

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Yellowstone County Democratic Central Committee v. Yellowstone County Republican Central Committee  No. COPP 2018-CFP-037	FINDING OF SUFFICIENT FACTS SUPPORT A CAMPAIGN FINANCE VIOLATION
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On August 24, 2018, the Yellowstone County Democratic Central Committee (YCDCC) filed a campaign practices complaint against the Yellowstone County Republican Central Committee (YCRCC). The complaint alleged that the YCRCC failed to file committee finance reports disclosing their contribution and expenditure activity for election years 2017 and 2018 as required.

**SUBSTANTIVE ISSUES ADDRESSED**

The timely and proper filing of Montana campaign finance reports, and the proper reporting of committee contribution and expenditure activity.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: The Yellowstone County Democratic Central Committee filed an amended C-2 Statement of Organization as a Political Party committee for election year 2018 on March 11, 2018. (Commissioner's Records.)

Finding of Fact No. 2: The Yellowstone County Republican Central Committee (YCRCC) filed an original C-2 Statement of Organization

for election year 2016 as a Political Party committee on January 19, 2016. During election year 2016, registered Political Party committees that did not contribute to Statewide candidates for election had C-6 committee finance reports due to the COPP on or before March 9, May 3, and May 26 of 2016, and additional post-primary reports due on June 27 and August 9, 2016. (Commissioner's Records.)

Finding of Fact No. 3: On March 17, 2016, the YCRCC filed their initial C-6 committee financial report, dated January 1 through March 10, 2016. No expenditures were reported as candidate/campaign contributions, nor were any expenditures listed as supporting or opposing candidates for election. (Commissioner's Records.)

Finding of Fact No. 4: On April 6, 2016, the YCRCC filed a periodic C-6 committee finance report, dated March 1 through April 10, 2016, and was most recently amended on August 27, 2018. No expenditures were reported as candidate/campaign contributions, nor were any expenditures listed as supporting or opposing candidates for election. (Commissioner's Records.)

Finding of Fact No. 5: On May 3, 2016, the YCRCC filed a periodic C-6 committee finance report, dated April 11 through May 3, 2016. This report was most recently amended on August 27, 2018. No expenditures were reported as candidate/campaign contributions, nor were any expenditures listed as supporting or opposing candidates for election. (Commissioner's Records.)

Finding of Fact No. 6: The YCRCC did not file a C-6 committee financial report on or before May 26, 2016. (Commissioner's Records.)

Finding of Fact No. 7: On July 8, 2016, the YCRCC filed a periodic C-6 committee financial report, dated May 4, 2016 through June 27, 2016. This report was most recently amended on August 27, 2018, and incorrectly reported 30 individual contributions of \$35.00 or more under the fundraisers section of the report rather than individual contributors, and did not include the occupation and employer information for these contributors as required. No expenditures were reported as candidate/campaign contributions, nor were any expenditures listed as supporting or opposing candidates for election. (Commissioner's Records.)

Finding of Fact No. 8: On August 5, 2016, the YCRCC filed a periodic C-6 committee financial report, dated June 28, 2016

through August 3, 2016. The report included a committee expenditure as a direct financial contribution (labeled a 'Campaign Contribution') to Matt Rosendale, dated July 25, 2016. This was the first reported candidate/campaign contribution made by the YCRCC in the 2016 election cycle. (Commissioner's Records.)

Finding of Fact No. 9: Matt Rosendale filed a C-1 Statement of Candidate as a candidate for State Auditor, a Statewide elected office, with the COPP on February 5, 2016. By making a direct financial contribution to a Statewide candidate on July 25, the YCRCC was obligated to begin following the Statewide reporting calendar from that date forward, with C-6 reports due on or before September 1, October 1, October 24, November 1, and November 28 of 2016. (Commissioner's Records.)

Finding of Fact No. 10: On September 1, 2016, the YCRCC filed a periodic C-6 committee financial report, dated August 4 through August 31, 2016. (Commissioner's Records.)

Finding of Fact No. 11: On October 3, 2016, the YCRCC filed a periodic C-6 committee financial report, dated September 1 through September 30, 2016. This report contained an expenditure that did not name the candidate the expenditure was intended to benefit. The expenditure did not provide all required reporting detail (see Table 5). (Commissioner's Records.)

Finding of Fact No. 12: On October 26, 2016, the YCRCC filed a periodic C-6 committee financial report, dated October 1 through October 26, 2016. (Commissioner's Records.)

Finding of Fact No. 13: The YCRCC did not file a C-6 committee financial report on or before November 1, 2016. (Commissioner's Records.)

Finding of Fact No. 14: On November 28, 2016, the YCRCC filed a C-6 committee financial report, dated October 27 through November 28, 2016. (Commissioner's Records.)

