

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Ward v. Butcher and Bergstrom No. COPP 2020-CFP-019	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On May 29, 2020, John Ward of Helena, MT filed a campaign practices complaint against Ed Butcher and Lonny Bergstrom. The complaint alleged that Mr. Butcher and Mr. Bergstrom failed to register as a political committee and failed to report expenditures associated with the support for or opposition of candidates competing in Montana's Primary election.

SUBSTANTIVE ISSUES ADDRESSED

Filing statement of organization as a political committee, proper and timely filing of committee finance reports.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Neither Mr. Butcher or Mr. Bergstrom registered as a candidate for election to public office with the COPP or Montana's Secretary of State for Montana's 2020 Primary elections. Both individuals are residents of Fergus County. (Commissioner's Records.)

Finding of Fact No. 1A: Neither Mr. Butcher nor Mr. Bergstrom has registered a Political Committee with the COPP based on 2020 election activities. (Commissioner's Records.)

Finding of Fact No. 2: On July 9, 2020, Mr. Butcher and Mr. Bergstrom filed a Verified Complaint for Declaratory and Injunctive Relief through the United States District Court, District of Montana, Helena Division against Montana Attorney General Tim Fox and Commissioner of Political Practices Jeff Mangan. In this filing, Mr. Butcher and Mr. Bergstrom state that “Plaintiff Ed Butcher, a former state senator, and his friend, Plaintiff Lonny Bergstrom, gave Power Point presentations to several Republican organizations” and that “These presentations are almost entirely educational and consist of presenting facts to his audiences but, on occasion, also include snippets of support for, or opposition to, candidates for public office”. The filing states that Mr. Butcher handles most if not all of the speaking during each presentation, while Mr. Bergstrom runs the PowerPoint.

They go on to state that “The only expenses incurred by Sen. Butcher and Mr. Bergstrom in conducting these presentations are purchases by Sen. Butcher of fuel for the car they operated, food, and, on one occasion, lodging at La Quinta in Glendive, Montana”, and estimated the total cost of a trip to Glendive for such a presentation exceeded \$250 (\$281.75 for transportation, \$150 for lodging, and \$13.45 for food or meals). That presentation was given on March 9, 2020 at the invitation of the Dawson County Republican Central Committee, and “One slide in the Power Point presentation included a call for audience members to vote for Brandon Ler, Jerry Schillinger, and Steve Hinebauch, each of whom were local candidates seeking the Republican Party’s nomination for various seats in the Montana Legislature”.

Each presentation is made, Mr. Butcher and Mr. Bergstrom state, “on how Legistats operates, the data the system uses, and the conclusions that can be drawn from Legistats’ rankings”. Mr. Butcher operates the Legistats website (legislatorloyalty.com), a computer program that “ranks Republican legislators based on the number of times their votes deviate from those of the majority of the Republican caucus with regard to partisan bills” and assigns them a “Loyalty Index” grade. (Commissioner’s Records.)

Finding of Fact No. 3: In June of 2019, Mr. Butcher and Mr. Bergstrom gave a Legistats presentation to the North Valley Pachyderm club based in Stevensville.¹ Most slides were not visible on the videos of the presentation. In the presentation Mr. Butcher speaks of the “Republican wing” of the Democratic Party and lists Llew Jones as their leader. He further explains that Legistats was

¹ <https://www.youtube.com/channel/UC3TBz3lS6mKeJOL5ib6CWUw/videos>

designed for Republican primaries, so that Republican voters “know who they’re voting for”. (Commissioner’s Records.)

Finding of Fact No. 3A: Llew Jones filed a C-1 Statement of Candidate as a Republican candidate for HD 18 in Pondera County with the COPP on April 15, 2019. (Commissioner’s Records.)

Finding of Fact No. 4: A June 5, 2020 article published by the Helena Independent Record described a meeting of the Gallatin County Republican Central Committee, held on February 18 in Bozeman, where Mr. Butcher and Mr. Bergstrom gave a Legistats presentation. The article states that the presentation stated that Legistats gave both Bruce Grubbs and Walt Sales “F ratings” and that “The message was clear- Republicans in Montana need to clean the state House and Senate of the likes of Grubbs and Sales, and anyone else not completely loyal to the party, in the fast approaching June 2 Primary”.² The article also stated that “In Butcher’s presentation [Llew] Jones’ face was roughly Photoshopped over a cartoon rendering of a swamp animal”. (Commissioner’s Records.)

