

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Pierson v. Sweeney No. COPP 2020-CFP-056	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On November 13, 2020, Gordon Pierson of Deer Lodge, MT, filed a campaign practices complaint against Mark Sweeney of Philipsburg. The complaint alleged that candidate Sweeney failed to properly file campaign finance reports, improperly reported a PAC contribution, and failed to timely disclose pre-election expenditures as required.

SUBSTANTIVE ISSUES ADDRESSED

Proper and timely filing of campaign expenditures and contributions.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Mark Sweeney filed a C-1 Statement of Candidate as a Democratic candidate for Montana Senate District 39 with the COPP on July 15, 2019. Gordon Pierson filed a C-1 Statement of Candidate as a Democratic candidate for Montana Senate District 39 with the COPP on August 26, 2019. Candidate Sweeney defeated candidate Pierson in Montana's Primary election, advancing to the November 3, 2020 General election as the Democratic candidate for SD 39.¹ (Commissioner's Records.)

¹ <https://sosmt.gov/wp-content/uploads/2020PrimaryReportStateCanvassLegislative.pdf>

Finding of Fact No. 1A: Candidates for election to public office participating in Montana's 2020 Primary election had C-5 campaign finance reports due on or before October 5, 2019, and January 5, March 20, April 20, May 20, and June 20, 2020. Candidate for election to public office participating in the General election had C-5 campaign finance reports due on or before August 20, September 20, October 20, and November 20, 2020. (Commissioner's Records.)

Finding of Fact No. 2: On October 4, 2019, candidate Sweeney filed his Initial C-5 campaign finance report, dated July 15, 2019 through October 1, 2019. (Commissioner's Records.)

Finding of Fact No. 2A: Candidate Sweeney did not file any periodic C-5 campaign finance reports. Each filing after October 4, 2019 was an amendment made to this Initial report. (Commissioner's Records.)

Finding of Fact No. 3: On January 8, 2020, candidate Sweeney amended his Initial C-5 campaign finance report. While the start date for the report remained July 15, 2019, the ending date was extended to January 8, 2020. (Commissioner's Records.)

Finding of Fact No. 4: On March 19, 2020, candidate Sweeney amended his Initial C-5 campaign finance report to again extend its ending date. While the start date for the report remained July 15, 2019, the ending date was extended to March 19, 2020.

This version of the report disclosed candidate Sweeney as receiving two (2) Primary election contributions from political committees: \$100 from the CVS Health PAC and \$180 from the Montana RPAC. Each was reported as an individual contributor. (Commissioner's Records.)

Finding of Fact No. 5: On May 21, 2020, candidate Sweeney amended his Initial C-5 campaign finance report to again extend its ending date. While the start date for the report remained July 15, 2019, the ending date was extended to May 21, 2020.

This version of the report disclosed candidate Sweeney as receiving one (1) Primary election contribution from a political committee: \$180 from the Montana Hospital Association. This was reported as an Individual contributor. (Commissioner's Records.)

Finding of Fact No. 6: On June 17, 2020, candidate Sweeney amended his Initial C-5 campaign finance report to again extend

its ending date. While the start date for the report remained July 15, 2019, the ending date was extended to June 17, 2020.

This version of the report disclosed one (1) expenditure of \$100.00 or more made by candidate Sweeney dated between May 15, 2020 and June 3, 2020 that had not previously been disclosed: an expenditure dated June 2, 2020 in the amount of \$190.00 to the Silver State Post with Purpose "ad in Philipsburg Mail", Platform "newspaper", Quantity "1 ad in weekly paper-" and Subject Matter "vote for Mark Sweeney for Senate Dist. #39". (Commissioner's Records.)

Finding of Fact No. 7: On August 19, 2020, candidate Sweeney amended his Initial C-5 campaign finance report to again extend its ending date. While the start date for the report remained July 15, 2019, the ending date was extended to August 19, 2020.

