

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

ED LESTER v. MICHAEL GAGE and IMMANUEL SECURITY, LLC	COPP-2024-CFP-035 PARTIAL DECISION SUFFICIENCY FINDING OF VIOLATIONS
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COMPLAINT

On September 6, 2024, Ed Lester, current Butte-Silver Bow County sheriff and candidate for re-election, filed a Campaign Finance and Practices (CFP) complaint against Michael Gage, an opposing candidate for election to the position of sheriff in Silver Bow County. The complaint alleged that candidate Gage coordinated a radio advertisement promoting his candidacy with a local security company but failed to disclose this activity as either a campaign contribution received, or expenditure made. It also raised concerns that candidate Gage accepted prohibited corporate contributions, that Mr. Gage and Immanuel Security, LLC (Immanuel Security) engaged in prohibited coordination, resulting in Mr. Gage accepting contributions in excess of legal limits, and that 80% of candidate Gage's campaign finance reports have been filed late. I accepted the complaint as filed on September 9, 2024, because the complaint sufficiently alleged violations of law under my jurisdiction. Respondents were notified at this time and asked to provide a response. The responses were received as requested by September 17, 2024.

This is a partial decision that reports factual findings, established violations of law, and pre-election mitigation actions taken by the respondents. Previous commissioners have issued partial decisions when there is widespread concern about perceived election irregularity, but the demand for longer, more reasoned investigation remains warranted. *McCulloch v. Stanford and Dartmouth*, COPP-2014-CFP-046. As explained later in this decision, I find a similar approach is

appropriate here.

Candidate Lester alleges that his opponent, Mr. Gage, ran unreported radio ads prior to the June 4, 2024, primary election. The radio advertisements ran on two Butte radio stations and continued through at least August 23, 2024. Candidate Lester further alleges that these radio ads were paid for by Immanuel Security and that the radio ads were coordinated.

As a preliminary matter, Candidate Lester asserts that Immanuel Security is legally prohibited from making donations due to its status as a limited liability company (LLC). While Mont. Code Ann. (MCA) § 13-35-227, does ban contributions to candidates by corporations and unions, this prohibition does not apply to LLCs. Limited liability companies are not corporations, and the ban does not apply them or to other similar entities such as partnerships. Statutes that infringe upon First Amendment rights require a plain reading and application of the law. The Montana Legislature has never expanded the corporate contribution ban to other types of business entities. Consequently, this allegation is dismissed.

Candidate Lester makes other assertions that warrant pre-election findings and determinations. One additional reason for this is the fact that Mr. Gage publicly maintains that this matter is resolved and has been dropped. Nothing could be further from the truth. As determined herein, serious violations of campaign finance laws did occur and will be pursued.

I reviewed the law, complaint, and responses to identify pertinent issues and directed that an investigation be conducted. I requested a status report from the COPP investigator. The status report I received from the COPP investigator, which includes his review of the complaint, responses, and his own verifications and findings to date, is as follows:

ISSUES IDENTIFIED FOR INVESTIGATION AND REVIEW

Whether candidate Gage coordinated campaign activity with Immanuel Security. MCA § 13-1-101(10), Administrative Rules of Montana (ARM) 44.11.602(1);

Whether Mr. Gage's campaign disclosure reports were late, inaccurate, or both. MCA §§ 13-37-225 - 229, ARM 44.11.602(5);

Whether Mr. Gage and Immanuel Security exceeded contribution limits as a result of the activity. MCA § 13-37-216, ARM 44.11.227;

Whether Immanuel Security, failed to timely file as a political committee under MCA § 13-37-201; and failed to publicly disclose its expenditures as required under MCA §§ 13-37-225 -229, 232, ARM 44.11.502;

Whether MCA § 13-35-225, requiring proper attribution was violated. MCA § 13-35-225, ARM 44.11.601; and

A summary of relevant facts relating to the remaining issues is as follows:

