

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

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Date: May 15, 2019
To: The People of Montana
From: Jeffrey Mangan,
The Commissioner of Political Practices
Re: *Bishop v. Miller*, COPP-2012-CFP-056

Dear Fellow Montanans:

On April 19, 2012, Kelly Bishop filed a campaign finance complaint against Ken Miller for Governor 2012 (Ken Miller). On April 23, 2012, news stories began appearing in Montana papers based on the Complaint filed with the COPP. That same day former COPP staffers Mary Baker and Julie Steab traveled to Laurel, Montana to work with and interview the members of Miller campaign regarding the allegations of the Complaint.

By April 27, 2012, the Miller campaign filed an amended statement of candidate, appointing Peggy Miller (Mr. Miller's wife) as a deputy campaign treasurer. On May 7, 2012, the COPP received Mr. Miller's response to the complaint. On May 16, 2012, Mr. Miller's campaign paid Super 8 Missoula, \$898.80 for 21 nights of hotel room stays during 2011 and 2012 during his primary campaign for Governor. By May 21, 2012, Mr. Miller had filed corrected campaign finance reports in response to allegations of the Complaint.

On June 1, 2012, former Commissioner Murry issued a Summary of Facts, Statement of Findings, and Conclusion in the Matter of the Complaint Against Miller for Governor. A copy of the Decision was forwarded to the Yellowstone County Attorney, who waived the right of prosecution to the COPP on June 5, 2012.

On June 3, 2012, Mr. Tom Balek circulated a response to Commissioner Murry's Decision. Commissioner Murry agreed to review the subsequently submitted information, and on June 20, 2012, issued an Amended Summary of Facts, Statement of Findings and Conclusion. On July 19, 2012, Ken Miller filed a Petition for Judicial

Review of a “Final Agency Action”¹ by the Montana Commissioner of Political Practices, Cause No. DDV-2012-570, First Judicial District Court. The petition was never served on the COPP.

Following the June 2012 primary campaign, Mr. Miller reallocated contributions and refunded general campaign funds to his contributors, including contributions the campaign had received in excess of contribution limits.

On March 13, 2014, the Commissioner Motl reopened the Complaint and former Commissioner Murry’s Decision. On September 29, 2015, Commissioner Motl issued a Summary of Facts and Finding of Sufficient Evidence to Show a Violation of Montana’s Campaign Practices Act.

The decision reexamined the facts and laws, and made the following sufficiency findings:

Failure to Have Contributions Deposited and Expenditures Made by an Authorized Campaign Treasurer

“Candidate Miller acted in violation of Montana’s campaign practice law by causing contributions to be deposited and expenditures to be made by someone other than the designated campaign treasurer”, Mont. Code Ann.§13-37-201 and Mont Admin R. 44.10.501 (2011).

Mr. Millers expenditures by unauthorized treasurers exceeded \$130,000. By way of comparison, Governor Bullock settled and paid a civil fine of \$3,000 for \$15,000 worth of campaign expenditures made by an unauthorized treasurer in *Little v. Bullock*, 10/15/2010, Deputy Commissioner Dufreschou. A comparable settlement for Mr. Miller’s campaign would have been \$25,999.

¹ A Commissioner’s summary of facts and statement of findings (Decision) is not the final discretionary determination taken by the County Attorney or Commissioner on a campaign finance complaint and whether or not to pursue litigation in the District Court, Mont. Code Ann. §§ 13-37-111, 124 and Mont. Admin R. 44.11.106(3). Further, the Summary Decision or Dismissal are not subject to Judicial Review nor the provisions of the Montana Administrative Procedure Act (MAPA). *Doty v. COPP*, 2007 MT 341, ¶20, 340 Mont. 276, 173 P.3d 700; *Koopman v. City of Bozeman*, Eighteenth Judicial District Court, Gallatin County, Cause No. DV 18-1166B, Hon. Judge Gilbert (Mar 26, 2019).

Separation of Campaign Accounts

“Candidate Miller acted in violation of Montana’s campaign practice law by depositing primary and general election funds into the same bank account, thereby failing to establish the “separate” general election account required by law”, Mont. Code Ann. § 13-34-216(1)(a) and (6), and Mont. Admin R. 44.10.330(2)(c) (2011).

Mr. Miller’s campaign collected over \$24,000 in general election contributions which were deposited in his primary campaign account. Montana’s contribution limits apply to “each” election, with the primary and general elections being separate elections. The purpose of two separate election accounts is to prevent the expenditure of general election funds during a primary campaign, resulting in an individual’s primary contribution to the campaign to exceed Montana’s contribution limits. Further, general election contributions must be refunded to the contributor should the candidate not proceed to the general election, Mont. Admin R. 44.10.330.

Late Reporting of Contributions, Failing to Disclose Contributions and Accepting Anonymous Contributions

“Candidate Miller acted in violation of Montana’s campaign practice law by late reporting contributions, failing to disclose contributions and reporting anonymous contributions”, Mont. Code Ann. §§ 13-37-225, 217, 229, Mont. Admin R. 44.10.544(4).

