

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

TRISTAN ULMER	COPP-2024-CFP-047
v.	PARTIAL DISMISSAL AND FINDING OF FACTS SUFFICIENT TO SUPPORT VIOLATIONS
JESSE JAMES MULLEN (Montana Secretary of State candidate)	

COMPLAINT

On October 25, 2024, Tristan Ulmer of East Helena, MT, filed a Campaign Finance and Practices (CFP) complaint against Montana Secretary of State candidate Jesse James Mullen. The complaint allege that candidate Mullen failed to timely disclose expenditures made and contributions received prior to Montana’s June 4, 2024, primary election on forms C-7 and C-7E as required; failed to disclose expenditures made related to newspaper and social media advertisement on campaign finance reports filed with COPP; and accepted contributions exceeding Montana’s allowable limits from certain individual contributors.

The complaint conforms to the requirements of Admin. R. Mont (ARM) 44.11.106 and alleges violations of statutes which fall under my jurisdiction as Commissioner of Political Practices. Therefore, I accepted it as filed. Due to the proximity to the election, Mr. Mullen was immediately notified of this complaint via email on the same date it was received by COPP, October 25, 2024. I also formally notified Mr. Mullen and in accordance with Montana Code Annotated (MCA) § 13-37-132, requested a response. Mr. Mullen provided an initial response via email on October 25, 2024, and provided a formal response on October 29, 2024. The complaint and response are posted on COPP’s website, politicalpractices.mt.gov.

ISSUES

This decision addresses the reporting of expenditures made and debts owed by candidates, MCA § 13-37-225 through 229 and ARM 44.11.502, and campaign contribution limits, MCA § 13-37-216 and ARM 44.11.227.

DISCUSSION

I. Reporting of contributions received and expenditures made

Newspaper ads

The first allegation raised in the complaint is that Mr. Mullen failed to disclose newspaper advertisements supporting his candidacy as campaign expenditures in the time and manner required by Montana election law. The complaint states, “Mr. Mullen has, for weeks and potentially months maintained a newspaper ad in at least one publication.” (Complaint, 1.) As evidence, the complainant provided three copies of an advertisement for Mr. Mullen published in the Cut Bank Pioneer Press.¹

MCA § 13-37-229(2)(a)(vi) stipulates that candidates must report all expenditures made to support or oppose their candidacy, including the “amount and nature of debts owed.” Applicable administrative rules clearly lay out how candidates are required to report debts owed. ARM 44.11.502(2), explains “[a]n obligation to pay for a campaign expenditure is incurred on the date the obligation is made, and shall be reported as a debt of the campaign until the campaign pays the obligation by making an expenditure.” Further, candidates are required to disclose the full amount of debts owed at the time the debt is incurred. *Ward v. Marceau*, COPP-2022-CFP-008, 4-12.

Here, COPP reviewed all C-5 campaign finance reports filed by Mr. Mullen at the time this complaint was submitted. This review did not uncover any reported expenditures made or debts owed by Mr. Mullen to obtain newspaper advertisements of this nature. When notified of this complaint on October 25, 2024, Mr. Mullen stated in an email, “[w]e have yet to receive an accurate invoice for the newspaper advertisements and are awaiting a corrected billing to make the payment.” (COPP Records.) On October 29, 2024, via his formal written response, Mr. Mullen stated that “the Aug/Sept report has been amended to reflect the print display advertisements raised in item #1, which is the entirety of the amount for

¹ This newspaper also includes the captions, Glacier Reporter, Shelby Reporter, and the Vallerian.

the ads that ran through October 30.” COPP reviewed Mr. Mullen’s August 16 through September 15, 2024, C-5 campaign finance report, and confirmed that the report now includes an expenditure of \$3,456.00 to entity Silver State Post, described as “Display newspaper advertisements at \$288/insertion, 12 editions – Ponderosa & SWMT group.” (COPP Records.)

Although Mr. Mullen was not provided a formal invoice, he was still required to disclose this activity as a debt owed at the time the obligation occurred. The earliest advertisement provided by the complainant is dated September 4, 2024. Therefore, Mr. Mullen entered into an agreement on September 4, 2024, at the very latest, and this obligation was required to be disclosed on his August 16 - September 15, 2024, C-5 report, pursuant to MCA § 13-37-229(2)(a)(vi) and ARM 44.11.502(2). See *Perkins v. Downing*, COPP-2020-CFP-022; *Ward v. Tucker*, COPP-2022-CFP-021; *Ward v. Marceau*, COPP-2022-CFP-008; and *Amerman v. McGrath*, COPP-2016-CFP-043.