Finding of Fact No. 4A: Bruce Grubbs filed a C-1 Statement of Candidate as a Republican candidate for HD 68 in Gallatin County with the COPP on April 13, 2019; Walt Sales filed a C-1 Statement of Candidate as a candidate for SD 35 in Gallatin County with the COPP on June 14, 2019. (Commissioner’s Records.)

Finding of Fact No. 5: On April 4, 2020, a full video of a Legistats presentation given by Mr. Butcher and Mr. Bergstrom was uploaded to Youtube by Montana Viewpoint. The video was named “The Truth Behind the Solutions Caucus in Montana”.³ The video does not disclose where or when the presentation was given. An early slide depicts candidate Jones (using both name and likeness) as a “Swamp creature”, while candidates Eric Moore, Joel Krautter, and Nancy Ballance are depicted as his “ringleaders”. Candidate Nancy Ballance is referred to as the “real turncoat”. Speaking of candidate Krautter when explaining the Legistats grading process, they clearly state he is “stabbing the Republican leadership in the back”

At 20:56 of the presentation, Mr. Butcher credits the presentation and work performed by Mr. Bergstrom, including the statement “Lonnie’s done the research, he’s the guy who built this website, as

² https://helenair.com/news/state-and-regional/montana-conservatives-cite-gains-in-primary/article_aa6ed8ae-5938-5740-b968-d9f774b7ec2c.html.

³ <https://www.youtube.com/watch?v=rTfBmDFQmys>

you call it. He did a tremendous job digging material, digging information out”.

Late in the presentation, a slide states: “Concerned Republicans-The following candidates need your help defeating Jones’ Solution Faction and bring conservative principals back to Helena politics”. The next slide then names the following candidates: Amy Regier (HD 6); Jerry O’Neil (HD 7); David Dunn (HD 9); Mark Noland (HD 10); Derek Skees (HD 11); Mark French (HD 14); Sally Tucker (HD 21); Sheridan Buck (HD 26); Casey Knudsen (HD 33); Rhonda Knudsen (HD 34); Brandon Ler (HD 35); Bob Phalen (HD 36); Jerry Schillinger (HD 37); Amanda Scheidler (HD 39); Bryan Haysom (HD 63); Michele Binkley (HD 85); Ken Allen (HD 86); Jolena Bugli (HD 87); Jim Crews (HD 89); Carl Glimm (SD 2); Jeni Dodd (SD 10); Brad Molnar (SD 28); Gary Perry (SD 35); Theresa Manzella (SD 44); and Jim Buterbaugh (SD 38). The presentation also includes a slide discussing “solutions” regarding the Solutions Caucus, including “1. Elect more conservatives in the legislature, real republicans that follow the Party Platform” and “2. Elect a Republican Governor that will not put up with this”. The slide states that Republican Gubernatorial candidate Tim Fox “is endorsed by the Solutions Caucus”. (Commissioner’s Records.)

Finding of Fact No. 5A: Frederick ‘Eric’ Moore filed a C-1 Statement of candidate as a Republican candidate for HD 37 in Custer County with the COPP on January 30, 2020; Joel Krautter filed a C-1 Statement of Candidate as a Republican candidate for HD 35 in Richland County with the COPP on May 10, 2019; Nancy Ballance filed a C-1 Statement of Candidate as a candidate for SD 44 in Ravalli County with the COPP on April 19, 2019; Tim Fox filed a C-1 Statement of Candidate as a Republican candidate for Montana Governor with the COPP on April 3, 2019. (Commissioner’s Records.)

Finding of Fact No. 6: On May 18, 2020, full video of a Legistats presentation given by Mr. Butcher and Mr. Bergstrom in Kalispell was uploaded as a Facebook video to the Free Montana Project: 2020 Elections Facebook page (<https://www.facebook.com/groups/1223649384316739>). See post link at <https://www.facebook.com/groups/1223649384316739/permalink/3456771721004483/> Identified as a Cindi Hamilton post on May 18, 2020 to the Facebook group Free Montana Project: 2020 Elections. This presentation included a slide depicting candidates Ballance, Krautter, and Frank Garner as “Swamp Creatures”, with candidate Jones as their ringleader, with a statement “Drain the

Helena swamp”. The video link was provided by Mark French, ‘Red Lion Kalispell, Women’s Republicans’ dated May 18, 2020 at <https://www.facebook.com/mark.french.3511/videos/853047041881965>.

