

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

KEITH KOPRIVICA v. ANDREA DAVIS (Mayoral Candidate, City of Missoula)	COPP-2023-CFP-015 AND COPP-2023-CFP-024 PARTIAL DISMISSAL AND FINDINGS OF FACT SUFFICIENT TO SUPPORT VIOLATIONS
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COMPLAINT

On September 28, 2023, Keith Koprivica of Missoula, MT filed a campaign practices complaint (Compl. 1) against Andrea Davis, candidate for Mayor in the City of Missoula. The complaint alleged that candidate Davis failed to properly name the campaign treasurer on the C-1A Statement of Candidate filed with COPP, failed to report the total amount of contributions made by individual contributors during certain reporting periods, accepted campaign contributions from anonymous sources and improperly disposed of them by donating the funds to an organization seeking to help elect her to office, and accepted campaign contributions related to the primary election that exceeded Montana’s established campaign contribution limits.

On October 30, 2023, Mr. Koprivica filed a second campaign practices complaint (Compl. 2) against Andrea Davis. This complaint alleged that the Davis campaign failed to properly report certain pre-election expenditures for television advertising on station KPAX in compliance with Montana law.

Both complaints met the requirements of ARM 44.11.106 and alleged violations which fall under my jurisdiction as Commissioner of Political Practices. Consequently, I accepted both as filed and requested responses from Ms. Davis. Responses to both complaints were timely provided. The complaints and responses are posted on our website, politicalpractices.mt.gov.

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ISSUES

This decision addresses campaign treasurer requirements, MCA § 13-37-201; reporting of contributions and expenditures, specifically the requirement to track cumulative contributions, and the requirement to report debts as expenditures, MCA § 13-37-229, ARM 44.11.224(2) and 44.11.403(3); contribution limits, MCA 13-37-216; and anonymous campaign contributions, MCA § 13-37-217.

DISCUSSION

I. Designating a campaign treasurer and attribution requirements.

The complainant first asserts that the Davis campaign's C1-A campaign registration lists Lisa Swallow as her campaign treasurer, but her campaign literature and signs list Marilyn Marler as the campaign treasurer." (Compl. 1 at 1.) The complainant does not specify which statute he believes has been violated but clearly implies that this is a violation of Montana reporting requirements.

MCA § 13-37-201(1) requires each candidate seeking election to public office in Montana¹ "shall appoint one campaign treasurer" and provides that a campaign treasurer may appoint deputy campaign treasurers, "but not more than one in each county in which the campaign is conducted." (Compl.1 at 1.) Additionally, MCA § 13-35-225 requires that all election materials "include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication." There is no requirement that the campaign treasurer be named on election materials.

On her original C1-A Statement of Candidate, filed on March 21, 2023, Ms. Davis named herself as her own campaign treasurer. This report was amended on May 14, 2023, to name Lisa Swallow of Missoula, MT, campaign treasurer and Ms. Davis as deputy treasurer. An amended C1-A filed on October 2, 2023, certifies

¹ Excluding certain school and special district candidates exempted under MCA § 13-37-206. This exemption does not apply to municipal (city) candidates such as Andrea Davis

Marilyn Marler of Missoula, MT, as treasurer, with three individuals listed as deputy treasurers. Following a discussion with COPP staff, regarding the statutory requirement that only one deputy treasurer per county be named, Ms. Davis again amended her C1-A to name Marilyn Marler as treasurer and Lisa Swallow as deputy treasurer. (COPP Records.)

As stated above, there is no requirement that a treasurer be named on election materials. Additionally, there is no limit to the number of times a candidate can change treasurers. Therefore, if a treasurer is stated on campaign materials, there is always the possibility that the included information may no longer be accurate when the materials are distributed or observed. The complainant's suggestion that the Davis campaign violated Montana election law by filing a C1-A naming a treasurer other than that identified on particular election materials is dismissed.

