

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

SHIELA HOGAN v. WILLIAM (BILL) HODGES (Candidate House District 42)	COPP-2024-CFP-045 DISMISSAL
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COMPLAINT

On October 18, 2024, Sheila Hogan of Helena, MT, filed a campaign practices complaint against Bill Hodges, candidate for election to the Montana House of Representatives, District 42. The complaint alleges Mr. Hodges violated Mont. Code Ann. (MCA) § 13-35-207, Deceptive election practices, by filing as a candidate for election to HD 42 when he was not qualified to run for the Montana Legislature in that district.

The complaint met the requirements of Admin. R. Mont. (ARM) 44.11.106, the administrative rule governing complaints, and alleged violations which fall under my jurisdiction as Commissioner of Political Practices. Therefore, I accepted it as filed and requested a response from Mr. Hodges. Mr. Hodges provided a timely response including supporting documents. The complaint and response are posted on our website, politicalpractices.mt.gov.

ISSUES

This decision addresses MCA § 13-35-207, Deceptive election practices; MCA § 13-1-112, Rules for determining residence; and residency requirements for legislative candidates, Mont. Const. Art. V, Part V, Sec. 4

BACKGROUND

The complainant asserts Mr. Bill Hodges filed with COPP on January 19, 2024, as a candidate for House District 42, listing as his address, 31 Parker Ln., Hardin, MT, which exists within the boundaries for HD 41 and

consequently, Mr. Hodges does not qualify as a candidate in the house district in which he registered. (Complaint.)

In his response, Mr. Hodges states that he could not find a redistricting map at the time he filed so he reached out to his County Election Administrator and was informed his proper district was HD 42. (Response.)

DISCUSSION

When COPP receives a complaint challenging residency, a determination is first made as to whether the candidate can support their position that they meet constitutionally provided residency requirements. *Luckey v. Brown*, COPP-2020-CFP-037, 4. Most recently, in *Senecal v. Decker*, I found that a candidate for county commissioner did not meet residency requirements because he was unable to provide sufficient objective evidence to support a residency claim. COPP-2024-CFP-003. A determination regarding residency requires a candidate support their subjective claim of residency with objective facts. *Id.* at 19. If the candidate cannot support a residency claim, the Commissioner next determines if the candidate engaged in deceptive election practices by knowingly affirming they met residency requirements when they did not.

The present case presents a different question because Mr. Hodges readily acknowledges he did not meet the residency requirements to serve as a representative for House District 42. Consequently, the pertinent issue is whether Mr. Hodges knowingly filed a false declaration with the Montana Secretary of State's office when filing his Declaration for Nomination and Oath of Candidacy. Nevertheless, complaints regarding residency are regularly filed with COPP and therefore some discussion of residency requirements is beneficial here.

a. Constitutional Requirements and Rules for Determining Residency.

The Montana Constitution prescribes specific residency requirements for members of the Montana Legislature:

A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county. Mont. Const. Art. V, Part V, Sec. 4

When registering as a candidate with Montana's Secretary of State, each candidate must sign a Declaration for Nomination and Oath of Candidacy. This form requires the candidate to affirm, *inter alia*, that they are "either a resident of the county in which [they are] a candidate, if it contains one or more legislative districts, or of the legislative district if it contains all or parts of more than one county," or alternatively, if the candidate does not currently meet the residency requirements, they will do so for six months preceding the general election.

Rules for determining residency are provided in both MCA § 1-1-215 and MCA § 13-1-112. Although for the purposes presented here the two statutes do not conflict, it is important to note that MCA § 13-1-112 specifically applies to "seeking election to the legislature" while MCA § 1-1-215 is a general definition. MCA § 13-1-112 applies here because a specific statute prevails over a more general statute. *State v. Berdahl*, 2017 MT 26, ¶ 20, 386 Mont. 281, 389 P.3d 254. See *Downs v. Picos*, 2023 MT 173, ¶ 12, 413 Mont. 269, 273, 537 P.3d 99, 101. In *Downs v. Picos*, the Montana Supreme Court held MCA § 13-1-112 is the controlling statute when candidate residency is involved. ¶ 13.

According to MCA § 13-1-112(1), "[t]he residence of an individual is where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning." MCA § 13-1-112 contains seven additional subsections which provide guidelines for determining residency and ways a person may or may not gain or lose residency. Here, because Mr. Hodges does not assert he is a resident of House District 42, such an analysis is not necessary.

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b. *Deceptive election practices*

The Oath of Candidacy included with the Declaration for Nomination states “I hereby affirm I possess, or will possess within the constitutional and statutory deadline, the qualification prescribed by the Constitution and laws of the United States and the State of Montana.”¹ This Oath is a sworn statement certified by a Notary Public or other public official.

MCA § 13-35-207 provides the dispositive issue as to whether Mr. Hodges violated Montana election law when he filed as a candidate for HD 42 when he did not meet the residency requirements.

A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person: (3) knowingly causes a false statement, certificate, or return of any kind to be signed; (4) falsely makes a declaration or certificate of nomination; (5) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false; (10) makes a false oath or affidavit where an oath or affidavit is required by law. MCA § 13-35-207.

“A person who knowingly violates a provision of the election laws of this state for which no other penalty is specified is guilty of a misdemeanor.” MCA § 13-35-103. As is the case with most statutes under Title 13, chapter 35, there is “no other penalty specified” for a violation of MCA § 13-35-207. Therefore, in order for me to find that Mr. Hodges is guilty of a misdemeanor, I must have evidence that he acted with the mental state of knowingly required by the criminal code. MCA § 45-2-103, *see also Scott v. Doyle*, COPP-May 31, 2011.

