

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

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| Hippler v. Arntzen No. COPP 2020-CFP-030 | FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION; DISMISSAL OF AN ALLEGATION |
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On July 15, 2020, Julie Hippler of Billings, MT, filed a campaign practices complaint against Elsie Arntzen, also of Billings. The complaint alleged that candidate Arntzen failed to report Facebook advertisement expenditures on campaign financial reports as required and that candidate Arntzen failed to timely report certain pre-election expenditures via form C-7E as required.

SUBSTANTIVE ISSUES ADDRESSED

Proper and timely reporting of an election communication.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Elsie Arntzen filed a C-1 Statement of Candidate as a candidate for Montana Superintendent of Public Instruction with the COPP on July 5, 2019. (Commissioner's Records).

Finding of Fact No. 1A: Montana's Primary election was held on June 2, 2020. (Commissioner's Records).

Finding of Fact No. 2: A July 27, 2020 COPP review of candidate Arntzen's campaign Facebook page revealed the campaign aired paid advertisements on Facebook for the 2020 campaign at a total

cost of \$1,413.00. Ads were launched in both August of 2019 and May of 2020. (Commissioner's Records).

Finding of Fact No. 3: On October 7, 2019, candidate Arntzen timely filed a periodic C-5 campaign finance report, dated July 1, 2019, through September 30, 2019. This report did not disclose any campaign expenditures made or debts owed for the purchase of paid Facebook advertisements during this period. The report did disclose one expenditure to an entity named Sage Strategies LLC for "Internet Marketing Consultation". (Commissioner's Records).

Finding of Fact No. 3A: An amended version of candidate Arntzen's July 1, 2019 through September 30, 2019, campaign finance report was filed on October 17, 2019. This amended report did not disclose any campaign expenditures made or debts owed for the purchase of paid Facebook advertisements during this period. This amended report included the expenditure to Sage Strategies LLC for "Internet Marketing Consultation" but provided no additional information to describe the expenditure. (Commissioner's Records).

Finding of Fact No. 3B: On July 20, 2020, candidate Arntzen provided an official response to this Complaint through campaign Treasurer Lorna Kuney. The response included an addendum for the July 1, 2019 through September 30, 2019, campaign financial report. This addendum disclosed the campaign making one expenditure of \$51.68 on August 13, 2019, to Sage Strategies for one Facebook ad, titled "Elsie for Montana", that aired August 6, 2019 through August 29, 2019. (Commissioner's Records).

Finding of Fact No. 3C: The COPP's July 27, 2020, review of candidate Arntzen's campaign Facebook page determined that candidate Arntzen launched three distinct paid Facebook ads in August 2019: one captioned "Being your State Superintendent means preparing students for life, and their career" that ran August 6-11; one captioned "School safety is my top priority and I need your support to continue serving our students" that ran August 28-September 6; and one captioned "Being your State Superintendent means preparing students for their career" that ran August 29-September 14. (Commissioner's Records).

Finding of Fact No. 4: On May 19, 2020, candidate Arntzen timely filed a periodic C-5 campaign finance report, dated April 16, 2020, through May 14, 2020. This report did not disclose any campaign expenditures made or debts owed for the purchase of paid Facebook advertisements during this period. The report did disclose one expenditure to an entity named Arena Mail and Digital

that included (in part) "Website Renewal".¹ (Commissioner's Records).

Finding of Fact No. 4A: An amended version of the April 16, 2020, through May 14, 2020, campaign finance report was filed on July 15, 2020. This amended report did not disclose any campaign expenditures made or debts owed for the purchase of paid Facebook advertisements during this period. This amended report included the expenditure to Arena Mail and Digital for but provided no additional information to describe the expenditure. (Commissioner's Records).

Finding of Fact No. 4B: Candidate Arntzen's formal Response to this Complaint also included an addendum for the April 16, 2020 through May 14, 2020, campaign financial report. This addendum disclosed the campaign as making six expenditures, each on May 14, totaling \$2,274.00 to Arena Mail and Digital for six Facebook ads that ran between May 11-24: ads were titled "Leadership", "Unprecedented", "Advocate", "Kids First", "Covid-19", and "Proven Leader". The response also stated that "We did not find the need to report the Arena payment on a C-7E as we felt the 24-hour period started on 05/15/20 as listed on the COPP calendar. That expense was paid on May 14th and was reported as such in the reporting period that ended on 05/14/20". (Commissioner's Records).

