montana. In 2012 Mr. Ponte was a candidate for election to the Montana legislature, House District 66 (HD66). Jesse O'Hara is a resident of Great Falls, Montana. On April 14, 2014, Mr. O'Hara filed a complaint with the COPP alleging that Candidate Ponte had failed to file required campaign finance reports and had failed to properly complete the campaign finance reports he did file.

SUBSTANTIVE ISSUES ADDRESSED

The substantive areas of campaign finance law addressed by this Decision concern a candidate's reporting, disclosure and record keeping obligations under Montana law.

FOUNDATIONAL FINDING OF FACTS

The foundation facts necessary for this Decision are as follows:

Finding of Fact No. 1: David Ponte was a candidate in the 2010 Republican primary election for nomination as a candidate for election to the Montana legislature from Senate District #35 (SD 35). Mr. Ponte did not win the 2010 primary election, losing to Art Wittich who went on to

win the general election for SD 35 in November of 2010 (Secretary of State (SOS) website).¹

Finding of Fact No. 2: On March 15, 2012, David Ponte filed a C1 Statement of Candidate form with the Commissioner of Political Practices Office (COPP). Mr. Ponte filed as a Republican candidate for HD #66 (Gallatin County). Mr. Ponte listed Kathy Hollenback as treasurer of his campaign. (Commissioner's records).

Finding of Fact No. 3: On June 6, 2012, a legislative primary was held and two candidates advanced to the general election for HD #66: Jennifer "JP" Pomnichowski (Democrat) and David Ponte (Republican). (Secretary of State (SOS) Website).

Finding of Fact No. 4: On November 6, 2012, a general election was held for HD#66. Ms. Pomnichowski (Democrat) defeated Mr. Ponte (Republican) with 3,270 votes to Mr. Ponte's 1,498 votes. (SOS Website).

Finding of Fact. No. 5: Mr. Ponte filed three complaints with the COPP in a three month span in 2014:

- *Ponte v. Buttrey*, COPP-2014-CFP-007. Filed February 18, 2014; On April 21, 2014 the COPP issued a Non-Sufficiency Decision dismissing the Complaint.
- *Ponte v. Gallik*, COPP-2014-CFP-009, Filed February 24, 2014; On April 30, 2014 the COPP issued a Sufficiency Decision.
- *Ponte v. MT Base et al*, COPP-2014-CFP-012. Filed April 7, 2014; On April 15, 2014 the COPP issued a partial non-sufficiency Decision dismissing a number of respondents and several of the claims. The remaining claims await a supplemental Decision.

DISCUSSION

Mr. Ponte was a 2012 candidate for election to the Montana legislature from HD 66 (FOF Nos. 3, 4). Mr. O'Hara's complaint alleges that Candidate Ponte 2012 campaign failed to comply with disclosure and reporting requirements set out in Montana law.

Candidate Ponte was required to report and disclose as Montana's campaign

¹ While he stayed on the primary election ballot, Mr. Ponte announced his "withdrawal" before the primary election and gave his support to Candidate Wittich.

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finance report filing requirements are mandatory: “shall file” (see §§13-37-225, 226 MCA). Mr. Ponte was also required to report certain information as a candidate’s campaign must disclose all contributions received (§13-37-229 MCA) and all expenditures made (§13-37-229 MCA). Each of these issues is discussed further below.

1. Filing of Campaign Finance Reports.

Montana law requires that legislative candidates file their campaign finance report “on the 12th day preceding the date on which an election is held...” and on 20th day after the election §13-37-226(3) MCA. In 2012 the 12th day preceding the June 6 primary election was May 25, 2014 and 20th day after the election was June 26, 2014. The comparable general election filing dates for campaign finance reports were October 25, 2014 and November 26, 2014 (Commissioner’s 2012 filing schedule).

Finding of Fact No. 6: On May 24, 2012, Candidate Ponte submitted his first (or pre-primary) C5 campaign finance report to the COPP for the period of March 12, 2012 to May 19, 2012. (Commissioner’s records).