Here, Mr. Hodges has acknowledged that he is not a resident of District 42, the district in which he registered as a candidate with Montana’s Secretary of States office. Therefore, the issue to be determined is whether Mr. Hodges was aware of this and therefore knowingly signed a false Declaration for Nomination and Oath of Candidacy.

MCA § 45-2-101(35) defines “knowingly” as follows:

A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the

person is aware of the person's own conduct or that the circumstances exist. A person acts knowingly with respect to the results of conduct described by a statute defining an offense when the person is aware that it is highly probable that the results will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence.

To establish that Mr. Hodges violated MCA provisions of Mont. Code Ann. Title 13, chapter 35, it is necessary to prove that he either *knowingly* made a false statement under oath or *knowingly* filed a false written statement.

In his response to this complaint, Mr. Hodges states that he “was also under the opinion that recent County re-alignment had transpired” and therefore on approximately January 18, 2025, he sought assistance from the Big Horn County Election Administrator. Mr. Hodges asserts the Election Administrator informed him his district was House District 42. Later, when he discovered this was incorrect, he contacted the office of the Secretary of State and was informed “since ballots had been certified to leave the filing intact without amendment.” (Response.)

Many prior court decisions have addressed the issue of residency and whether a candidate was able to support his subjective claim with objective evidence. See *Senecal*. While some of these cases have determined a candidate was not a resident of the district in which he ran for office, none have discovered that the candidate acting knowingly and therefore in violation of MCA § 13-35-207.

In *Cajun v. Maedje*, a candidate took concrete steps to determine his residency but was nevertheless not qualified for the position, and in *Hodges v. Olson*, the candidate relied on incorrect information posted on an official government website. COPP October 2000, COPP-2024-CFP-018. Both of these complaints were ultimately dismissed because the candidates did not act knowingly. Here, I must conclude the same. Although Mr. Hodges has not provided any physical evidence supporting his response, I nevertheless have no

evidence indicating this was anything other than an innocent mistake and he believed his residence was located in House District 42 when he registered as a candidate. In order to find a violation of MCA § 13-35-207, I must determine the candidate knew he did not meet the residency requirements *at the time* he signed his Declaration for Nomination and Oath of Candidacy. No evidence has been provided by the complainant to make such an assertion and Mr. Hodges' statements are sufficient to rebut such an allegation. Consequently, I cannot determine Mr. Hodges violated MCA § 13-35-207 by knowingly signing a false declaration.

c. Removal from the ballot

Although the complainant does not specify any particular remedy, removal from the ballot is often the relief sought by complainants when issues regarding residency arise. Consequently, some discussion regarding removal from the ballot is warranted. MCA § 13-37-128 specifies exclusive remedies which I or the affected county attorney may seek, and removal from the ballot is not one of them. *Senecal v. Decker*, COPP-2024-CFP-003. However, an elector may contest:

[A]ny nomination or election to public office for which the elector has the right to vote if the elector believes that: (1) a deliberate, serious, and material violation of any provision of the law relating to nominations or elections has occurred; (2) the person was not, at the time of the election, eligible to be a candidate for the office; (3) votes were cast illegally or were counted or canvassed in an erroneous or fraudulent manner.” MCA § 13-36-101.

MCA § 13-36-102 prescribes the process for contesting a nomination including notification of the candidate and applying to the district court. While a COPP decision in a residency matter may provide supporting evidence for an elector seeking a candidate's removal from the ballot, it is not within my authority to pursue such a remedy. *Senecal*, 31.

In the event a candidate is not eligible due to residency, the Secretary of State “shall notify the candidate that the candidate is required to withdraw.”

MCA § 13-12-201(3). However, it is important to note that while this statute may initiate a candidate's withdrawal, it does not provide the Secretary of State the authority to unilaterally remove the candidate from the ballot.

An additional impediment to removing a candidate from the ballot is created by MCA § 13-10-201(4) which reads: "The candidate affirmation included in this oath is presumed valid unless proven otherwise in a court of law." Furthermore, MCA § 13-10-201(5) provides "[t]he declaration, when filed, is conclusive evidence that the elector is a candidate for the nomination by the elector's party." MCA § 26-1-102(2)(a), defines "'conclusive evidence" as that which the law does not permit to be contradicted." *Hogan v. Knudsen*, COPP-2024-CFP-017 at 22.

The above statutes protect individuals from having their declarations called into question. This policy protects and promotes an individual's federal constitutional right to run for political office. *Sadler v. Connolly*, 175 Mont. 484, 575 P.2d 51. While the concept of "conclusive evidence" has been found unconstitutional, these two statutes remain unchallenged. *Bielenberg v. Montana Union Ry. Co.*, 8 Mont. 271 (1889), *State ex rel. Zander v. Fourth Judicial Dist.*, 180 Mont. 548 (1979). As long as they remain in effect, even in the event I determined a candidate knowingly signed a false declaration, a judicial determination would be required to determine the oath is not valid.

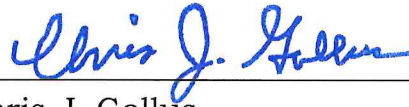
In *Sadler*, the Montana Supreme Court also determined that violations of laws pertaining to a declaration for nomination must show a "deliberate, serious and material violation" of law by way of false attestation. *Sadler*, 490. As previously stated, I cannot find Mr. Hodges acted knowingly in violation of MCA § 13-35-207. Likewise, I cannot find a "deliberate" violation as the Court required in *Sadler*.

CONCLUSION

The evidence provided is insufficient to support a finding that Mr. Hodges knowingly filed a false Declaration of Nomination and Oath of Candidacy in

violation of MCA § 13-35-207. The complaint allegations have been considered as described above and this complaint is hereby dismissed in full.

Dated this 11th day of June, 2025.



Chris J. Gallus
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of the State of Montana
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