Here, the complainant did not specifically allege any violations regarding failing to update treasurer information on the Davis campaign's C-1A. Nevertheless, due to the fact that Marilyn Marler's name appeared on election materials prior to her being named as treasurer on the Davis campaign's C-1A, it is possible that the campaign failed to keep the treasurer information up to date with COPP. Additionally, the campaign briefly named more than one deputy treasurer in Missoula County. These are technical violations of Montana election law and if COPP had discovered such errors in the course of routine inspections, the Davis campaign would have been contacted and afforded the opportunity to correct. When violations arise that are not specifically alleged in a complaint, the Commissioner may provide the campaign with the opportunity to correct. See *Montana Freedom Caucus v. Zephyr*, COPP-2023-CFP-010, at 16. This is essentially what occurred here. The additional deputy treasurers were named following the receipt of this complaint, a COPP compliance specialist took note, notified the campaign, and the campaign made a prompt correction. (COPP records.) Although Marilyn Marler was not named as treasurer until October 1, 2023, voters were at all times able to ascertain who financed campaign materials, regardless of who was serving as

treasurer. Under the circumstances presented, any potential harm to voters (if any) is minimal, and COPP would dismiss any allegations addressing these issues as de minimis.²

II. Reporting aggregate contributions, designating in-kind contributions for the primary or general election, and contribution limits.

The complainant also asserts that the Davis campaign accepted contributions in excess of legal limits and failed to properly report these contributions. Specifically, the complainant asserts, Ms. Davis attempted to actively conceal over-the-limit contributions by accepting “in-kind contributions for various expendable items or services during the primary election, but designating them as general election donations, something that is expressly illegal under ARM 44.11.403(3) and ARM 44.11.502(2) . . . [and] many contribution records do not include the total amount of contributions made by that person for all reporting periods” as required by MCA § 13-37-229(1)(c). (Compl. 1, at 1.)

Montana election law clearly establishes campaign contribution limits, restricting the amount candidates for public office can accept from contributors other than themselves, MCA § 13-37-216. Montana’s campaign contribution limits apply per-election, with an election being a contested primary election and/or the general. In this case, candidate Davis participated in a contested municipal primary election as well as a general election.³ MCA § 13-37-216(6). Therefore, the Davis campaign was permitted to accept a total of \$400 per individual for the primary election and \$400 per individual for the general election. ARM 44.11.227(1)(c).

To assure candidates abide by these limits and to provide full transparency to voters, Montana law requires candidates to track and report “the aggregate amount

² An act may be considered de minimis and therefore does not warrant enforcement as a campaign practices violation if it does not deprive the public of disclosure and results in minimal harm. ARM 44.11.603(d)(e).

³ For purposes of this section, "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 only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply.

of contributions made by that person within the reporting period and the total amount of contributions made by that person for all reporting periods.” MCA § 13-37-229(1)(c).

Montana Administrative Rules further provide:

The total value of the services, property, or rights contributed in-kind shall be deemed to have been consumed in the reporting period in which received. ARM 44.11.403(3).

As a general rule, contributions received by a candidate prior to and on the day of a primary election are designated for the primary election and are subject to the aggregate contribution limits for the primary election; however, a candidate in a contested primary may receive contributions designated for the general election during the primary election period (*except for in-kind contributions*) subject to the contribution limits for the general election. ARM 44.11.224(2)(b)(*emphasis added*).

As evidence supporting the allegations, the complainant provides a list of eleven contributors whose aggregate contributions to the Davis primary campaign totaled more than the \$400 limit provided by law. COPP’s investigator reviewed the Davis campaign’s finance reports and found the complainant’s assertions to be largely accurate. COPP’s investigation of this complaint identified the following matters:

A) The Davis campaign accepted either cash or in-kind contributions from six individuals for election activities during the primary election, and when those contributions exceeded the aggregate contribution limit of \$400, wrongly attributed any additional in-kind contributions to the general election in violation of MCA § 13-37-216 and ARM 44.11.403(3). Each of these over-the-limit contributions were refunded following receipt of the first complaint by the Davis campaign. (Response to Compl. 1 at 2. and COPP records.)

