

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Luckey v. Jacobsen No. COPP 2020-CFP-047	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN FINANCE VIOLATION
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On October 23, 2020, Montana Democratic Party Executive Director Sandi Luckey filed a campaign practices complaint against Christi Jacobsen of Helena. The complaint alleges that candidate Jacobsen violated Montana campaign finance law by utilizing Primary election contributions to finance General election expenditures.

SUBSTANTIVE ISSUES ADDRESSED

Transfer of Primary election funds to General election funds. Timely reporting of contributions received and campaign expenditures. Proper reporting of consultant expenditures.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Christi Jacobsen filed a C-1 Statement of Candidate as a candidate for Secretary of State with the COPP on October 4, 2019. (Commissioner's Records.)

Finding of Fact No. 1A: Candidate Jacobsen was provided with a copy of this complaint via email on October 26, 2020. At that time candidate Jacobsen began working with COPP Compliance staff to amend previously filed finance reports. In phone correspondence

with the COPP, candidate Jacobsen stated that the campaign had made two (2) transfers of Primary election funds to the General election account after the conclusion of the Primary election and reported these transfers on the relevant campaign finance report. She went on to state that, as of October 26, these funds had been transferred back to the Primary election account. The Jacobsen response to the complaint also stated "Christi Jacobsen transferred all Primary funds that were transferred to the General Funds Account back to the Primary Funds Account". (Commissioner's Records.)

Finding of Fact No. 2: On January 6, 2020, candidate Jacobsen filed her initial C-5 campaign finance report, dated October 1, 2019, through December 31, 2019. This report disclosed candidate Jacobsen as receiving \$96,576.98 in Primary election contributions, including a personal loan of \$60,582.43 made on December 31, 2019; candidate Jacobsen reported making \$20,496.81 in Primary election expenditures, for a Cash in Bank balance in the Primary of \$76,080.17. This report also disclosed candidate Jacobsen as receiving \$16,800.98 in General election contributions; candidate Jacobsen reported making \$0 in General election expenditures, for a Cash in Bank balance in the General of \$16,800.98. Candidate Jacobsen did not report making payment on the Primary election loan. This report was most recently Amended on October 24, 2020. (Commissioner's Records.)

Finding of Fact No. 3: On March 20, 2020, candidate Jacobsen filed a periodic C-5 campaign finance report, dated January 1, 2020, through March 15, 2020. This report disclosed candidate Jacobsen as receiving \$20,474.34 in Primary election contributions, including a personal loan of \$14,250.00 made on March 13, 2020; candidate Jacobsen reported making \$20,566.68 in Primary election expenditures, for a Cash in Bank balance in the Primary of \$75,987.83. This report also disclosed candidate Jacobsen as receiving \$1,949.34 in General election contributions; candidate Jacobsen reported making \$0 in General election expenditures, for a Cash in Bank balance in the General of \$18,750.32. Candidate Jacobsen did not report making payments on any of her Primary election loans. This report was most recently Amended on October 24, 2020. (Commissioner's Records.)

Finding of Fact No. 4: On April 20, 2020, candidate Jacobsen filed a periodic C-5 campaign finance report, dated March 16, 2020, through April 15, 2020. This report disclosed candidate Jacobsen as receiving \$7,254.78 in Primary election contributions, including a personal loan of \$5,500.00 made on April 10, 2020; candidate

Jacobsen reported making \$80,096.40 in Primary election expenditures, for a Cash in Bank balance in the Primary of \$3,146.21. This report also disclosed candidate Jacobsen as receiving \$289.34 in General election contributions; candidate Jacobsen reported making \$0 in General election expenditures, for a Cash in Bank balance in the General of \$19,039.66. Candidate Jacobsen did not report making payments on any of her Primary election loans. (Commissioner's Records.)

Finding of Fact No. 5: On May 20, 2020, candidate Jacobsen filed a periodic C-5 campaign finance report, dated April 16, 2020, through May 14, 2020. This report disclosed candidate Jacobsen as receiving \$4,233.70 in Primary election contributions, including a personal loan of \$2,637.86 made on May 1, 2020; candidate Jacobsen reported making \$7,379.91 in Primary election expenditures, for a Cash in Bank balance in the Primary of \$0. This report also disclosed candidate Jacobsen as receiving \$371.56 in General election contributions; candidate Jacobsen reported making \$0 in General election expenditures, for a Cash in Bank balance in the General of \$19,411.22. Candidate Jacobsen did not report making payments on any of her Primary election loans. (Commissioner's Records.)