Mr. Mullen violated MCA § 13-37-229 by failing to timely disclose an obligation owed to the Silver State Post to obtain the newspaper advertisements identified by the complainant. After receipt of this complaint, Mr. Mullen did address this deficiency with COPP by filing an Amended C-5 campaign finance report appropriately disclosing the activity as a campaign expenditure.

Social media ads

The complainant next alleges Mr. Mullen failed to report over “two thousand dollars to date” in social media advertising. As evidence, the complainant provides a Meta statement showing a total amount spent by “Mullen for Montana” of \$2,090 for the time period May 7, 2018 through October 20, 2024.

COPP reviewed all C-5 campaign finance reports filed by Mr. Mullen at the time this complaint was submitted and found several expenditures labeled as “digital advertising” or “fundraising” and “META/Digital Commercials” including expenditures in the amounts of \$2,484.43 and \$3,568.98, and \$10,000 to Dialogue Digital.

Expenditure reporting, including requirements to itemize and describe certain expenditures, is established under MCA § 13-37-229(2), which requires candidates disclose the amount, date, and purpose of each expenditure made. These requirements have been considered at great length by COPP relevant to Montana’s upcoming 2024 general election, where the agency has consistently concluded that it “does not interpret MCA § 13-37-229(2)(b) to require that candidates disclose the specific *platform* when reporting expenditures for campaign advertisements – the requirement is to disclose the specific *services* provided.” *Busse for Montana v. Gianforte*, COPP-2024-CFP-037, at 8. In *MTGOP v. Busse*, the commissioner held the description “statewide tv broadcast ad buy” met legal requirements. COPP-2024-CFP-27, See also, *Busse for Montana (via Harris) v. Gianforte*, COPP-2024-CFP-029, at 11-13.

Here, Mr. Mullen denies any suggestion that he has failed entirely to disclose social media expenditures,

Digital fundraising is ordered through Dialogue Digital, which is clearly marked in the reports. Dialogue Digital services include various digital fundraising services, including, but not limited to, emails, text messages, social media, and other online commercials. In our most recent report, META advertisements are explicitly noted as an additional billing charge for a more significant purchase on META to raise awareness of the candidate as ballots become available to voters. (Response.)²

COPP has reviewed Mr. Mullen’s C-5 campaign finance reports and can confirm that expenditures to entity Dialogue Digital were disclosed on campaign finance reports filed with COPP prior to this complaint’s submission. Here, Mr. Mullen has provided similar detail to describe expenditures as occurred in the prior *Busse* and *Gianforte* matters.

The complainant’s allegation that Mr. Mullen violated MCA § 13-37-229 by failing to report expenditures for digital advertising is dismissed.

² Meta is the parent company for Facebook, a prominent social media platform and the individual platform relevant to the submitted complaint

Pre-election reporting

The complainant additionally alleges that “A C7 was not filed in the required time period May 15 - June 3, 2024, when Mr. Mullen received a contribution in excess of the threshold amount requiring him to do so.” (Complaint, 2.)

In addition to monthly periodic finance reports, MCA §13-37-226(1)(c), (d) requires candidates to file additional reports within two business days of receiving a contribution or expenditure equal to or more than the contribution limit allowed “between the 15th day of the month before an election. . .and the day before the election.” These transactions are reported on C-7 or C-7E forms provided by COPP. MCA § 13-37-226(6) further specifies that a candidate is “not required to file a report required by subsection (1)(c) or (1)(d) if the candidate is not opposed in the election.”

Here, while the complainant is correct that Mr. Mullen did not file any C-7 or C-7E reports during the applicable time period, Mr. Mullen was not opposed in seeking the Democratic Party nomination for Montana’s Secretary of State position in the June 4, 2024, primary election. Consequently, under MCA § 13-37-226(6), Mr. Mullen was exempt from any requirement to do so.

The allegation that Mr. Mullen violated MCA § 13-37-226(1) by failing to report pre-election contributions and expenditures on the applicable C-7 and C-7E forms is dismissed.