This version of the report amended the Primary election contributions received from the Montana RPAC and Montana Hospital Association to reflect them as Committee contributions rather than Individual contributors. (Commissioner's Records.)

Finding of Fact No. 8: On September 20, 2020, candidate Sweeney amended his Initial C-5 campaign finance report to again extend its ending date. While the start date for the report remained July 15, 2019, the ending date was extended to September 20, 2020. (Commissioner's Records.)

Finding of Fact No. 9: On October 19, 2020, candidate Sweeney amended his Initial C-5 campaign finance report to again extend its ending date. While the start date for the report remained July 15, 2019, the ending date was extended to October 19, 2020.

This version of the report disclosed three (3) expenditures of \$100.00 or more made by candidate Sweeney dated between October 15, 2020 and November 3, 2020 that had not previously been disclosed: an expenditure dated October 16, 2020 in the amount of \$1,392.67 to Pit Printers with Purpose of "2500 2 sided mailers for Anaconda\$750 postcards, \$642.67 postage", Platform "mailers", Quantity 2500, and Subject Matter "Vote for Sweeney Senate District #39"; an expenditure dated October 19 in the amount of \$793.50 to the Silver State Post with Purpose of "5 ads 9/17/2020, 9/24/2020, 10/1/2020, 10/18/2020, 10/15/2020 in Philipsburg Mail", Platform as "Newspaper ads", Quantity "5 ads", and Subject Matter "Vote for Sweeney Senate District #39"; and an expenditure dated October 19 in the amount of \$793.50 to the

Silver State Post with Purpose of “5 ads 9/09/2020, 9/23/2020, 9/30/2020, 10/07/2020, 10/14/2020”, Platform “newspaper ads”, Quantity “5 ads in Silver State Post”, and Subject Matter of “Vote for Sweeney Senate District #39”. (Commissioner’s Records.)

Finding of Fact No. 10: On November 22, 2020, candidate Sweeney amended his Initial C-5 campaign finance report to again extend its ending date. While the start date for the report remained July 15, 2019, the ending date was extended to November 12, 2020.

This version of the report disclosed one (1) expenditure of \$100.00 or more made by candidate Sweeney dated between October 15, 2020 and November 3, 2020 that had not previously been disclosed: an expenditure dated October 26, 2020 in the amount of \$1,944.00 to the Anaconda Leader with Purpose “5 ads 10/09/2020, 10/09/2020, 10/16/2020, 10/16/2020, 10/01/2020”, Platform “newspaper ads”, Quantity “5 ads”, and Subject Matter “Vote for Mark Sweeney Senate Dist. 39”. (Commissioner’s Records.)

Finding of Fact No. 11: Also on November 22, 2020, candidate Sweeney filed a C-7E Notice of Pre-Election Expenditures, dated November 13, 2020 through November 14, 2020. This C-7E disclosed one (1) expenditure of \$100 or more made by candidate Sweeney dated between October 15, 2020 and November 3, 2020 that had not previously been disclosed: an expenditure dated November 19, 2020 in the amount of \$793.50 to the Silver State Post with Purpose of “5 ads 9/17/2020, 9/24/2020, 10/1/2020, 10/18/2020, 10/15/2020”, Platform “newspaper ads”, Quantity “5 ads in Philipsburg Mail”, and Subject Matter of “vote for Sweeney Senate Dist. #39”.

This version of the report amended the Primary election contribution received from the CVS Health PAC to reflect it as Committee contribution rather than an Individual contributor. (Commissioner’s Records.)

Finding of Fact No. 12: On November 29, 2020, candidate Sweeney emailed the COPP his response to this complaint. The response stated that “errors were made in filing” his campaign finance reports, but that when the issues presented by the complaint were brought to his attention “I made the necessary corrections as soon as I could”. (Commissioner’s Records.)

