

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Sweeney v. Pierson No. COPP 2020-CFP-055	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On November 2, 2020, Mark Sweeney of Philipsburg, MT filed a campaign practices complaint against Gordon Pierson of Deer Lodge. The complaint alleged that candidate Pierson failed to timely file campaign finance reports and failed to timely disclose pre-election expenditures as required.

SUBSTANTIVE ISSUES ADDRESSED

Proper and timely filing of candidate campaign finance reports.

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.)

Finding of Fact No. 2: Gordon Pierson filed a C-1 Statement of Candidate as a write-in candidate for SD 39 with the COPP on June 23, 2020. Candidates for election to public office participating in

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

Montana's 2020 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. 3: Candidate Pierson did not file a C-5 campaign finance report on or before August 20, 2020. (Commissioner's Records.)

Finding of Fact No. 3A: On August 23, 2020, candidate Pierson filed his write-in campaign's Initial C-5 campaign finance report, dated June 23, 2020 through August 20, 2020. (Commissioner's Records.)

Finding of Fact No. 4: Candidate Pierson did not file a C-5 campaign finance report on or before September 20, 2020. (Commissioner's Records.)

Finding of Fact No. 5: Candidate Pierson did not file a C-5 campaign finance report on or before October 20, 2020. (Commissioner's Records.)

Finding of Fact No. 5A: On November 5, 2020, candidate Pierson filed a Periodic C-5 campaign finance report, dated August 21, 2020 through October 20, 2020. This report disclosed one (1) debt incurred by candidate Pierson in an amount greater than \$100 dated after October 15, 2020, that had not been previously disclosed: a debt dated October 19, 2020, in the amount of \$1,424.00 owed to the Anaconda Leader, with Purpose of "3 half page color newspaper ads. "Write In Gordon Pierson for Senate District 39" on 10/9, 10/14, 10/16". This report was most recently Amended and filed on November 16, 2020. (Commissioner's Records.)

Finding of Fact No. 6: On November 5, 2020, candidate Pierson filed his write-in campaign's closing C-5 campaign finance report, dated October 21, 2020 through November 5, 2020. This report disclosed two (2) debts incurred by candidate Pierson in an amount greater than \$100 dated after October 15, 2020, that had not been previously disclosed: a debt dated November 4, 2020 in the amount of \$1,252.50 owed to the Anaconda Leader, with a Purpose of "Newspaper ad ½ page color ads on 10/21, 10/23, ¼ page color ad 10/28. "Write in Gordon Pierson for Senate District 39"" and one dated November 4, 2020, in the amount of \$936.00 owed to the Silver State Post, with a Purpose of "NEWSPAPER full page color ads 10/21, 10/28. "write in Gordon Pierson for Senate District 39"".

Also on that date candidate Pierson filed a C-7E Notice of Pre-Election Expenditures disclosing each of the two (2) debts owed to the Anaconda Leader and the debt owed to the Silver State Post. (Commissioner's Records.)

Finding of Fact No. 7: On November 6, 2020, candidate Pierson emailed the COPP his response to this complaint. The response took responsibility for his campaign's failure to timely file certain campaign finance reports, and stated that "I have done what I can to correct my errors". (Commissioner's Records.)

DISCUSSION

Timely filing of campaign finance reports

C-5 reports

The first allegation raised by the complaint is that candidate Pierson failed to timely file C-5 campaign finance reports. As a write-in candidate campaigning for election to Montana Senate District 39 in the General election, candidate Pierson was required to file C-5 campaign finance reports on or before August 20, September 20, October 20, and November 20, 2020, Mont. Code Ann. §13-37-226(1)(b). Candidate Pierson did not file a C-5 on or before August 20, 2020, instead filing this report on August 23, three (3) days late (FOF Nos. 3, 3A). Candidate Pierson did not file a C-5 on or before September 20, 2020; the dates that were to be covered by the September 20 report were included on a report filed by candidate Pierson on November 5, meaning the report is considered forty-six (46) days late (FOF Nos. 4, 5A). Candidate Pierson did not file a C-5 on or before October 20, 2020, instead filing this report on November 5, sixteen (16) days late (FOF Nos. 5, 5A). Candidate Pierson failed to timely file three C-5 periodic campaign finance reports, a Montana campaign finance violation.

Sufficiency Finding No. 1: There are sufficient facts to show Candidate Pierson failed to timely file three C-5 periodic campaign finance reports.

Notice of pre-election expenditures

The second allegation concerns candidate Pierson's disclosure of pre-election expenditures. The complaint includes copies of several newspaper ads supporting candidate Pierson. The complainant alleges candidate Pierson was required to disclose each expenditure within two business days but failed to do so.

As a candidate participating in Montana's general election, candidate Pierson was required to disclose expenditures made of \$100.00 or more between October 15 and November 3 (the date of the General election) within two business days, Mont. Code Ann. §13-37-226(1)(d). Candidate Pierson incurred two obligations after October 15 of \$100 or more that required this disclosure- ads purchased in the Anaconda Leader that began running on October 21, and ads purchased in the Silver State Post that began running on October 21 (FOF No. 6). Candidate Pierson failed to disclose either of these obligations within two business days, as required under Mont. Code Ann. §13-37-226(1)(d), a violation of Montana campaign finance law.

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

The Commissioner notes Candidate Pierson included the expenditures on his October 21-November 5 C-5 report, which was not filed until November 5.

Unlike the two obligations listed on candidate Pierson's October 21-November 5 report, the obligation owed to the Anaconda Leader disclosed by candidate Pierson on his August 21-October 20 C-5 report would not be subject to the provisions of Mont. Code Ann. §13-37-226(1)(d). This is because, according to the purpose information provided by candidate Pierson, the first ad included in this purchase began running on October 9, 2020 (FOF No. 5A).

As this obligation was incurred prior to October 15, it was not required to be disclosed within two business days under Mont. Code Ann. §13-37-226(1)(d). The allegation that candidate Pierson did not properly disclose this pre-election expenditure within two business days is hereby dismissed.

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 Gordon Pierson 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).

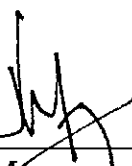
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Gordon Pierson. 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(1)(d), 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 12th day of March 2021.

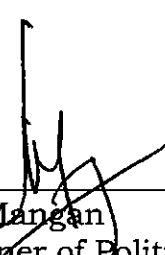


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DATED this 17th day of March 2021.



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