

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Safe Montana v. MTCIA No. COPP 2016-CFP-030-B	Finding of Sufficient Facts to Support a Campaign Practice Violation
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On September 27, 2016, Safe Montana, a 2016 Montana ballot committee, filed a complaint against Montana Citizens for I-182, also a 2016 ballot committee, and the Montana Cannabis Industry Association, a 2016 incidental political committee. The Complaint alleges multiple failures to properly register, report, and disclose.

Because the responsibilities of a ballot committee are different than those of an incidental committee the Commissioner split the Complaint into two parts. Part B (this Decision) deals with the allegations made against Montana Cannabis Industry Association, the incidental committee. On October 18, 2016, the COPP released its earlier Decision (COPP-2016-CFP-030-A) on the separated complaint; Part A addressed the allegations made against Montana

Citizens for I-182, the ballot committee.¹

Discussion

The Complaint alleges multiple campaign practice violations by Montana Cannabis Industry Association. Each is identified and dealt with, below.

1. The Acronym MTCIA Covers Two Entities

The Complaint alleges that the Montana Cannabis Information Association and the Montana Cannabis Industry Association are separate entities for filing and reporting purposes.

Finding of Fact No. 1: The Montana Cannabis Information Association, Inc. is a Montana non-profit corporation in good standing which was organized in 2011. (Records of the Montana Secretary of State (SOS).)

Finding of Fact No. 2: The Montana Cannabis Industry Association, Inc. is a Montana non-profit corporation in good standing which was organized in 2012 as an incorporated “incidental committee for ballot.” (SOS records.)

Finding of Fact No. 3: On May 2, 2016 the Montana Cannabis Information Association filed a statement of organization (Form C-2) as an incidental political committee with the COPP. (COPP records.)

Finding of Fact No. 4: On July 27, 2016 an amended C-2 Form was filed changing the contact person (the “additional officer information” was modified) and listing the name of the incidental committee as the Montana Cannabis Industry Association, Inc. (COPP records.)

Finding of Fact No. 5: On May 2, 2016 a campaign finance report was filed under the name of Montana Cannabis Information Association. (COPP records.)

¹ As used in this Decision, “Part A” is in reference to *Safe Montana v. Montana Citizens for I-182*, COPP-2016-CFP-030-A.

Finding of Fact No. 6: On May 25, 2016 a campaign finance report was filed under the name of Montana Cannabis Industry Association. (COPP records.)

Finding of Fact No. 7: All campaign finance reports following May 25, 2016 were filed under the name of Montana Cannabis Industry Association. (COPP records.)

The Complaint alleges that there was a plan to disguise campaign activity, including contributions, linked to the interchangeable use of the names of Montana Cannabis Information Association and Montana Cannabis Industry Association. The Commissioner rejects this allegation.

The Montana Cannabis Information Association is the name of a Montana non-profit corporation (FOF No. 1). The Montana Cannabis Information Association was formed in 2011 as the trade association entity representing the medical marijuana provider businesses created after the Medical Marijuana Act, Initiative 148, was passed into law by majority vote of Montana's in the 2006 elections.

The Montana Cannabis Industry Association is the name of another Montana non-profit corporation (FOF No. 2). The Montana Cannabis Industry Association was formed in 2012 as the incorporated entity that became a political committee advocating a position on Initiative Referendum 124, placed on the 2012 ballot for a vote by Montanans.²

Since 2012 the two names have been used interchangeably by the steering committee of medical marijuana providers who have functioned as the *de facto*

² In 2011 the Montana legislature repealed and replaced the language of I-148 with new language set out in Senate Bill 423. Following the session an initiative effort (IR-124) gathered enough signatures to place a referendum vote on SB 423 on the 2012 ballot. The language of SB 423 was sustained by the IR-124 vote at the 2012 election.

board of directors of the trade association non-profit entity.³ In effect, the narrower purpose Montana Cannabis Industry Association name has become a doing-business-as (dba) of the trade association, the Montana Cannabis Information Association. Regardless of name used there has been and is only one bank account and one steering committee for both groups. *Id.*