SUMMARY OF RELEVANT FACTS

Finding of Fact No. 1: Michael Gage filed a C-1A Statement of Candidate as a candidate seeking election to the position of sheriff in Silver Bow County with COPP on March 10, 2024. On the Statement of Candidate, candidate Gage indicated that campaign contributions and expenditures would exceed \$500.00, requiring he file periodic campaign finance reports disclosing all campaign contributions received and expenditures made. Mr. Gage filed for office with Silver Bow County on March 11, 2024. Therefore, his C-1 Statement of Candidate was due on or before March 16, 2024. Mr. Gage timely filed with COPP on March 10, 2024. Mr. Gage also needed to file periodic reports on March 20, April 20, May 20, June 20, and August 20, 2024. His March 20 report was 13 days late, his April and May reports were each 9 days late, and the June 20 report was four days late. Only the August 20, 2024, report was filed on time.

Finding of Fact No. 2: On August 26, 2024, prior to his submission of this complaint, Mr. Lester provided COPP, via email message, an audio copy of a radio advertisement airing in the Butte-Silver Bow area. The email message states that "I recorded the 60 second ad as it played on 8/23/24 at 8:16 AM on local radio station KAAR 92.5 FM."

The ad itself, which is just under 60 seconds in length, opens with candidate Gage introducing himself and speaking in support of his sheriff candidacy. The ad then has individual Kane Fischer of Immanuel Security introduce himself and state that he and Immanuel Security both support candidate Gage and will be voting for him. The ad ends with a message stating that "this ad has been paid for by Immanuel Security of Butte".

Finding of Fact No. 3: Immanuel Security is a local security company based in Butte, MT, that provided “customized security, protection and training services,” with a physical address of 105 N. Parkmont, and a mailing address of 3271 Seven Springs Rd.¹ For the Butte office, individual Kenneth Fischer is listed as the contact person, with a phone number of (406) 479-3836 and an email address of kane.immanuel@protonmail.com. Immanuel Security, LLC is registered as a Domestic Limited Liability Company in “Active-Good Standing” status with Montana’s Secretary of State’s office, Mr. Fischer is listed as the Registered Agent.

Finding of Fact No. 4: Prior to submission of this complaint on September 6, 2024, candidate Gage did not disclose any contributions received or expenditures made associated with the radio advertisement supporting his candidacy on any of his campaign disclosure reports.

Finding of Fact No. 5: Prior to submission of this complaint on September 6, 2024, Immanuel Security did not make any filings with COPP or otherwise publicly disclose its involvement in, including expenditures made to finance, the radio advertisement supporting candidate Gage. At a minimum, based on facts confirmed by COPP, Immanuel Security was required to file a C-2 Statement of Organization as an incidental political committee by May 22, 2024, and their first periodic report on May 30, 2024. Immanuel Security also had periodic reports due June 30 and August 30, 2024. Immanuel Security has never filed a C-2 or a periodic report, though it did attempt to disclose contributions by creating another entity it calls “Friends for Gage.” While it is appreciated and partially discloses payments to the radio stations, it does not absolve Immanuel Security LLC of the need to file its own reports—both a C-2 and a C-4. Further, “Friends for Gage” cannot meet the requirements to be an incidental political committee, since all of the committee’s activity and resources are dedicated to the election of candidate Gage to the office of Butte Silver Bow Sheriff. “Friends for Gage” would be properly designated as an independent political committee.