Mr. Miller’s campaign late reported \$3,500 in contributions, failed to timely disclose in-kind contributions totaling \$31,206.75, and accepted \$502.33 in anonymous contributions. While the campaign corrected the disclosure prior to the primary election, the late disclosure of contributions and correction of acceptance of anonymous contributions did not meet the requirements of Montana’s laws.

Commissioner Motl’s decision also changed Commissioner Murry’s holding that over-the limit contributions received from spouses on one check, and allocating contributions between primary and general contributions pursuant to *Landsgaard v. Peterson*, COPP-2014-CFP-008 and *Kenat v. VanDyk*, COPP-2013-CFP-004, thereby removing over \$3,600 in potential civil liability to the Miller campaign.

Late Reporting of Expenditures

“Candidate Miller failed to properly report and disclose campaign expenditures as required by Montana law”, Mont. Code Ann. §§13-37-205, 208, 225, 230 Mont. Admin. R. 44.11.531 (2011).

Mr. Miller’s campaign late reported 2011 and 2012 expenditures for 21 nights stay at Super 8 Missoula. Had the campaign not paid the motel for the services provided, the same would have been considered an illegal corporate contribution to his campaign, Mont. Code Ann. § 13-35-227. By acknowledging that the contribution was from a corporation and correcting by paying for the lodging the campaign corrected the corporate contribution error, however was unable to correct the late reporting of the expenditures.

Final Agency Determination

The COPP has involved the review of three separate Commissioners, three attorneys and many staff members in this matter over the past seven years. Commissioner Murry’s original investigation and determinations, Commissioner Motl’s Summary Determination, and now Commissioner Mangan’s final discretionary determination of the COPP’s actions in this matter.

Violations

Mr. Miller’s campaign did cooperate with the COPP on correcting the reporting and disclosure errors that were brought to the public’s attention by the campaign complaint filed by Ms. Bishop. Importantly, the corrections were made prior to the primary election, and the public had access to the information prior to going to the polls. However, the Mr. Miller never appropriately accepted responsibility for the omissions in reporting and disclosure obligations he owed to the people of Montana. Many of the errors could have been legally avoided while running the campaign in the manner which Mr. Miller apparently wanted to.

A candidate has the ability to appoint two authorized treasurers for their campaign, Mont. Code Ann. §§13-37-201 and 13-37-202. Further, a candidate for Governor can appoint a deputy campaign treasurer in each county in which their campaign is conducted, *id.* For record keeping purposes, even statewide candidates for

office usually appoint only one treasurer and one deputy treasurer to make all expenditures and record all contributions for the campaign.

Most of Mr. Miller's violations resulted from having an unauthorized treasurer in control of contributions received by and expenditures made by the campaign. The reporting violations were largely due to the same unauthorized treasurer's refusal to provide the duly appointed treasurer with the records necessary to properly report and disclose under Montana's campaign finance laws. Mr. Miller's failure to accept responsibility of his violation of his obligation to the people of Montana, his duly appointed treasurer, or to appropriately address the magnitude of his errors unfortunately is not unusual.

In general, candidates and committees accept responsibility for their omissions or errors, correct the reporting and disclosure, and pay a civil fine to rectify the violations of law. Occasionally the settlement discussions become protracted, and a placeholder lawsuit is filed to extend the statute of limitations so that settlement discussions can continue, as occurred here.

Settlement Efforts

In June of 2012, it was widely reported that Commissioner Murry thought the violations he found could lead to potential fines of \$45,000. The violations considered for settlement were only for February 12, 2012 through April 24, 2012, excluding violations prior to that time. Through counsel, former Commissioner Murry and Mr. Miller, engaged in settlement discussions.

Although the settlement offered by Commissioner Motl could have been substantially higher, Commissioner Motl renewed the same settlement offer that Commissioner Murry had last offered. Mr. Miller continually rejected the offer.

Over the course of the past three years, settlement efforts with Mr. Miller have proven unfruitful. Rather than lower the standards applied to campaign practice violations of this magnitude by entering into infinitesimal settlement with Mr. Miller to resolve this matter, the Commissioner has determined that the matter cannot be settled.

Litigation

The placeholder lawsuit filed by the COPP in April of 2016, has passed the three-year statute of limitations for service of the lawsuit on the Defendant. The Commissioner's office has limited resources including staff and funding with which to

pursue resolution in the Courts. The value of settling a matter without having to pursue litigation has always been a consideration of the COPP. The Commissioners in the past seven years have pursued and responded to other litigation, settlements and decisions.

Final Agency Determination

This Commissioner determines that the *Bishop v. Miller*, COPP-2012-CFP-056, has already consumed a large amount of the State of Montana’s resources in attempting resolution, that the COPP can not lower settlement standards to resolve a matter, and that the COPP does not have adequate resources further pursue litigation to resolve this matter in the Court system.

One of the demands repeatedly made by the Miller campaign was that the Commissioner “remove permanently from public display” the Sufficiency Decisions which are required by law to be public documents that are “widely disseminated” and public records of the State of Montana, Mont. Code Ann. §13-37-119, and Mont. Admin. R. 44.11.106. The determinations of this Commissioner and previous Commissioners stand and will remain a matter of public record.

Dated this 15th day of May, 2019.



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