The 2016 MTCIA steering committee of medical marijuana providers acted consistent with this one group approach. In May of 2016 the Montana Cannabis Information Association name was used in filing the original C-2 form creating the 2016 incidental committee (FOF No. 3). Likewise the Montana Cannabis Information Association name was used in filing the incidental committee's first campaign finance report (FOF No. 5). However, within a month the incidental committee was reporting using the name of Montana Cannabis Industry Association (FOF No. 6). Within three months the incidental committee officially changed its name to Montana Cannabis Industry Association (FOF No. 4).

The Commissioner determines, for the reasons set out above, that the Montana Cannabis Industry Association name is a dba of the Montana Cannabis Information Association name. As used in this Decision (and in the reports filed with the COPP) the acronym MTCIA means the Montana Cannabis Information Association and its dba the Montana Cannabis Industry Association.

³ COPP investigator interview with Gregory Zuckert on October 19, 2016.

The Commissioner determines that there is no harm to the public resulting from the interchangeable use of names of the two entities and the application of the acronym MCIA to include both entities. There is no gap in the campaign finance reports nor is there duplication in the reports. While the Complaint does not specifically claim a campaign practice violation on this issue, the Commissioner determines that, under the facts of this Matter, reporting and disclosure was accomplished by an incidental committee with the acronym of MTCIA.

2. There is a Failure to Timely File

The Complaint alleges that MTCIA failed to timely report and disclose expenses and contributions involved in a 2016 ballot issue campaign. Under Montana law a political committee making an expenditure in a statewide ballot issue campaign, including MTCIA, must file campaign finance reports with the COPP “on the first day of each month from March through November during a year in which an election is held.” §13-37-226(1)(b), MCA. The reports must disclose contributions and expenses “to 5 days before the date of filing of [such] a report.” §13-37-228(2), MCA.

Finding of Fact No. 8: MTCIA filed 2016 campaign finance reports as follows: the May 1 report was timely filed on May 2 (May 1 was a Sunday); the May 23 (pre-primary) report was late filed on May 25; the June 1 report was late filed on June 8; the June 27 (post-primary) report was late filed on July 27; the July 1 report was late filed on July 27; the August 1 report was timely filed on July 30; the September 1 report was late filed on September 7 and the October 1 report was timely filed on September 30. (COPP records.)

Timely reporting and disclosure is required so that the public, press and

opposing political committees understand the contribution and expenditure of funds used in support of a particular campaign.

Sufficiency Finding No. 1: The Commissioner finds that there are sufficient facts to show that MTCIA did not timely file the monthly campaign finance reports as required by Montana law. Instead multiple reports were late filed.

The Commissioner determines, through this sufficiency finding, that MTCIA has failed to timely file its campaign finance reports under Montana law.⁴ In making this determination the Commissioner notes that the May 2, May 23 and June 1 MTCIA incidental committee campaign finance reports match the amounts and activities reported and disclosed by the campaign finance reports of the I-182 ballot committee for those same dates.⁵ While some of these MTCIA incidental committee reports were late filed, the Montana Citizens for I-182 ballot committee reports were timely filed, meaning the in-kind contribution information was timely available to the press and public.

The June 1, July 1 and August 1 MTCIA incidental committee reports, two of which were late filed, disclose no in-kind expenditures. The September 1 MTCIA incidental committee report was late filed but reported and disclosed amounts and activities that were timely reported and disclosed by the ballot committee reports for those same reporting periods.

The above discussion of dual filing does not excuse the MTCIA incidental committee from its failure to timely report and disclose. It does, however,

⁴ The MTCIA response to the Complaint admits late filing.

⁵ Prior to filing its campaign finance report a ballot committee will check with each known incidental committee, disclosing as contributions the in-kind expenditure amounts reported to it by the incidental committees.

illustrate the wisdom and practicality of a dual reporting system that requires a ballot committee receiving an in-kind contribution and an incidental committee making an in-kind expenditure to each separately report the same in-kind transaction.