At approximately the 47:00 mark of this video, Mr. Butcher and Mr. Bergstrom are asked by an audience member if their Legistats presentation is available on a website. Mr. Butcher asks Mr. Bergstrom “Lonnie, where we at?” in responding to that question. Mr. Bergstrom states that the presentation has been filmed and is available on Facebook and YouTube as a video. “We did that during the COVID virus, and this I think is number 14, 15 of these” (these being Legistats presentations) he states. He also indicated Legistats presentations would be available directly on the Legislator Loyalty (Legistats) website “shortly”. (Commissioner’s Records.)

Finding of Fact No. 6A: Frank Garner filed a C-1 Statement of Candidate as a candidate for HD 7 in Flathead County with the COPP on August 9, 2019. (Commissioner’s Records.)

Finding of Fact No. 7: Montana’s Primary election was held on June 2, 2020. According to the elections calendar maintained by Montana’s Secretary of State’s office, absentee ballots needed to be made available for voting in person no later than May 4, 2020.⁴ (Commissioner’s Records.)

Finding of Fact No. 7B: On March 25, 2020, Montana Governor Steve Bullock issued a “Directive Implementing Executive Orders 2-2020 and 3-2020 and providing for measures to implement the 2020 June primary elections safely”.⁵ The Directive permitted “counties, at their local discretion, to expand access to mail voting procedures *and* early voting” and that “counties in Montana are permitted, but not required, to conduct the June 2 primary election under the mail ballot provisions of Title 13, Chapter 19” of the Montana Code Annotated. All 56 Montana counties chose to expand access to mail ballot elections after the Directive was issued.⁶

Under the Governor’s Directive of March 25, 2020, all Montana counties opted to conduct a mail ballot election, the initiation of voting would be May 8, 2020, when the official ballots were mailed to voters. Using the mail ballot initiation of voting date of May 8,

⁴ <https://sosmt.gov/wp-content/uploads/2020-Election-Calendar.pdf>

⁵ <http://governor.mt.gov/Portals/16/Directive%20on%20Elections.pdf?ver=2020-03-26-102626-610>

⁶ <https://sosmt.gov/wp-content/uploads/2020-Election-Calendar.pdf>

2020, the COPP determined that March 9, 2020 was the date the electioneering period began for the June 2, 2020 Montana primary election. (Commissioner's Records.)

Finding of Fact No. 8: The Legislator Loyalty website contains a copyright to Legistats, Inc. "The information on this website is © Legistats, Inc 2020. No information, formulae, or content can be reproduced without written permission. All rights reserved." (Commissioner's Records.)

Finding of Fact No. 9: Legistats, Inc. is a Montana corporation, Active Good Standing status, formation date 12/01/2009, and last Annual Report filed 4/4/2020. (Montana Secretary of State.)

DISCUSSION

This complaint alleges that, by travelling the state to give presentations that advocate for and against certain Republican candidates running in Montana's Primary election, Mr. Butcher and Mr. Bergstrom formed a political committee with registration and reporting requirements. The complaint contends that Mr. Butcher and Mr. Bergstrom failed to properly register this political committee with the COPP and failed to file periodic finance reports disclosing the committee's expenditure activities.

Background

Mr. Butcher and Mr. Bergstrom have admitted (via a lawsuit filed in US District Court against MT Attorney General Tim Fox and Commissioner of Political Practices Jeff Mangan) that they were both involved in giving "Power Point presentations to several Republican organizations" (FOF No. 2). Mr. Butcher and Mr. Bergstrom stated that these presentations were based on the Legistats website (legislatorloyalty.com), a computer program that they say "ranks Republican legislators based on the number of times their vote deviates

from the Republican caucus” on what they label as partisan bills to assign them a “Loyalty Index” grade. Both Mr. Butcher and Mr. Bergstrom state they reside in Fergus County.

While no presentations beyond the March 9 event in Glendive were noted by Mr. Butcher or Mr. Bergstrom in any correspondence to the COPP or in filings with the United States District Court in Helena, the COPP’s investigation into this complaint determined that no fewer than three additional presentations were given: one in June of 2019 to the North Valley Pachyderm Club (a political organization based in Stevensville); one on February 18, 2020 in Bozeman; and one on May 18, 2020 in Kalispell⁷ (FOF Nos. Nos. 3, 4, 6). Video of another Legistats presentation given at an unknown time and location was also uncovered by the COPP (FOF No. 5).