Finding of Fact No. 6: On June 22, 2020, candidate Jacobsen filed a periodic C-5 campaign finance report, dated May 15, 2020, through June 15, 2020. This report disclosed candidate Jacobsen as receiving \$11,580.00 in Primary election contributions, including a personal loan of \$10,000.00 made on May 26, 2020; candidate Jacobsen reported making \$11,580.00 in Primary election expenditures, for a Cash in Bank balance in the Primary of \$0. This report also disclosed candidate Jacobsen as receiving \$3,580.00 in General election contributions; candidate Jacobsen reported making \$0 in General election expenditures, for a Cash in Bank balance in the General of \$22,991.22. Candidate Jacobsen reported making payments of \$1,164.29 on her March 13, 2020, loan (leaving the balance due at \$13,085.71 on this obligation) and \$1,580.00 on her December 31, 2019 loan (leaving the balance due at \$59,002.43 on this obligation). (Commissioner's Records.)

Finding of Fact No. 6A: On October 26, 2020, candidate Jacobsen filed an amended version of her May 15, 2020, through June 15, 2020, C-5 campaign finance report. This report disclosed candidate Jacobsen as receiving \$21,580.00 in Primary election contributions, including a personal contribution of \$10,000.00 in addition to the May 26 loan of \$10,000.00; candidate Jacobsen reported making \$11,580.00 in Primary election expenditures, for

a Cash in Bank balance in the Primary of \$10,000.00. Candidate Jacobsen's General election contribution and expenditure information remained the same as originally reported, as did her payments on Primary election loans. (Commissioner's Records.)

Finding of Fact No. 7: Montana's Primary election was held on June 2, 2020. Candidate Jacobsen advanced to the November 3 General election as the Republican candidate receiving the highest number of votes. (Commissioner's Records.)

Finding of Fact No. 8: On August 17, 2020, candidate Jacobsen filed a periodic C-5 campaign finance report, dated June 16, 2020 through August 15, 2020. This report disclosed candidate Jacobsen as receiving \$6,390.00 in Primary election contributions; candidate Jacobsen reported making \$6,390.00 in Primary election expenditures, for a Cash in Bank balance in the Primary of \$0. This report also disclosed candidate Jacobsen as receiving \$83,709.04 in General election contributions; candidate Jacobsen reported making \$13,481.03 in General election expenditures, for a Cash in Bank balance in the General of \$93,219.23. This report disclosed candidate Jacobsen transferred \$6,390.00 from the Primary to General accounts (reported as a Fundraiser contribution of \$6,390.00 received in the General and an expenditure of the same amount made in the Primary, both dated August 15, 2020). Candidate Jacobsen did not report making payments on any of her Primary election loans. (Commissioner's Records.)

Finding of Fact No. 8A: On October 26, 2020, candidate Jacobsen filed an amended version of her June 16, 2020, through August 15, 2020, C-5 campaign finance report. Candidate Jacobsen's Primary and General election contribution and expenditure information remained the same as originally reported, except that the August 15 transfer of \$6,390.00 from the Primary to the General was removed. As a result, candidate Jacobsen reported a Primary election Cash in Bank balance of \$6,390.00 and a General election Cash in Bank balance of \$86,829.23. Candidate Jacobsen did not report making payments on any of her Primary election loans. (Commissioner's Records.)

Finding of Fact No. 9: On September 21, 2020, candidate Jacobsen filed a periodic C-5 campaign finance report, dated August 16, 2020, through September 15, 2020. This report disclosed candidate Jacobsen as receiving \$2,360.00 in Primary election contributions; candidate Jacobsen reported making \$2,360.00 in Primary election expenditures, for a Cash in Bank balance in the Primary of \$0. This report also disclosed candidate Jacobsen as

receiving \$22,727.48 in General election contributions; candidate Jacobsen reported making \$84,933.86 in General election expenditures, for a Cash in Bank balance in the General of \$31,012.85. This report disclosed candidate Jacobsen transferred \$2,360.00 from the Primary to General accounts (reported as a Fundraiser contribution of \$2,360.00 received in the General and an expenditure of the same amount made in the Primary, both dated September 15, 2020). Candidate Jacobsen did not report making payments on any of her Primary election loans. An amended version of this report filed on September 25, 2020 did not change any reported Primary or General election contribution or expenditure activity. (Commissioner's Records.)

