

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Keenan v. O'Donnell No. COPP 2018-CFP-042B	DISMISSAL
---------------------------------------------------	-----------

On September 13, 2018, Nancy Keenan of Helena filed a campaign practices complaint against Tony O'Donnell of Billings. The complaint alleged that Mr. O'Donnell indirectly induced people to vote for Rodney Garcia, Randy Pinocci, and potentially other candidates for elected office by providing the candidates with campaign loans that exceeded Montana's contribution limits.

SUBSTANTIVE ISSUES ADDRESSED

Illegal consideration of voting.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Tony O'Donnell currently serves on Montana's Public Service Commission (PSC), representing District 2. He is not a candidate for election to any Montana office during the current 2018 cycle. (Commissioner's Records.)

Finding of Fact No. 2: Rodney Garcia filed a C-1 Statement of Candidate as a candidate for HD 52 in Yellowstone County with the COPP on February 29, 2018. (Commissioner's Records.)

Finding of Fact No. 3: On July 31, 2018, Commissioner Mangan issued a Decision in the matter of *Blatnick v. Garcia*, COPP-2018-CFP-025, which determined that candidate Garcia accepted a \$3,000.00 campaign loan from Mr. O'Donnell, in violation of

Montana's campaign contribution limits. (Commissioner's Records.)

Finding of Fact No. 4: On September 21, 2018, Mr. O'Donnell emailed the COPP Investigator in response to this Complaint. This email stated that "As disclosed to the COPP by myself, I did make a strictly personal loan in the amount of \$3,000 to my close friend of over 10 years, Rodney Garcia. The personal nature of this loan was underscored by the agreement between us that the loan would be repaid from Mr. Garcia's expected federal income tax refund...The self reporting aspect of this transaction clearly shows that I had no inkling that this might be considered as a prohibited action". (Commissioner's Records.)

Finding of Fact No. 5: Randy Pinocci filed a C-1 Statement of Candidate as a candidate for Public Service Commission (PSC) District 1 with the COPP on February 8, 2018. (Commissioner's Records.)

Finding of Fact No. 6: Bank statements provided to the COPP by candidate Pinocci for his personal account do not show a \$3,000.00 deposit received from or provided from Mr. O'Donnell. As determined in the matter of *Keenan v. Pinocci*, COPP-2018-CFP-042A, Mr. O'Donnell has not to date provided any financial contributions to candidate Pinocci's campaign.¹ (Commissioner's Records.)

Finding of Fact No. 7: Candidate Garcia spoke with the COPP Investigator via telephone on October 1, 2018. Candidate Garcia described the loan he accepted from Mr. O'Donnell as a 'personal loan between friends' and that, without the loan, he probably would not have decided to run for elected office. (Commissioner's Records.)

DISCUSSION

The Commissioner found in *Blatnick v. Garcia*, COPP-2018-CFP-025, that Rodney Garcia, a Montana legislative candidate, accepted a \$3,000.00 loan from Mr. O'Donnell for use in political campaign, an amount that exceeded Montana's contribution limits (FOF No. 3). The acceptance of the contribution was found to be a Montana campaign finance violation by the Garcia campaign. It is the responsibility of the candidate, not the contributor,

¹ See *Keenan v. Pinocci*, COPP-2018-CFP-042A discussion

not to accept any contributions in excess of campaign contribution limits, Mont. Code Ann. § 13-37-216(4).

The Commissioner further found, in *Keenan v. Pinocci*, COPP-2018-CFP-042A, that Mr. O'Donnell did not contribute or provide a loan to the Pinocci campaign (FOF No. 6).

The Commissioner now examines whether or not Mr. O'Donnell's campaign loan to candidate Garcia violated 13-35-215(1), MCA, as alleged in the complaint:

13-35-215. Illegal consideration for voting.

A person, directly or indirectly, individually or through any other person, may not:

(1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the election or for inducing another to do so:

(a) receive, agree, or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for the person or any other person; or

(b) approach any candidate or agent or person representing or acting on behalf of any candidate and ask for or offer to agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for the person or any other person;

Subsection (b) specifies that a "person" (as alleged, Mr. O'Donnell) may not "approach a candidate" (as alleged, candidate Garcia) and "ask for or agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for the person or any other person" as an inducement for that "person" (again, in this scenario, Mr. O'Donnell) to vote a certain way or not vote at all. For Mr. O'Donnell to have violated this statute, he would have needed to approach candidate Garcia and "ask for or offer to agree or contract" for any of the above as a condition for a vote for candidate Garcia. In other words, Mr. O'Donnell would have needed to have approached candidate Garcia and asked for compensation as a condition of voting for him.

While the loan provided by Mr. O'Donnell to candidate Garcia was certainly 'of value' (specifically, \$3,000.00), this item of value was provided to candidate Garcia, not Mr. O'Donnell. Although candidate Garcia stated that he would not have run for elected office without securing this loan (FOF No. 7), the provision of a loan to an individual to ensure candidacy for election to a Montana elected office would not fall under Mont. Code Ann. § 13-35-215(1). As written, the statute applies to the act of Mr. O'Donnell voting himself, and prohibits benefits being received by a voter or potential voter as a condition of "voting or agreeing to vote or for refraining or to agreeing to refrain from voting at the election".

The type of arrangement agreed to (and carried out) between candidate Garcia and Mr. O'Donnell violated Montana's campaign contribution limits (as explained above), but it does not violate Mont. Code Ann. § 13-35-215(1), MCA. Further, there is no evidence to indicate Mr. O'Donnell approached Mr. Pinocci in a similar manner.

The Commissioner dismisses the allegation of illegal consideration of voting. The alleged violation is hereby dismissed.

FINDINGS

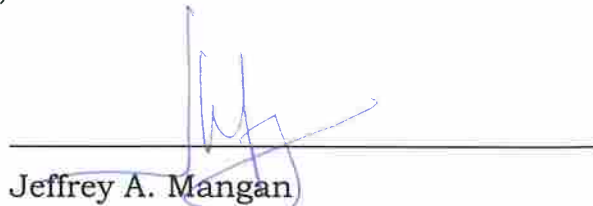
The Commissioner finds Tony O'Donnell did not violate Montana Political Campaign Finance laws as set herein.

///

DECISION

The Commissioner hereby dismisses this complaint.

DATED this 3rd day of October, 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