Finding of Fact No. 6: According to documents publicly posted in station KAAR FM 92.5’s Political Files on the Federal Communications Commission (FCC) database, on May 17, 2024, candidate Gage completed and submitted a Candidate Advertisement Agreement Form requesting station airtime for radio advertisements, with the request accepted and a copy of the advertisement received on May 20, 2024.² An additional document³ available in the station’s Political File provides the following breakdown of candidate Gage’s radio advertising:

¹ <https://www.immanuelsecurity.net/>

² <https://publicfiles.fcc.gov/fm-profile/KAAR/political-files/2024/local/gage-for-sheriff/bf648e9c-22ce-60ce-e2c8-65117a4520ae>

³ <file:///C:/Users/CTA030/Downloads/gage-for-sheriff-io-20240529-160940255-pdf.pdf>

- 117 spots on station KXTL AM, scheduled for the ad to be aired once a day Monday-Friday over a period of 23 weeks and an additional time each day on November 4 and 5, 2024, at a cost of \$1,755.00;
- 117 total spots on station KMTZ FM, scheduled for the ad to be aired once a day Monday-Friday over a period of 23 weeks and an additional time each day on November 4 and 5, 2024, at a cost of \$2,925.00;
- 117 total spots on station KMBR FM, scheduled for the ad to be aired once a day Monday-Friday over a period of 23 weeks and an additional time each day on November 4 and 5, 2024, at a cost of \$2,106.00; and
- 117 total spots on station KAAR FM, scheduled for the ad to be aired once a day Monday-Friday over a period of 23 weeks and an additional time each day on November 4 and 5, 2024, at a cost of \$2,106.00.

On this document, the business name is listed as Immanuel Security and the authorization is signed by Kane Fischer and dated May 17, 2024. Immanuel Security should have submitted a C-2 Statement of Organization by May 22, 2024, and the obligation associated with the radio advertisements should have been disclosed on a May 30, 2024, C-4 campaign disclosure form, which was not filed.

Finding of Fact No. 7: On September 12, 2024, an incidental political committee using the name “Friends for Gage” filed a C-2 Statement of Organization with COPP. Lin Fischer of Butte was named as the committee treasurer and Kenneth Fischer as an additional officer, with the committee address listed as 3271 Seven Springs Rd. The Purpose of the committee was stated as supporting “Mike Gage for Sheriff in Butte-Silver Bow County.”

Finding of Fact No. 8: On September 17, 2024, the Friends for Gage incidental political committee filed a C-4 incidental committee finance report, dated May 28 through September 12, 2024. The report disclosed only five “individual contributions” received by the committee: four from Mike Tillo Graphics totaling \$2,360.00, and one from Townsquare Media in the amount of \$8,892.00 with an in-kind description provided of “Payed [sic] radio ad at local radio station KXTL, written as “Townsquare Media” in check.”

DISCUSSION

Based on the current status of the COPP investigation, it can easily be determined that at least some coordination occurred with respect to the radio

advertisements and Mr. Gage regularly late filed his reports. Due to clear coordination between Immanuel Security and Mr. Gage, reports were either not filed or were substantially inaccurate. This coordination resulted in contribution limits being exceeded. The contribution limit for a local election in 2024 is \$450 dollars per contested election. Only two candidates appeared on the Butte Silver Bow primary election ballot for the position of sheriff, which means both candidates advanced to the general election, so there was only one election contest in this race. Based on preliminary findings and the response provided, the radio advertisements cost \$11,252 (\$8,892.00 purchased ad time and \$2,360 production and design), which exceeds the contribution limit by \$10,802.00. Each of these issues are considered in detail as follows:

I. Coordination

Based on the available evidence, specifically the audio copy of the material provided to COPP by Mr. Lester and Mr. Gage's formal written response, COPP determines that the campaign radio advertisement relevant to this matter was coordinated between Mr. Gage and, through Kane Fischer, the company's registered agent. The term "[c]oordinated" including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee." MCA § 13-1-101(10). As recounted by Mr. Gage in the formal written response provided to COPP:

In May of this year, I was approached by Kane Fisher of Immanuel Security. Mr. Fisher invited me to participate in one of his business commercials, where I would briefly mention my candidacy for Sheriff, and he would conclude by expressing his and his company's support for my campaign. ... I agreed to participate, and we recorded the ad at the station. (¶¶ 2, 3.)

