

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Reinlasoder v. Hanser No. COPP 2013-CFP-021	Finding of Sufficient Facts to Show a Violation of Montana Campaign Practice Laws
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Rose Hanser of Colstrip was a candidate for the position of Mayor of Colstrip, Montana in the 2011 primary and general local government elections. On June 3, 2013, Larry Reinlasoder filed a complaint against Candidate Hanser based on a failure to timely file campaign finance reports related to Candidate Hanser's 2011 campaign.

SUBSTANTIVE ISSUES ADDRESSED

The substantive areas of campaign finance law addressed by this decision are: filing responsibility related to a local government race; and, attribution.

SUMMARY OF RELEVANT FACTS

The foundational facts necessary for this Decision are as follows:

1. Ms. Hanser filed a C-1A Statement of Candidate form with the COPP on or before July 13, 2011.¹ (Commissioner's records).

¹ The first form a candidate files with the COPP is a C-1A form. The original of Ms. Hanser's C-1A form (with the filing date) was missing from the Commissioner's files, but the Commissioner's investigator was able to determine that Ms. Hanser's form had been filed (no later than July 13, 2011) by looking to correspondence and other information in the file.

2. Candidate Hanser checked “Box B” on the C-1A form certifying thereby that she did not expect the total amount of her campaign contributions would exceed \$500, but that if it was exceeded a campaign finance report (form C-5) would be filed with the COPP. (Commissioner’s records).
3. Candidate Hanser reported campaign spending of \$220.26 in the primary election. (Commissioner’s records).
4. On September 13, 2011, a primary election was held for candidates for Mayor of Colstrip, Montana. Candidate Hanser was one of two candidates receiving the most primary votes and therefore advanced to the general election.
5. Candidate Hanser reported exceeding \$500 in campaign spending on October 25, 2011. (Commissioner’s records).
6. Candidate Hanser was elected Mayor of Colstrip on November 8, 2011, receiving 425 votes. (Rosebud County, Montana, Elections Office).
7. In total candidate Hanser spent approximately \$590 in the primary and general elections. (Commissioner’s records).

DISCUSSION

A candidate is required to timely file a certification (§13-37-201 MCA), provide specific attribution on all campaign communications (§13-35-225 MCA), timely keep and maintain accounts of contributions and expenditures (§13-37-208 MCA) and timely file reports to the Commissioner’s office of such contributions and expenditures (§13-37-226 MCA). Montana’s campaign

related laws require that candidates for public office file campaign finance reports on a certain schedule so as to inform the public as to who is contributing to their campaign. The report schedule varies according to the particular office being sought. §13-37-226 MCA. A candidate for a local government office is not required to report at all until his or her contributions/expenditures exceed \$500. §13-37-226(4) MCA.

Ms. Hanser was a candidate for a local government office. Candidate Hanser expended \$220.26 on her primary election. (FOF 3). Ms. Hanser spent less than \$500 and had no obligation to file a campaign finance report for the primary election. Candidate Hanser spent an additional sum on her general election, spending a total of about \$590 on the two elections. (FOF 7). Once candidate Hanser exceeded the \$500 amount in her campaign she was required to file C-5 campaign finance reports. §13-37-226(4).

Candidate Hanser exceeded the \$500 amount on October 25, 2011. (FOF 5). This triggered Candidate Hanser's duty to meet the 20 day post-election reporting deadline of November 28, 2011. §13-37-226(4). Candidate Hanser first filed her campaign finance report on August 21, 2013. Candidate Hanser's campaign finance report was late filed by approximately 21 months.

Candidate Hanser provided copies of her campaign material. Candidate Hanser was required to label all election communication with "...the attribution 'paid for by' followed by the name and address of the person who made or financed the expenditure for the communication." §13-35-225 MCA. The Hanser campaign material was labeled "paid for by Hanser for Mayor", with the

treasurer's name included on some communication. The Candidate Hanser attribution failed to meet the full requirements of law.

Past Commissioners have determined that the lack of one portion of an attribution is *de minimis* and does not support prosecution when the remaining attribution is sufficient to inform the public as to the identity of the party making the communication. *Ellis v. CI-97*, et. al. (April 15, 2008, Commissioner Unsworth). This Commissioner applies *de minimis* to any failure of Candidate Hanser to attribute, as that failure occurs under the facts of this Matter. The concept of *de minimis* is defined in *Matters of Vincent*, Nos. CPP-2013-CFP-006 and 009.

FACTUAL FINDINGS ESTABLISHING CAMPAIGN PRACTICE VIOLATIONS

The established facts show that Candidate Hanser failed to timely report election contributions and expenditures thereby violating §13-35-226 MCA

ADJUDICATION INCLUDING CONSIDERATION OF DE MINIMIS AND EXCUSABLE NEGLECT PRINCIPLES

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must investigate a complaint 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. In this matter Montana's campaign finance report filing requirements are mandatory: "shall file" (See §13-37-226 MCA). The filing date requirements are date certain. Therefore, any failure to meet a mandatory, date-certain filing date is a violation of §13-37-226 MCA.

This Commissioner, having been charged to investigate and decide, hereby determines that sufficient evidence exists to show that Ms. Hanser has, as a matter of law, violated Montana's campaign practice laws, specifically § 13-37-226, MCA. 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.

Ms. Hanser explained that she missed the reporting deadline because of a misunderstanding of the requirements of law. Excusable neglect cannot be applied to a misunderstanding of law. See discussion of excusable neglect principles in *Matters of Vincent*, Nos. CPP-2013-CFP-006 and 009. Likewise, a 21 month failure to report on time cannot be excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. CPP-2013-CFP-006 and 009.

Because there is a finding of sufficient evidence to show a violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil 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 the failure to report occurred in Lewis and Clark County, this matter will now be submitted to [or “noticed to”] the Lewis and Clark County attorney for his review for appropriate civil action. See §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 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 Chapter 37, including those of §13-37-226. (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 will be considered. It is hereby determined that case specific mitigation, stemming from the facts of this Matter, is appropriate and

will be a factor in negotiations. See discussion of mitigation principles in *Matters of Vincent*, Nos. CPP-2013-CFP-006 and 009. Ms. Hanser's forthright cooperation and provision of information and her prompt filing of the campaign finance report once she understood her error are factors that will be taken into consideration to mitigate the fine in this matter.

CONCLUSION

Based on the preceding discussion as Commissioner I find and decide that there is sufficient evidence to show that Ms. Hanser violated Montana's campaign practices laws, specifically §13-37-226, MCA, and that a civil penalty action under § 13-37-128, MCA is warranted. This matter is hereby submitted to (or "noticed to") the Lewis and Clark County Attorney for his review for appropriate civil action under section 13-37-124(1) MCA. Upon return to the Commissioner of this Matter by the County Attorney, this Commissioner will work with Ms. Hanser, in manner set out above, in determining the amount of civil penalty, should Ms. Hanser choose to settle this Matter with a negotiated fine.

DATED this 14th day of March, 2014.



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