Finding of Fact No. 9A: On October 26, 2020, candidate Jacobsen filed an amended version of her August 16, 2020, through September 15, 2020, C-5 campaign finance report. This report disclosed candidate Jacobsen as receiving \$2,610.00 in Primary election contributions; candidate Jacobsen reported making \$0 in Primary election expenditures, for a Cash in Bank balance in the Primary of \$9,000.00. This report also disclosed candidate Jacobsen as receiving \$20,117.48 in General election contributions; candidate Jacobsen reported making \$84,933.86 in General election expenditures, for a Cash in Bank balance in the General of \$22,012.85. The September 15, 2020, transfer of \$2,360.00 from the Primary to the General accounts was removed from this version of the report. Candidate Jacobsen did not report making payments on any of her Primary election loans. (Commissioner's Records.)

Finding of Fact No. 10: On October 20, 2020, candidate Jacobsen filed a periodic C-5 campaign finance report, dated September 16, 2020, through October 14, 2020. This report disclosed candidate Jacobsen as receiving \$1,445.60 in Primary election contributions; candidate Jacobsen reported making \$0 in Primary election expenditures, for a Cash in Bank balance in the Primary of \$1,445.60. This report also disclosed candidate Jacobsen as receiving \$10,675.00 in General election contributions; candidate Jacobsen reported making \$13,162.50 in General election expenditures, for a Cash in Bank balance in the General of \$28,525.35. Candidate Jacobsen did not report making payments on any of her Primary election loans. (Commissioner's Records.)

Finding of Fact No. 10A: On October 26, 2020, candidate Jacobsen filed an amended version of her September 16, 2020 through October 14, 2020 C-5 campaign finance report. This report disclosed candidate Jacobsen as receiving \$1,445.60 in Primary

election contributions; candidate Jacobsen reported making \$0 in Primary election expenditures, for a Cash in Bank balance in the Primary of \$10,445.60. This report also disclosed candidate Jacobsen as receiving \$11,150.00 in General election contributions, including a personal contribution of \$475.00; candidate Jacobsen reported making \$33,162.50 in General election expenditures, for a Cash in Bank balance in the General of \$0.35. This version of the report added one (1) General election expenditure of \$20,000.00 to an entity named McShane, dated October 1, 2020; Purpose was described as “Facebook Ad Center”, Platform as “Facebook”, and Subject Matter as “Christi Jacobsen for Secretary of State”. Candidate Jacobsen did not report making payments on any of her Primary election loans. (Commissioner’s Records.)

Finding of Fact No. 10B: An October 27, 2020 COPP review of candidate Jacobsen’s campaign Facebook Ad Library revealed the campaign ran four (4) distinct paid campaign ads during the period of September 16, 2020 through October 14, 2020: https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=116945146375650. (Commissioner’s Records.)

DISCUSSION

Transfer of Primary funds to the General election

The primary allegation raised by this complaint is that candidate Jacobsen improperly transferred campaign funds from the Primary to General election accounts. Specifically, the complaint alleges that candidate Jacobsen violated 44.11.224(2)(e), Administrative Rules of Montana, by transferring Primary election funds into the General election account prior to satisfying all Primary election obligations.

The requirements and applicability of 44.11.224(2), ARM and its individual subsections are discussed in greater detail in Commissioner Mangan’s Decision in the matter of *Luckey v. Gianforte*, COPP-2020-CFP-044.

Put simply, candidates may continue accepting Primary election contributions after the conclusion of the Primary election if they have outstanding debts or loans to pay off from that election as long as those funds are only used to pay off those Primary election obligations. In this matter, candidate Jacobsen reported making four personal loans to the campaign during the Primary election; none of these obligations had been paid off in full at the time this complaint was filed, with candidate Jacobsen owing \$80,226.00 (see Table 1). Under 44.11.224(2), ARM, candidate Jacobsen would be allowed to continue accepting Primary election contributions after the conclusion of the Primary election to pay off these debts.

Table 1: Primary election obligations (debts/loans) as reported by candidate Jacobsen on her 2019-2020 C-5 campaign financial reports.

