

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Ponte v. MT BASE, et. al. No. COPP 2014-CFP-012	FINAL DECISION ON COMPLAINT: 1) FINDING SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION; AND, 2) INCORPORATING PRIOR DISMISSAL OF PARTS OF THE COMPLAINT AS FRIVOLOUS AS WELL AS APPLYING FRIVOLOUS STANDARD TO SOME ISSUES ADDRESSED IN FINAL DECISION
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On April 7, 2014, Bozeman, Montana resident David Ponte filed a complaint with the Commissioner of Political Practices (COPP) against Montana Business Advocates for Sensible Elections (MT BASE), a duly formed Montana political committee, and a number of additional corporations, candidates and political committees. The Complaint alleged that MT BASE et. al. violated Montana campaign practice laws in a number of ways.

A PARTIAL DECISION WAS EARLIER RELEASED

On April 15, 2014 the Commissioner released a Partial Decision on the issues raised in the above complaint. A number of the specific issues (raised by the Complaint) were addressed and dismissed as frivolous. That earlier

Partial Decision is hereby incorporated by reference. The earlier Partial Decision and this Final Decision will be posted together on the COPP website.

ISSUES ADDRESSED BY THIS FINAL DECISION

This Final Decision addresses the issue of the listing of \$15,356 in “under \$35” contributions on the MTBASE campaign finance reports and the issues associated with the date of filing by certain political committees. The coordination and naming and labeling issues were dismissed by the earlier Partial Decision.

DISCUSSION

1. Ballot and Incidental Committee C-2 Registration

A political committee, whether in the form of an independent, ballot or incidental committee, is required to timely register (§13-37-201 MCA) and timely file reports of campaign contributions and/or expenditures (§§13-37-225, 226 MCA). Complainant Ponte asserts that multiple incidental committees, along with Stop Dark Money (a ballot committee) failed to timely register and/or report.

Stop Dark Money is hereby examined as a ballot committee:

Finding of Fact No. 1: On October 10, 2013, Stop Dark Money (SDM) filed a duly completed C2 Statement of Organization form with the COPP identifying itself as a ballot committee. (Commissioner’s records).

Finding of Fact No. 2: Initiative #168 was “approved” for signature gathering by the Secretary of State’s Office on October 7, 2013. (Commissioner’s records, Secretary of State (SOS) website).

Mr. Ponte complains that Stop Dark Money late filed as a political committee.

Stop Dark Money, however, filed as a ballot committee (FOF No. 1). It did so within 5 days of the date I-168 became a ballot issue (FOF No.2) and therefore filed timely under Montana law. [See §13-1-101(17)(b) and §13-37-201 MCA.] This part of Mr. Ponte's complaint is dismissed as frivolous, lacking support in fact or law.

B&H Ranch is hereby examined as an incidental committee:

Finding of Fact No. 3: MTBASE reported a corporate contribution of \$2,000 from B&H Ranch on its C-6 finance report for the reporting period of 5/25/12 to 6/20/12. The date of contribution was not listed. (Commissioner's records).

Finding of Fact No. 4: On February 22, 2013, B&H Ranch duly filed as an incidental committee with the COPP. James and Lorraine Peterson were listed as the officers of the incidental committee. (Commissioner's records).

Finding of Fact No. 5: On February 22, 2013, B&H Ranch filed a C-4 finance (and closing) report with the COPP for the reporting period of 5/25/12 to 7/5/12. B&H Ranch listed an expenditure of \$2,000 to MTBASE PAC for the general election. The purpose was listed as a "contribution," but the date of the contribution was not listed. (Commissioner's records).

Mr. Ponte complains that B & H Ranch late filed as an incidental committee and failed to timely report its contribution. Mr. Ponte's complaint was filed on April 7, 2014, some 14 months after B & H Ranch had filed as an incidental committee.

The Commissioner's partial dismissal in this matter noted that Mr. Ponte's complaint invokes conflicting authority from the Commissioner. On one hand the Commissioner has determined that an "indicia of a frivolous complaint is a complaint making a challenge to a corrected campaign action." *Landsgaard v.*

Peterson, COPP-2014-CFP-008. On the other hand, the COPP has a long history of strictly enforcing candidate and PAC filing deadlines, taking late filing issues outside of the *Landsgaard* determination. *Harrington v. Cap the Rate*, July 3, 2012, (Commissioner Murry).

The Commissioner begins further analysis first examining the late reporting issue. The B & H incidental committee was required to report and disclose its contribution by the 12th day preceding the November 6, 2012 election date. [§13-37-226(5) MCA]. The incidental committee late reported by filing on February 22, 2013 (FOF No. 5). The Commissioner further determines that the \$2,000 B & H Ranch contribution was, however, timely reported by MTBASE (FOF No. 3), thereby providing the public and any opposing party of timely notice of the contribution. Any harm caused by the B & H late filing is hereby dismissed as *de minimis* and the Commissioner declines to make a sufficiency finding as to late filing.