Finding of Fact No. 7: On June 25, 2012, Candidate Ponte submitted his second (or post-primary) C5 campaign finance report for the period May 20, 2012 to June 20, 2012. (Commissioner’s records).

Finding of Fact No. 8: On October 30, 2012, Candidate Ponte submitted his third (or pre-general) C5 campaign finance report for the period of June 21, 2012 to October 20, 2012. (Commissioner’s records).

Finding of Fact No. 9: To date Candidate Ponte has not filed his fourth (or post-general) campaign finance report for his 2012 campaign. On May 21, 2014, apparently in response to Mr. O’Hara’s complaint, Candidate Ponte resubmitted:

- a. A C5 campaign finance report to the COPP for the period of March 12, 2012 through May 19, 2012. Candidate Ponte's report was a duplicate of the report he submitted for this same period on May 24, 2012 (See FOF No. 3).
- b. An "Amended" C5 campaign finance report to the COPP for the period of May 20, 2012 to June 20, 2012. This report was identical to the report Candidate Ponte filed June 25, 2012 (see FOF No. 6).

The Commissioner will further discuss contribution and expense reporting obligations, below. For the purposes of campaign finance report filing the Commissioner finds sufficient facts to make two sufficiency findings:

Sufficiency Finding One: Sufficient facts exist (FOF No. 8) to show that Candidate Ponte was 5 days late in filing his pre-general election campaign finance report. (Commissioner's records)

Sufficiency Finding Two: Sufficient facts exist (FOF No. 9) to show that Candidate Ponte has failed to file his post-general election campaign finance report. (Commissioner's records)

In making sufficiency findings the Commissioner determines that the two campaign finance reports filed by Candidate Ponte on May 21, 2014 do not list the post-general reporting period as a covered reporting period nor do they list contributions and expenses for such period.

2. Reporting of Contributions and expenses.

The money that supports (campaign contributions) and is spent by (campaign expenses) a candidate's campaign is subject to complete transparency, made useful to voters and the opposing candidate by an accompanying requirement of timely reporting. Montana law defines a simple,

but complete, system of dealing with and accounting for contributions and expenses:

- 1) Within 5 days of becoming a candidate, a candidate must file a certification with the COPP. (§13-37-201 MCA). That certification filing must include “one primary campaign depository.” (§13-37-205 MCA).
- 2) The campaign depository must be used to “deposit[ing] all contributions received and disburse[ing] all expenditures made by the candidate.” (§13-37-205 MCA).

Candidate Ponte’s form C-1 (the document fulfilling the requirements of (§§13-37-201, 205 MCA) was filed March 15, 2012. Candidate Ponte’s C-1 form designated Rocky Mountain Credit Union in Bozeman, Montana as his campaign’s depository.²

A. CONTRIBUTIONS

As described above, Montana law required that each and all of Candidate Ponte’s 2012 campaign contributions must be deposited into his designated campaign depository, Rocky Mountain Credit Union. Further, Montana law requires that the contributions must be deposited “prior to the 5th business day following their receipt...” (§13-37-207(1) MCA). Still further, Candidate Ponte’s campaign treasurer “shall keep detailed accounts of all contributions received...” (§13-37-208(1)(a) MCA). Candidate Ponte then “shall file periodic

² Candidate Ponte opened a “Dave Ponte HD 66” account on March 21, 2012. The Commissioner subpoenaed the RMCU account records when candidate Ponte failed to produce a complete copy of the campaign banking records.

reports of contributions...” (§13-37-225(1) MCA), according to the schedules set out above. This system, if followed, provides transparency and fairness to the public, voters and the opposing candidate.