In general, an incidental committee is an on-going business, organization, non-profit group or trade association that is often not familiar with the demands of campaign finance reporting. In contrast, a ballot committee is often staffed by an experienced person (here, M and R Strategic Services) who is familiar with those demands. Given the multi-player roles of ballot campaigns reporting violations do occur but most often lie with the incidental committee reports,⁶ with the press and public still receiving timely disclosure through the timely reports of the ballot committee.

3. MTCIA Is a Legitimate Incidental Committee

The Complaint alleges that MTCIA is really a ballot committee, not an incidental political committee.

Finding of Fact No. 9: From 2012 through 2016 MTCIA engaged in medical marijuana policy advocacy in the legislature, courts and electoral process. (Investigator interviews and COPP records.)

MTCIA duly filed as an incidental political committee (FOF Nos. 3 and 4) and reported contributions and in-kind expenditures (albeit, often late) related to I-182 (FOF Nos. 5 through 7). MTCIA was in existence before the I-182 ballot issue, with a purpose and record of activity that involved multiple policy

⁶ See *MHCA v. SEIU*, August 31, 2011 (Deputy Commissioner Colburg); *Harrington v. Montana Women Vote*, July 3, 2012 (Commissioner Murry).

venues (FOF No. 9). There should be no doubt but that MTCIA was an incidental committee under Montana law defining an incidental political committee as a committee: “that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.” §13-1-101(22)(a), MCA.

The Complainant’s view would not afford MTCIA a legitimate role in Montana policy determination, apparently discarding its four years of civic participation, including work on ballot issues, legislative proposals and litigation. Montana campaign practice law, with all its accompanying constitutional ramifications, does not provide for this sort of distinction. The Commissioner hereby incorporates the detailed discussion set out in regard to political committees in the Part A Decision on this same complaint. The Commissioner dismisses any allegation against MTCIA based on an improper use of incidental committee status.

4. Lack of Reporting of Expense Detail

The Complaint alleges that MTCIA failed to report the necessary detail of certain expenses made in support of I-182.

Finding of Fact No. 10: MTCIA reported its in-kind expenditures in the same detail as the principal ballot committee describing the funded activity as “campaign management, field staff for petitioning, travel, office overhead, and materials.” (COPP records.)

The Commissioner incorporates the reasoning from Part A of this Decision and determines that the requirement of greater detail does not apply to the current election. This portion of the Complaint is therefore dismissed.

ENFORCEMENT OF SUFFICIENCY FINDINGS

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner “shall investigate” any alleged violation of campaign practices law. §13-37-111(2)(a), MCA. 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 MTCIA’s 2016 campaign activities violated Montana’s campaign practice laws, including, but not limited to the laws set out in the Decision. 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 fully and timely report and disclose cannot generally be excused by oversight or ignorance. Excusable neglect cannot be applied to

oversight or ignorance of the law as it relates to failures to file and report. *See* discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009. Likewise, 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, 009.

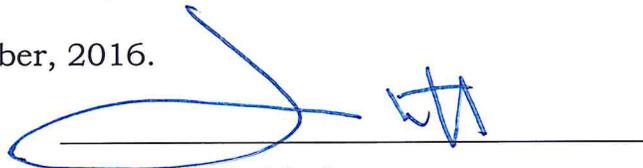
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to these certain Sufficiency Findings, civil prosecution and/or a civil fine is justified. §13-37-124, MCA. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying civil adjudication of MTCIA’s violation. Because of the nature of the violations (the failure to 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 adjudication. *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.

While it is expected that a fine amount can be negotiated and paid, 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 campaign practice 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*.

This Decision is simultaneously released to the press, public and the parties. Because Montanans are already voting on the Initiative addressed in this Decision a full release at the earliest possible date is required.

DATED this 26th day of October, 2016.



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