DISCUSSION

Part One: campaign finance reports

The first allegation raised by this complaint is that candidate Sweeney failed to properly file his C-5 campaign finance reports. Specifically, the complaint notes that candidate Sweeney did not file separate reports for each reporting period, instead filing one finance report covering the entirety of the election cycle.

As a candidate campaigning for election to Montana Senate District 39 in both the Primary and General elections, candidate Sweeney was required to file C-5 campaign finance reports on or before October 5, 2019 in addition to January 5, March 20, April 20, May 20, June 20, August 20, September 20, October 20, and November 20, 2020, Mont. Code Ann. §13-37-226(1)(a) and (b).

In examining Mont. Code Ann. §13-37-228(2) candidates are required to file an initial report and “subsequent periodic reports”.

13-37-228. Time periods covered by reports. Reports filed under 13-37-225 and 13-37-226 must be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report must cover all contributions received or expenditures made by a candidate or political committee from the time that a person became a candidate or a political committee, as defined in 13-1-101, until the 5th day before the date of filing of the appropriate initial report pursuant to 13-37-226. Reports filed by political committees organized to support or oppose a statewide ballot issue must disclose all contributions received and expenditures made prior to the time an issue becomes a ballot issue by transmission of the petition to the proponent of the ballot issue or referral by the secretary of state even if the issue

subsequently fails to garner sufficient signatures to qualify for the ballot.

(2) Subsequent periodic reports must cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226. For the purposes of this subsection, the reports required under 13-37-226(1)(c), (1)(d), (2)(c), and (2)(d) are not periodic reports and must be filed as required by 13-37-226(1)(c), (1)(d), (2)(c), and (2)(d), as applicable.

Candidate Sweeney filed an Initial report on October 4, 2019, and then simply amended this report each subsequent filing deadline (FOF Nos. 2, 2A). As a result, candidate Sweeney filed one continuous C-5 initial report covering all his contribution and expenditure activity for the 2020 election cycle. By doing so, candidate Sweeney did not properly file periodic reports on nine occasions as required by Mont. Code Ann. § 13-37-228, violations of Montana campaign finance law.

While candidate Sweeney failed to properly file periodic campaign finance reports, he did amend and report his initial campaign finance report on or about the 2020 reporting dates. Specifically, candidate Sweeney amended and filed the report due January 5, 2020 on January 8, three days late (FOF No. 3). No filing, periodic or amended, was made on April 20, 2020; the dates that were to be covered by the April 20 report were included on a version of the report filed by candidate Sweeney on May 21, the amended filing would be considered thirty-one days late (FOF No. 5). The periodic report due on May 20, 2020 was filed as an amended initial report on May 21, one day late (FOF No. 5). Finally, the periodic report due on November 20 was not filed until

November 22, two days late (FOF No. 10). Candidate Sweeney failed to timely file on five separate occasions, a Montana campaign finance violation.

Sufficiency Finding No. 1: There are sufficient facts to show Candidate Sweeney failed to properly and timely file C-5 periodic campaign finance reports on nine occasions.

The Commissioner notes candidate Sweeney did disclose campaign contributions and expenditures through the continued amending of one report. Reporting properly and timely within the framework of Montana's campaign finance law allows the public to more easily access and understand a candidate's election spending.

Part Two: Notice of pre-election expenditures

The second allegation concerns candidate Pierson's disclosure of pre-election expenditures. As a candidate participating in both Montana's Primary and General elections, candidate Pierson was required to disclose expenditures made of \$100.00 or more between May 15 and June 3 (the date of the primary election) and those between October 15 and November 3 (the date of the general election) within two business days of the activity, Mont. Code Ann. §13-37-226(1)(d).

Candidate Sweeney had one Primary election expenditure that required this disclosure- the June 2, 2020, Silver State Post expense (FOF No. 6). The expenditure reportedly occurred on June 2, 2020, meaning candidate Sweeney was required to disclose it within two business days. Candidate Sweeney did not meet this requirement, only disclosing the expenditure when filing his June

17 version of the C-5 report, fifteen days later, a violation of the reporting requirement found in Mont. Code Ann. §13-37-226(1)(d).