In investigating Mr. O’Hara’s complaint the Commissioner looks to three sources of information: 1) the RMCU campaign account records; 2) the campaign accounts maintained by the campaign treasurer; and, 3) the Ponte campaign finance reports to the COPP. All three of these sources should be consistent if the disclosure and reporting is done properly.

i) The Pre-Primary Contribution Reporting Period

The Commissioner first examines contributions in the March 12 to May 19, 2012 pre-primary campaign finance reporting period:

Finding of Fact No. 10: The RMCU Candidate Ponte account records between March 12 to May 19, 2012, show a total of \$1,155 in contribution deposits as follows:

\$200 on March 21	(\$100 Peggy Hart, \$50 Glen Swope, \$50 Karlana Popwell)
\$170 on March 27	(\$120 Shawn Box, \$50 Jennifer Haley)
\$320 on March 29	(\$160 Lucas Mardock, \$160 Melissa Mardock)
\$50 on April 18	(\$50 Cheryl Roller)
\$100 on April 25	(\$50 Brenda Sunderland, \$50 Gordon Vance)
\$165 on May 4	(\$25 Matthew Monforton, \$100 Don Hart, \$40 Mary Schonsberg)
\$150 on May 22	(\$50 Glenn Swope, \$100 Connie Kirkland)

The May 22 contribution deposit is included as a pre-primary contribution even though it was made after May 19 because Candidate Ponte included those contributions in his pre-primary campaign finance report. The RMCU records do not show any deposit of cash contributions or of a deposition of a contribution made by the candidate. (Commissioner’s records).

Finding of Fact No. 11: Candidate Ponte's campaign finance report lists a total of \$1,395 in contributions as follows:

\$200	(\$200 Candidate Ponte)
\$200	(\$100 Peggy Hart, \$50 Glen Swope, \$50 Karlana Popwell)
\$210	(\$160 Shawn Box, \$50 Jennifer Haley)
\$320	(\$160 Lucas Mardock, \$160 Melissa Mardock)
\$50	(\$50 Cheryl Roller)
\$100	(\$50 Brenda Sunderland, \$50 Gordon Vance)
\$165	(\$25 below dollar (Matthew Monforton), \$100 Don Hart, \$40 Mary Schonsberg)
\$150	(\$50 Glenn Swope, \$100 Connie Kirkland) (Commissioner's records).

Finding of Fact. No. 12: Candidate Ponte produced incomplete campaign contribution records.³ The records, however, included a notation showing that the Shawn Box contribution consisted of \$120 by check and \$40 cash. (Commissioner's records).

Finding of Fact. No. 13: The contribution amounts listed in Candidate Ponte's campaign finance reports exceeded the amounts deposited into the RMCU account by \$240. This difference is explained as:

- a. Candidate Ponte kept and did not deposit the \$40 in cash contributed by Shawn Box.
- b. Candidate Ponte did not deposit his personal \$200 cash contribution that he reported on his campaign finance report.

The above findings of fact are sufficient evidence to find as follows:

Sufficiency Finding Three: Sufficient facts exist (FOF Nos. 10-13) to show that Candidate Ponte and/or his treasurer failed to deposit reported pre-primary campaign contributions into the campaign account at RMCU.

Sufficiency Finding Four: Sufficient facts exist (FOF Nos. 10-13) to show that Candidate Ponte and/or his treasurer failed to properly keep and produce to COPP records showing pre-primary deposits into a campaign depository.

Candidate Ponte and his treasurer are experienced participants in Montana's electoral system. Candidate Ponte ran for the Montana legislature in 2010

³ The records produced included copies of some of the checks deposited into the RMCU campaign account.

and 2012 (FOF Nos. 1-4). Further, Candidate Ponte has, within the past year, filed complaints alleging violations of campaign finance law by a legislator, former Commissioner of Political Practices, and a political committee. (FOF No. 5).

Among the Montana laws cited in Candidate Ponte's complaints were laws requiring transparency in election finances. These laws required that Candidate Ponte deposit "all contributions received" (§13-37-205 MCA) into his RMCU campaign account and that he make and keep a contribution "deposit slip" or "[a] statement showing the amount received from or provided by each person..." §13-37-207(2) MCA. Montana law further required that Candidate Ponte: "shall keep detailed accounts of all contributions received..." (§13-37-208(1)(a) MCA).

