

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

In the matter of:  Yes for Cascade County Jobs  No. COPP 2017-ONC-001	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE VIOLATION
---	--

On October 27, 2017, the Commissioner of Political Practices issued an Order of Noncompliance to Yes for Cascade County Jobs (YCCJ) for failure to file required C-6 financial reports, failure to detail contribution and expenditure activity made by the committee, and failure to amend the C-2 Statement of Organization to properly reflect the committee Treasurer.

**SUBSTANTIVE ISSUES ADDRESSED**

Proper and timely filing of campaign finance reports and updating a political committee's Statement of Organization.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Cascade County held its general municipal election on November 7, 2017. (Cascade County website.)

Finding of Fact No. 2: Committees that participated in local races through expenditure or contribution activity had financial reports due on October 3, 2017 (covering the date of the committee's first contribution or expenditure through September 28), October 26 (covering all financial activity from September 29 through October 21), and November 27 (covering financial activity October 22 through November 27). (Commissioner's Records.)

Finding of Fact No. 3: YCCJ filed a C-2 Statement of Organization on February 24, 2017 as a ballot issue committee in Great Falls, listing Robert Bulcher as the Treasurer and Brett Doney as the Deputy Treasurer. (Commissioner's Records.)

Finding of Fact No. 4: Commissioner Mangan spoke with YCCJ via telephone call on September 1, 2017 to discuss financial reporting and disclosure requirements for Ballot Issue Committees. The Commissioner followed up this phone conversation with an email to Mr. Doney that same day detailing the reporting dates and requirements. (Commissioner's Records.)

Finding of Fact No. 5: YCCJ did not file its required financial report on October 3, 2017. (Commissioner's Records.)

Finding of Fact No. 6: YCCJ did not file its required financial report on October 26, 2017. (Commissioner's Records.)

### **DISCUSSION**

After receiving an email discussing both the receipt by and solicitation of contributions for the committee 'Yes for Cascade County Jobs' to promote an economic development ballot issue on September 1, 2017, the Commissioner contacted YCCJ through Mr. Doney to inform the committee that contributions from businesses were acceptable as long as the business also filed as an incidental committee. The Commissioner also notified the committee of pending financial reporting deadlines, offered the assistance of the COPP should questions arise, and followed with an email that included a reporting schedule for 2017 local elections (FOF No. 4).

On or about to October 27, 2017, the COPP was alerted to at least two sets of full color, double-sided flyers being mailed to Cascade County voters using the attribution "paid for by Yes for Cascade County Jobs," with Bruce Len Watkins listed as the committee's Treasurer. A review of the committee's

online CERS<sup>1</sup> committee financial reporting indicated no committee financial reports had been filed, which were due on October 3 and 26, 2017 (FOF Nos. 5, 6). Further, a review of the committee's Statement of Organization did not include Mr. Watkins as a committee Treasurer (FOF No. 3).

Montana campaign finance law requires that "each ... political committee shall file with the commissioner periodic reports of contributions and expenditures made by or on the behalf of a ... political committee." § 13-37-225, MCA.

Finding of Fact No. 7: On October 27, 2017 the Commissioner issued an Order of Noncompliance to YCCJ, providing the committee to, within five days, file required campaign financial reports and update the committee's Statement of Organization. (Commissioner's Records.)

Finding of Fact No. 8: On October 31, Brett Doney visited the COPP office in Helena and, using CERS, filed a financial report for YCCJ covering the dates of February 24 through October 31, 2017. This report showed YCCJ receiving \$38,450 in contributions, with \$17,856.31 in expenditures, for an ending cash-in-bank balance of \$20,593.69. The committee's Statement of Organization was also amended to show Bruce (Len) Watkins to be the Treasurer. (Commissioner's Records.)

A review of the October 31, 2017 campaign finance report showing \$17,856.31 in expenditures, however, did not include the full color, double-sided flyers that were initially brought to the attention of the COPP.

Finding of Fact No. 10: The October 31 committee financial report was amended on November 7 to cover the dates of February 24 through November 7, 2017 and reported \$46,750.00 in contributions received by YCCJ. The report indicated no additional expenditures or debts. (Commissioner's Records.)

---

<sup>1</sup> CERS is an acronym for Campaign Electronic Reporting System, the e-filing system used by candidates and political committees to submit campaign finance reports and other required forms to COPP.

Finding of Fact No. 11: On November 27, YCCJ filed an amended version of their October 31 report, covering the dates of February 24 through November 27, 2017. This report indicated no additional contributions, expenditures, or debts. (Commissioner's Records.)

Finding of Fact No. 12: No financial reports filed by YCCJ list any expenditure activity pertaining to printed and mailed postcards, mailers, or flyers. On November 6, 2017 Commissioner Mangan left a voicemail message for Mr. Doney instructing YCCJ to contact the COPP to discuss the disclosures required. Mr. Doney returned the call that same day and spoke with COPP Compliance Specialist/Investigator Scott Cook. Mr. Doney explained that mailers/postcards had been ordered sometime during the month of October, but the invoice had only been received in November. (Commissioner's Records.)

Subsequent committee finance reports filed on November 7 and 27, 2017 did not include any additional committee expenditures or debts. (FOF Nos. 10, 11.) No filed committee financial report included an expenditure or debt for several campaign election communications (printed and mailed postcards) that were identified by the COPP and acknowledged by the YCCJ (FOF No. 12).