Finding of Fact No. 15: The YCRCC did not file an amended C-2 Statement of Organization specifically for election year 2017. A September 21, 2018 review of C-5 campaign financial reports filed by 2017 municipal candidates in Yellowstone County concluded that the YCRCC did not become involved by making a campaign contribution and could not identify any expenditures made to

support or oppose Yellowstone County candidates for election.<sup>1</sup> Committees that were not involved in the 2017 municipal elections had 2017 year-end financial reports due on or before January 31, 2018. (Commissioner's Records.)

Finding of Fact No. 16: The YCRCC did not file a 2017 year-end C-6 committee finance report on or before January 31, 2018. A review of the party's Facebook page determined that the YCRCC hosted or otherwise participated in no fewer than two 2017 fundraiser activities where reportable contribution or expenditure activity occurred: the Lincoln Reagan Dinner, on May 10, 2017; and a Pig Roast on September 9, 2017. (Commissioner's Records.)

Finding of Fact No. 17: The YCRCC filed an amended C-2 Statement of Organization for election year 2018 on January 17, 2018. Registered Political Party committees that contribute to State District candidates during election year 2018 had C-6 committee finance reports due on or before May 7, May 29, and June 25 of 2018. (Commissioner's Records.)

Finding of Fact No. 18: The YCRCC did not file a C-6 committee financial report on or before May 7, 2018. (Commissioner's Records.)

Finding of Fact No. 19: The YCRCC did not file a C-6 committee financial report on or before May 29, 2018. (Commissioner's Records.)

Finding of Fact No. 20: The YCRCC did not file a C-6 committee financial report on or before June 25, 2018. (Commissioner's Records.)

Finding of Fact No. 21: A review of C-5 campaign financial reports filed by 2018 Statewide candidates, as well as all State District and County candidates in Yellowstone County, determined that the YCRCC made direct financial contributions to State District and County candidates on 16 occasions (to date) during election year 2018, totaling \$9,700.00 (see Table 8), with the earliest recorded contribution on April 23, 2018. A review of the YCRCC's Facebook page also determined that the YCRCC hosted or otherwise participated in no fewer than one 2018 fundraiser activity where reportable contribution or expenditure activity would have

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<sup>1</sup> One (1) Facebook post endorsing 2017 candidates is still available on the Party's Facebook page, however no evidence could be found that this activity was paid:  
<https://www.facebook.com/yellowstoneMTgop/photos/a.1037550389611589/1806382142728406/?type=3&theater>.

occurred: the Lincoln Reagan Day Dinner on March 9, 2018. (Commissioner's Records.)

## **DISCUSSION**

The complaint alleges the YCRCC political committee failed to file campaign finance reports. The Commissioner examines the YCRCC report activity in the years 2018, 2017, and 2016.

### *Failure to file timely campaign finance reports - 2016*

Political committees “that receive contributions or make expenditures to support or oppose a particular state district candidate or issue” are required to file reports of all contributions and expenditures under a specific schedule set by statute. Mont. Code Ann. §§ 13-37-225, 226(2). To assist candidates and committees in following the law, every election cycle COPP also calculates and publishes the reporting calendars applicable to each type of race set out in § 13-37-226.<sup>2</sup>

For election year 2016, the YCRCC properly followed non-statewide reporting calendars prior to Montana's Primary elections because the committee did not make financial contributions to, nor expenditures supporting or opposing, any candidates for election prior to the Primary. As required in Mont. Code Ann. § 13-37-226(4)(a), the committee had financial reports due “on the 90th, 35th, and 12th days preceding the date of an election in which they participate by making an expenditure”. Using the 2016 Primary election date of June 7, 2016<sup>3</sup> the reporting dates would have been March 9,

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<sup>2</sup> See <http://politicalpractices.mt.gov/calendars>.

<sup>3</sup> 2016 Primary Election day, Montana Secretary of State

May 3, and May 26, 2016 (FOF No. 2). The YCRCC filed its initial campaign financial report on March 17, approximately one week late (FOF No. 3). The YCRCC filed an unrequired campaign finance report, on April 10, 2016 (FOF No. 4). The YCRCC's final pre-primary report for 2016 was timely filed on May 3, 2016 (FOF No. 5). The YCRCC failed to file a campaign finance report due May 26, 2016 as required (FOF No. 6).

Similarly, Mont. Code Ann § 13-37-226(4)(b) states that committees have financial reports due "not more than 20 days after the date of the election in which they participate by making an expenditure". Using the 2016 Montana Primary date of June 7, 2016, a post-primary report was due by the YCRCC on or before June 27, 2016. The YCRCC did not file its post-primary campaign finance report until July 8, 2016, a late filing by approximately two weeks (FOF No. 7). The YCRCC filed its August 9, 2016 report on August 5, 2016, which included a reported contribution to Matt Rosendale, then candidate for State Auditor, a Statewide elected office (FOF No. 8). By contributing to a Statewide candidate the YCRCC was, by statute, required to begin filing financial reports using the Statewide calendar, replacing the general calendar they had previously been following (FOF No. 9).

