

**BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)**

<b>SHIELA HOGAN</b>  <b>v.</b>  <b>KEVIN TAYLOR (Montana HD 31 candidate)</b>	<b>COPP-2024-CFP-044</b>  <b>DISMISSAL</b>
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**COMPLAINT**

On October 18, 2024, Sheila Hogan of Helena, MT, filed a campaign practices complaint against Kevin Taylor, candidate for election to the Montana House of Representatives, District 31. The complaint alleges Mr. Taylor violated Montana’s deceptive election practices statute by filing as a candidate for election to HD 31 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. Taylor. Mr. Taylor provided a timely response including supporting documents. The complaint and response are posted on our website, [politicalpractices.mt.gov](https://politicalpractices.mt.gov).

**ISSUES**

This decision addresses Mont. Code Ann. (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. Kevin Taylor filed to run in House District 31 on March 7, 2024, listing on his C-1 Statement of Candidate a mailing address of 1138 Cherry Creek St. in Glasgow, MT, and a physical address of 282 Britzman Rd. in Glasgow, MT, neither of which are in House District 31.

## 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. Taylor readily acknowledges he did not meet the residency requirements to serve as a representative for House District 31. Consequently, the pertinent issue is whether Mr. Taylor 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. The Declaration for Nomination 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. Piocos*, 2023 MT 173, ¶ 12, 413 Mont. 269, 273, 537 P.3d 99, 101. In *Downs v. Piocos*, 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. Taylor does not assert he is a resident of HD 31, such an analysis is not necessary.

*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.”<sup>1</sup> 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. Taylor violated Montana election law when he filed as a candidate for HD 31 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 Sec. 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. Taylor violated a statute under Title 13, chapter 35, 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.

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.

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<sup>1</sup> The declaration and oath signed by candidates can be found on the Montana Secretary of State’s website.

Establishing that Mr. Taylor violated any provision of Mont. Code Ann. Title 13, chapter 35, requires proving that Mr. Taylor either *knowingly* made a false statement under oath or *knowing* filed a false written statement.

In his response to this complaint, Mr. Taylor states, “[i]t was not my intention to file for office in the wrong district.” (Response, 1.) Mr. Taylor explains that he entered his address into the Montana Secretary of State’s online voter portal to determine his district. With his response, Mr. Taylor provided screenshots from the portal. These screenshots show a residential address at 282 Britzman Rd, Glasgow, MT, and a mailing address of 1138 Cherry Creek St, Glasgow, MT. House District 31 is shown below the Cherry Creek St. mailing address.

Mr. Taylor also provided a notarized “Withdrawal of Candidacy” dated March 11, 2024. In his response, Mr. Taylor states:

After filing, I concluded I should withdraw. I took paperwork to the Valley County Elections Office to withdraw from office. However, nothing happened. Thus, I concluded I could continue with my campaign.

Mr. Taylor adds that he was subsequently (and correctly) advised he “needed to file the paperwork with the Montana Secretary of State in order to withdraw.” The withdrawal form – in somewhat fine print at the bottom - explains where the form should be submitted, with “Federal, Statewide, State District, and Legislative Offices submitting to Montana Secretary of State” and “County, City, and most Local District Offices to Local County Elections Office.”<sup>2</sup>

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

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<sup>2</sup> Withdrawal form sos.mt.gov, last visited June 10, 2025.

determined 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. Mr. Taylor has provided adequate evidence that he believed his residence was located in House District 31 when he registered as a candidate. Although I would advise candidates that find themselves in such a situation in the future confirm they have followed the proper procedures to withdraw their candidacy, failure to do so is not a violation of MCA § 13-35-207.

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. Taylor has provided adequate evidence to rebut any such allegation. Consequently, I cannot determine Mr. Taylor 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, MCA § 13-10-201(4) and (5) 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

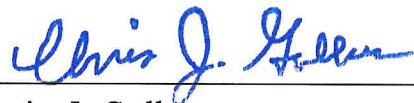
judicial determination would be required to determine a candidate's Oath of Candidacy is not valid.

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. Taylor acted knowingly in violation of MCA § 13-35-207. Likewise, I cannot find a "deliberate, serious and material violation" as the Court required in *Sadler*.

### **CONCLUSION**

The evidence provided is insufficient to support a finding that Mr. Taylor 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 11<sup>th</sup> day of June, 2025.



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