

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Eaton v. Hamlett No. COPP 2018-CFP-023	DISMISSAL OF COMPLAINT BASED ON APPLICATION OF PRINCIPLE OF EXCUSABLE NEGLIGENCE FINDING OF SUFFICIENT FACTS SUPPORT A CAMPAIGN FINANCE VIOLATION
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On June 22, 2018, Jake Eaton of Billings filed a campaign practices complaint against Bradley Hamlett of Cascade. The complaint alleged that candidate Hamlett failed to provide the proper level of reporting detail to describe six expenditures made by his 2016 campaign, and that candidate Hamlett failed to properly report two debts owed by the campaign.

SUBSTANTIVE ISSUES ADDRESSED

This decision addresses the sufficiency of expense detail when reporting campaign expenditures and services. A portion of this Complaint will be dismissed for the same reasoning and analysis set forth in *Eaton v. Dunwell*, COPP-2018-018. The proper and timely reporting of all campaign expenditures, debts, and payments is also addressed.

FINDINGS OF FACT

The foundational fact necessary for the Decision is as follows:

Finding of Fact No. 1: Bradley Hamlett filed a hard-copy C-1 Statement of Candidate as a candidate for HD 23 in Cascade County with the COPP on September 2, 2015. (Commissioner's Records.)

DISCUSSION

The Complaint asserts that expenditures and debts reported by candidate Hamlett failed to include sufficient detail. The Commissioner thus examines candidate Hamlett's campaign finance reports. Representative Hamlett reported expenditures on his 2016 campaign finance reports in the following detail:

Finding of Fact No. 2: On his campaign financial report covering the dates of May 22, 2016 through June 22, 2016, candidate Hamlett did not provide the required level of reporting detail to describe campaign expenditures on one occasion (see Table 1). The most recent amended version of this report was filed on November 28, 2016. (Commissioner's Records.)

Table 1: Expenditures reported by candidate Hamlett on his May 22, 2016 through June 22, 2016 Periodic campaign finance report that did not contain the required level of reporting detail. Report was amended and filed November 28, 2016.

Entity	Date	Purpose	Amount
Printing Center USA	06/22/2016	Business cards for doors	\$56.75

*Reported as a Loan

Finding of Fact No. 3: On his campaign financial report covering the dates of June 23, 2016 through September 30, 2016, candidate Hamlett did not provide the required level of reporting detail to describe campaign expenditures and debts on five occasions (see Table 2). (Commissioner's Records.)

Table 2: Expenditures and Debts reported by candidate Hamlett on his June 23, 2016 through September 30, 2016 Periodic campaign finance report that did not contain the required level of reporting detail.

Entity	Date	Purpose	Amount
Artcraft	08/02/2016	Printing	\$800.00

MTS Mailing Service	09/29/2016	Mailing services	\$379.90
Artcraft*	09/29/2016	Printing	\$1,240.00
Element L Design*	09/01/2016	Design services	\$600.00
MTS Mailing Service*	09/29/2016	Mailing services	\$1,664.10

*Debt owed by the campaign

The expenses and loans described in the foregoing Tables require additional detail. Such generic expenditure descriptions are more akin to a list or category than a description and do not provide the “purpose, quantity, subject matter” of the expense which are the details required to be reported by 44.11.502(7), ARM. Nor, do the listings meet Montana’s statutory requirement of detail required for expenditures to consultants or other persons who perform services for or on behalf of a candidate; the law requires that such expenditures “must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.” Mont. Code Ann. § 13-37-229(2)(b).

Sufficiency Finding No. 1: There are sufficient facts to show that Hamlett 2016 campaign finance reports failed to disclose sufficient detail describing campaign expenditures and debts (FOF No. 2, 3).

Similar problems of insufficient detail in expenditure reporting under the current rules and statutes was first substantively addressed on October 3, 2016 in *MDP v. MRLCC*, COPP-2016-CFP-029, by then-Commissioner Jonathan Motl. While MRLCC’s lack of expenditure reporting detail was a violation, such a finding was, at the time of the 2016 election cycle, a further application of the

rule and statute at issue. Thus, the violation was dismissed under the “excusable neglect” principle:

[G]iven the first time nature of this determination and the likelihood that there are other candidates and committees in a similarly deficient reporting status.

Id., at 7.

The Commissioner incorporates herein by reference the in-depth review of the *MDP v. MRLCC* decision recently set out in *Eaton v. Dunwell*, 2018-CFP-018. This Complaint against Representative Hamlett will be dismissed for the same reasons and pursuant to the same two safeguards.

First, no later than February 15, 2019, Representative Hamlett is directed to file amended campaign finance reports providing the required “sufficient detail” for the specific expenditures noted in this decision. Second, contingent on amended campaign finance reports being filed, the Commissioner hereby excuses (dismisses) Representative Hamlett from a campaign practice violation for the deficiencies identified above based on the principle of excusable neglect.¹

The Complaint also alleged candidate Hamlett failed to properly report debts on his 2016 campaign finance reports. The Commissioner examines the allegations.

Finding of Fact No. 4: On his campaign financial report covering the dates of October 1, 2016 through October 27, 2016, candidate Hamlett reported making two payments on previously reported debts (see Table 3). (Commissioner’s Records.)

¹ The Commissioner notes that Representative Hamlett has agreed to amend the campaign’s 2016 finance reports to fulfill the requirements set out by the Commissioner for dismissal.