The inspection of the first of Candidate Ponte's required campaign finance reports resulted in a finding (SF No. 3) of sufficient facts to show that Candidate Ponte breached these requirements of law. These deposit, accounting and record keeping requirement are not idle requirements as inspection rights are afforded to the opposing candidate during an election [§13-37-209 MCA] and the Commissioner, on behalf of the public, has *carte blanche* examination rights of any campaign finance report. (§13-37-123 MCA).

ii) The Post-Primary Contribution Reporting Period

The Commissioner next examines contributions reported in the May 20 to June 20, 2012 post-primary campaign finance report filed with the COPP by Candidate Ponte.

Finding of Fact No. 14: The RMCU post-primary campaign account shows contribution deposits of \$795 as follows:

\$35 on June 1	(Henry Kriegel)
\$100 on June 11	(Lucas Zemlicks)
\$320 on June 13	(\$160 J. Patrick Moore; \$160 Keith Garcia)
\$340 on June 18	(\$160 Scott Sales; \$160 Contractors PAC; \$20 cash)

(Commissioner's records).

Finding of Fact No. 15: Candidate Ponte's post-primary campaign finance report lists a total of \$680 in contributions as follows:

\$320	(\$160 J. Patrick Moore; \$160 Keith Garcia)
\$320	(\$160 Scott Sales; \$160 Contractors PAC)
\$40	(contributions less than \$35)

Finding of Fact No. 16: Candidate Ponte's campaign finance records (and campaign records) failed, as a matter of fact, in the following ways:

- a. \$20 of the cash reported in the campaign finance report was not deposited into the RMCU campaign account.
- b. The Kriegel and Zemlicks contributions shown by the RMCU records were not reported or disclosed in the campaign finance report.
- c. The Candidate Ponte campaign records lacked documentation of contribution deposits.

Based on these facts the Commissioner makes the following sufficiency findings:

Sufficiency Finding Five: Sufficient facts exist (FOF Nos. 14-16) to show that Candidate Ponte and/or his treasurer failed to deposit reported post-primary campaign contributions into the campaign account at RMCU.

Sufficiency Finding Six: Sufficient facts exist (FOF Nos. 14-16) to show that Candidate Ponte and/or his treasurer failed to properly keep and produce to the COPP records showing post-primary contribution deposits into the campaign depository.

Sufficiency Finding Seven: Sufficient facts exist (FOF Nos. 14-16) to show that Candidate Ponte and/or his treasurer

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failed to report and disclose post-primary campaign contributions.

iii) The Pre-General Contribution Reporting Period

The Commissioner next examines the contributions reported in the June 20 to October 20, 2012 pre-general campaign finance report filed by Candidate Ponte with the COPP.⁴

Finding of Fact No. 17: The RMCU pre-general Ponte campaign account records show checks totaling \$2,563.56 deposited or transacted between June 21 to October 20, 2012 as follows:

\$300 on July 5	(\$100 Robert Kollar, \$40 Kristyn Miller, \$160 Dennis Balian)
\$60 on July 20	(\$60 Don Hart)
\$105 on July 27	(\$5 Scotts Miracle-Gro, \$100 Wells Fargo PAC)
\$625 on August 6	(\$625 Western Pines)
\$200 on Aug. 13	(\$100 Janice Beck, \$100 Harold Love)
\$160 on Aug. 28	(\$60 Jedediah Hinkle, \$100 DarLyne Olson)
\$760 on Sept. 20	(\$160 MTMedPAC, \$500 Gallatin Ctny Repubs, \$100 Carla Howard)
\$253.56 on Oct. 5	(\$25 Deborah Diteman, \$75 Carolyn Powell) \$153.56 Paypal for Jason Priest)
\$100 on Oct. 26	(\$100 Robert Lopert)

The Robert Lopert deposit of October 26 is included, even though the deposit date is after the October 20 pre-general reporting deadline, because Candidate Ponte included that contribution in his pre-general campaign finance report (see FOF No. 18). (Commissioner's records).