Mont. Code Ann. § 13-36-226(1)(b), dictates that committees reporting under the Statewide calendar have reports due "on the first day of each month from March through November during a year in which an election is held". The YCRCC timely filed its report on September 1 and filed on October 3, 2016



(FOF Nos. 10, 11). The YCRCC failed file its November 1, 2016 campaign finance report (FOF No. 13).

An additional reporting date for Statewide committees, Mont. Code Ann. § 13-36-226(1)(c), includes “the 15th day preceding the date on which an election is held”. As the 2016 General election was held on November 8, 2016<sup>4</sup>, Statewide committees would have had a report due on or before October 24, 2016. The YCRCC did meet this requirement, albeit 2 days late, filing this report on October 26, 2016 (FOF No. 12).

Sufficiency Finding No. 1: The Commissioner finds that there are sufficient facts to show that YCRCC did not timely file 2016 committee finance reports as required by Montana law.

The Commissioner finds YCRCC failed to file, timely file, and properly file five 2016 campaign finance reports, a Montana campaign finance violation.

*Failure to provide required information on financial reports*

Once a complaint is filed the Commissioner “shall investigate any other alleged violation ...” §13-37-111(2)(a), MCA. This investigative authority includes authority to investigate “all statements” and to examine “each statement or report” filed with the COPP. §§13-37-111, 123 MCA. The Commissioner is afforded discretion in exercising this authority. *Powell v. Motl*, OP-07111, Supreme Court of Montana, November 6, 2014 Order.

Upon review of filed campaign finance reports, the COPP discovered a number of reporting and disclosure issues. Mont. Code Ann. § 13-37-229(1)(b), requires the disclosure of “the full name, mailing address, occupation, and

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<sup>4</sup> 2016 Montana General Election day, Montana Secretary of State.

employer, if any, of each person who has made aggregate contributions, other than loans, of \$35 or more to a candidate or political committee, including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events”. On its 2016 financial report, the YCRCC failed to fully report occupation and employer information for 33 reported contributors of \$35.00 or more.

Sufficiency Finding No. 2: The Commissioner finds that there are sufficient facts to show that YCRCC failed to properly report committee contributions on its 2016 campaign finance reports as required by Montana law.

The Commissioner finds YCRCC failed to properly disclose committee contribution information as required, a Montana campaign finance violation.

Additionally, certain expenditures reported in 2016 failed to provide sufficient detail as required by Montana law.

**Table 1: Expenditures reported by the YCRCC on their March 17, 2016 initial C-6 report that did not contain all required reporting detail. Report was amended and filed August 27, 2018.**

Entity	Date	Purpose	Amount
Cooper Creative Advertising	01/06/2016	Business cards	\$390.00
worldwide speakers group	02/11/2016	save the date cards	\$180.00
worldwide speakers group	01/21/2016	reimburse postage expense	\$155.02

**Table 2: Expenditures as reported by the YCRCC on their May 3, 2016 periodic C-6 report that did not contain all required reporting detail. Report was amended and filed August 27, 2018.**

Entity	Date	Purpose	Amount
Cooper Creative Advertising	04/12/2016	LRDD tickets & brochures	\$346.25



**Table 3: Expenditures as reported by the YCRCC on their July 8, 2016 Periodic C-6 report that did not contain all required reporting detail. Report was Amended and filed August 27, 2018.**

Entity	Date	Purpose	Amount
All American Classics	06/13/2016	Auction Items for LRDD Ck # 1649	\$4,308.00
Direct Mail Advertising Services	05/09/2016	993 Letters and Postage- CK # 1635	\$294.89
KBXI-KRPM-KYSX	06/01/2016	Radio ads in May for LRDD- Ck # 1647	\$950.00
KGHL AM	05/31/2016	Radio Ads for LRDD- Ck # 1651	\$672.00
KLW Productions	05/31/2016	Internet Radio Advertising May 5 <sup>th</sup> – 19 <sup>th</sup> 2016 – Ck # 1636	\$150.00
McKinney, Jenna	06/07/2016	Reimbursement for campaign expenses- Ck # 1648	\$103.21
Pease, Ben	05/19/2016	Quick draw for LRDD- Ck # 1652	\$1,020.00
Scheppele, Barbara	05/31/2016	Reimbursement for Town Square Radio ad for LRDD- Ck # 1641	\$848.30

**Table 4: Expenditures as reported by the YCRCC on their August 5, 2016 Periodic C-6 report that did not contain all required reporting detail.**