- Betsy Bach contributed \$400.00 to the primary election campaign and made an in-kind contribution valued at \$114.55 during the primary election period for an aggregate total of \$514.55, an excess of \$114.55.
- Caroline Kurtz contributed \$400.00 to the primary campaign and subsequently made an in-kind contribution during the primary election

period, valued at \$154.33 for an aggregate total of \$554.33, an excess of \$154.33.

- Anna Martello contributed \$350.00 to the primary campaign and subsequently made an in-kind contribution during the primary election period, valued at \$195.15 for an aggregate total of \$545.15, an excess of \$145.15.
- Martha Newell contributed \$400.00 to the primary election campaign and subsequently made four in-kind contributions during the primary election period for a total value of \$188.10, creating an aggregate total of \$588.10, an excess of \$188.10.
- Kate Sutherland made three in-kind contributions to the primary election campaign for a total value of \$400.20. Ms. Sutherland made eight additional in-kind contributions during the primary election period for a total value of \$400.00, creating an aggregate total of \$800.20, an excess of \$400.20.
- Winona Bateman contributed \$400.00 to the primary election campaign and made an in-kind contribution during the primary election period valued at \$55.16 for an aggregate total of \$455.16, an excess of \$55.16.

B) The Davis campaign accepted the following contributions from four individuals in excess of legal limits in violation of MCA § 13-37-216, but unlike those listed above, each of these contributions were properly attributed to the general or primary campaign. Each over-the-limit contribution was refunded following receipt of this complaint. (Response to Compl. 1, at 2. and COPP Records.)

- Bert Linder contributed \$200.00 to the primary election campaign on two occasions for a total of \$400.00. He then also contributed \$400.00 and \$200.00 to the general election campaign for an aggregate of \$600.00, an excess of \$200.00 contributed to the general election campaign.
- Christine Littig contributed \$200.00 to the primary election campaign and made two in-kind contributions during the primary election period, for a total value of \$256.89, creating an aggregate of \$456.89, for an excess of \$56.89.
- Jenn Prinzing made two in-kind contributions valued at \$400.00 each to the primary election campaign, creating an aggregate of \$800.00, an excess of \$400.00.
- Ruth Reineking contributed \$211.06 cash and made six additional in-kind contributions during the primary election period for a total value of \$337.31, creating an aggregate of \$586.37, an excess of \$186.37.
- Mea Andrews contributed \$250.00 to the primary election and Mary Andrews, with the same address, contributed another \$300.00 to the primary election. Mea Andrews listed her employer as 'retired – NA.' and Mary Andrews listed her employer as 'Writer – Coffey Communications Inc.,' Ms. Davis indicated in her response to this complaint that she was able to ascertain Mea and Mary are the

same individual. Consequently, Ms. Andrews contributed a total of \$550.00 to the primary election campaign, an excess contribution of \$150.00. For the matter at issue here, I have disregarded this over-the-limit contribution as a reasonable error the Davis campaign promptly rectified.

In each of the above circumstances, the aggregate total from each contributor was not included in the applicable C-5 periodic campaign finance report, a technical violation of MCA § 13-37-229(1)(c). Additionally, six in-kind contributions made during the primary were designated to the general election, a violation of ARM 44.11.403(3).

If the Davis campaign had designated the in-kind contributions as “primary,” and either a) refunded the over-the-limit amount and then requested the contributor reissue a contribution for the general, or b) with the contributor’s permission - including documentation to that effect - amended the applicable report to designate an equal amount of the donor’s cash contribution as “general,” they would have been fully compliant with ARM 44.11.403(3) as well as ARM 44.11.224(2)(b) which allows a candidate to “receive contributions [other than in-kind contributions] designated for the general election during the primary election period.”

In order to facilitate compliance with contribution limits, the applicable administrative rules require the following:

[G]eneral election contributions received prior to the day of the primary election must be maintained in a separate account and shall not be used until after the day of the primary election; ARM 44.11.224(2)(c).

If a candidate receives contributions designated for the general election prior to the primary, and does not proceed to the general election, the candidate must return the contributions to the donors. . ARM 44.11.224(4).