Finding of Fact No. 5: On his campaign financial report covering the dates of October 28, 2016 through November 28, 2016, candidate Hamlett did not report making any payments on previously reported debts, leaving the campaign with three outstanding debts owed: Artcraft; MTS Mailing Service; and Rylan Boggs (see Table 4). (Commissioner’s Records.)

Candidate Hamlett properly reported four debts owed by his campaign in CERS². Previously reported debts do not show up in subsequent reports filed in CERS, only debts new to that period appear (FOF Nos. 3, 4).

Table 3: Debt Payments reported by candidate Hamlet on his October 1, 2016 through October 27, 2016 Periodic campaign finance report.

Entity	Date	Paid Amount	Balance Due
Element L Design	10/20/2016	\$600.00	\$0.00
MTS Mailing Service	10/07/2016	\$1,200.00	\$464.10

Table 4: Outstanding Debts still owed by candidate Hamlett according to his October 28, 2016 through November 28, 2016 campaign finance report.

Entity	Purpose	Paid Amount	Balance Due
Artcraft	Printing	\$0.00	\$1,240.00
MTS Mailing Service	Mailing service	\$1,200.00	\$464.10
Boggs, Rylan	Photographic services	\$0.00	\$170.00

Although previously reported debts do not show up on each subsequent report, the CERS system automatically carries this information from report to report, and the system automatically tracks the current balance owed if a payment is made using the payments tab. For example, candidate Hamlett successfully used the payments tab to report making payments on two campaign obligations on his October 1, 2016 through October 27, 2016 report; the entity, the original debt amount, the paid amount, and balance due is available for

² 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

each of those debts. The allegation that candidate Hamlett failed to properly report debts is hereby dismissed.

While candidate Hamlett properly reported all debts owed by his 2016 campaign, he failed to report complete payments of three campaign obligations. According to the final 2016 campaign financial report filed by candidate Hamlett, his campaign owed debts in the amount of \$1,240.00 to Artcraft of Billings, MT; \$170.00 to Rylan Boggs of Helena, MT; and \$464.10 to MTS Mailing Service of Billings (FOF No. 5).

Finding of Fact No. 6: On September 5, 2018, Merle Peifer of Mailing Technical Services emailed the COPP a statement saying, in part, “the Hamlett campaign does not owe MTS any money, nor has the campaign owed money to MTS for over a year”. (Commissioner’s Records.)

Finding of Fact No. 7: On October 1, 2018, candidate Hamlett emailed the COPP a copy of an invoice from January 31, 2017 indicating that, as of that date, candidate Hamlett owed MTS \$287.50 in unpaid obligations. Copies of two campaign checks, which totaled to that amount were provided, indicating that candidate Hamlett had fully paid MTS. (Commissioner’s Records.)

Finding of Fact No. 8: On September 13, 2018, Natalie Grieco, an MDLCC Regional Field Director for the Montana Democratic Party based in Great Falls, emailed the COPP a copy of an invoice received by candidate Hamlett from Artcraft printers on December 27, 2017 that appeared to show candidate Hamlett had, as of that date, fully paid off all obligations owed to Artcraft. A telephone call between the COPP Investigator and Ms. Grieco on October 4, 2018, confirmed that candidate Hamlett had fully paid off all obligations owed to Artcraft. (Commissioner’s Records.)

Finding of Fact No. 9: On September 18, 2018, candidate Hamlett emailed the COPP a photo of a campaign check written to cover the \$170.00 obligation owed to Rylan Boggs. This check was dated September 7, 2018. (Commissioner’s Records.)

Finding of Fact No. 10: The Hamlett campaign did not file a 2016 campaign finance closing report. (Commissioner’s Records.)

Candidate Hamlett provided correspondence to the COPP, partial records (copies of checks, invoices, etc.), and the subsequent COPP investigation indicated the Hamlett campaign fully met each of these three obligations (FOF Nos. 6-9).

Failure to report payments made on obligations while they had yet to be paid is a violation of Mont. Code Ann. §13-37-226(2)(d). Similarly, candidate Hamlett failed to file a closing campaign financial report once all obligations were fully paid off, in violation of Mont. Code Ann. §13-37-228(3), MCA (FOF No. 10).

Sufficiency Finding No. 2: There are sufficient facts to show that the Hamlett campaign failed to properly and timely report debt payments on his 2016 campaign finance reports.

Sufficiency Finding No. 3: There are sufficient facts to show that the Hamlett campaign failed to file its 2016 closing campaign finance report.

Candidate Hamlett failed to timely report debt payments and failed to file a 2016 campaign finance closing report as required by Montana law. The Commissioner finds Candidate Hamlett violated Montana campaign finance law.

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; if

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, as set out in the Decision, to show that Candidate Hamlett’s 2016 campaign practices 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 discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009. In this Matter, however, application of excusable neglect is appropriate for the reasons set out above and is therefore applied to dismiss Sufficiency Finding No. 1.

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to Sufficiency Finding Nos. 2 and 3, 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 enforcement of Candidate Hamlett. Because of the nature of the violation, this matter is referred to the County Attorney of Lewis & Clark County for his consideration as to prosecution. *Id.*, at (1). Should the County Attorney waive the right to prosecute (*id.*, at (2)) or fail to prosecute within 30 days (*id.*, at (1)) 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 id.*) 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 timely reporting of the expenditure and cooperation in correcting issues 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, including those of § 13-37-225, MCA. *See id.*, at § 13-37-128.

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Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 15 day of November 2018.



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