II. Campaign contribution limits

In addition to the above reporting violations, the complainant also alleges Mr. Mullen “has reported a substantial number of contributions beyond the maximum amount he is legally allowed to collect without issuing any refunds.” (Complaint, 2.)

Montana's campaign contribution limits are established under MCA § 13-37-216. The relevant campaign contribution limits are calculated by COPP each biennium pursuant to MCA 13-37-216(3) and published in ARM 44.11.227. In 2024, candidates for election to a statewide office - other than Governor/Lt. Governor - are

limited to accepting \$790.00 per election from individual contributors. ARM 44.11.227(1)(c).

In order to determine the contribution limits as applied to a particular candidate, it must first be determined if there is more than one election to which the \$790 limit applies. MCA § 13-37-216(6) specifies “election” means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary there is one limit. If there is a contested primary there are two limits.” The related administrative rule adds, “if only one candidate seeks Party B’s nomination for the same public office, it is not a contested primary with respect to Party B’s nomination, and there is only one election to which the contribution limits in 13-37-216, MCA apply.” ARM 44.11.222(2)(b).

Here, Mr. Mullen filed with both COPP and Montana’s Secretary of State’s office (SOS) as a Democratic candidate seeking election to the position of Secretary of State for the State of Montana. No other individuals filed with either COPP or SOS as Democratic candidates intending to contest this nomination, nor did any other individuals - including write-in candidates - formally or officially contest that nomination in Montana’s June 4, 2024, primary election. Under MCA § 13-37-216(6) and ARM 44.11.222(2)(b), Mr. Mullen had only one election to which Montana’s campaign contribution limits applied. Consequently, he could properly accept no more than \$790.00 in campaign contributions from individual contributors for the duration of his campaign. Any contribution greater than \$790.00 would be an over-limit contribution received in violation of MCA § 13-37-216 and ARM 44.11.227.

The submitted complaint in this matter specifically names six (6) individual contributors who allegedly provided contributions to Mr. Mullen exceeding the relevant \$790.00 campaign contribution limit. COPP reviewed all campaign finance reports filed by Mr. Mullen and identified the following:

- Contributor Brenda Brumbaugh provided \$700.00 in reported “primary” election contributions and \$250.00 in reported “general” election contributions. This contributor provided a total of \$950.00 in campaign

contributions to Mr. Mullen's campaign, exceeding the applicable \$790.00 limit by \$160.00.

- Contributor Melody Cunningham provided \$650.00 in reported "primary" election contributions and \$265.00 in reported "general" election contributions. This contributor provided a total of \$915.00 in campaign contributions to Mr. Mullen's campaign, exceeding the applicable \$790.00 limit by \$125.00.
- Contributor Meghan Hull provided \$1,580.00 in reported "general" election contributions. This contributor provided a total of \$1,580.00 in campaign contributions to Mr. Mullen's campaign, exceeding the applicable \$790.00 limit by \$790.00.
- Contributor Mark Mackin provided \$100.00 in reported "primary" election contributions and \$700.00 in reported "general" election contributions. This contributor provided a total of \$800.00 in campaign contributions to Mr. Mullen's campaign, exceeding the applicable \$790.00 limit by \$10.00.
- Contributor Reilly Neil provided \$600.00 in reported "primary" election contributions and \$600.00 in reported "general" election contributions. This contributor provided a total of \$1,200.00 in campaign contributions to Mr. Mullen's campaign, exceeding the applicable \$790.00 limit by \$410.00.
- Contributor Cris Yellowtail provided \$700.00 in reported "primary" election contributions and \$700.00 in reported "general" election contributions. This contributor provided a total of \$1,400.00 in campaign contributions to Mr. Mullen's campaign, exceeding the applicable \$790.00 limit by \$610.00.

In total, at the time of submission of this complaint, Mr. Mullen had accepted **\$2,105.00** in over-limits campaign contributions from individual contributors.

In his October 25, 2024, email to COPP, Mr. Mullen states, "If there are specific contributions the complainant noticed, we appreciate them being specified so we may issue those refunds immediately." (COPP Records.) While COPP appreciates Mr. Mullen's cooperation in this matter, it is not the responsibility of COPP or the complainant to monitor Mr. Mullen's contribution limits. This task belongs to the Mullen campaign.