In her response Ms. Davis states: “The value of the excess in-kind contributions was kept in a separate account, available to be refunded if I did not advance to the general election. (Response to Compl. 1, at 1.) Although Ms. Davis

violated ARM 44.11.403(3) by designating in-kind contributions made during the primary as “general” when the contributor had previously made cash contributions and the aggregate would exceed contribution limits for the primary, by keeping an equal amount in a separate account, anticipating the possibility those funds would need to be refunded if she did not advance to the general, she complied with the spirit, if not the letter, of ARM 44.11.224(2)(c), and (4).

Here, voters were not deprived of any information regarding the amount of contributions or the identity of contributors, but these practices created an environment where voters were required to do significant additional research to discover any violations. More importantly, disregarding these rules resulted in the Davis campaign violating MCA § 13-37-216. Failure to track aggregate contributions resulted in 10 over-the-limit contributions, six of which were in-kind contributions wrongly designated to the general election campaign. Consequently, the Davis campaign violated MCA § 13-37-216 on ten occasions and ARM 44.11.403(3) on six occasions.

Reporting aggregate contributions

As a practical matter, some guidance to candidates is appropriate here. Montana’s electronic Campaign Electronic Reporting System (CERS) can aggregate an individual contributor’s total contributions and display this information on a candidate’s C-5 campaign finance reports. To do so, however, the candidate must use the ‘Entity Search’ to search for the contributor’s name, and then select the appropriate result from the search.

In CERS, users may bypass the ‘Entity Search’ to manually enter in the name, address, etc. for a contributor. If the candidate manually enters contributor information, the CERS system is not able to aggregate total contributions or display this information on the finance reports. All information manually entered by the candidate/campaign- the contributor’s name, the amount of the contribution, etc.- will show up on the C-5 campaign finance report but the system will not show an aggregate if an individual or committee contributed on more than one occasion. Use

of the 'Entity Search' feature simplifies a candidate's duty to track aggregate contributions.

III. Disposal of anonymous contributions

The complainant next asserts that the Davis campaign "accepted anonymous contributions on four occasions" and subsequently disposed of the "illegal anonymous contributions" by donating them to a non-profit run by one of her supporters. The complainant explains that "Ms. Davis donated the illegal anonymous contributions to Montana Women Vote, a non-profit corporation that is run by SJ Howell, one of her endorsers who appears in campaign ads for Ms. Davis." (Compl. 1 at 2.)

Anonymous contributions are indeed prohibited by Montana election law. MCA § 13-37-217(1) specifically states "a person may not knowingly receive a contribution or enter or cause the contribution to be entered in the person's accounts or records in another name other than that of the person by whom it was actually furnished."

However, COPP recognizes that at some events, such as a pass the hat, some cash donations might occur without the proper attribution, despite the candidate's best efforts. The COPP reporting manual for candidates provides the following: "If the campaign cannot identify the source of a contribution, those funds must be donated to a nonprofit entity rather than utilized by the campaign." *Accounting and Reporting Manual for Candidates and Treasurers*, 9.

Here, Ms. Davis does not dispute that her campaign inadvertently accepted anonymous contributions. In fact, prior to receipt of this complaint, the Davis campaign contacted COPP regarding an anonymous donation and received advice from a compliance specialist to enter the contribution as anonymous, "donate it to an organization and maintain a record of the donation." (Response Compl. 1 at 1.) The Davis campaign subsequently donated four anonymous contributions totaling \$75.00 to Montana Women Votes.

While not disputing the Davis campaign's assertion that the anonymous contributions were donated, the respondent asserts that this donation was improper, stating "[a]llowing candidates to accept illegal anonymous contributions and then donate those illegal contributions to an organization that will help them get elected to the same office flies in the face of Montana's campaign finance laws." (Compl. 1 at 1.) The complainant supports this allegation by providing that the director of Montana Women Votes, SJ Howell, endorsed and appeared in campaign ads for Ms. Davis. *Id.*

There is nothing in Montana law dictating where a candidate might donate anonymous contributions and doing so would clearly violate First Amendment rights of free speech and association. See *Sanders Cty. Republican Cent. Comm. v. Bullock* (9th Circuit Court, 2012). The Davis campaign is free to accept endorsements from whomever they choose, and SJ Howell is free to endorse whomever they choose, regardless of any donations made by the Davis campaign or their position as director of Montana Women Vote.