Prior to receipt of this complaint, COPP was provided with an audio copy of this advertisement by Mr. Lester, which the agency reviewed in considering this matter. Roughly the first half of the ad features Mr. Gage speaking in support of his own

candidacy. The second half features Kane Fischer stating that both he personally and the company at large support Mr. Gage's candidacy. (FoF No. 2.) The ad ends with a statement identifying the party responsible for financing it - "this ad has been paid for by Immanuel Security of Butte."

Public records available via the Federal Communications Commission (FCC) support Mr. Gage's recollection of the ad being conceived of by Mr. Fischer. While Mr. Gage submitted the request for airtime related to this radio ad himself, Mr. Fischer signed and submitted a related authorization. (FoF No. 6.)

In total, the ad was set to be run 468 times on four local radio stations - once per day Monday-Friday for a period of 23 weeks, with a second daily airing of each on of November 4 and 5, 2024, at a total amount owed of \$8,892.00. (FoF Nos. 6, 8.) Based on the ad's closing statement of "this ad was paid for by Immanuel Security of Butte" and an incidental finance report later filed by the Friends of Gage political committee (which shares officers and an address with Immanuel Security) COPP determines that the ad was financed by Immanuel Security, LLC.

All available facts and evidentiary material support a finding that Immanuel Security, through registered agent Mr. Fischer, conceived of the ad supporting Mr. Gage and requested Mr. Gage's participation. The applicable rule, ARM 44.11.602 provides elements to consider when determining if coordination occurred, including:

[W]hether the candidate or the candidate's agent has made or participated in any discussion or in making any decision regarding the content, timing, location, media, intended audience, volume of distribution, or frequency of placement of the communication or activity. (2)(e).

As evidenced by Mr. Gage's participation in the implicated radio advertisement, he engaged in coordination with Immanuel Securities. Ultimately, Immanuel Securities produced and aired the ad "in cooperation with" and "in consultation with" Mr. Gage.

Montana only requires proof of one element to establish coordination. ARM 44.11.602(1). Although Mr. Gage may have been unaware of many pertinent details in regard to running the advertisement, his participation in the ad sufficiently

establishes coordination. As a past example of COPP determining a coordinated expenditure had occurred despite the parties not agreeing on each term, see *Merwin v. Cooney*, COPP-2024-CFP-034 and *Foundation for Accountability and Civic Trust (FACT) v. Cooney*, COPP-2024-CFP-036, at 8-13.

COPP must also address the claim made by Mr. Gage in the submitted response that he “was unfamiliar with Mr. Fisher’s commercials.” This statement is misleading at best. While Mr. Gage may not have known the ad’s entire or exact broadcast schedule, he was obviously well aware that he had recorded it with Immanuel Security’s registered agent, Mr. Fischer, and that Immanuel Security was paying to have it aired on local radio stations. As his written response states, Mr. Fischer originally approached him with the idea of recording the radio ad. Mr. Gage was also well aware that Mr. Fischer intended for any ad to be broadcast on local radio. Indeed, it would be impossible for Mr. Gage not to be aware of the ad’s existence, considering his direct participation in its conception, recording, and request for airtime.

While Mr. Gage in his response additionally classifies the ad as one of Immanuel Security LLC’s “business commercials,” this description is misleading. The content of the ad clearly and intentionally outlines support for Mr. Gage’s sheriff candidacy, via personal statements from the candidate himself and follow-up remarks from Mr. Fischer. No products or professional services offered by Immanuel Security are mentioned in the ad. Mr. Gage’s sheriff candidacy is the sole topic.

After reviewing Montana law, additional relevant materials, and evidence, I determine that the activity described above is coordinated.

II. Reporting obligations as applied to Mr. Gage

Reporting of contributions received

Any expenditure that is coordinated between a candidate or the candidate’s campaign and a third-party entity is considered a reportable contribution received by the candidate under Montana law. The definition provided for the term

“contribution” in MCA § 13-1-101(9)(a)(ii), includes “*an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution.*” (*emphasis added*). Candidates are required to disclose all campaign contributions received and expenditures made by their campaign in the time and manner required by Montana law. MCA §§ 13-37-225, 226, 228, 229.