In his October 29, 2024, response, Mr. Mullen states "[w]e are verifying the accuracy of the payments identified in the complaint, and any payments in excess of \$790 will be refunded to the donors this week." (Response.) Mr. Mullen's November

20, 2024, campaign finance report shows that he has indeed returned all known over-the-limit contributions.

Nevertheless, Mr. Mullen violated MCA § 13-37-216 by accepting numerous contributions over the amount allowed by law. His efforts to correct these errors are appreciated but this does not alleviate Mr. Mullen of a campaign finance violation.

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 law violations exists, the commissioner next determines if there are circumstances or explanations that may affect whether prosecution is justified. *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 circumstance 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 interests of the state.” *Montana Freedom Caucus v. Rep. Zephyr*, COPP-2023-CFP-010, at 26.

MCA § 13-37-124(1) requires that I refer a matter to the appropriate county attorney when I find sufficient evidence “to justify a civil or criminal prosecution.” The county attorney may then choose to prosecute the matter or refer it back to me for appropriate civil or criminal action. *Id.* While I do not have discretion to pursue a civil action without first referring the matter to the affected county attorney, I do have discretion to determine if enforcement action and therefore referral to the county attorney is justified. *Rep. Zephyr*, 23, *Doty v. Montana Commissioner of Political Practices*, 2007 MT 341, 340 Mont. 276, 173 P.3d 700.

Recently, in *MTGOP v. Mullen*, *MTGOP v. Alke*, and *O’Neill v. Wilson*, I discussed in detail the objective factors I apply in determining when prosecution is justified. COPP-2024-CFP-30, 18, 22. These primarily consist of proximity to the election, a campaign’s pattern of compliance, the size of unlawful contributions or expenditures, and finally, responsiveness of the campaign. The above factors are

listed in order of relevance, with proximity to the election being the most determinative factor.

Enforcement factors applied to Mr. Mullen

- Proximity to the election - The complaint in this matter was received on October 25, 2024, less than one month before Montana's general election to be held on November 5, 2024. Following receipt of this complaint, Mr. Mullen has amended his September 20, 2024, C-5 report to disclose expenditures made for newspaper advertising. He has also returned all over the limit contributions received. However, he disclosed expenditures on October 29, 2024, seven days prior to the election and did not take action to return over-the-limit contributions until after the election. Therefore, this factor weighs heavily in favor of prosecution.

- Pattern of compliance - Mr. Mullen has substantially complied with the reporting calendar, but rather than the occasional over-the-limit contribution, the Mullen campaign has routinely accepted contributions in excess of allowable limits. Therefore, this factor weighs in favor of prosecution.

- The size of unlawful contributions - While some over-the-limit contributions are relatively small, at least one is double the allowable legal limit. Therefore, this factor weighs in favor of prosecution.

- Responsiveness - Mr. Mullen quickly replied to all requests by COPP but did not take action to return contributions and report this to COPP until well after the election. Therefore, this factor weighs in favor of prosecution.

Considering all the facts and circumstances described above, I hereby determine that a civil action or penalty under MCA § 13-37-128 is justified.

CONCLUSION

When the commissioner finds sufficient evidence to justify 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, at 4. In negotiating a fine, the commissioner may exercise his discretion and consider any and all mitigating factors. *Id.* 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.*, 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.


Based on the above discussion, I find there is sufficient evidence to determine the following:

- Mr. Mullen did not fail to report digital advertising in violation of MCA § 13-37-229. This allegation is dismissed.
- Mr. Mullen did not violate MCA § 13-37-226 by failing to file C-7 and C7-E reports. This allegation is dismissed.
- Rep. Mullen violated MCA § 13-37-216 by accepting contributions in excess of legal limits by \$2,105. Prosecution of this matter is justified and will be referred to the Powell County Attorney.
- Mr. Mullen violated MCA § 13-37-226 by failing to report a debt owed for newspaper advertising at the time the obligation occurred. Prosecution of this matter is justified and will be referred to the Powell County Attorney.

Having determined that prosecution is justified, this matter will now be referred to the Powell 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 Powell County District Court.

Dated this 2nd day of December, 2024,



Chris J. Gallus
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