

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Smith v. Geiger No. COPP 2016-CFP-009	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On April 26, 2016, Brady Smith of Glendive, Montana filed a complaint against Jerome Geiger of Glendive, Montana for failing to properly report and disclose certain campaign contribution information.

Discussion

The Complaint alleges that Mr. Geiger, as a 2013 Candidate for public office in Montana, failed to properly report and disclose expenses and contributions involved in his campaign for election to public office.

Finding of Fact No. 1: Jerome Geiger was a 2013 candidate for election to the Glendive City Council, Ward 1.¹ (Geiger Statement of Candidacy filed with COPP).

Finding of Fact No. 2: Candidate Geiger filed a statement of candidacy with the COPP on April 30, 2013. (Commissioner's records.)

¹ Glendive uses a Mayor and Council form of government, with the Council consisting of 8 members 2 from each of 4 wards. Glendive Homepage.

Finding of Fact No. 3: Candidate Geiger filed no campaign finance reports related to his 2013 campaign with the COPP. (Commissioner's records.)

Under Montana law a candidate for local government office, including Candidate Geiger, does not need to file campaign finance reports with the COPP, so long as campaign financial activity (that is both expenses and contributions) does not exceed \$500. §13-37-226(3), MCA. Candidate Geiger checked the box on his Statement of Candidacy pledging to spend under \$500.

The Complaint, however, provides documentation that Candidate Geiger spent more than \$500. In response, Candidate Geiger admits to spending \$700.²:

Sufficiency Finding No. 1. Sufficient facts exist to show that Candidate Geiger failed to properly report and disclose contributions and/or expenses in his 2013 election.

Reporting and disclosure is required so that the public and opposing candidate understand the source of funds used in support of a particular candidacy. Candidate Geiger exceeded \$500 in campaign expenditures and was therefore required to provide such reporting and disclosure.³ §13-37-226(3), MCA. Candidate Geiger failed to provide such reporting and disclosure.

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),

² Geiger E-Mail, May 10, 2016.

³ The Commissioner notes that Candidate Geiger stated that he did not maintain campaign accounts and records, as required by §13-37-208, MCA. Given Candidate Geiger's initial status as an "under \$500" candidate, and his forthright admission of spending \$700 the Commissioner does not find a campaign practice violation on this issue.

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 Candidate Geiger’s 2013 campaign for election to the Glendive City Council from Ward 1 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. The Commissioner, however, applies one or both principles to excuse Candidate Geiger’s failure to keep and maintain campaign finance records, as discussed

in footnote 3 of this Decision.

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to Sufficiency Finding 1, civil/criminal prosecution and/or a civil fine is justified. §13-37-124, MCA. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying civil prosecution of Candidate Geiger. 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 prosecution. *Id.*

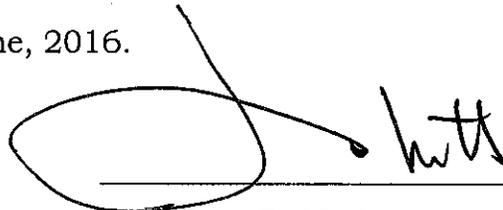
Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that this Matter is waived back, the Finding and Decision in this Matter does not necessarily lead to civil or criminal prosecution as the Commissioner 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 candidate named in the sufficiency finding was forthright in describing his campaign activity.

While it is expected that a mitigated fine amount will 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*.

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 2nd day of June, 2016.

A handwritten signature in black ink, appearing to read 'J. Motl', is written over a horizontal line. The signature is stylized and somewhat cursive.

Jonathan R. Motl
Commissioner of Political Practices
Of the State of Montana
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