Entity	Date	Purpose	Amount
All American Classics	07/06/2016	Additional Auction Item for LRDD (ck # 1656)	\$98.00

**Table 5: Expenditures as reported by the YCRCC on their October 3, 2016 Periodic C-6 report that did not contain all required reporting detail and not properly report as an independent expenditure.**

Entity	Date	Purpose	Amount
Cooper Creative	09/23/2016	3000 mailing pieces for SD 25 (Ck # 1664)	\$454.71

**Table 6: Expenditures as reported by the YCRCC on their November 28, 2016 Periodic C-6 report that did not contain all required reporting detail.**

Entity	Date	Purpose	Amount
Cooper Creative	11/07/2016	YCRCC election party Invite w/A-2 Envelopes (Ck # 1665)	\$495.20
Direct Mail	11/08/2016	Processing and postage of 2,893 letters (Ck # 1666)	\$1,119.27

The expenses described in the foregoing Tables required 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.” § 13-37-229(2)(b), MCA.

Sufficiency Finding No. 3: There are sufficient facts to show that YCRCC 2016 campaign finance reports failed to disclose sufficient detail describing committee expenditures.

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 (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 violation against the YCRCC will be dismissed for the same reasons and pursuant to the same two safeguards.

First, no later than January 1, 2019, the YCRCC is directed to file amended 2016 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) the YCRCC from a 2016 campaign practice violation for the deficiencies identified above based on the principle of excusable neglect.

Additionally, the expenditure in Table 5, ‘Cooper Creative, 3000 mailing pieces for SD 25’ was improperly reported as an ‘other expenditure’ rather than an ‘independent expenditure’ (FOF No. 11). The committee is directed to properly report under the ‘Independent Expenditure’ tab with the appropriate level of detail, including which candidate the independent expenditure supports.

*Failure to file timely campaign finance reports - 2017*

The COPP investigation concluded the YCRCC conducted reportable election activity in 2017, at a minimum holding a political fundraiser on both May 10, 2017 and September 9, 2017 (FOF No. 16).

The YCRCC failed to file financial report/s as required.

Sufficiency Finding No. 4: The Commissioner finds that there are sufficient facts to show that YCRCC did not file 2017 committee finance reports as required by Montana law.

The Commissioner finds YCRCC failed to file 2017 campaign finance reports, Montana campaign finance violations.

Failure to file timely campaign finance reports – 2018

Commissioner's records indicate the YCRCC failed to file campaign finance reports in 2018 (as of September 21, 2018). A September 21, 2018 review of candidate financial reports filed with the COPP determined that the YCRCC has, as of September 21, 2018 made at least 15 direct financial contributions to State District candidates during election year 2018, with the earliest coming on April 23, 2018 (FOF No. 21). This activity would place the YCRCC under the reporting obligations of 13-37-226(2)(a) and (c), MCA, with financial reports due on or before May 7, May 29, and June 25, 2018. The YCRCC failed to file a committee finance report on or before May 7, May 29, or June 25, 2018.

The YCRCC contributed at least \$9,000.00 to State District candidates, and another \$700.00 to a single County candidate. Further, the YCRCC held a widely publicized fundraiser, the 2018 Lincoln Reagan Day Dinner on March 9, 2018 in Billings, Montana (FOF No. 21).

Sufficiency Finding No. 4: The Commissioner finds that there are sufficient facts to show that YCRCC did not file 2018 committee finance reports as required by Montana law.

The Commissioner finds YCRCC failed to file 2018 campaign finance reports, Montana campaign finance violations.

By failing to file 2017 and 2018 financial reports as required, the YCRCC has deprived both the public and competing committees of significant reportable contribution and expenditure activity.

## 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. Mont. Code Ann. § 13-37-111(2)(a). The mandate to investigate is followed by a mandate to take action; where there is “sufficient evidence” of a violation the Commissioner must (“shall notify,” *see id.*, at § 13-37-124) 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 YCRCC 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*. *Id.* (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. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of YCRCC. Because of the nature of the violation, this matter is referred to the County Attorney of Lewis and 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 cooperation in correcting the issue when the matter was raised in the Complaint.

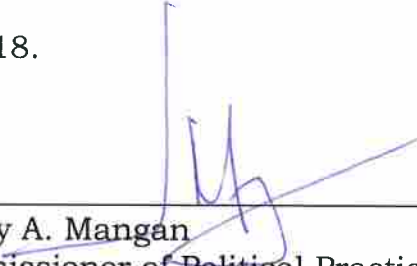
While it is expected that a fine amount can be negotiated and paid, in the event that a fine is not negotiated and the Matter resolved, the Commissioner



retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of campaign practice law, including those of Mont. Code Ann. § 13-37-226, 229. *See id.*, at § 13-37-128. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

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DATED this 28<sup>th</sup> day of September 2018.



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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