The Commissioner next examines the B & H incidental committee filing. The incidental committee filing was required within 5 days of the date that B & H sent money to MT BASE. (§13-37-201 MCA). B & H did not file or register as an incidental committee until February 22, 2013 (FOF No. 4), some 8 months after it was required to do so. In this instance the timely MT BASE disclosures do not come into play as the incidental committee filing added the additional information of the names of the officers of B & H Ranch. This information was important contemporaneous knowledge, given the role that

MTBASE playing in 2012 candidate campaigns.¹ The Commissioner further determines that the self-corrective but late filing by B & H Ranch does not cure the harm to the public caused by delay in providing required information to the public.²

Sufficiency Finding No. 1: The Commissioner determines that sufficient facts exist to show that B&H Ranch failed to timely register as a political committee. (Commissioner's records).

Kessun Corporation is hereby examined as an incidental committee:

Finding of Fact No. 6: MTBASE reported a corporate contribution of \$3,400 from Keesun Corporation on its C-6 finance report for the reporting period of 6/21/12 to 10/20/12. The date of contribution was listed as 9/28/12. (Commissioner's records).

Finding of Fact No. 7: On June 6, 2013, Keesun Corporation duly filed as an incidental committee with the COPP. John Finstead was listed as the officer of the incidental committee. (Commissioner's records).

Finding of Fact No. 8: On June 6, 2013, Keesun Corporation filed a C-4 finance (and closing) report with the COPP for the reporting period of 5/25/12 to 7/5/12. Keesun Corporation listed an expenditure of \$3,400 to MTBASE PAC for the general election. (Commissioner's records).

Based on FOF Nos. 6-8 and applying the discussion and analysis set out in regard to B & H Ranch, the Commissioner finds as follows:

Sufficiency Finding No. 2: The Commissioner determines that sufficient facts exist to show that Keesun Corporation failed to timely register as a political committee. (Commissioner's records).

¹ MTBASE engaged in independent expenditures in certain Republican primary elections. (Commissioner's records).

² The B & H Ranch incidental committee registration form (C-2 form) was scanned upon receipt and made available for public review through the COPP website. The late filing meant that the public was denied access to the information in the registration form during the period of late filing.

HiLine Redi-Mix, LLC is hereby examined as an incidental committee:

Finding of Fact No. 9: MTBASE reported a corporate contribution of \$3,400 from HiLine Redi-Mix, LCC on its C-6 finance report for the reporting period of 6/21/12 to 10/20/12. The date of contribution was listed as 9/28/12. (Commissioner's records).

Finding of Fact No. 10: On June 6, 2013, HiLine Redi-Mix, LCC duly filed as an incidental committee with the COPP. Tiffany Stores, Jeffrey Stores and Steve Williamson were listed as the officers of the incidental committee. (Commissioner's records).

Finding of Fact No. 11: On June 6, 2013, HiLine Redi-Mix, LCC filed a C-4 finance (and closing) report with the COPP for the reporting period of 5/25/12 to 7/5/12. HiLine Redi-Mix, LCC listed an expenditure of \$2,800 MTBASE PAC for the general election. (Commissioner's records).

Based on FOF Nos. 9-11 and applying the discussion and analysis set out in regard to B & H Ranch, the Commissioner finds as follows:

Sufficiency Finding No. 3: The Commissioner determines that sufficient facts exist to show that HiLine Redi-Mix, LCC failed to timely register as a political committee. (Commissioner's records).

Bay Materials, LLC is hereby examined as an incidental committee:

Finding of Fact No. 12: MTBASE reported a corporate contribution of \$2,000 from Bay Materials, LCC on its C-6 finance report for the reporting period of 6/21/12 to 10/20/12. The date of contribution was listed as 9/28/12. (Commissioner's records).

Finding of Fact No. 13: On June 6, 2013, Bay Materials, LCC duly filed as an incidental committee with the COPP. Brian Midbor was listed as the officer of the incidental committee. (Commissioner's records).

Finding of Fact No. 14: On June 6, 2013, Bay Materials, LCC filed a C-4 finance (and closing) report with the COPP for the reporting

period of 5/25/12 to 7/5/12. Bay Materials, LCC listed an expenditure of \$2,000 MTBASE PAC for the general election. (Commissioner's records).

Based on FOF Nos. 12-14 and applying the discussion and analysis set out in regard to B & H Ranch, the Commissioner finds as follows:

Sufficiency Finding No. 4: The Commissioner determines that sufficient facts exist to show that Bay Materials, LCC failed to timely register as a political committee. (Commissioner's records).

