

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Rodda v. Bennett  No. COPP 2014-CFP-013	Final Decision Dismissal of Complaint by Application of <i>De Minimis</i> Principle.
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On April 14, 2014 the Commissioner of Political Practices dismissed a portion of a complaint filed against Bryce Bennett of Missoula, Montana, a member of the Montana Legislature from House District 92 (HD 92). The Commissioner reserved for investigation and determination the issue of whether there was a \$40 excess contribution by each of two contributors, for \$80 total in excess contributions.

**Discussion**

In 2012 a candidate for legislature could accept up to \$160 from a single contributor.<sup>1</sup> The complaint cited to Candidate Bennett's own campaign finance reports wherein two contributors were listed with multiple contributions, each totaling \$200. One of those contributors was named Cari Bohm and the other Bill Ballard.

The Commissioner's investigator determined that Cari Bohm made her contributions on-line through a donor service called ACT BLUE. The

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<sup>1</sup> See §13-37-216 MCA (2010 code) with amounts adjusted for inflation by 44.10.338 ARM.

investigator secured a listing of the contributions Cari Bohm made through ACT BLUE to Candidate Bennett and determined that Ms. Bohm made four contributions of \$40 each to Candidate Bennett through ACT BLUE. The dates that those four contributions were posted with ACT BLUE correspond to the dates that the 4 contributions were listed in Candidate Bennett's campaign finance reports.<sup>2</sup>

The Commissioner herein determines that Ms. Bohm did not contribute more than four times or more than the allowed amount of \$160. The Commissioner further determines that Candidate Bennett did not accept more than the four contributions of \$40 each for a total of \$160. There was, however, an error in reporting by Candidate Bennett as he incorrectly listed one of the \$40 Bohm contributions as \$80, thereby creating the appearance of an excess contribution. Candidate Bennett has corrected the campaign finance report to list the Bohm contribution at the correct \$40 amount, doing so when informed of the error.

Candidate Bennett's campaign finance reports list Bill Ballard as making two \$100 contributions to Candidate Bennett. The Commissioner's investigator interviewed Candidate Bennett and he explained that the second contribution was supposed to have been listed as coming from Bill Ballard's wife, Lee Ballard. The investigator viewed the checks and, while the checks are drawn on the joint account of Bill and Lee Ballard, each of the checks is signed

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<sup>2</sup> Candidate Bennett received contribution amounts from ACT BLUE in a periodic lump sum along with a listing showing the amounts per contributor. The Commissioner verified the Bohm contributions by inclusion in the appropriate lump sum deposit and by the date of the contribution.

by Bill Ballard. This Office is not inclined to intrude into the reported division of a campaign contribution amount between each half of a married couple. *Landsgaard v. Peterson*, COPP-2014-CFP-008. Had Candidate Bennett reported the contribution differently (as in \$100 from Bill Ballard and \$100 from Lee Ballard) there may have been a different decision in this Matter, but he did not do so, instead reporting both contributions as coming from Bill Ballard. Given that reporting by the candidate, the perception created by the campaign finance report is that both contributions were made by Bill Ballard. The Commissioner therefore determines that Candidate Bennett accepted \$200 from Bill Ballard, a contribution \$40 in excess of the contribution limit. Candidate Bennett has acted to refund the excess contribution to Bill Ballard.

The Commissioner hereby determines that there is sufficient evidence to show that Candidate Bennett made an error in reporting a \$40 contribution from Ms. Bohm as \$80 and further erred in accepting a contribution from Mr. Ballard that was \$40 in excess of the limit allowed by law.

## **VI. 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, as set out in this Decision, to show that Candidate Bennett has, as a matter of law, violated Montana’s campaign practice laws, including, but not limited to §13-37-229 and §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 Bennett is an experienced campaigner. 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.

Turning to a second level of analysis, the reporting error as to Ms. Bohm’s contribution is of a small amount, technical, inadvertent, of no harm to the public and it is excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009.

The \$40 excess Ballard contribution needs further discussion. The Commissioner is not inclined to dismiss any acceptance of an excess campaign contribution. In this Matter, however, the \$40 excess contribution was inadvertent (it was listed and disclosed). While it occurred after the complaint was filed, when informed by the complaint Candidate Bennett promptly

refunded the excess \$40 and filed (doing so on April 22, 2104) an amended report correcting the contribution amount. Further, it is difficult to see harm to the opposing candidate or public because the amount is small (\$40) and Candidate Bennett ended the campaign with thousands of dollars in surplus campaign funds.

The facts this Matter argue against pursuit of enforcement of the violation. Any act of enforcement will necessarily take the time and attention of a county attorney and the Commissioner's attorney. The Commissioner applies *de minimis* and also dismisses the \$40 excess contribution with all those factors in mind.

Because there is a finding of sufficient showing of violation followed by a determination that the *de minimis* principle applies, civil adjudication and/or a civil fine is not justified (see §13-37-124 MCA). This Matter is dismissed as *de minimis*.

DATED this 23<sup>rd</sup> day of April, 2014.



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