ARM 44.11.602(5), additionally clarifies that “[a] “coordinated expenditure” shall be treated and reported as an in-kind contribution from and expenditure by the person funding, facilitating, or engaging in the election communication, electioneering communication, or reportable election activity. Both the candidate and the committee shall report the coordinated expenditure and/or in-kind contribution as the case may be.” A contribution is reportable “on the date it is received.” ARM 44.11.402(1).

It is safe to assume Mr. Gage accepted the request to record an ad with the company because of the benefits it would provide his campaign, specifically free exposure for his candidacy broadcast on AM and FM radio across Butte and the surrounding area. Mr. Gage received something “of value” through this activity, creating a contribution under MCA § 13-1-101(9)(a)(i).

Being a coordinated expenditure, Mr. Gage was required to report the cost of this radio ad as an in-kind contribution received from Immanuel Security, pursuant to MCA § 13-37-229(1) and ARM 44.11.602(5). Mr. Gage has not, at any time, disclosed to COPP his receipt of any contributions, either monetary or in-kind, from Immanuel Security. (FoF No. 4.)

By not including this in-kind contribution on campaign finance reports filed with COPP, or otherwise publicly acknowledging this coordinated expenditure, Mr. Gage failed to report a campaign contribution in the amount of \$8,892.00 received by his campaign.

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Campaign contribution limits

Finally, candidates such as Mr. Gage seeking election to public office in the State of Montana are limited in the amount they can accept from contributors. Montana's campaign contribution limits are established in statute. MCA § 13-37-216. Relevant to this matter, Mr. Gage was not involved in a contested primary election as defined in MCA § 13-37216(6), as only two candidates - Mr. Gage and Mr. Lester - participated in the June 4, 2024, primary election, with each automatically advancing the November 5, 2024, general election. ARM 44.11.222(2)(c). Not having a contested primary, Mr. Gage had only one election to which the contribution limits apply.

The contribution limits applying to Montana's 2024 primary and general elections are published by COPP in ARM 44.11.227. Relevant to Mr. Gage, local candidates may only accept \$450.00 from any individual contributor or political committee (other than a political party committee) per election, ARM 44.11.227(1)(c). Put directly, even though Immanuel Security is not a corporation, and could make contributions, it could contribute no more than \$450.00 to Mr. Gage's campaign.

By coordinating the radio ad expenditure with Immanuel Security, Mr. Gage received a reportable contribution totaling \$8,892.00. Immanuel Security also engaged design services. To the extent these design services are attributable to the radio ads, those services must be included. Nevertheless, I can easily ascertain that coordination between Immanuel Security and Mr. Gage occurred, and the amount of coordinated campaign activity resulting in excess contributions is at least \$8,442.00.

As a final point here, COPP notes that there is no limit on the amount an individual, or as is the case here, an LLC, could have expended independently in support of Mr. Gage. Similarly, there is no limit on the amount Mr. Gage could have himself expended to support his own campaign. However, the campaign activity engaged in by Immanuel Security was not independent. Immanuel Security invited candidate Gage to participate in its campaign advertisement, and candidate Gage

accepted the invitation. This was advocacy to support candidate Gage. There is an ascertainable value that candidate Gage and Immanuel Security were required to disclose.

III. Registration and reporting requirements applied to Friends for Gage committee

Political committee registration

Political committees are defined by Montana election law as “a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure” to support or oppose candidates or ballot issues or otherwise finances an election communication, electioneering communication, or independent expenditure costing \$250.00 or more. MCA § § 13-1-101(34)(a), (d). Immanuel Security is clearly “a person other than an individual”.⁴ Immanuel Security's ad qualifies as an election communication under MCA § 13-1-101(15)(a)(i) and evidence shows that costs to record and distribute the ad exceed \$250.00 (FoF Nos. 6, 8.) Therefore, Immanuel Security is a political committee under Montana law. Specifically, it qualifies as an incidental committee, as it is “not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues” but became a political committee by “making an expenditure.” MCA § 13-1-101(26)(a).