Finding of Fact No. 4C: The COPP's July 27, 2020, review of candidate Arntzen's campaign Facebook page determined that candidate Arntzen aired six distinct paid Facebook ads during this period: one captioned "Click to learn how Elsie Arntzen is prioritizing the health and safety of our students and schools" which ran May 11-24 at a cost of less than \$100, May 11-24 at a cost of less than \$100, and May 19-24 at a cost of less than \$100 (listed three times in the Ad Library); one captioned "In this time of uncertainty, my focus remains on Montana students, families, and educators. Like my page to learn more!", which ran May 11-24 at a cost of less than \$100 and May 19-24 at a cost of less than \$100 (listed twice in the Ad Library); one captioned "Elsie Arntzen is working tirelessly to give local school leaders flexibility and local control over how to best help our students. Click here to learn how you can support Elsie!", which ran May 11-24 at a cost of less than \$100 and May 19-24 at a cost of \$100-\$199 (listed twice in the Ad Library); one captioned "Parents and teachers can count on me to support flexibility and local control for schools, while pushing back

¹ The full description provided for this expenditure activity was "Website Renewal and # 2 500 Elsie Arntzen for Montana Palm Cards Design and Printing"

on government mandates. Like my page!", which ran May 11-24 at a cost of less than \$100 and May 19-24 at a cost of \$200-\$299 (listed twice in the Ad Library); one captioned "Click here to learn how Elsie Arntzen is successfully advocating for the flexibility and resources that families and schools need", which ran May 11-24 at a cost of \$200-\$299 and May 19-24 at a cost of \$500-\$599 (listed twice in the ad library); and one captioned "Elsie Arntzen is working to ensure that our students receive a high-quality education under these unprecedented circumstances. Click here to learn how you can support Elsie!", which ran May 11-24 at a cost of less than \$100 and May 19-24 at a cost of less than \$100 (listed twice in the Ad Library). (Commissioner's Records).

DISCUSSION

The Complaint alleges candidate Arntzen failed to properly report certain election communications and failed to timely report pre-election expenditures. The Commissioner examines each of these allegations.

Reporting the Advertisements

The first allegation raised by the Complainant in this matter is that candidate Arntzen failed to disclose paid Facebook ads on C-5 campaign finance reports as required. Mont. Code Ann. §13-37-229(2) expenditure reporting requirements for candidates subsection (2)(b) states that:

Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate or political committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.

44.11.502(7), ARM additionally requires "purpose, quantity, subject matter, as appropriate to each expenditure".

Upon review of candidate Arntzen's filed C-5 campaign finance reports in relation to the campaign's Facebook page Ad Library of paid advertisements,

candidate Arntzen did not meet the requirements of Mont. Code Ann §13-37-229(2)(b), including 44.11.502(7), ARM.

August 2019 advertisements

According to the campaign's Facebook page Ad Library, Candidate Arntzen had three distinct paid Facebook ads launch in August of 2019: one captioned "Being your State Superintendent means preparing students for life, and their career" that ran August 6-11, one captioned "School safety is my top priority and I need your support to continue serving our students" that ran August 28-September 6, and one captioned "Being your State Superintendent means preparing students for their career" that ran August 29-September 14 (FOF No. 3C). Candidate Arntzen did not disclose these three paid Facebook ads on her July 1, 2019, through September 30, 2019, C-5 campaign financial report prior to this Complaint being filed (FOF Nos. 3, 3A).

In its official response to this Complaint, the Arntzen campaign stated that it paid a vendor by the name of Sage Strategies \$51.68 to run one paid Facebook ad, listed "Elsie for Montana", from August 6-29, 2019 (FOF No. 3B). While the campaign did report its expenditure to Sage Strategies, the description provided of "Internet Marketing Consultation" fails to describe the specific services provided (paid Facebook ads), in violation of Mont. Code Ann. §13-37-229(2)(b) (FOF Nos. 3, 3A), and failed to provide the level of detail required by 44.11.502(7), ARM, as it lacked any "purpose, quantity, subject matter" information to describe each individual advertisement.

While campaign Treasurer Kuney states in the response that the campaign paid for only one Facebook ad to run from August 6-29, the campaign actually ran three separate paid Facebook ads during this reporting period, with the last ad visible through September 14 (FOF Nos. 3B, 3C). The Arntzen campaign failed to properly report election communications as required by Montana campaign finance law.

May 2020 advertisements

The COPP's review of candidate Arntzen's campaign Facebook page Ad Library determined that six distinct paid ads were launched in May of 2020, all airing between May 11th and 24th (FOF No. 4C). None of these six ads were disclosed on campaign financial reports filed with the COPP prior to receipt of this Complaint (FOF Nos. 4, 4A).

Candidate Arntzen's response to this Complaint confirmed that six paid Facebook ads were launched in May 2020, and that the campaign paid a vendor named Arena Mail and Digital \$2,274.00 for these ads (FOF No. 4B). While the campaign did report its expenditure to Arena Mail and Digital, the relevant description provided of "Website Renewal and palm cards" but failed to describe the specific services provided (the provision of six paid Facebook ads), in violation of Mont. Code Ann. §13-37-229(2)(b) (FOF No. 4) and failed to provide the level of detail required by 44.11.502(7), ARM, as it lacked any "purpose, quantity, subject matter" information to describe each individual advertisement.

The Commissioner notes candidate Arntzen's response provides all information required to bring the six May 2020 ads into compliance with both §13-37-229(2)(b), MCA and 44.11.502(7), ARM. Specifically, the response identifies the specific service provided (provision of six distinct paid Facebook ads), along with individualized content description for each and relevant quantity/run date information.