Entity	Election	Type (Debt/Loan)	Date incurred	Amount	Balance Due ¹
Jacobsen, Christi	Primary	Loan	12/31/2019	\$60,582.43	\$59,002.43
Jacobsen, Christi	Primary	Loan	03/13/2020	\$14,250.00	\$13,085.71
Jacobsen, Christi	Primary	Loan	04/10/2020	\$5,500.00	\$5,500.00
Jacobsen, Christi	Primary	Loan	05/01/2020	\$2,637.86	\$2,637.86
					\$80,226.00

On her June 16, 2020 through August 15, 2020 C-5 campaign finance report, candidate Jacobsen reported an August 15 transfer of \$6,390.00 from the Primary election account to General election account (FOF No. 8). On the August 16, 2020 through September 15, 2020 report candidate Jacobsen

¹ Reflects the Primary obligations due as of October 27, 2020.

reported making an additional Primary to General transfer in the amount of \$2,360.00 (FOF No. 9). In telephone correspondence with the COPP on October 26, 2020, candidate Jacobsen confirmed that these transfers had taken place as reported (FOF No. 1A).

As applied in the *Gianforte* Decision, Candidate Jacobsen violated the provisions of 44.11.224(2)(e), ARM by transferring Primary election funds into the General election account prior to paying off all Primary election obligations. Candidate Jacobsen transferred Primary election contributions to the General election account on two separate occasions despite owing \$80,226.00 in outstanding obligations.

After receiving notice of this complaint, candidate Jacobsen immediately worked to remedy these violations. Candidate Jacobsen stated to COPP Compliance staff that all Primary funds had been transferred back to the Primary election account, and she amended the relevant C-5 campaign finance reports to no longer report such a transfer (FOF Nos. 1A, 8A, 9A). However, reporting a transfer of funds back into the Primary from the General account on the relevant finance report, not simply removing the original transaction as candidate Jacobsen did, would have been the correct course of action.

Other issues

Once a complaint is filed, the Commissioner “shall investigate any other alleged violation” Mont. Code Ann. § 13-37-111(2)(a). This investigative authority includes authority to investigate “all statements” filed with COPP, inspect a variety of records and require their production for purposes of the

investigation, and examine “each statement or report” filed with the COPP. *Id.*, §§ 13-37-111, -123. The Commissioner is afforded discretion in exercising this authority. *Powell v. Motl*, OP-07111, Supreme Court of Montana, November 6, 2014 Order.

Reporting Contributions Received

As originally filed, candidate Jacobsen initially disclosed receiving \$11,580.00 in Primary election contributions on her May 15, 2020, through June 15, 2020, C-5 campaign finance report (FOF No. 6). However, the amended version of this report filed in response to this complaint on October 26 disclosed \$21,580.00 in Primary election contributions received during the reporting period, an increase of \$10,000.00 from what she had originally reported (FOF No. 6A). The discrepancy can be explained by the addition of a personal contribution of \$10,000.00 made by candidate Jacobsen to the October 26 amended report; this contribution was not disclosed on the report as originally filed. By not disclosing this \$10,000.00 contribution prior to receipt of this complaint, candidate Jacobsen violated the requirements of §13-37-229(1), MCA, as she failed to accurately disclose the “aggregate amount of contributions made” to her campaign during the reporting period.

Similarly, candidate Jacobsen initially disclosed receiving \$10,445.60 in General election contributions on her September 16, 2020, through October 14, 2020, finance report (FOF No. 10). The amended version of this report filed on October 26 disclosed \$11,150.00 in General election contributions, an increase of \$475.00 (FOF No. 10A). The discrepancy can be explained by the

addition of a personal contribution of \$475.00 made by candidate Jacobsen to the October 26 amended report; this contribution was not disclosed on the report as originally filed. The failure to originally disclose this \$475.00 contribution is a violation of §13-37-229(1), MCA.

Reporting Expenditures Made

As originally filed, candidate Jacobsen reported making \$13,162.50 in General election expenditures on her September 16, 2020, through October 14, 2020, C-5 campaign finance report (FOF No. 10). The amended version of this report filed on October 26 disclosed \$33,162.50 in General election expenditures, an increase of \$20,000.00 (FOF No. 10A). The discrepancy can be explained by the addition of a single \$20,000.00 expenditure dated October 1 to an entity named McShane (FOF No. 10A). By not disclosing this \$20,000.00 expenditure on the finance report as originally filed, candidate Jacobsen has violated the requirements of §13-37-229(2), MCA. Specifically, the campaign failed to disclose “the total sum of expenditures made” during the reporting period.