Each of these five presentations will be considered in analyzing this complaint. Chronologically, the first known Legistats presentation was given by Mr. Butcher and Mr. Bergstrom to the North Valley Pachyderm Club (June 2019). It was followed by similar presentations given in Bozeman (February 2020), Glendive (March 2020), and Kalispell (May 2020). The presentation with unknown date and location will be considered last.

Legistats website

Each presentation done by Mr. Butcher and Mr. Bergstrom is based on the Legistats website, www.legislatorloyalty.com. As described by Mr. Butcher

⁷ During the question and answer of the May 18, 2020 presentation, Mr. Bergstrom acknowledged conducting as many as 15 of the presentations (FOF No. 6)

and Mr. Bergstrom, Legistats assigns a “Loyalty Index” to all Republicans serving in the Montana Legislature based on how they vote on certain “partisan” bills. Mr. Butcher and Bergstrom note Legistats was created by Mr. Butcher’s son, who operated it until his death in 2017. Mr. Butcher assumed its operation at that time. Mr. Butcher credits Mr. Bergstrom for research, building the website, and the presentation (FOF No. 5).

Like a school grading system, an ‘A’ grade is positive (“considered exception party loyalty”), while an ‘F’ is severely negative (“basically a Republican that the Democrats can consistently count on to swing partisan votes”). The site includes these rankings for each of the 2005, 2007, 2009, 2011, 2013, 2015, 2017, and 2019 Montana Legislatures. The website contains a copyright of ©Legistats, Inc. (FOF No. 8). Legistats, Inc. is a Montana corporation in good standing (FOF No. 9). No other information, statements, or postings can be found on the website.

Costs associated with the website would include domain registration, hosting, and ongoing maintenance. In this matter, as expressed by Mr. Butcher, additional costs include research and development of the PowerPoint presentation.

North Valley Pachyderm Club presentation

In June of 2019, Mr. Butcher and Mr. Bergstrom gave a Legistats presentation to the North Valley Pachyderm Club, video of which was posted on Representative Theresa Manzella’s YouTube channel (FOF No. 3). Most of the specific slides were not visible on the video of the presentation, but they clearly

identify Rep. Llew Jones as the leader of the “Republican wing” of the Democratic Party and state that Legistats was designed for use in Republican Primary elections, so that Republican voters “know who they’re voting for”. Llew Jones ran as a Republican candidate for election in Montana’s 2020 Primary election (FOF No. 3A).

Mr. Butcher and Mr. Bergstrom would have incurred expenses in travelling to and from this presentation. Neither individual resides in or around Stevensville, Montana, where the North Valley Pachyderm Club is based. Utilizing the figures provided by Mr. Butcher and Mr. Bergstrom in calculating their Glendive expenses, COPP estimates transportation cost alone for this presentation at approximately \$346.15 (Attachment A).

Bozeman presentation

According to a June 5, 2020 Helena Independent Record newspaper article written by Holly Michels, Mr. Butcher and Mr. Bergstrom gave a Legistats presentation in Bozeman in February of 2020 (FOF No. 4). In the presentation, “Jones’ face was roughly photoshopped over a cartoon rendering of a swamp animal” the article states, and “In Butcher’s sights that night were two targets well within shooting range...state Reps. Bruce Grubbs and Walt Sales. Both Bozeman Republicans had ‘F’ grade” from Legistats. “The message was clear- Republicans in Montana needed to clean the state House and Senate of the likes of Grubbs and Sales, and anyone else not completely loyal to the party, in the fast-approaching June 2 Primary”. Bruce Grubbs and Walt Sales

both ran as Republican candidates for election in Montana's Primary election (FOF No. 4A).

As residents of Fergus county, as opposed to Bozeman or Gallatin county (or nearby Park county or Madison county, for that matter), Mr. Butcher and Mr. Bergstrom would have incurred expenses associated with their travel to this event. Utilizing the figures provided by Mr. Butcher and Mr. Bergstrom in calculating their Glendive expenses, COPP estimates transportation cost alone for this presentation at approximately \$187.45 (Attachment A).

