

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Kary v. Daniels No. COPP 2016-CFP-024	Finding of Sufficient Facts to Show a Campaign Practice Violation
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On August 22, 2016, Douglas Kary of Billings, Montana filed a formal complaint against Josh Daniels of Billings, Montana, for failure to properly complete documents related to his candidacy for public office.

Foundational Facts

The following foundational facts apply to this Decision.

Finding of Fact No. 1. Josh Daniels is a duly listed Libertarian Party candidate for 2016 election to the Montana Legislature from HD 43. (Records of Montana Secretary of State.)

Finding of Fact No. 2. Candidate Daniels filed the Statements and Reports required for 2016 election purposes with the Commissioner of Political Practices. (Commissioner's records.)

Discussion

The Complaint asserts that Candidate Daniels has failed to provide certain information required of candidates by Montana law.

Finding of Fact No. 3. Candidate Daniels filed his Statement of Candidacy (Form C-1-A) on March 10, 2016. (Commissioner's records.)

Finding of Fact No. 4. The Statement of Candidacy filed by Candidate Daniels listed himself as treasurer but did not list the name of a bank under the "campaign account information." (Commissioner's records.)

Finding of Fact No. 5. The campaign finance reports filed by Candidate Daniels disclose \$75 "cash in bank." (Commissioner's records.)

Finding of Fact No. 6. Candidate Daniels filed his Business Disclosure Statement (Form D-1) on March 10, 2016. (Commissioner's records.)

Finding of Fact No. 7. Candidate Daniels' Business Disclosure Statement listed "disabled" under question No. 7, requiring the listing of the "type of business in which currently engaged." (Commissioner's records.)

Montana law defines a sparing but effective system of accounting, record keeping and disclosure of campaign finance information. A candidate's first exposure to the campaign finance system is with the completion and filing of a Statement of Candidacy form. Candidate Daniels filed his Statement of Candidacy on March 10, 2016 (FOF No. 3).

A Statement of Candidacy, when completed by the candidate, identifies the person (campaign treasurer) and the entity (campaign bank account) that will serve to handle all campaign funds. Candidate Daniels submitted a Statement of Candidacy form that listed himself as campaign treasurer but did not list a campaign bank location. Under Montana law Candidate Daniels was required ("shall") to list "the complete name and address of the candidate's campaign treasurer and campaign depository" on his Statement of Candidacy.

44.11.220(3), ARM.

Sufficiency Finding No. 1. There are sufficient facts to show that Candidate Daniels failed to complete a Statement of Candidacy form that reported and disclosed the campaign depository information required by Montana campaign practice standards.

The Commissioner notes that Candidate Daniels has now filed an amended Statement of Candidacy form listing his campaign depository (bank), doing so promptly after the Complaint was filed. The Commissioner further notes that Candidate Daniels has apologized to the people of Montana for his earlier failure to list the name of the bank.¹

The Commissioner hereby recognizes Candidate Daniels' actions as factors that will mitigate the fine assessed for the campaign practice violation. The violation, however, must stay as there was a period of time when the information was lacking. As to that period of time, Montana law required, without exception, the disclosure of the name and address of the campaign depository. 44.11.220(3), ARM.

The Complaint further asserts that Candidate Daniels failed to properly fill out his Business Disclosure Statement. Candidate Daniels listed only the word "disabled" when disclosing the "type of business in which currently engaged." (FOF No. 7.) The Complaint asserts that Candidate Daniels has an undisclosed business interest as a grower of medical marijuana. Candidate Daniels responds that he is "a medical marijuana patient who grows."

Montana law requires that a candidate, including Candidate Daniels, list

¹ Candidate Daniels conversation with COPP investigator on August 24, 2016.

“each present or past employing entity from which benefits” are currently received, along with any “business...in which the individual holds an interest.” §2-2-106(2), MCA.² The Commissioner determines that “growing” marijuana does not establish a reportable business interest when the growing is for personal use, as opposed to commercial sale. This portion of the Complaint is dismissed as lacking in evidence.

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 certain 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

² The COPP has considered reporting obligations under §2-2-106, MCA on one prior occasion, with Commissioner Vaughney determining that then-Governor Martz properly completed the Business Disclosure Form she was required to file. *MDP v. Martz*, September 2002.

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 properly complete a Statement of Candidacy cannot generally be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law. 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 provide required information are excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009.

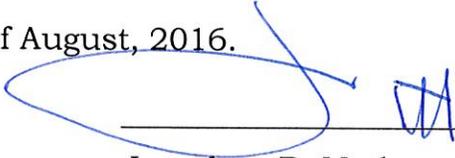
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the sufficiency findings, civil/criminal prosecution and/or a civil fine is justified. §13-37-124, MCA. The Commissioner hereby issues a “sufficient evidence” Finding and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

While it is expected that a 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*.

DATED this 25th day of August, 2016.



Jonathan R. Motl
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