

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Chadwick v. Rivera No. COPP 2020-CFP-033	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN FINANCE VIOLATIONS, DISMISSAL OF ALLEGATIONS
---	---

On July 30, 2020, David Chadwick of Helena, MT filed a campaign practices complaint against Dennison Rivera, also of Helena. The complaint alleged that candidate Rivera failed to report campaign expenditures associated with his campaign website, campaign yard signs, and social media posts. The complaint also alleged that Facebook posts allegedly made by candidate Rivera did not contain the proper ‘paid for by’ attribution statement.

SUBSTANTIVE ISSUES ADDRESSED

Timely and proper reporting of campaign contributions and expenditures.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Dennison Rivera filed a C-1 Statement of Candidate as a candidate for HD 79 in Lewis and Clark County with the COPP on March 4, 2020. (Commissioner’s Records.)

Finding of Fact No. 2: Candidate Rivera’s campaign website can be found at www.riveraforhd79.com, and contains a full attribution statement indicating it was paid for by candidate Rivera. A picture

of a yard sign supporting candidate Rivera is included on the site. (Commissioner's Records.)

Finding of Fact No. 2A: This Complaint contained one picture of a Rivera for HD 79 yard sign publicly displayed. (Commissioner's Records.)

Finding of Fact No. 2B: As of the filing date of the Complaint on July 30, 2020, candidate Rivera's campaign Facebook page had not run any paid advertisements or posts. (Commissioner's Records.)

Finding of Fact No. 3: Facebook is a free to use, internet based social media platform. Users are not charged a fee to create or post to a page. Users can voluntarily choose to run paid ads on the site or can pay to boost posts they have previously made. All paid ads or posts are identified by Facebook in the Ad Library. (Commissioner's Records.)

Finding of Fact No. 4: On March 19, 2020, candidate Rivera timely filed his initial C-5 campaign finance report, dated March 1, 2020 through March 20, 2020. This report did not disclose candidate Rivera as receiving any contributions or making any expenditures. (Commissioner's Records.)

Finding of Fact No. 5: On May 15, 2020, candidate Rivera filed a periodic C-5 campaign finance report, dated March 21, 2020 through April 20, 2020. This report did not disclose candidate Rivera as receiving any contributions or making any expenditures. This report was originally due on or before April 20, 2020. (Commissioner's Records.)

Finding of Fact No. 5A: On August 4, 2020, candidate Rivera filed an amended version of his March 21, 2020 through April 20, 2020 C-5 campaign finance report. The amended version of the report did not disclose candidate Rivera as receiving any contributions but did disclose one campaign expenditure of \$23.98, dated April 10, for the purchase of the domain name for his campaign website. (Commissioner's Records.)

Finding of Fact No. 5B: On August 13, candidate Rivera filed an amended version of his March 21, 2020 through April 20, 2020 C-5 campaign finance report. The amended version of the report reclassified the website domain name purchase from a campaign expenditure to an in-kind loan provided by himself to the campaign. This version of the report also disclosed that candidate Rivera himself contributed "Website design and development" for the site in-kind, valued at \$2,000.00. (Commissioner's Records.)

Finding of Fact No. 6: On May 15, 2020, candidate Rivera timely filed a periodic C-5 campaign finance report, dated April 21, 2020 through May 14, 2020. This report did not disclose candidate Rivera as receiving any contributions or making any expenditures. (Commissioner's Records.)

Finding of Fact No. 7: On June 21, 2020, candidate Rivera timely filed a periodic C-5 campaign finance report, dated May 15, 2020 through June 15, 2020. This report did not disclose candidate Rivera as receiving any contributions or making any expenditures. (Commissioner's Records.)

Finding of Fact No. 7A: On August 4, 2020, candidate Rivera filed an amended version of his May 15, 2020 through June 15, 2020 C-5 campaign finance report. The amended report disclosed candidate Rivera as receiving five monetary contributions totaling \$690.00, as well as one in-kind contribution of \$180.00 for "Indoor advertising". The report also disclosed candidate Rivera as making one campaign expenditure of \$149.50, dated August 20, for the purchase of fifty campaign yard signs. (Commissioner's Records.)

Finding of Fact No. 7B: On September 15, 2020, candidate Rivera filed an amended version of his May 15, 2020 through June 15, 2020 C-5 campaign finance report. The amended version of the report re-classified the campaign yard signs as an in-kind loan provided by himself to the campaign. It also added an additional in-kind loan of \$55.96 for "Republican Signs - 50 wire frames for Yard Signs" from himself to the campaign. (Commissioner's Records.)

Finding of Fact No. 8: On August 13, 2020, candidate Rivera emailed the COPP his formal response to this Complaint. In the response, candidate Rivera stated that he had amended the relevant campaign finance reports to disclose his campaign expenditures for both the campaign website and the campaign yard signs. (Commissioner's Records.)

