

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

KEVIN SHEA v. VETERANS FOR KATHY LOVE	COPP-2024-CFP-019 FINDING OF FACTS SUFFICIENT TO SUPPORT VIOLATIONS
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COMPLAINT

On May 20, 2024, Kevin Shea of Missoula, MT, filed a campaign practices complaint against Veterans for Kathy Love. The complaint alleged that Veterans for Kathy Love failed to register as a political committee or file finance reports with COPP despite financing an election communication supporting Montana House of Representatives candidate Kathy Love. The submitted complaint conforms to the requirements of Admin. R. Mont. 44.11.106 and alleges violations of statutes which fall under my jurisdiction as Commissioner of Political Practices. Therefore, I accepted it as filed, and in accordance with COPP procedures, requested a response from the named treasurer of Veterans for Kathy Love, Al Fox. Mr. Fox and Dean Sperry, both of Corvallis, MT, timely filed a response on May 30, 2024. The complaint and response are posted on COPP’s website, politicalpractices.gov.

ISSUES

Political committee registration, Montana Code Annotated (MCA) § 13-37-201; reporting of contributions received, and expenditures made by political committees, MCA §§ 13-37-225 - 229.

BACKGROUND

On May 15, 2024, Tidbits of Ravalli County, a local periodical, published an advertisement from “Veterans for Kathy Love” supporting Montana House of Representatives District 85, Republican candidate Kathy Love. The ad included an attribution statement: “Paid for by Veterans for Kathy Love, Al Fox, Treasurer, 801 Old Corvallis Road, Corvallis, MT 59828.”

No political committee with the name Veterans for Kathy Love or Veterans for Love filed as a political committee with COPP by submitting the required C-2 Statement of Organization. Nor has any organization by such a name disclosed receipt of any contributions or

expenditures on committee finance reports filed with COPP.

On May 30, 2024, Al Fox and Dean Sperry provided COPP with a formal written response indicating they were responsible for the advertisement and stating, “the total cost of the add [sic] was \$796.00, there was no coordination between Al Fox and Dean Sperry and the Love for Montana campaign.” Response, 1.

DISCUSSION

The complaint alleges that the committee “Veterans for Kathy Love” did not register with COPP as a committee and that the attribution as required by MCA Sec. 13-35-225, is “likely false as well.” Complaint, 1.

I. Political committee registration requirements

Montana election law defines a political committee as a combination of two or more individuals, or a person other than an individual, who receives contributions or makes expenditures totaling \$250.00 or more, in support of or in opposition to a candidate or ballot issue, or otherwise finances an election communication, electioneering communication, or independent expenditure costing \$250.00 or more. MCA § 13-1-101(34)(a), (d).

In this case, the material in question- a newspaper ad supporting candidate Kathy Love, was an independent expenditure,¹ financed by a combination of two or more people (Al Fox and Dean Sperry), at a cost of \$796.00. Response, 1. Under Montana law, Al Fox and Dean Sperry formed a political committee when they made an expenditure in support of Kathy Love in excess of \$250.00

Montana election law requires political committees to “certify the full name and address of the campaign treasurer” and file “the certification, which must include an organizational statement and the name and address of all officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first.” MCA § 13-37-201(1), (2)(b).

¹ (28) "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.

The ad financed by the Veterans for Kathy Love political committee was published on May 15, 2023. Consequently, the committee was required to register with COPP no later than May 20, 2023, five days later.² Veterans for Kathy Love did not at any time file a committee registration with COPP, a violation of § 13-37-201.

The complainant additionally asserts that the ‘paid for by’ attribution on the ad “is likely false.” Complaint, 1. Although the committee, Veterans for Kathy Love, was not registered when this ad was placed, that does not indicate the attribution is false. There is no evidence presented which indicates Veterans for Kathy Love violated MCA § 13-35-225.

II. Reporting of contributions received and expenditures made by political committees

The complainant’s allegations are addressed above. However, “Montana law also permits COPP to ascertain whether other violations exist.” *MFC v. Zephyr*, COPP-2023-CFP-010, 2. Here, a political committee is not only required to file as such with COPP, but Montana election law also requires that political committees file periodic reports of contributions received and expenditures made by the committee. MCA §§ 13-37-225 through 229.

In accordance with Montana election law and the COPP reporting calendar, political committees were required to file a C-6 periodic finance report on or before May 30, 2024. MCA § 13-37-226(2)(b). Having not registered as a political committee with COPP, Veterans for Kathy Love has yet to file any finance reports disclosing contributions received or expenditures made by the committee.

As of the date of this decision, Veterans for Kathy Love had an additional report due on June 30, 2024. Therefore, the political committee consisting of members Dean Sperry and Al Fox, Veterans for Kathy Love, has violated MCA § 13-37-226(2)(b) on two occasions.