Other Reporting Issues

Additionally, the Arntzen campaign failed to comply with the requirements of Mont. Code §13-37-229(1)(g) "the amount and nature of debts and obligations owed to a political committee or candidate" when reporting both its August 2019 and May 2020 paid Facebook advertisements. Rule 44.11.502(2), ARM states that "An obligation to pay for a campaign expenditure is incurred on the date the obligation is made, and shall be reported as a debt of the campaign until the campaign pays the obligation by making an expenditure". Candidate Arntzen's response indicates that the campaign expenditure to Sage Strategies for all August 2019 paid Facebook ads occurred August 13, however the ad/s in question began running on August 6 (FOF Nos. 3B, 3C). While candidate Arntzen's response indicates that the campaign's expenditures to Arena Mail and Digital for the May 2020 paid Facebook ads occurred May 14, each of the six ads began running on May 11 (FOF Nos. 4B, 4C). In each case, an agreement to run the ad/s in question was reached prior to the campaign providing payment, as the beginning run date for each ad is earlier than the date the campaign states it made payment to the vendor. The

ads launched in August of 2019 were incurred no later than August 6, as the first ad began running on that date; each of the six ads launched in May of 2020 were incurred no later than May 11, the date they began running.

44.11.502(2), ARM, dictates that candidate Arntzen should have reported the August 2019 and May 2020 paid Facebook ads as debts owed by the campaign using the date the agreement to produce/distribute was reached, rather than as expenditures using the date payment was provided to the vendor.

Part Two: C-7E Requirement

The second allegation raised by this Complaint is that candidate Arntzen failed to timely report her May 2020 paid Facebook expenditures using a C-7E Notice of Pre-Election Expenditures. Candidates are required to file a special campaign finance reporting form (the C-7E) “within 2 business days of making an expenditure of \$100 or more if made between the 15th day of the month preceding an election in which the candidate participates and the day of the election”, §13-37-226(1)(d), MCA. Montana’s Primary election occurred on June 2, 2020, meaning the C-7E requirements applied to any expenditure or debt activity occurring on or after May 15, 2020 (FOF No. 1A). The COPP’s reporting calendar for Montana’s 2020 Primary election- available to both candidates running for elected office and the general public- correctly lists May 15 as the start of the C-7E period, and was utilized by the Arntzen campaign to determine the C-7E reporting window (FOF No. 4B).

In her response to this Complaint, candidate Arntzen’s campaign asserted that the May 2020 paid Facebook advertisements did not need to be

reported on a C-7E. The reason, they argued, was that payment for those ads was made to the vendor on May 14, prior to the start of the C-7E reporting window (FOF No. 4B). The ads in question began running on Facebook on May 11 backs up the campaign's assertion that they were incurred prior to the May 15 beginning of the C-7E reporting window.

Certain ads appear to have been run again as paid ads after May 15- for example, the ad captioned "Elsie Arntzen is working tirelessly to give local school leaders flexibility and local control over how to best help our students. Click here to learn how you can support Elsie!" is listed in the Facebook Ad Library as running May 19-24 at a cost of between \$100-\$199 (FOF No. 4C).

Candidate Arntzen's response, however, indicates that all payment was provided by the campaign to the vendor, Arena Mail and Digital, on May 14 for each of the six (6) paid ads launched in May 2020. Treasurer Kuney writes that "most digital advertising is paid in advance"- i.e. payment is made by the candidate to the vendor for the activity before a specific ad is run. No evidence can be found to dispute the campaign's assertion that all payment was provided to the vendor on May 14, 2020. The allegation that the Arntzen campaign failed to properly report a pre-election expenditure is dismissed. The Commissioner notes, however, that had the campaign provided the proper detail on it's May 20 report, the information would have been disclosed in full.

FINDINGS

Candidate Arntzen failed to timely and properly report nine election communications as required by Montana campaign finance law.

Sufficiency Finding No. 1: There are sufficient facts to show candidate Arntzen failed to properly and timely report the three August 2019 Facebook advertisements and six May 2020 Facebook advertisements.

The Commissioner finds candidate Arntzen violated Montana's campaign finance and practices law by failing to properly and timely report nine Facebook advertisements.

"An obligation to pay for a campaign expenditure is incurred on the date the obligation is made, and shall be reported as a debt of the campaign until the campaign pays the obligation by making an expenditure." ARM 44.11.502(2). The Arntzen campaign failed to properly report its obligations as a debt as required by Montana campaign finance law.

Sufficiency Finding No. 2: There are sufficient facts to show that the Artzen campaign failed to timely report certain election communications as a debt.

Candidate Arntzen failed to properly report a debt as required by Montana law. The Commissioner notes while the expenditure was reported, it was not reported until time of payment. The Commissioner finds Candidate Arntzen violated Montana campaign finance law.

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 candidate Arntzen 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).

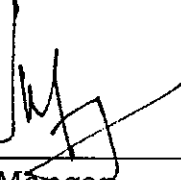
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of candidate Arntzen. 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. § §13-37-229. *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*.

DATED this 11th day of August 2020.



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