Finding of Fact No. 9: Helena Facts Media has a website available at <https://helenafactsmedia.com/>. On its About page, the group states that "Our purpose is to present substantiated facts to Helena residents without bias opinion. You have the right to know and be informed about what's happening in Helena". No publicly available content on the site supports or opposes any current candidates for elected office, including candidate Rivera. (Commissioner's Records.)

DISCUSSION

The Commissioner examines the allegations.

Part One: Campaign Website

The first allegation raised in the Complaint concerns candidate Rivera's campaign website. Specifically, it alleges that candidate Rivera failed to properly report the costs associated with this website as expenditures on campaign finance reports filed with the COPP.

Mont. Code Ann. §13-37-225(1) requires candidates file periodic reports disclosing contributions received and expenditures made by the candidate or candidate's campaign. Mont. Code Ann. §13-37-229 details the specific reporting and disclosure requirements for campaign contributions received or expenditures made. Regarding contributions received, candidates must report the "full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of \$35 or more" in addition to the "the aggregate amount of contributions made by that person within the reporting period", Mont. Code Ann. §13-37-229(1). For expenditures, candidates are required to disclose the full name, mailing address, occupation, and principal place of business, if any, of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person" for each, Mont. Code Ann. §13-37-229(2).

The COPP investigation confirmed candidate Rivera created and maintained a campaign website, www.riveraforhd79.com, prior to the filing of the Complaint, including an attribution statement indicating it was paid for by candidate Rivera (FOF No. 2). No C-5 campaign finance reports filed by candidate Rivera prior to receipt of this Complaint included any contributions received or expenditures made by candidate Rivera pertaining to the website (FOF Nos. 4-7).

On August 4, 2020, candidate Rivera filed an amended version of his March 21-April 20 campaign finance report (originally filed on May 15) disclosing a campaign expenditure of \$23.98 for the purchase of the campaign website's domain name; a second amended version of this report filed on August 13 re-classified the activity as an in-kind loan provided by candidate Rivera to the campaign (FOF Nos. 5A, 5B). The August 13 version of the report disclosed that candidate Rivera had personally provided design and development services for the website, which he valued as a \$2,000.00 in-kind contribution (FOF No. 5B).

By not disclosing his personal in-kind loan for the purchase of the [riveraforhd79](http://riveraforhd79.com) domain name to the campaign on a campaign finance report prior to this Complaint being filed, candidate Rivera failed to timely and accurately report all campaign contribution information as required by §13-37-229(1), MCA, a Montana campaign finance violation.

While candidate Rivera reported making a personal in-kind contribution valued at \$2,000.00 to his campaign for his provision of "website design and

development” work, the Commissioner determines this activity would not qualify as a contribution under Mont. Code Ann. §13-1-101(9)(b). The statute states that the term contribution does not mean “services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee”. No evidence suggests that candidate Rivera ever charged or intended to charge his campaign for his personal web design/development work. Instead, it appears candidate Rivera donated his own time, energy, and expertise to the campaign to design and create the website without return compensation or the expectation of return compensation from the campaign, exempting the activity from the definition of a contribution provided by statute.

Part Two: Campaign yard signs

The second allegation contained in this Complaint is that candidate Rivera failed to report acquisition of campaign yard signs as an expenditure on campaign finance reports.

Candidate Rivera did not disclose the purchase of campaign yard signs as an expenditure on any campaign finance reports prior to the filing of this Complaint (FOF Nos. 4-7). On August 4, candidate Rivera filed an amended version of his May 15-July 15 campaign finance report disclosing a campaign expenditure of \$149.50 for the purchase of fifty yard signs (FOF No. 7A). On September 15, 2020, candidate Rivera amended that report to re-classify the activity as an in-kind loan provided by candidate Rivera to the campaign and added a second in-kind loan of \$55.96 for the provision of wire frames for the

yard signs (FOF No. 7B). Candidate Rivera failed to timely and accurately report all campaign contribution information as required under Mont. Code Ann. §13-37-229(1).

Sufficiency Finding No. 1: Candidate Rivera failed to timely disclose in-kind loans in the amount of \$ 229.44 for the purchase of campaign political signs.

The Commissioner finds candidate Rivera failed to timely disclose in-kind loans to his campaign, a Montana campaign finance violation.

Part Three: The Facebook posts

The complainant in this matter alleges Facebook posts made or allegedly made by candidate Rivera were not disclosed. Specifically, the Complaint contends that candidate Rivera failed to properly report posts made to both his campaign Facebook page as well as a second group page as expenditures of his campaign, and that each post failed to include the required 'paid for by' attribution message.