Finding of Fact No. 18: Candidate Ponte's pre-general campaign finance report from June 21 to October 20, 2012 shows \$1,733.56 in contributions as follows:

\$300	(\$100 Robert Kollar, \$40 Kristyn Miller, \$160 Dennis Balian)
\$60	(\$60 Don Hart)

⁴ This report was late filed on October 30, 2012. SF No. One, this Decision.
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\$100	(\$100 Wells Fargo PAC)
\$160	(\$60 Jedediah Hinkle, \$100 DarLyne Olson)
\$760	(\$160 MTMedPAC, \$500 Gallatin Ctny Repubs, \$100 Carla Howard)
\$253.56	(\$25 cash (Deborah Diteman), \$75 Carolyn Powell) \$153.56 Paypal for Jason Priest)
\$100	(\$100 Robert Lopert)

Finding of Fact No. 19: The Ponte RMCU pre-general campaign account records show \$830 more in contribution deposits/transactions than the Ponte campaign finance reports disclose. That \$830 comes from four deposits: \$5 from Scotts Miracle Grow; \$625 from Western Pines; \$100 from Janice Beck and \$100 from Harold Love.

- a. The \$625 deposit was from a check issued by Western Pines Landscaping in Manhattan, MT.⁵ On the bottom left, the check read “for reimbursement.” The signature on the back of the check was “David A. Ponte” and in the same script, Mr. Ponte wrote the number of his campaign bank account and below that “HD66.” On August 27, 2012, the Commissioner’s Investigator contacted Joy Smith at Western Pines Landscaping. Ms. Smith stated that: the check was for reimbursement for returned bedding material; the \$625 check was not a campaign contribution; and, only Kathryn Hollenback, wife of Mr. Ponte was listed in the Western Pines customer registry.
- b. The \$100 checks from Janice Beck and Harold Love were endorsed by Mr. Ponte.⁶ On August 28, 2014 the Commissioner’s investigator determined (from an interview and research) that the Beck and Love checks came in as part payment or reimbursement of the costs of a multi-party property owner’s lawsuit that Mr. Ponte was involved in.
- c. The \$5 check was marked as rebate check for a product (Miracle Grow) purchase and taken out as cash.

Finding of Fact No. 20: The check from Robert Lopert was dated October 17 but was received before October 20 (Candidate Ponte included the check in the campaign finance report ending on October 20) but was not deposited until October 26. The check was not deposited within 5 days of receipt.

⁵ Mr. Ponte deposited the \$625 into his campaign account on August 6, 2012. On the same day, Mr. Ponte withdrew \$625 from his campaign account in cash (\$600 in fifty dollar bills, one \$20 bill and one \$5 bill).

⁶ Again, these funds were immediately taken out as cash under the account number of the Ponte campaign account.

Based on the above facts the Commissioner makes sufficiency findings as follows:

Sufficiency Finding Eight: Sufficient facts exist (FOF Nos. 17-20) to show that Candidate Ponte and/or his treasurer used the Ponte campaign account for the purpose of transacting funds that were not campaign contributions.

Sufficiency Finding Nine: Sufficient facts exist (FOF Nos. 17-20) to show that Candidate Ponte and/or his treasurer failed to properly keep and produce to the COPP records showing deposits into a campaign depository.

Sufficiency Finding Ten: Sufficient facts exist (FOF Nos. 17-20) to show that Candidate Ponte and/or his treasurer failed to timely deposit campaign contributions.

In making these sufficiency findings the Commissioner determines that Candidate Ponte acted with purpose, rather than by accident, in carrying out the deposits or transactions addressed by sufficiency Finding No. Eight. Candidate Ponte transacted four checks involving non-campaign financial matters through his campaign account between July 27 and August 13, 2012 (See FOF No. 18). Each of those checks was endorsed by Candidate Ponte with the account number and/or "HD 66" noted by Candidate Ponte on the check. Further the checks, totaling \$830, were immediately converted to cash and withdrawn from the campaign account by Candidate Ponte (See FOF No. 19). The checks and the \$830 were not accounted for or reported in Candidate Ponte's campaign finance reports. Sufficiency Finding No. 8 determines that sufficient facts exist to show Candidate Ponte used his campaign account for purposes other than campaign activity.