Glendive presentation

In their lawsuit against AG Fox and Commissioner Mangan, Mr. Butcher and Mr. Bergstrom stated they made a Legistats presentation in Glendive on March 9, 2020 (FOF No. 2). They state that one slide of this specific presentation was a call "for audience members to vote for Brandon Ler, Jerry Schillinger, and Steve Hinebauch, each of whom were local candidates seeking the Republican Party's nomination for various seats in the Montana Legislature".

Mr. Butcher and Mr. Bergstrom stated they had expenditures associated with this presentation, specifically food, travel, and lodging (FOF No. 2). They estimated they expended a total of \$445.20 combined on travel (\$281.75), lodging (\$75 each, \$150 total) and food (\$13.45) (FOF No. 2).

Kalispell presentation

Mr. Butcher and Mr. Bergstrom gave another Legistats presentation in Kalispell on May 18, 2020, with video of this presentation made available by an

individual attendee via Facebook Live (FOF No. 6). The presentation was titled 'Drain the Helena Swamp', and included an image of candidate Jones as the ringleader of the 'swamp creatures'- Nancy Ballance, Joel Krautter, and Frank Garner, each of whom was a candidate for election in Montana's Primary election (FOF No. 6A). During this presentation, Mr. Bergstrom states that this was the 14th or 15th such presentation he and Mr. Butcher had given.

As residents of Fergus county, Mr. Butcher and Mr. Bergstrom would have incurred travel expenses to Kalispell. Utilizing the figures provided by Mr. Butcher and Mr. Bergstrom in calculating their Glendive expenses, COPP estimates transportation cost alone for this presentation at approximately \$382.95 (Attachment A).

Presentation of unknown date and location

The COPP's investigation into this complaint found video of a Legistats presentation distinct from those previously described here where the time and location could not be determined (FOF No. 5). This presentation again depicts candidate Jones as the "ringleader" of the swamp creatures, in this case candidates Eric Moore, Joel Krautter, and Nancy Ballance (FOF Nos. 5, 5A). Candidate Ballance is specifically referred to in this presentation as the "real turncoat" and that candidate Krautter is "stabbing the Republican leadership in the back". The presentation also contained a slide telling the audience that "The following candidates need your help defeating Jones' Solution Faction And bring conservative principals back to Helena politics", which then names

twenty-five (25) Republican candidates for election participating in Montana's Primary election (FOF No. 5).

Analysis

Mont. Code Ann. §13-1-101(31) defines a political committee as:

(31) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

44.11.202(3)(b), ARM, clarifies that a political committee is not formed if an expenditure, regardless of type, is \$250.00 or less.

"Support or oppose" are defined by §13-1-101(50), MCA, as:

(50) "Support or oppose", including any variations of the term, means:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties,

or the passage or defeat of one or more ballot issues submitted to voters in an election; or

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

Clearly, Mr. Butcher and Mr. Bergstrom together represent “a combination of two or more individuals”, and each participated in all discovered Legistats presentations (FOF No. 2). Similarly, each Legistats presentation supported or opposed candidates for election in Montana.

Consider:

- North Valley Pachyderm Club presentation- the intention is clearly to foment opposition to Rep. Llew Jones by insisting that he is not a ‘true’ member of the Republican party. Rep. Jones had already filed a C-1 Statement of Candidate as a candidate for election to public office in Montana when this presentation was given. If the intention of the presentation was not to “oppose” candidate Jones, his depiction as the leader of the ‘Republican wing of the Democratic party’ would not have been included. By including these statements, no “reasonable interpretation” of this presentation exists other than it serving as a call for the defeat of candidate Jones, §13-1-101(50)(b), MCA.
- Bozeman presentation- the reason for labeling candidate Jones a ‘swamp creature’ and directing negativity at the ‘conservative bona fides’ of candidates Grubbs and Sales was to depict them as ‘fake’ members of the Republican party unworthy of voter support. Holly Michels sums it up well by writing of the meeting “The message was clear- Republicans in Montana need to clean the state House and Senate of the likes of Grubbs and Sales, and anyone else not completely loyal to the party, in the fast approaching June 2 Primary”. If the presentation was not intended to oppose candidates Jones, Grubbs, and Sales, they would not have been negatively depicted or otherwise mentioned at all. By

inclusion, these portions of presentation leave it with no “reasonable interpretation” other than calling for their defeat and the election of candidates Legistats favors, §13-1-101(50)(b), MCA.