Political committees, including incidental political committees, are required to file a 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(2)(b). In this case, Immanuel Security, through registered agent Mr. Fischer, authorized an expenditure to record and air radio ads supporting Mr. Gage’s candidacy no later than May 17, 2024. (FoF No. 6.) Montana law required they file with COPP no later than May 22, 2024, five days later,

⁴ ““Person” means an individual, **corporation**, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8)”, MCA 13-1-101(32)(emphasis added).

pursuant to MCA § 13-37-201(2)(b). Immanuel Security did not file any sort of registration on or before May 22, 2024, nor at any other time prior to its receipt of this complaint. (FoF No. 5.)

A committee registration was eventually filed on September 12, 2024, under the name “Friends for Gage.” (FoF No. 7.) While using a name other than the business name, these can be considered one and the same. First, the Friends for Gage committee shares an address, officers, and certain contact information with the business entity. (FoF Nos. 3, 7.) Second, the written response provided by Kenneth and Lin Fischer explicitly states that “Immanuel Security, is now compliant” with its requirement to register as a political committee and report expenses with COPP and does not otherwise assert that “Friends for Gage” was established as a separate unrelated entity. (¶ 3.) Third, the radio ad relevant to this complaint proclaims “Immanuel Security” as the entity who had paid for it rather than Mr. Fischer individually, Mrs. Fischer individually, or “Friends for Gage.” Finally, the authorization form submitted for the ad purchase lists the business as Immanuel Security. (FoF No. 6.) Based on this evidence, no credible argument can be made that the Friends for Gage committee was established or currently exists independent of and unrelated to Immanuel Security.

Reporting of expenditures made

Incidental political committees must disclose all expenditures made by the committee, including election communications, on campaign finance reports filed with COPP. MCA §§ 13-37-225, 13-37-232(2). Montana law unequivocally requires incidental political committees disclose their expenditures like any other candidate or political committee engaging in Montana’s electoral process. Based on the information available to COPP, Immanuel Security authorized this expenditure no later than May 17, 2024, and paid for it on May 28, 2024, eleven days later. (FoF Nos. 6, 8.)

In this case, the radio ad expenditure was coordinated between Immanuel Security and Mr. Gage. ARM 44.11.602(5), specifies that “[a] ”coordinated

expenditure" shall be treated and reported as an in-kind contribution from and expenditure by the person funding, facilitating, or engaging in the election communication, electioneering communication, or reportable election activity. Both the candidate and the committee shall report the coordinated expenditure and/or in-kind contribution as the case may be." Relevant to this matter, an expenditure occurs, and is to be reported, on the day it is made, in this case as a debt owed. ARM 44.11.502(2).

The expenditure for advertising occurring on May 17, 2024, and paid for on May 28, 2024, was required to be reported it as a debt owed on a finance report filed with COPP. COPP has provided prior guidance to incidental political committees who engage in activity throughout the entirety of Montana's primary and/or general election cycles to follow the monthly reporting calendar outlined in MCA 13-37-226(2) rather than reporting expenditures "within 30 days" as stated in MCA 13-37-232(5). Following such guidance, Immanuel Security should have reasonably reported its radio advertising as a debt owed on or before May 30, 2024 via a monthly report filed pursuant to MCA§ 13-37-226. Immanuel Security did not at that time file any finance reports with COPP, nor did they alternatively report any expenditures "within 30 days" as specified in MCA § 13-37-232(5), or otherwise provide any public disclosure outlining the costs incurred in creating and distributing the material. (FoF No. 5.) In not disclosing this debt on campaign finance reports filed with COPP at the time the obligation occurred, Immanuel Security failed to disclose a reportable election communication costing \$8,892.00 in the time and manner required by Montana law.