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iv) Post-General Reporting Period

Candidate Ponte was required by law to file a post-general campaign finance report but did not and has not filed such a report. See SF No. Two.

B. EXPENDITURES

As described above, Montana law required that each and all of Candidate Ponte's 2012 campaign expenditures must be "disbursed" from his designated campaign depository, Rocky Mountain Credit Union. (§13-37-205 MCA). Further, Candidate Ponte's campaign treasurer "shall keep detailed accounts of all ... expenditures made by ..." (§13-37-208(1)(a) MCA). Candidate Ponte then "shall file periodic reports of ...expenditures made by..." [(§13-37-225(1) MCA)], according to the schedules set out above. This system should insure transparency and fairness to the public, voters and the opposing candidate.

In investigating Mr. O'Hara's complaint the Commissioner looks to three sources of information as to expenditures: 1) the records of the depository (Rocky Mountain Credit Union) as each and all expenditures must be disbursed from the RMCU account; 2) the accounts maintained by the campaign treasurer; and, 3) the Ponte campaign finance reports. All three of these sources should be consistent if the disclosure and reporting is done properly.

i) The Pre-Primary Expense Reporting Period

The Commissioner first examines Ponte campaign expenses in the March 12 to May 19, 2012 pre-primary campaign finance reporting period:

Finding of Fact No. 21: The RMCU Ponte campaign account shows \$711.92 in four debits as follows:

\$149.69 in check number 101 on April 3
\$218.66 intra-credit union transfer on April 30
\$296.02 intra-credit union transfer on May 3
\$47.55 intra-credit union transfer on May 6
(Commissioner's records).

Finding of Fact No. 22: The Ponte campaign finance report shows \$711.92 in five expenditures:

\$149.69 for remittance envelopes
\$218.66 for yard signs
\$296.02 for palm cards
\$42.01 for door knob bags
\$5.13 petty cash
(Commissioner's records).

Finding of Fact No. 23: The treasurer's "detailed accounts" produced \$711.51 in copies of bills/receipts bill: for \$149.69 remittance envelopes marked paid with check No. 101; \$218.66 for yard signs; \$296.02 for palm cards; a bill (no amount listed) for door knob bags; and a \$5.13 receipt for payment for reservation of a domain name. These amounts total \$711.51.

Montana law requires that "[a]ll expenditures, except expenditures from a petty cash fund, shall be made by check drawn on the designated depository."

44.10.503 ARM, COPP accounting manual p. 14. Candidate Ponte's campaign account shows debits from three intra-account transfers and one check.

Past Commissioners, however, have noted that the check requirement is there to provide disclosure of the details (payee, purpose, date) of an expenditure, as required by Montana law. Thus, an acceptable transaction is a wire transfer, with a receipt maintained as part of the banking records that provides the same information (payee, purpose, date) as a check provides.

Montanans in Action at p. 98, June 26, 2009, (Commissioner Unsworth).

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Commissioner Unsworth again emphasized the disclosure purpose of the check requirement in the later decision of *Wilcox v. Raser*, at p. 11 May 26, 2010 (Commissioner Unsworth) when he determined that the 5 transactions involved violated law because there was no documentation of payee, purpose and date comparable to that automatically set out in a check or wire transfer transaction.

Candidate Ponte's three intra-account transfers in this Matter, with accompanying receipts, fall under the *Montanans in Action* analysis. The share transfer record between credit union accounts does not provide the information (payee, purpose, and date) required in a campaign expenditure. However, Candidate Ponte's campaign receipt records (See FOF No. 23) provide the necessary payee, purpose and date information. The Commissioner makes no sufficiency findings as to Candidate Ponte's pre-primary expense disclosures.

ii) The Post-Primary Expense Reporting Period

The Commissioner next examines Ponte campaign expenses in the May 20 to June 20, 2012 post-primary campaign finance reporting period:

Finding of Fact No. 24: Candidate Pontes' post-primary campaign finance report discloses \$89.50 in "stamps" cost, the RMCU campaign account records show check No. 102 issued in the amount of \$89.50 and the treasurer's campaign expenditure records include a copy of an appropriately dated receipt for \$89.50 in a stamp purchase. (Commissioner's records).