### **FINDINGS**

The Commissioner may investigate all statements filed pursuant to title 35 or 37, and shall investigate alleged failures to file any statement required under § 13-37-111(2)(a). Pursuant to an Order of Noncompliance, YCCJ failed to timely report committee financial activity. Reporting and disclosure is required so that the public, press and opposing candidates or committees understand contributions and expenditures of political committee funds. §§ 13-37-226(4)(a), 229, MCA.

Sufficiency Finding No.1: The Commissioner finds that there are sufficient facts to show that YCCJ did not timely file campaign finance reports as required by Montana law. (FOF Nos. 3, 4, 5.)

Sufficiency Finding No.2: The Commissioner finds that there are sufficient facts to show that YCCJ did not report campaign expenditures or debts as required by Montana law. (FOF Nos. 8-12.)

Montana requires that campaign finance reports be timely filed according to statutory deadlines. § 13-37-226, MCA. A political committee is required to report at the times specified in § 13-37-226(2), MCA, when funds are used in support of a “particular local issue,” §13-37-226(3), MCA. In general, timely reporting and disclosure must include “the amount and nature of debts and obligations owed” by the committee at the end of the reporting period. § 13-37-229(2)(a)(vi), MCA.

Sufficiency Finding No. 3: The Commissioner finds that there are sufficient facts to show that YCCJ did not amend its Statement of Organization to reflect the name and address of the new committee Treasurer as required by Montana law. (FOF No. 2.)

Statement of Organization forms are required from a political committee “within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first.” § 13-37-201, MCA. This statement must include “the name and address of all officers....” *Id.*

Any material change in information previously submitted in a ... statement of organization ... shall be reported by filing an amended statement with the commissioner within five business days after the change.

ARM 44.11.303(2).

The YCCJ failed to provide the public **any** financial reporting in a timely fashion of contributions and expenditures in the approximate amount of \$47,000.00 in support of a local ballot issue. Upon the issuance of an Order of Noncompliance, the YCCJ provided a portion of the reportable information but

failed to fully report the scope and amount of the expenditures or debts the committee incurred. The filing remains incomplete as of the date of this decision. The committee remains under order to fully and completely report all contributions and expenditures until the COPP is satisfied the filing is complete.

Reporting and disclosure is required so that the public, press, and opposing candidates understand the contribution and expenditure of funds used in support of a particular issue. The Commissioner encourages local ballot committees to be aware of the appearance to the public of a committee's failure to report and disclose contributions and expenditures to its campaigns, and to ensure they file and report as required in a timely manner with the COPP.

### **DECISION**

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner "shall investigate" any alleged violation of campaign practices law. § 13-37-111(2)(a), MCA. The mandate to investigate is followed by a mandate to take action. The law requires that where there is "sufficient evidence" of a violation the Commissioner must ("shall notify," *see* §13-37-124, MCA) initiate consideration for prosecution.

Second, having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice decision. This Commissioner, having been charged to investigate and decide,

hereby determines that there is sufficient evidence to show that the Yes for Cascade County Jobs committee violated Montana’s campaign practice laws, including, but not limited to, the laws set out in the Decision. Having determined that sufficient evidence of a campaign practice violation exists, the next step is to determine whether there are circumstances or explanations that may affect prosecution of the violation and/or the amount of the fine.

The failure to fully and timely report and disclose cannot generally be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law as it relates to failures to file and report. See *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing excusable neglect principles). Likewise, the Commissioner does not normally accept that failures to file or report be excused as *de minimis*. See *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing *de minimis* principles).

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. § 13-37-124, MCA. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of the Yes for Cascade County Jobs committee. Because of the nature of the violations (the failure to report and disclose occurred in Lewis and Clark County), this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. § 13-37-124(1), MCA. Should the County Attorney waive the right to prosecute (§ 13-37-124(2), MCA) or fail to prosecute within 30 days

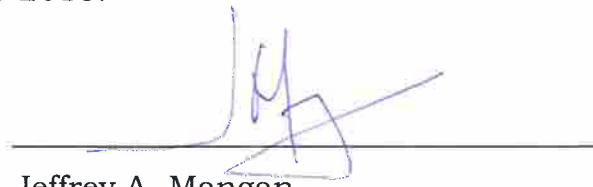
(§ 13-37-124(1) MCA) this Matter returns to this Commissioner for possible prosecution.

Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that the Matter is waived back, this Finding and Decision does not necessarily lead to civil prosecution as the Commissioner has discretion (“may then initiate” *see* § 13-37-124(1), MCA) in regard to a legal action. Instead, most of the Matters decided by a Commissioner are resolved by payment of a negotiated fine. In setting that fine the Commissioner will consider matters affecting mitigation, including the cooperation or lack thereof in correcting the reports at issue when the matter was raised in the Complaint.



While it is expected that a fine amount can be negotiated and paid, in the event that a fine is not negotiated, and the Matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of campaign practice law. See § 13-37-128, MCA. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 2nd day of January 2018.



Jeffrey A. Mangan  
Commissioner of Political Practices  
Of the State of Montana  
P.O. Box 202401  
1209 8<sup>th</sup> Avenue  
Helena, MT 59620  
Phone: (406) 444-3919