After receipt of this complaint, using the Friends for Gage incidental committee name, Immanuel Security did finally file a C-4 incidental committee report disclosing its radio advertisement activity. (FoF No. 8.) COPP notes that this activity was incorrectly entered as a contribution received, rather than as an expenditure made by the committee. An error the committee will need to correct.

Similarly, the Friends for Gage incidental political committee reports four

additional “contributions” received from Mike Tillo Graphics, totaling \$2,360.00 (FoF No. 8.) Context and review of Mr. Gage’s provided written response indicates these were actually additional expenditures financed by Friends for Gage intended to support Mr. Gage’s candidacy, not contributions received by the committee. Here, Immanuel Security/Friends for Gage failed to disclose any information at all related to the “purpose” of each expenditure as required under MCA § 13-37-232(3)(b), further depriving voters in Silver Bow County of any knowledge pertaining to when the funds were expended in support of Mr. Gage’s candidacy or what was purchased. The Friends for Gage committee will need to immediately update its C-4 report to, at a minimum, describe the “purpose” of each expenditure and identify the date these expenditures were made. This, of course, does not excuse their failure to timely and properly do so in the first place.

Absent contradictory evidence, COPP does accept Mr. Gage’s assertion that these additional expenditures were not “coordinated” with his campaign but instead taken “independently,” making them reportable only by Friends for Gage.

Attribution of election communications

Finally, Montana law requires that all election communications include a “paid for by” attribution statement identifying the person or entity financing the communication. MCA § 13-35-225. As an entity who financed an election communication, Immanuel Security’s radio ad must include an attribution statement with the words “paid for by,” along with their name, the name of their treasurer, and their address.

In listening to the radio ad relevant to this matter, COPP determines that Immanuel Security failed to adhere to the attribution requirements outlined in statute. Specifically, the attribution statement included in the ad, “this ad has been paid for by Immanuel Security of Butte,” failed to include the name of the treasurer and an address. This particular failure can likely be dismissed as de minimis, pursuant to ARM 44.11.603(2)(f). The provided attribution does provide “sufficient disclosure” for listeners to determine who financed the advertisement. Following

notice of the attribution error, Immanuel Security promptly addressed the matter by pulling the remaining radio ads, which was one of the options available to them, regarding the erroneous attribution.

ENFORCEMENT

Enforcement of this matter is delayed pending further investigation of the amounts involved and any additional relationship between the parties. However, coordinated campaign activity occurred at a significant level, and consequently enforcement is warranted and a referral to the Butte Silver Bow County Attorney will ultimately occur. Although the primary was uncontested for purposes of determining whether there was one contribution limit or two, there were nevertheless, two candidates on the ballot and voters selected between them. Timely access to accurate information was important to voters and should have been available to them. Unquestionably, this did not occur.

COPP establishes a uniform system of disclosure and reporting applicable to all candidates and political committees. MCA, Title 13, chapter 37, part 2. Disclosure ensures that voters have the facts necessary to evaluate messages competing for their attention. *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1006 (9th Cir. 2010). It also provides general transparency to the public and those acting on their behalf. Lastly, it provides information to government agencies in other areas of enforcement. Taken together, these functions promote confidence and integrity in the election process. *Id.*

Montana's reporting requirements have already been upheld by Federal Courts as simple and straightforward, which means our requirements withstand constitutional scrutiny and are not overly burdensome on candidates or political committees. *National Association for Gun Rights (NAGR), Inc. v. Mangan*, 933 F.3d 1102 (9th Cir. 2019).

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*, 26.

Recently, in *MTGOP v. Mullen*, COPP-2024-CFP-030, *MTGOP v. Alke*, COPP-2023-COPP-018, and *O’Neill v. Wilson*, COPP-2024-CFP-022, I discussed in detail the objective factors I apply in determining when prosecution is justified. These primarily consist of proximity to the election, a campaign’s pattern of behavior, the size of contributions or expenditures which have gone unreported, 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.