Transparency and reporting requirements are met and there are no sufficiency findings for expense reporting for the post-primary election period.

iii) The Pre-General Expense Reporting Period

The Commissioner next examines campaign expenses in the June 21 to October 20, 2012 pre-general campaign finance reporting period:

Finding of Fact No. 25: The RMCU Ponte campaign account shows \$2,996.53 in 12 debits as follows:

\$625 (on-line withdrawal and share transfer) on August 6
\$228.55 (on-line withdrawal and share transfer) on August 28
\$25.99 check 103 on September 19⁷
\$396.80 check 104 on September 21
\$205.25 (on-line withdrawal and share transfer) on September 24
\$52.98 check 105 for on September 24
\$640.00 check 106 for on September 25
\$25.99 (on-line withdrawal and share transfer) on September 28
\$250 (on-line withdrawal and share transfer) on October 11
\$160.00 check 107 on October 11
\$62.98 check 108 on October 15
\$322.99 check 109 on October 11
(Commissioner's records.)

Finding of Fact No. 26: The RMCU Ponte campaign finance report disclosed \$1,276.28 in 8 expenditures as follows:

\$228.55 for post-card printing on August 28
\$396.80 for postage stamps on September 19
\$52.98 for printer ink cartridges for on September 19
\$25.99 for Avery Labels on September 18
\$62.98 for printer ink cartridges October 8
\$25.99 for Avery Labels on September 26
\$160.00 for postage stamps on October 5
\$322.99 for postage stamps, undated
(Commissioner's records.)

Finding of Fact No. 27: The treasurer's records include 9 receipts for \$1916.28 in expenses of:

\$228.55 (invoice dated 8/25) for 2,000 postcards
\$25.99 in supplies ((9/18)
\$52.98 in supplies (9/18)

⁷ Check No. 103, while stamped "paid" does not appear as a debit in the accounting provided by RMCU for the Ponte campaign account.

\$396.80 for 1,240 thirty-two cent stamps (9/19)
\$640 for 2,000 thirty-two cent stamps (9/21)
\$25.99 in supplies (9/26)
\$160 for 500 thirty-two cent stamps (10/05)
\$62.98 in supplies (10/08)
\$322.99 for 1,000 thirty-two cent stamps plus \$2.99 for mailing
carton
(Commissioner's records).

Finding of Fact No. 28: Comparing the three campaign sources of pre-general expense information (FOF Nos. 25-27) shows the RMCU campaign account (check 106) and the treasurer's records (receipt) include a \$640 stamp expense. The pre-general campaign finance report does not disclose or report a \$640 stamp purchase.
(Commissioner's records).

Sufficiency Finding Eleven: Sufficient facts exist (FOF No. 28) to show that Candidate Ponte and/or his treasurer failed to report the \$640 stamp purchase in the pre-general campaign finance report.
(Commissioner's records).

Finding of Fact No. 29: Comparing the three campaign sources of pre-general expense information shows three debits to the RMCU Ponte campaign account that are not reported by the pre-general campaign finance report, nor supported by receipts from the campaign records. These debits are: \$625 (on-line withdrawal and share transfer) on August 6; \$205.25 (on-line withdrawal and share transfer) on September 24; and \$250 (on-line withdrawal and share transfer) on October 11.
(Commissioner's records).

Sufficiency Finding Twelve: Sufficient facts exist (FOF Nos. 25-29) to show that during the pre-general reporting period Candidate Ponte and/or his treasurer failed to pay by check or another form of transaction whereby payee, date and purpose was disclosed.