The complainant seems to be implying, without evidence, that an element of coordination exists between the Davis campaign and Montana Women Vote based on support of Ms. Davis by director, SJ Howell. No evidence is provided that Montana Women Vote took actions to support Ms. Davis's mayoral campaign based on the donation of anonymous contributions. "Commissioners have found coordination only on the basis of a specific act(s) of cooperation and have never assumed coordination based solely on a relationship." *Dick v. Republican State Leadership Committee*, COPP-2012-CFP-038. See also, *Pennington v. Bullock*, 2013-CFP-012.

While the Davis campaign did inadvertently accept anonymous contributions, it did not retain these contributions and properly followed COPP guidance to dispose of them. Certainly, it is no surprise Ms. Davis donated to an organization whose interests align with hers. Once these funds were donated, they no longer constitute a thing of value to the campaign and are no longer contributions. MCA § 13-1-

101(9). Any allegation the Davis campaign accepted and improperly donated anonymous contributions is dismissed.

IV. Expenditures and debts.

The single allegation raised in Mr. Koprivica's second complaint is "Ms. Davis is hiding \$3140.75 in either expenditures or debts." (Compl. 2 at 2.) This allegation is based on information provided by the complainant indicating the Davis campaign entered into a contract with television station KPAX for television advertising in the amount of \$4594.25 but only reported \$1,453.50 in expenditures to KPAX. (Compl. 2 at 2.)

By administrative rule, "each report. . . shall disclose all debts and obligations owed by a candidate or political committee." ARM 44.11.506(1). If a candidate is uncertain of the specific amount of an obligation, they must report an estimated amount. ARM 44.11.506(2).

Reporting of debts by candidates has been discussed in numerous COPP decisions. Recently, in *MTGOP v. Alke*, the Commissioner held "[a] candidate or political committee has a responsibility to report debts at the time an obligation for a campaign expenditure is incurred rather than when an invoice is received, or the payment is made." COPP-2023-CFP-018. See also, *Perkins v. Downing*, COPP-2020-CFP-022, *Ward v Marceau*, COPP-20220CFP-008, and *Ward v. Tucker*, COPP-2020-CFP-021. Each of the referenced decisions addresses candidates that failed to report obligations while awaiting an invoice or negotiating a final amount due to dissatisfaction with a product, and under each set of facts, the Commissioner found sufficient evidence to support violations of Montana law due to the failure to report the obligation including an estimated total.

The Commissioner's decision in *Ream v. Bankhead* specifically addressed the reporting of advertising expenses when a candidate failed to report these costs during the reporting period during which they were incurred. COPP-1999, Vaughey. In his response to the complaint, candidate Bankhead explains he had not reported advertising expenses because the campaign "was not required to pay for the ads at the time they were placed in the newspapers." *Id.* at 3. The Commissioner

maintained candidate Bankhead had indeed violated Montana law because “[c]andidates and political committees are required to disclose their debts, including when those debts are incurred, and to estimate debts if the exact amounts are not known.” *Id.* at 7.

Although a similar issue is presented here, this a unique set of facts which creates a matter of first impression. The Davis campaign had indeed agreed to a price for advertising totaling \$4594.25. Certainly, this could have been reported as a debt by the campaign and the cost later adjusted depending on how many ads were actually run. However, the relevant issue here is “when did the campaign become obligated to pay for advertising?”

A simple definition of obligation is:

[T]he action of obligating oneself to a course of action (as by promise or vow); something (such as a formal contract, a promise or the demand of conscience or custom) that obligates one to a course of action; a commitment (as by a government) to pay a particular sum of money; something one is bound to do: Duty, Responsibility. Merriam-Webster.com/dictionary, 2025.

As evidence of the debt owed, the complainant provides an “Order” found on KPAX’s FCC disclosure site which includes a total expense for ads to run September 25, 2023, through November 7, 2023, of \$4594.25. If this “Order” constitutes an obligation entered into by the Davis campaign, reporting the full amount as a debt during the reporting period it was entered into would be required by Montana law.