Sufficiency Finding No. 2: There are sufficient facts to show Candidate Sweeney failed to report two pre-election campaign finance expenditures as required.

The Commissioner notes Candidate Sweeney reported the expenditure on his subsequent amended initial campaign finance report following the primary election.

Candidate Sweeney also had one general election expenditure that required disclosure within two business days- the October 16, 2020, expense to Pit Printers (FOF No. 9). Candidate Sweeney included this expenditure on a version of his C-5 report filed on October 19, 2020, meaning he disclosed it within two business days.² The allegation that candidate Sweeney failed to properly disclose this pre-election expenditure is hereby dismissed.

None of the other three expenditures highlighted by the complainant in this matter required disclosure within two business days because they did not actually occur between October 15 and the November 3 general election. While candidate Sweeney dated two expenditures to the Silver State Post October 19, according to the purpose information provided by candidate Sweeney the ads he had purchased began running on September 9 and September 17, respectively (FOF No. 9). Similarly, while he dated an expenditure to the Anaconda Leader October 26, the ads included in this expense began running

² October 16, 2020 fell on a Friday, meaning Monday, October 19 and Tuesday, October 20 represented the two business days candidate Sweeney was provided to report this expenditure.

on October 9 (FOF No. 10). The November 19, 2020 expenditure reported by candidate Sweeney on his November 22 C-7E filing also were ads included in that expense began running on September 17 (FOF No. 11).

44.11.502(2), ARM specifically notes 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” (emphasis added). Put simply, this means that candidate Sweeney would have been required to disclose this obligation at the time he agreed with the relevant vendor on each expenditure. The allegation that candidate Pierson did not properly disclose these expenditures within two business days is hereby dismissed.

As candidate Sweeney did not have to disclose any of these other four expenditure activities within two business days does not mean he reported them properly, however. The first of the two ‘October 19’ expenditures would have been incurred prior to September 9, 2020, while the second would have been incurred prior to September 17. Each should have been included as debts owed on the version of candidate Sweeney’s amended initial report filed on September 20, since it covered all activity through September 20; neither was included on this report (FOF No. 8). The ‘October 26’ expenditure would have been incurred prior to October 9 and should have been included as a debt owed on the version of candidate Sweeney’s report filed on October 19, as it covered all activity through October 19; it was not (FOF No. 9). Finally, the ‘November 19’ expenditure would have been incurred prior to September 17

and should have been included as a debt owed on the version of candidate Sweeney's report filed on September 20, which it was not (FOF No. 8).

Candidate Sweeney violated the requirements of 44.11.502(2), ARM when reporting each of these four expenditure activities.

Sufficiency Finding No. 3: There are sufficient facts to show Candidate Sweeney failed to properly report four campaign expenditures as debts when incurred.

Part Three: Reporting committee contributions

The final allegation raised against candidate Sweeney in the complaint is that he improperly reported receipt of committee contributions, specifically by reporting them as Individual contributors. Mont. Code Ann. §13-37-229(1) and 44.11.401(2), ARM lay out the requirements for reporting contributions received, with neither specifically stating that committee contributions must be reported separate from those contributions received from individuals. The allegation candidate Sweeney failed to properly report contributions is hereby dismissed.

The Commissioner notes as of November 22, 2020, candidate Sweeney amended his C-5 initial finance report to include all reported contributions received from political committees in the committee contributions section of the report rather than the individual contributors section.

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 Mark Sweeney 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).

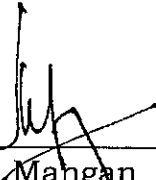
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124.

The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Mark Sweeney. 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. § 13-37-226 and 44.11.502(2), ARM. *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 17th day of March 2021.



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