Sufficiency Finding Thirteen: Sufficient facts exist (FOF Nos. 25-29) to show that during the pre-general reporting period Candidate Ponte and/or his treasurer either used the Ponte campaign account for non-campaign purposes or diverted campaign funds for private use.

Sufficiency Finding Fourteen: Sufficient facts exist (FOF Nos. 25-29) to show that during the pre-general reporting period Candidate Ponte and/or his treasurer failed to maintain a system of accounts as required by 44.10.501 ARM and as specified by the COPP accounting manual, page 6.

As the above establishes, Candidate Ponte engaged in serial campaign account transactions, some consisting of intra-account fund transfers, that are contrary to Montana law. It is hard to imagine a clearer directive than that set out in the COPP accounting manual provided to all 2012 candidates for Montana public office:

It is essential that all monetary receipts – including a candidate’s own funds- be deposited in the campaign account and that all money spent by the campaign be by checks drawn on this account (the only exception is the petty cash fund.) Proper use of the campaign checking account will make record keeping and reporting much easier.

COPP Candidate Manual, page 6.

To a substantial degree Candidate Ponte and/or his treasurer turned a blind eye to Montana’s campaign practice act. Funds were transferred between Candidate Ponte’s campaign and personal accounts leaving no record (payee, date and purpose) like that created when a check is used. This is against the law. Even Candidate Ponte’s reported uses of campaign funds is suspect. Candidate Ponte’s expenses show one round of printing of 2,000 postcards with no other printing costs of any sort listed. Yet, Candidate Ponte claims costs for 4,740 stamps, making those 2,000 postcards a well-stamped mailing indeed. Still further, carelessness is evident as Candidate Ponte failed to report a \$640 stamp purchase even though that purchase was made by a check drawn on the campaign account.

Montana law places both public trust (§2-2-103 MCA) and ethical conduct (§2-2121 MCA) duties on public officials, once elected to office. The only

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comparable duty, and therefore the only lens to measure a candidate, is the duty to meet the reporting and disclosure obligations set out in Montana law. These are not onerous duties and Candidate Ponte must meet those obligations.

iv) Post-General Reporting Period

Candidate Ponte was required by law to file a post-general campaign finance report, but did not and has not filed one. *See* SF No. Two.

ENFORCEMENT OF SUFFICIENCY FINDINGS

The Commissioner has limited discretion when making the determination 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 (see Sufficiency Findings, as set out in this Decision) to show that Candidate Ponte’s campaign may have violated Montana’s campaign practice laws, including, but not limited to §§13-37-126, 226, 228 MCA and all associated ARMs. Having determined that

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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 timely file cannot be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law. See discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009.

Likewise, the Commissioner does not accept that failures to file or report can normally be excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. In particular, the Commissioner has limited discretion to apply *de minimis* to untimely reporting. Reporting is only valid when it is timely accomplished and any delay, much less a failure to file, demonstrates harm.

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) as well as any other action the Commissioner is directed to take. In this Matter that “other action” includes the removal of a candidate’s name from the ballot, as directed by §13-37-126 MCA.

Accordingly, in this Matter the Commissioner determines Candidate Ponte may not appear as a candidate on the ballot of any future election until he files the missing report for the 2012 election. §13-37-126 MCA. The Commissioner will notify the Montana Secretary of State that Mr. Ponte is

conditionally banned as a candidate for future public office in Montana.

The Commissioner hereby, through this decision, also issues a “sufficient evidence” Finding and Decision justifying civil prosecution of Candidate Ponte and/or his treasurer for late filing, failing to report, improper accounting, improper use of campaign funds and general improper campaign practices implicating the full reach of chapters 35 and 37 of Title 13 MCA. Because of nature of violations (the failure to timely and adequately 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. 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 §13-37-226 MCA. (*See* 13-37-128 MCA). Full due process is provided

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to the alleged violator because the district court will consider the matter *de novo*.

Should this Matter not settle the Commissioner reserves his right, upon return of the Finding by the County Attorney, to instigate an enforcement action on behalf of the people of Montana.

DATED this 8th day of September, 2014.



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