In her response, Ms. Davis states the “Order” constitutes “an estimate of maximum amount of advertising expense for my campaign.” Ms. Davis also provides an email from a KPAX Account Executive stating that “signing does not lock you into the contract. . .you would just need to tell us 24-hours in advance to pull the schedule. . .I can provide you with a revised copy of the schedule reflecting the new budgets week over week.” (Response to Compl. 2 at 1.)

Under the circumstances presented, the Davis campaign’s arrangement with KPAX does not rise to the level of an obligation that necessitates reporting the full amount as a debt. As long as each TV spot is reported at the time the campaign

agrees to go forward with that week's advertising – necessarily before it runs - the campaign has properly reported. The difference between this activity and someone waiting until they receive a final invoice is subtle but important. If someone has agreed to a purchase, despite not being certain of the final amount, they are obligated to pay for that purchase and therefore they are also required to report that obligation on the applicable campaign finance form with an estimated amount ARM 44.11.506(2).

Unlike Mr. Bankhead, Ms. Davis paid for all advertising when she committed to moving forward for the week, prior to any ads running on KPAX television. Each week of KPAX advertising, according to the "Order," begins on a Monday and each week's advertising was paid for by the Davis campaign on the preceding Friday or Saturday. Although titled an 'Order,' the fact that advertising can be pulled with a single days' notice and decisions are made 'week over week' means the 'Order' is more akin to an estimate or a quote than a contract. A contract is "a binding agreement" or an agreement "intended to be enforceable by law." Merriam-Webster and Oxford Dictionary *Contract*, 2025. There is no binding agreement here.

Here, the amount for each purchase is known, but the purchase is not yet agreed to. Ms. Davis was not obligated to a course of action until she committed to the following weeks advertising. Ms. Davis committed to each week's advertising on the preceding Friday or Saturday, paid for the upcoming week, and properly reported it on the applicable finance report. Consequently, Ms. Davis did not violate Montana election law by failing to report the entirety of the "Order" as a debt.

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. *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.” *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 the Davis campaign.

Proximity to election – This factor is not determinative here. Although Ms. Davis accepted over-the-limit contributions throughout the primary, she did not spend excess funds in support of her primary campaign and refunded each of these in advance of the general election.

Pattern of Compliance – This factor weighs in favor of prosecution. While the Davis campaign generally complied with law and COPP guidance, the number of over-the limit contributions alone justifies prosecution.

The size of unlawful contributions – This factor also weighs in favor of prosecution. Although some over-the-limit contributions were minor, others were equal to the maximum amount allowed by law, and none were so small as to be considered de minimis.

Responsiveness – This factor weighs against prosecution. The Davis campaign promptly responded to all COPP requests, including any made prior to the complaint, and immediately rectified all reporting errors.

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:

- Ms. Davis did not violate Montana election law by designating a treasurer on her campaign materials that is different from that on her C-1.

- Ms. Davis did not violate Montana election law by accepting anonymous contributions and donating them to Montana Women Vote.
- Ms. Davis did not violate Montana election law by failing to report expenses for potential television advertisements as debts.

The above allegations are dismissed in full.

- Ms. Davis violated ARM 44.11.403(3) by designating in-kind contributions received during the primary to the general election.

Although the above constitute technical violations, prosecution of these matter is not justified.

- Ms. Davis violated MCA § 13-37-216 by accepting in-kind contributions during the primary, constituting \$1641.75 over the primary limit.

Although also a technical violation, Ms. Davis retained these amounts in the event she did not advance to the primary. Consequently, this matter is not considered justified for prosecution.

- Ms. Davis violated MCA § 13-37-229(1)(c) by failing to report aggregate of contributions made by each contributor.
- Ms. Davis violated MCA § 13-37-216 by accepting a total of \$257.09 from three contributors over the \$800 contribution limit for the general and primary election.

Prosecution of the above matters is justified and will be referred to the Missoula County Attorney.

Having determined that prosecution is justified, this matter is immediately referred to the Missoula 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 Missoula County District Court.

Dated this 13th day of February,



Chris J. Gallus
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