- Glendive presentation- Mr. Butcher and Mr. Bergstrom have openly admitted the Glendive presentation included a slide encouraging the audience to vote for candidates Brandon Ler, Jerry Schillinger, and Steve Hinebauch. This is a direct admission that the presentation “supports” these candidates as the term is defined under §13-1-101(50)(a), MCA.
- Kalispell presentation- the depiction of candidates Nancy Ballance, Joel Krautter, and Frank Garner as “swamp creatures”, with candidate Jones as their leader, in a presentation described as “Drain the Helena Swamp” cannot reasonably be interpreted as anything other than calling for the defeat of those candidates in the Primary election, §13-1-101(50)(b), MCA. If the presentation was not meant to oppose candidates Ballance, Krautter, and Garner there is no reasonable explanation for the depiction of these candidates in such a negative manner.
- Presentation of unknown time and place- The final known Legistats presentation contains a series of slides naming twenty-five Republican candidates that “need your help defeating Jones’ Solution Faction and bring conservative principals back to Helena politics”. No reasonable interpretation of this call other than that the audience should support the candidates noted, §13-1-101(50)(b), MCA.

The term expenditure is defined by §13-1-101(18), MCA (emphasis added):

(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.

Mr. Butcher and Mr. Bergstrom admitted to incurring monetary expenditures in excess of \$250.00 to travel to Glendive to give a Legistats presentation (FOF No. 2). As residents of Fergus county, Mr. Butcher and Mr. Bergstrom may have incurred additional travel and lodging expenses for their North Valley Pachyderm Club (based in Stevensville), Bozeman, and Kalispell presentations.

As the purpose of each known Legistats presentation was to support certain Republican candidates for election while opposing others, any travel and lodging costs born by Mr. Butcher and Mr. Bergstrom must be considered expenditures under Mont. Code Ann. §13-1-101(18)(a). Mr. Butcher and Mr. Bergstrom each expended something of value (money) to finance their participation in activities meant “to support or oppose candidates” for election in Montana in travelling to Stevensville, Bozeman, Glendive, and Kalispell. Additionally, both the costs associated with the LegislatorLoyalty.com website

and the 1 to 1.5 hour PowerPoint presentation/s can be considered additional reportable expenses.

Committee Registration

The Disclose Act passed by the 2015 Legislature of Montana requires entities who engage in such election activity register, report and disclose to the people of Montana with the COPP. Because Mr. Butcher and Mr. Bergstrom represent a combination of two or more individuals that made an expenditure of more than \$250.00 to support or oppose candidates for election, they would be considered a political committee under §13-1-101(31), MCA and 44.11.202(3)(b), ARM. Mr. Bergstrom and Mr. Butcher became a political committee on or about June 7, 2019, the date they gave their presentation to the North Valley Pachyderm Club (Mangan Declaration, 6-11). Using the travel costs provided by Mr. Butcher and Mr. Bergstrom for the Legistats presentation given in Glendive, transportation alone for this trip would exceed \$250.00 (Attachment A). This is the earliest known Legistats presentation⁸ given by Mr. Butcher and Mr. Bergstrom.

Mont. Code Ann. §13-37-201(2)(b) requires that a political committee file a C-2 Statement of Organization with the COPP “within five days after it makes an expenditure”. Since Mr. Butcher and Mr. Bergstrom made their first known reportable expenditure no later than June 7, 2019, they were required to file a Statement of Organization on or before June 12, 2019. Neither Mr. Butcher or

⁸ Mr. Bergstrom acknowledged conducting as many as 15 of the presentations (FOF No. 6)

Mr. Bergstrom registered a political committee with the COPP on or before that date, or at any time since (FOF No. 1A). By failing to register their political committee with the COPP, Mr. Butcher and Mr. Bergstrom have violated the requirements of §13-37-201(2)(b), MCA.