Here, proximity to the election weighs in favor of prosecution. The violations for which there is sufficient evidence occurred in May 2024, well in advance of the November 5, 2024, election, but the June 4, 2024, primary election was equally important. Correction of these matters only occurred because of candidate Lester’s complaint.

The second factor, pattern of behavior, also indicates prosecution is justified. Candidate Lester is correct that candidate Gage regularly filed his reports late, and even though Immanuel Security made late efforts to report, it is still obligated to file as an incidental political committee, and it has not done so. By creating “Friends for Gage,” Immanuel Security does not shed its incidental committee status. Creating such a committee merely established an independent committee that also needs to report.

Third, the size of unreported contributions or expenditures, weighs in favor of prosecution. The failure to report a coordinated activity amounting to at least \$8,900 is significant. This activity was late reported, and in fact, may have never been reported at all, but for the filing of this complaint.

The final factor, responsiveness of the campaign, tips the scales in favor of the respondents. To date, the respondents have been responsive to the investigators request. However, Immanuel Security must file its own reports and candidate Gage must show an in-kind contribution from Immanuel Security on his disclosure reports. Some of these matters can be addressed by corrective action, which will occur as this investigation continues. Consequently, this final factor can only be determined at a later time.

Still, taken together, and as matters now sit, violations did occur and referral to the Butte-Silver Bow County Attorney will ultimately occur. Based upon the law and known facts, referral for prosecution is unavoidable.

CONCLUSION

The above-described complaint has been considered as described above and sufficient evidence exists to determine the following:

- Immanuel Security is a limited liability company, rather than a corporation, so MCA § 13-35-227 does not apply and any such claim is dismissed.
- Immanuel Security has adequately addressed attribution errors pertaining to the radio advertisements, and any related violation of MCA § 13-35-225 is dismissed as de minimis under 44.11.603(2)(f).
- Immanuel Security failed to file a C-2 statement of organization within 5 days of making its first expenditure in violation of MCA 13-37-201.
- Immanuel Security failed to file at least one C-4 incidental committee report to disclose its expenditures in violation of MCA § 13-37-226.
- Immanuel Security coordinated with candidate Gage's campaign, which resulted in unreported expenditures and contributions that also exceeded contribution limits in violation of MCA § 13-37-216.
- Candidate Gage late filed four of his five C-5 candidate disclosure reports, in violation of MCA §§ 13-37-225 and 228.
- Candidate Gage failed to disclose in-kind contributions to his campaign from Immanuel Security, in violation of MCA § 13-37-229.

- Creation of the “Friends for Gage” committee does not result in compliance by Immanuel Security. Contributions from Immanuel Security are not disclosed, and the true source of the person making the in-kind contribution to candidate Gage’s campaign is not disclosed, a violation of MCA § 13-37-217.

As indicated previously, the exact amount and nature of the excessive and unreported activity still must be ascertained through a continued investigation and continued inspection of records before a final determination can be issued, but it is important to notify the public that violations did occur. As a result, referral to the Butte Silver Bow County Attorney for prosecution will inevitably result. Based on the law and the facts currently before me such a referral is inevitable.

This partial decision determines there are unreported and excessive contributions with an approximate value of at least \$8,942, if not more, which is now publicly disclosed. I reserve the right to continue investigating these matters and others and to refer these matters to the Butte Silver Bow County Attorney for civil action in accordance with the provisions of MCA §§ 13-37-124 and 128. Unlike MCA Title 13, chapter 35 corrupt practices, which requires an intent element, the timely and accurate disclosure required by MCA Title 13, chapter 37, allows for civil action for the intentional or negligent acts or omissions of violators. Weighing all facts and laws, I can sufficiently determine that both Immanuel Security and candidate Gage, at the very least, acted negligently with respect to the aforementioned laws.

Dated this 16th day of October, 2024.



Chris J. Gallus

Commissioner of Political Practices
of the State of Montana
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