

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

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| In the matter of: August Scalpcane No. COPP 2020-CFP-026 | FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE VIOLATION |
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On May 29, 2020, the Commissioner of Political Practices issued an Order of Noncompliance to August Scalpcane for failure to file his required C-5 financial reports. August Scalpcane failed to comply with the Order of Non-Compliance.

SUBSTANTIVE ISSUES ADDRESSED

Proper and timely filing of campaign finance reports. Failure to comply with an Order of Noncompliance issued by the Commissioner.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: On May 29, 2020, an Order of Noncompliance was issued to August Scalpcane, candidate for House District 41 in Rosebud County, for his failure to file the required March 20, April 20, and May 20, 2020 C-5 campaign financial reports. The Order provided candidate Scalpcane five business days to address the issue, June 1 to June 5, 2020. (Commissioner's Records.)

Finding of Fact No. 2: August Scalpcane filed a C-1 Statement of Candidate signaling his intention to run as a candidate for House District 41 in Rosebud County with the COPP on March 16, 2020,

using the CERS electronic reporting system. Candidate Scalpcane filed as a candidate for HD 41 with Montana's Secretary of State on March 9, 2020. (Commissioner's Records.)

Finding of Fact No. 3: COPP compliance staff emailed candidate Scalpcane on April 6, 16, and May 6 reminding candidate Scalpcane of his need to file his C-5 campaign financial reports and offered COPP resources and staff assistance meant to assist in filing. (Commissioner's Records.)

Finding of Fact No. 4: Candidate Scalpcane did not file his March 20, April 20, and May 20, 2020 C-5 campaign financial reports on or before June 8, 2020. (Commissioner's Records.)

DISCUSSION

The Commissioner issued an Order of Noncompliance to Candidate Scalpcane for failure to file required C-5 financial reports and provided five days to comply with the order (FOF No. 1).

Montana campaign finance law requires "each candidate ... shall file with the commissioner periodic reports of contributions and expenditures made by or on the behalf of a candidate ...", Mont. Code Ann. § 13-37-225. Montana law specifies Mont. Code Ann. §13-37-226(1)(b)

"... a candidate shall file reports required by 13-37-225(1)(a) containing the information required by 13-37-229, 13-37-231, and 13-37-232 as follows:

(b) the 20th day of March, April, May, June, August, September, October, and November in the year of an election in which the candidate participates"

Despite numerous requests, COPP offers of assistance, and an Order of Noncompliance, Candidate Scalpcane has failed to file his March 20, April 20, and May 20, 2020 campaign finance reports with the Commissioner's office (FOF No. 4).

FINDINGS

The Commissioner may investigate all statements filed pursuant to Title 35 or 37 and shall investigate alleged failures to file any statement required under § 13-37-111(2)(a). Pursuant to an Order of Noncompliance, August Scalpcane failed to timely report campaign financial activity. Reporting and disclosure are required so that the public, press and opposing candidates or committees understand contributions and expenditures of a political candidate's funds. §§ 13-37-226(1)(b), 229, MCA.

Sufficiency Finding No.1: The Commissioner finds that there are sufficient facts to show that August Scalpcane did not a file three campaign finance reports as required by Montana law. (FOF No. 4)

Montana requires that campaign finance reports be timely filed according to statutory deadlines, § 13-37-226, MCA. A political candidate is required to report at the times specified in § 13-37-226(1)(b), MCA.

Candidate Scalpcane remains under order to fully and completely report all contributions and expenditures until the COPP is satisfied the filing is complete.

Reporting and disclosure are required so that the public, press, and opposing candidates understand the contribution and expenditure of funds used in a candidate's campaign.

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 the August Scalpcane campaign 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 prohibit use of state or local resources for campaign purposes. *See Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing excusable neglect principles). Likewise, the Commissioner does not normally accept that failures to prohibit use of state or local resources for campaign purposes 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 August Scalpcane. 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. §§ 13-37-225, 226. *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*.

DATED this 10th day of June 2020.



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