Finance reports

Under the provisions of §13-37-225, MCA, all registered political committees in the State of Montana are required to periodically file finance reports disclosing their contribution and expenditure activity. §13-37-226(2), MCA, lays out the dates these reports are due:

(2) Except as provided in 13-37-206, 13-37-225(3), and 13-37-227, a political committee shall file reports required by 13-35-225(1)(a) containing the information required by 13-37-229, 13-37-231, and 13-37-232 as follows:

(a) quarterly, due on the 5th day following a calendar quarter, beginning with the calendar quarter in which the political committee receives a contribution or makes an expenditure after an individual becomes a candidate or an issue becomes a ballot issue, as defined in 13-1-101(6)(b), and ending in the final quarter of the year preceding the year in which the candidate or the ballot issue appears on the ballot;

(b) the 30th day of March, April, May, June, August, September, October, and November in the year of an election in which the political committee participates;

(c) within 2 business days of receiving a contribution, except as provided in 13-37-232, of \$500 or more if received between the 25th day of the month before an election in which the political committee participates and the day of the election; and

(d) within 2 business days of making an expenditure of \$500 or more that is made between the 25th day of the month before an election in which the political committee participates and the day of the election;

(e) quarterly, due on the 5th day following a calendar quarter, beginning in the calendar quarter following a year of an election in which the political committee participates until the political committee files a closing report as specified in 13-37-228(3); and

(f) as provided by subsection (3).

Because Mr. Butcher and Mr. Bergstrom first became a political committee on June 7, 2019, their initial committee finance report disclosing contributions received and expenditures made was due to the COPP on October 5, 2019, §13-37-226(2)(a), MCA. An additional quarterly report was due on January 5, 2020, §13-37-226(2)(a), MCA. Required Periodic finance reports were due on March 30, April 30, May 30, June 30, and August 30 of 2020, §13-37-226(2)(b), MCA. Mr. Butcher and Mr. Bergstrom have not filed any finance reports with the COPP disclosing their contribution or expenditure activity in conjunction with the Legistats presentations or the legislatorloyalty.com website (FOF No. 1A).

FINDINGS

The Commissioner finds Edward Butcher and Lonnie Bergstrom formed a political committee when they initiated statewide presentations that required travel to present their legislatorloyalty.com website and application in the support of declared candidates and the opposition of declared candidates. Mr. Butcher and Mr. Bergstrom failed to register as a political committee and failed to report contribution and expenditure activity as required by Montana campaign practice law.

Sufficiency Finding No. 1: Edward Butcher and Lonnie Bergstrom failed to register as a political committee with 5 days of June 7, 2019.

Sufficiency Finding No. 2: Edward Butcher and Lonnie Bergstrom failed to report political committee contribution and expenditure activity from 2019 and 2020

The Commissioner finds Edward Butcher and Lonnie Bergstrom failed to file as a political committee and submit committee finance reports as required by Montana campaign practice law. Mr. Butcher and Mr. Bergstrom are ordered to file as a political committee and report committee contribution and expense activity from the date reportable election was initiated. These filing must occur no later than October 15, 2020.

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 Edward Butcher and Lonnie Bergstrom 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 Edward Butcher and Lonnie Bergstrom. Because of the nature of the, this matter is referred to the County Attorney of Lewis & 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. §§ 13-37-201(2)(b), 225, 226(2). *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 September, 2020.



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

Estimated Travel Expenses, Legistats Presentation

Four (4) known Legistats presentations were given by Mr. Butcher and Mr. Bergstrom: June 2019 in the Stevensville area; February 18 2020 in Bozeman; March 9 2020 in Glendive; and May 18 2020 in Kalispell. While more presentation may have been given, their time and location cannot be confirmed with the evidence publicly available.

Travel Expenses

-Stevensville Presentation:

Lewistown to Stevensville is approximately 301 miles each way (602 round trip)
602 miles x \$.575/mile (IRS reimbursement rate mentioned by Plaintiffs for Glendive cost) =
\$346.15

-Bozeman Presentation:

Lewistown to Bozeman is approximately 163 miles each way (326 round trip)
326 miles x \$.575/mile (IRS reimbursement rate mentioned by Plaintiffs for Glendive cost) =
\$187.45

-Glendive Presentation: estimated at \$281.75 by Plaintiffs Butcher and Bergstrom

-Kalispell Presentation:

Lewistown to Kalispell is approximately 333 miles each way (666 round trip)
666 miles x \$.575/mile (IRS reimbursement rate mentioned by Plaintiffs for Glendive cost) =
\$382.95

\$346.15 (Stevensville) + \$187.45 (Bozeman) + \$281.75 (Glendive) + \$382.95 (Kalispell) = \$1,198.30

