

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Eaton v. Montana Democratic Party No. COPP 2018-CFP-028	DISMISSAL OF COMPLAINT AS FRIVOLOUS ON ITS FACE
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On July 18, 2018, Jake Eaton of Billings, Montana filed a complaint against the Montana Democratic Party for not disclosing the litigation expenditures it made challenging the process of signatures gathering to qualify the Montana Green Party as a minor political party for Montana's 2018 ballot. *Larson, et al. v. Secretary of State and Montana Green Party*, Montana First Judicial District Court, Lewis and Clark County, Cause No. CDV-2018-295.¹

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance law addressed by this decision is the dismissal of a complaint as frivolous on its face, *Landsgaard v. Peterson and Wilks*, COPP-2014-CFP-008 (Mar. 12, 2014).

¹ The district court's decision has since been appealed to the Montana Supreme Court, Case No. DA 18-0414.

DISCUSSION

It is long established that the costs of litigation are not expenditures or contributions under Montana Campaign Finance and Practice laws.

“Complaints identified as frivolous will be swiftly dismissed so as to lessen the burden on participants (contributors, candidates, ballot committees and others) frivolously accused of campaign practice violations.” *Landsgaard*, at 3 (note omitted; citing Admin. R. Mont. 44.10.307(3)(a) (2014)); accord Admin. R. Mont. 44.11.106(4) (2016). The complainant’s characterization of the purpose of the District Court action is rhetoric and subjectively exaggerates the proceedings in and measured holdings of the District Court. There are no findings of fact necessary for this dismissal of a complaint as frivolous on its face. *Id.*

In 2014, Commissioner Motl was asked to evaluate whether or not the costs of litigation to retain a Montana Supreme Court candidacy on the ballot were a contribution to or expenditure by a candidate which required reporting and disclosure to the people of Montana, and if the contribution to a legal fund would be subject to contribution limits. [COPP-2014-AO-012 \(Sept. 3, 2014\)](#).² The Commissioner advised that the litigation³ costs incurred in retaining a place on the ballot were not contributions under Montana Campaign Finance laws. *Id.*, at 1-2.

² The opinion noted a contrary decision out of Philadelphia, *O’Connor v. City of Philadelphia*, 71 A.3d 407 (on appeal), which had concluded legal fees there *were* a contribution. *Id.*, at 2. The appeal of *O’Connor* has since concluded and the Pennsylvania Supreme Court reversed the holding that legal fees are subject to contribution limits. See *O’Connor v. City of Phila. Bd. of Ethics*, 629 PA 505 (Dec. 2014).

³ *Cross v. VanDyke*, 2014 MT 193.

In 2012, Commissioner Murry was asked to evaluate whether a bond to be posted or any related legal defense costs incurred in a recount of ballots in the Superintendent of Public Instruction race would be a contribution to or expenditure by a candidate for office. [Welch Recount Opinion \(Nov. 27, 2012\)](#). The Commissioner advised that the litigation and bond costs incurred in a recount were not contributions to a candidacy, or expenditures by a candidate committee. *Id.*, at 3-4.

The situation here is the same as those previously addressed by the Commissioner and described above. The Complaint does not even identify which candidate or in which race the alleged expenditure was intended to benefit. If it is a State candidate, then the long-established reasoning outlined above applies. If, however, it is a Federal candidate, the complaint is not even within COPP's jurisdiction and should instead be made to the Federal Election Commission.

OVERALL DECISION

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. In most cases the Commissioner must follow a process requiring that the Commissioner investigate any alleged violation of campaign practices law, Mont. Code Ann. § 13-37-111(2)(a). However, “no investigation shall be required and a complaint may be dismissed if the complaint is frivolous on its face[.]” Admin. R. Mont. 44.11.106(4).

This Commissioner, having duly considered the matters raised in the Complaint determines the Complaint to be frivolous.⁴ The Commissioner hereby dismisses this complaint in full as frivolous on its face.

DATED this 20th day of July 2018.



Jeffrey A Mangan
Commissioner of Political Practices
Of the State of Montana
P. O. Box 202401
1209 8th Avenue
Helena, MT 59620

⁴ There being no investigation necessary in these circumstances, the Commissioner did not request a response from the Montana Democratic Party to the Complaint.