



Commissioner of Political Practices (Commissioner). Form C-5 is a periodic report filed by a candidate listing contributions received and expenditures made during the reporting period. Although he filed a form C-5 in the Commissioner's Office, Mr. Fisher did not file a copy in the office of the Flathead County Election Administrator.

4. On June 29, 1998 Ted Stollfus, campaign treasurer for Mr. Syverson, telephoned the Commissioner's office and inquired whether Mr. Fisher's campaign had filed a form C-5 with that office. When advised that a C-5 had been filed with the Commissioner's office, Mr. Stollfus stated that no C-5 was on file with the Flathead County Election Administrator.

5. Following the telephone call from Mr. Stollfus, an employee of the Commissioner's office telephoned C.P. McCahill, campaign treasurer for Mr. Fisher, and reminded him of the requirement that copies of C-5s be filed with the county election administrator. Mr. McCahill filed a copy of the C-5 with the Flathead County Election Administrator on June 30, 1998.

6. In response to the complaint, Mr. McCahill claimed that he erroneously failed to file a copy of the C-5 with the Flathead County Election Administrator because he was unaware of the requirement prior to the primary election. Upon being advised of the omission by the Commissioner's office, he promptly filed a copy with the Flathead County Election Administrator.

7. In February, 1998, Mr. McCahill received a letter from the Commissioner's office advising him that as treasurer of Mr. Fisher's campaign he was responsible for seeing that campaign finance forms are filed in a timely manner. The letter enclosed copies of forms, including C-5s, along with a calendar listing dates on which the reports were due to be filed. In addition, the letter advised Mr. McCahill:

File an originally signed copy of all reports with this office and with your county election administrator. [Emphasis added].

8. The Flathead County Election Administrator's office did not notify the Commissioner's office that Mr. Fisher had failed to file a C-5 prior to the June 2 primary election. The Commissioner's office typically does not contact the local election administrators to determine whether candidates have filed the appropriate forms with that office. In addition, local election administrators typically do not provide information to the Commissioner regarding whether candidates for state district office have filed their C-5 forms. The election administrators are responsible for seeing that candidates in their county file their reports in the election administrator's office.

#### **STATEMENT OF FINDINGS**

Candidates for state district office are required to file C-5s on the twelfth day preceding the date on which an election is held. Montana Code Annotated § 13-37-226(3)(a). Montana Code Annotated

§ 13-37-225(1) provides that all reports required to be filed by candidates shall be filed with the Commissioner and with the election administrator of the county in which a candidate is a resident. The election administrator is typically the county clerk and recorder. Montana Code Annotated § 13-1-101(8).

Mr. Fisher neglected to file a pre-primary report with the Flathead County Election Administrator, even though he was advised of this requirement in February, 1998 by the Commissioner's office. See Finding of Fact No. 7. Upon being advised of the omission he filed the report. Mr. Stollfus suggests that because of Mr. Fisher's failure to file the C-5 with the election administrator in a timely manner, his name should not be printed on the ballot, pursuant to Montana Code Annotated § 13-37-126(1). That statute provides, in relevant part:

**Names not to be printed on ballot.** (1) The name of a candidate may not be printed on the official ballot for an election if the candidate or a political treasurer for a candidate fails to file any statement or report as required by this chapter.

. . .

(3) In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name should not be printed on the official ballot. . . .

Montana Code Annotated § 13-15-406 requires the election administrator to issue a certificate of nomination or election to

each person whom the board of county canvassers declares has been elected. Montana Code Annotated § 13-37-127, states that a certificate of election shall not be granted to any candidate until he or his treasurer has filed the reports and statements required to be filed by law.

Reading Montana Code Annotated § 13-37-126 in isolation could lead to the conclusion that since Mr. Fisher failed to file his C-5 with the Flathead County Election Administrator prior to the primary election, his name should not have been printed on the primary ballot. However, since the Commissioner was not made aware of the omission he had no basis upon which to notify the Secretary of State that Mr. Fisher had not complied with the law's reporting requirements. Moreover, the Montana Supreme Court has cautioned that individual statutory provisions may not be read and properly understood in a vacuum. Rather, statutes must be read and construed in a manner "as to insure coordination with the other sections of an act." Peretti v. State, 238 Mont. 239, 244, 777 P.2d 329, 332-33 (1989); Hostetter v. Inland Development Corp. of Montana, 172 Mont. 167, 171, 561 P.2d 1323, 1326 (1977). Both Montana Code Annotated §§ 13-37-126 and 13-37-127 were enacted as part of Chapter 480 (Senate Bill 76) in the 1975 Montana Legislature. The inclusion of the word "until" in Montana Code Annotated § 13-37-127 supports a conclusion that a certificate of election may be issued to a successful candidate who files the

required reports and statements, even if they are not filed in a timely manner. This appears to have been intended as an incentive for candidates who have won the election to file the necessary reports, even if they are late.

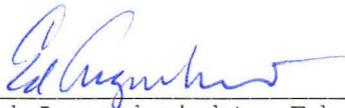
By the same token, Montana Code Annotated § 13-37-126 appears to be intended as an incentive for candidates to file their reports during the campaign. The Commissioner is required to notify the Secretary of State when a candidate or the candidate's treasurer "has not complied" with the provisions of title 13, chapter 37. Montana Code Annotated § 13-37-126(3). A candidate has not complied with the reporting provisions if he or she "fails to file any statement or report" required by law. Montana Code Annotated § 13-37-126(1). Had the Commissioner been made aware of Mr. Fisher's failure to file a C-5 with the Flathead County Election Administrator in a timely manner prior to the primary election, a notice to that effect would have been issued pursuant to Montana Code Annotated § 13-37-126(3). However, the primary election has already been held, therefore Mr. Fisher's name cannot be removed from the ballot for that election. In any event, Mr. Fisher has now complied with the reporting requirements, thus there is no basis upon which to notify the Secretary of State that the candidate has failed to comply with the provisions of title 13, chapter 37.

Candidates and their campaign treasurers are expected to file all reports in a timely manner and with the proper offices. While there is no basis at this time upon which to notify the Secretary of State that Mr. Fisher has failed to comply with the reporting requirements of title 13, chapter 37, there is sufficient evidence to conclude that the reporting provisions of the chapter were at least negligently violated. Montana Code Annotated § 13-37-128 authorizes a civil action brought by the Commissioner or the County Attorney pursuant to Montana Code Annotated §§ 13-37-124 and 13-37-125.

**CONCLUSION**

Based on the preceding Summary of Facts and Statement of Findings, and pursuant to Montana Code Annotated § 13-37-124, this matter will be referred to the Flathead County Attorney for his consideration of whether to pursue a civil action under Montana Code Annotated § 13-37-128.

Dated this 21<sup>st</sup> day of August, 1998.



---

Ed Argenbright, Ed.D.  
Commissioner of Political Practices