Croft Petroleum Company is hereby examined as an incidental committee:

Finding of Fact No. 15: MTBASE reported a corporate contribution of \$2,500 from Croft Petroleum Company on its C-6 finance report for the reporting period of 6/21/12 to 10/20/12. The date of contribution was listed as 9/28/12. (Commissioner's records).

Finding of Fact No. 16: On June 6, 2013, Croft Petroleum Company duly filed as an incidental committee with the COPP. Nancy Croft Jacobson and Jerry Croft were listed as the officers of the incidental committee. (Commissioner's records).

Finding of Fact No. 17: On June 6, 2013, Croft Petroleum Company filed a C-4 finance (and closing) report with the COPP for the reporting period of 5/25/12 to 7/5/12. Croft Petroleum Company listed an expenditure of \$2,500 MTBASE PAC for the general election. (Commissioner's records).

Based on FOF Nos. 15-18 and applying the discussion and analysis set out in regard to B & H Ranch, the Commissioner finds as follows:

Sufficiency Finding No. 5: The Commissioner determines that sufficient facts exist to show that Croft Petroleum Company failed to timely register as a political committee. (Commissioner's records).

Hawley-Desimon, Inc. is hereby examined as an incidental committee:

Finding of Fact No. 18: MTBASE reported a corporate contribution of \$3,400 from Hawley-Desimon, Inc. on their C-6

finance report for the reporting period of 6/21/12 to 10/20/12. The date of contribution was listed as 9/28/12. (Commissioner's records).

Finding of Fact No. 19: On June 6, 2013, Hawley-Desimon, Inc. duly filed as an incidental committee with the COPP. Lois Miller and Jim Finlayson were listed as the officers of the incidental committee. (Commissioner's records).

Finding of Fact No. 20: On June 6, 2013, Hawley-Desimon, Inc. filed a C-4 finance (and closing) report with the COPP for the reporting period of 5/25/12 to 7/5/12. Hawley-Desimon, Inc. listed an expenditure of \$3,400 MTBASE PAC for the general election. (Commissioner's records).

Based on FOF Nos. 18-20 and applying the discussion and analysis set out in regard to B & H Ranch, the Commissioner finds as follows:

Sufficiency Finding No. 6: The Commissioner determines that sufficient facts exist to show that Hawley-Desimon, Inc. failed to timely register as a political committee. (Commissioner's records).

2. Under \$35 Contributions.

Complainant Ponte asserts that there is something inherently wrong with the \$15,356 amount reported as "under \$35" contributions on the MT BASE campaign finance reports. The Commissioner's investigator determined the following:

Finding of Fact No. 21: The MT BASE C-6 report ending November 21, 2012 was filed hard copy and duly showed \$15,356 in cash held by MT BASE. (Commissioner's records).

Finding of Fact No. 22: On January 31, 2013 MT BASE filed its next C-6 finance report with the COPP showing the \$15,356 in cash in bank. This report was filed electronically and a glitch in the computer processing of the report identified the \$15,356 as being contributions less than \$35. (Commissioner's records).

The former electronic reporting program used by the COPP was not

reliable. This is not the first instance where the former reporting program scrambled information presenting an inaccurate data platform to the public. *See Swope v. Pomnichowski*, COPP-2014-CFP-001. The COPP has installed and instituted a new electronic reporting program that has eliminated these errors. Because the reporting issue was due to an outside error (faulty computer program) there is no campaign practice violation by MT BASE.

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 entities listed in the sufficiency findings in this Decision may have violated Montana’s campaign practice laws, including, but not limited to §13-37-201 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.

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.

The Commissioner has applied the principle of *de minimis* to excuse the late reporting by the several incidental committees but did not do so for late filing, as discussed above in this Decision. 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 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 the contribution information reporting was timely accomplished by MT BASE the Commissioner applies *de minimis*. Because no comparable timely disclosure occurred in regard to the committee filing information the Commissioner does not apply *de minimis* as to late filing

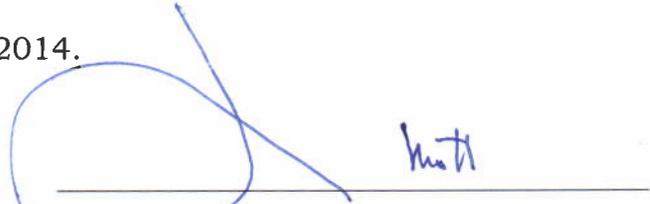
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil/criminal prosecution and/or a civil fine is justified (See §13-37-124 MCA). The Commissioner hereby, through this Decision, issues a “sufficient evidence” Finding and Decision justifying civil prosecution of each of the entities named in a

sufficiency finding for late filing. Because of nature of violations (the failure to timely file 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 setting that fine the Commissioner will consider matters affecting mitigation, including the fact that the entities named in the sufficiency findings had self-corrected the deficient filing before the complaint in this Matter was filed. 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 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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