SUMMARY

Montana’s political committee disclosure requirements are not intended to serve as a barrier to political speech by interested citizens. See the discussion in *Landsgaard v. Peterson*

² The registration was in reality due before May 20. This is because the expenditure or authorization to make the expenditure had to happen before May 15 for the ad to be published on that date. Unfortunately, the Veterans for Love committee did not provide COPP with information about the actual date the expenditure was made or authorized, so COPP uses the May 15 publishing date for purposes of simplifying this discussion. *Shea v. Veterans for Kathy Love* COPP-2024-CFP-019 3 of 6

and Wilks, COPP-2014-CFP-008, 8-11, which established COPP’s current position that complaints seeking to restrict base level participation in electoral politics or otherwise demand an increased disclosure burden on individuals are dismissed as frivolous. However, as articulated in *Landsgaard*, Montana’s requirements that candidates and political committees participating in electoral politics register and report serve an important function, allowing the public to know who is spending what for the purposes of influencing an election. “The public’s interest in transparent political funding outweighs the minimal burden the incidental disclosure requirements impose.” *Landsgaard*, quoting *Nat’l Ass’n for Gun Rights, Inc. v. Murray*, CV-12-95-H-DLC (D. Mont. 2013).

Rather than discouraging Al Fox and Dean Sperry - Veterans for Kathy Love - from participating in Montana’s electoral process, Montana campaign finance laws simply require they register as a political committee and report their spending. By failing to register as a political committee with COPP or file finance reports disclosing contributions received and expenditures made, the Veterans for Kathy Love political committee withheld this information from interested Montanans. Furthermore, when a comparatively large expenditure occurs and is not reported prior to an election, Montana voters are deprived of valuable information which informs their decisions at the ballot box.

ENFORCEMENT

The duty of the commissioner to investigate alleged violations of election law is statutorily mandated. MCA § 13-37-111. Upon a determination that sufficient evidence of election violations exists, the commissioner next determines if there are circumstances or explanations that may affect whether prosecution is justified.³ *Rose v. Glines*, COPP-2022-CFP-030. “The determination of whether a prosecution is justified must take into account the law and the particular factual circumstances of each case, and the prosecutor can decide not to prosecute when they in good faith believe that a prosecution is not in the best interest of the state.”⁴ *Montana Freedom Caucus v. Zooney Zephyr*, COPP-2023-CFP-010, at 26.

³ An extensive discussion of the commissioner’s discretion can be found in *Montana Freedom Caucus v. Zooney Zephyr*, COPP-2023-CFP-010.

⁴ See also, *In the Matter of Citizens for More Responsive Government*, (*Motl v. CMRG*, COPP-2001-CFP-2/21/2002), *In the Matter of the Complaint Against Ronald Murray*, (*Washburn v. Murray*, COPP-2013-CFP-02), and *Fitzpatrick v. Zook*, COPP-2010-CFP-06/14/2011.

When the commissioner finds sufficient evidence to justify a prosecution, the commissioner notifies the affected county attorney and transfers all relevant information, allowing the county attorney the opportunity to prosecute the offending party. MCA § 13-37-124(1). The county attorney has 30 days in which to initiate a civil or criminal action, at which time, if action is not taken the matter is waived back to the commissioner. *Id.* If the matter is waived back, the commissioner “may then initiate” legal action, but may exercise his discretion as to whether the matter is best solved by a civil action or the payment of a negotiated fine. MCA § 13-37-124(1), See also, *Bradshaw v. Bahr*, COPP-2018-CFP-008, 4. In negotiating a fine, the commissioner may exercise his discretion and consider any and all mitigating factors. *Bradshaw*, 4. If the matter is not resolved through the aforementioned negotiation, the commissioner retains statutory authority to bring a claim in district court against any person “who intentionally or negligently violates any requirement of campaign practice law.” *Id.* at 5.

The district court will consider the matter de novo, providing full due process to the alleged violator. The court, not the commissioner, determines the amount of liability when civil actions are filed under MCA § 13-37-128, and the court may take into account the seriousness of the violation(s) and the degree of a defendant’s culpability. MCA § 13-37-129.

CONCLUSION

Based on the above discussion, I find there is sufficient evidence to show Veterans for Kathy Love violated Montana election law. This Commissioner, have been charged to investigate and decide, hereby determines that Veterans for Kathy Love, and its sole members, Al Fox and Dean Sperry, violated the following:

- MCA § 13-37-201(2)(b), Campaign treasurer, by failing to register as a political committee with COPP.
- MCA § 13-37-226, Time for filing reports, by failing to file C-6 periodic finance reports on May 30 and June 30, 2024.

Having determined that prosecution is justified. I will now refer this matter to the Ravalli County Attorney in accordance with the provisions of MCA § 13-37-124. The County Attorney’s office is free to conduct their own investigation under MCA § 13-37-125, request additional material from COPP, or refer the matter back to this office for potential prosecution. Most matters are returned to COPP and are concluded with a negotiated settlement where mitigating

factors are considered, and a civil penalty is determined pursuant to MCA § 13-37-128. If a negotiated settlement is unsuccessful, the Commissioner will pursue the matter in Ravalli County District Court.

Dated this 11th of July, 2024



Chris J. Gallus
Commissioner of Political Practices
State of Montana
P.O. Box 202401
1209 8th Avenue
Helena, MT 59620