The information provided by the Jacobsen campaign to describe this expenditure also falls short. 44.11.502(7), ARM, states that “the “purpose” of each expenditure as reported on the commissioner's campaign finance reporting forms shall specifically describe the purpose, quantity, subject matter, as appropriate to each expenditure, and must be detailed enough to distinguish among expenditures for similar purposes.” In this case, the Jacobsen campaign described the Purpose as “Facebook Ad Center”, the

Platform as “Facebook”, and Subject Matter as “Christi Jacobsen for Secretary of State”. Quantity information was not provided.

An October 27, 2020 review of candidate Jacobsen’s campaign Facebook Ad Library revealed that the campaign ran four distinct paid campaign ads on Facebook between the period of September 16, 2020 and October 15, 2020 (FOF No. 10B). The expenditure information provided by the Jacobsen campaign on its finance report for the period does not disclose this reality. The only expenditure that mentions Facebook is the above discussed McShane expenditure. The information provided to describe this expenditure activity does not meet Montana’s requirements, however. First, the provided Purpose of “Facebook Ad Center” does not clarify if this expenditure was for the airing of paid campaign ads on Facebook, the production of such ads, or a combination of both. Second, the campaign completely neglects to provide quantity information² (having left the Quantity field blank and not providing that information elsewhere). It also does not provide subject matter for any of the four individual ads or provide information so that each individual ad can be distinguished from the others. In total, the information provided by the campaign to describe this expenditure does not conform to the requirements of 44.11.502(7), ARM.

² In the case of social media paid advertising such as facebook, a dated time frame or quantity of days the ad is run is sufficient.

FINDINGS

Following the 2020 Primary election, the Jacobsen campaign reported \$80,226.00 in Primary obligations. The Jacobsen campaign reported the transfer of \$8,750.00 in Primary campaign funds to its General election account.

Sufficiency Finding No. 1: Candidate Jacobsen transferred Primary election funds to its General election and failed to designate those funds to its existing Primary election obligations.

The Commissioner finds sufficient facts exist to support a determination that candidate Jacobsen transferred \$8,750.00 in Primary campaign funds to its General election account prior to applying those funds to existing Primary obligations. The Commissioner notes post-complaint the Jacobsen campaign transferred the \$8,750.00 from its General election account back to the Primary election account according to the amended report. The Commissioner will take into consideration the corrective action taken by the Jacobsen campaign in the settlement of this matter.

On October 26, 2020, the Jacobsen campaign filed an amended report disclosing an additional \$10,000.00 Primary election contribution from candidate Jacobsen for the period ending June 15, 2020.

Sufficiency Finding No. 2: Candidate Jacobsen failed to timely report a \$10,000.00 personal contribution to her campaign.

The Commissioner finds sufficient facts exist to support a determination that candidate Jacobsen did not disclose aggregate Primary election contributions as required by Montana campaign finance law.

On October 26, 2020, the Jacobsen campaign filed an amended report disclosing an additional \$475.00 General election contribution from candidate Jacobsen for the period ending October 14, 2020.

Sufficiency Finding No. 3: Candidate Jacobsen failed to timely report a \$475.00 personal contribution to her campaign.

The Commissioner finds sufficient facts exist to support a determination that candidate Jacobsen did not disclose aggregate General election contributions as required by Montana campaign finance law.

On October 26, 2020, the Jacobsen campaign filed an amended report disclosing an additional \$20,000.00 General election expenditure for the period ending October 14, 2020.

Sufficiency Finding No. 4: Candidate Jacobsen failed to timely report a \$20,000.00 General election expenditure.

The Commissioner finds sufficient facts exist to support a determination that candidate Jacobsen did not disclose aggregate General election expenditures during the reporting period as required by Montana campaign finance law.

The Commissioner finds the Jacobsen campaign failed to 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. 5: There are sufficient facts to show that Jacobsen campaign finance reports failed to disclose sufficient detail describing campaign expenditures.

The Commissioner finds sufficient facts exist to support a determination that candidate Jacobsen failed to properly detail an expenditure for several election communications.

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 Christi Jacobsen 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 Christi Jacobsen. 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. § 13-37-216, 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 30th day of October 2020.



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