Facebook itself is a free to use platform available to anyone with internet access (FOF No. 2C). Neither the Helena Facts Media page nor candidate Rivera paid to run ads or otherwise boost posts on Facebook prior to this Complaint being filed (FOF NO. 2B).

§13-1-101(18), MCA, defines the term expenditure as:

(18) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or

(ii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) The term does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) payments by a candidate for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(c) This definition does not apply to Title 13, chapter 37, part 6.

Helena Facts Media

The Complaint specifically references six posts to a Facebook page named 'Helena Facts Media' it alleges were made by candidate Rivera.

None of the six Facebook posts to the Helena Facts Media page would qualify as an expenditure under Montana campaign finance law. First, the posts were not purchased, nor was payment made for them. The Helena Facts Media group simply posted content to a Facebook page, an activity available to any individual, group, or organization free of charge. Even if the posts had supported or opposed a candidate or ballot issue up for election, they would not qualify as expenditures under §13-1-101(18), MCA because the posts themselves were not paid activities. However, none of the posts referenced by the Complainant

supported or opposed candidates or ballot issues up for election. Each of the six posts to the Helena Facts Media page instead focused entirely on current events in the City of Helena and its municipal government operations.

Even were the Helena Facts Media posts to be considered expenditures, candidate Rivera would only be required to report the activities as expenditures if his campaign had directly paid to produce and distribute them. Per §13-37-229(2), MCA, it is the responsibility of the entity making an expenditure to report the expenditure with the COPP.

The Commissioner finds the Facebook posts do not qualify as expenditures under Mont. Code Ann. §13-1-101(18).

Candidate Rivera's Facebook page

The Complaint also references two posts made to candidate Rivera's Facebook page.

For reasons similar to the Helena Facts Media posts, neither of the two Facebook posts to candidate Rivera's campaign Facebook page referenced by this Complaint would qualify as an expenditure under Montana campaign finance law. Neither post was a paid post, and neither directly supported candidate Rivera's candidacy for HD 79 nor opposed the candidacy of any other individuals running for elected office.

The eight Facebook posts referenced in the complaint do not qualify as an expenditure as defined by Montana campaign finance law. The allegation that

candidate Rivera failed to properly report the specific Facebook posts alleged in the Complaint is hereby dismissed.

Attribution

Mont. Code Ann. §13-35-225(1) (2), attribution requirements:

(1) All election communications, electioneering communications, and independent expenditures must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. The attribution must contain:

(a) for election communications or electioneering communications financed by a candidate or a candidate's campaign finances, the name and the address of the candidate or the candidate's campaign;

(b) for election communications, electioneering communications, or independent expenditures financed by a political committee, the name of the committee, the name of the committee treasurer, deputy treasurer, secretary, vice chairperson, or chairperson, as designated pursuant to 13-37-201(2)(b), and the address of the committee or the named committee officer; and

(c) for election communications, electioneering communications, or independent expenditures financed by a political committee that is a corporation or a union, the name of the corporation or union, its chief executive officer or equivalent, and the address of the principal place of business.

(2) Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

None of the eight Facebook posts referred to in the Complaint would qualify as an election communication as defined by §13-1-101(14), MCA, as none were a paid broadcast, nor did any support or oppose candidate/s or ballot issue/s up for election. None of the eight would qualify as an

electioneering communication as defined under §13-1-101(16), MCA as they were not paid communications. While the May 14 video shared by the group does depict candidate Rivera in both name and likeness (a requirement of an electioneering communication), it was not a paid post and therefore could not be considered an electioneering communication as defined. None would qualify as independent expenditures under §13-1-101(25), MCA because the posts were not election communications. Being neither election communications, electioneering communications, or independent expenditures, the eight posts in question would not require the 'paid for by' attribution message under Montana campaign finance law. The allegation these posts were lacking a required attribution statement is hereby dismissed.

Part Four: Other Issues

Candidate Rivera filed one campaign finance report late. Pursuant to Mont. Code Ann. §13-37-226(1)(b), candidates for elected office had periodic C-5 campaign finance reports due on or before April 20, 2020 (covering the period of March 16-April 15). Candidate Rivera did not file this report until May 15, twenty-five days late (FOF No. 5).

Sufficiency Finding No. 2: Candidate Rivera filed his April 20, 2020 periodic finance report on May 15, 2020, twenty-five days late.

The Commissioner finds candidate Rivera failed to timely file his April 20, 2020, campaign finance report, a Montana campaign finance report violation.

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 Dennison Rivera 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 Dennison Rivera. 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(1), 13-37-226(1)(b). *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 18th day of September 2020.



Jeffrey A. Mangano
Commissioner of Political Practices
Of the State of Montana
P.O. Box 202401
1209 8th Avenue
Helena, MT 59620
Phone: (406)-444-3919