

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Ward v. Tucker  No. COPP 2020-CFP-021	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 Sally Tucker of Black Eagle. The complaint alleged that candidate Tucker failed to disclose certain campaign expenditures on financial reports filed with the COPP.

**SUBSTANTIVE ISSUES ADDRESSED**

Properly reporting a debt or obligation on a campaign finance report.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Sally Tucker filed a C-1 Statement of Candidate as a candidate for HD 21 in Cascade County with the COPP.<sup>1</sup> (Commissioner's Records).

Finding of Fact No. 2: An agreement for radio ads to be run on KQDI-AM in the Great Falls area was signed by both candidate Tucker and a representative of the radio station. The signatures were dated May 14, 2020. A copy of the sales order between candidate Tucker and KQDI-AM, showed the agreement as being for candidate Tucker to spend \$299.00 to run radio ads on the station between the dates of May 20, 2020 and June 1, 2020. (Commissioner's Records).

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<sup>1</sup> The Date Filed field was left blank on candidate Tucker's original filing.

Finding of Fact No. 3: On May 20, 2020, candidate Tucker timely filed a periodic C-5 campaign finance report, dated April 16, 2020 through May 15, 2020. Candidate Tucker did not disclose making any campaign expenditures or owing any debts on this report. (Commissioner's Records).

Finding of Fact No. 4: On May 22, 2020, candidate Tucker filed a C-7E Notice of Pre-Election Expenditures financial report, dated May 18, 2020 through May 19, 2020. This C-7E report disclosed candidate Tucker as making an expenditure of \$299.00 to KQDI-AM radio for radio ads on May 19, 2020. (Commissioner's Records).

Finding of Fact No. 5: On June 3, 2020, candidate Tucker faxed the COPP her official response to this Complaint. Candidate Tucker's response included both the agreement for radio ads and Sales Order originally provided by the Complainant. Candidate Tucker's response added a copy of a receipt received from STARADIO COPRORATION (KQDI-AM's parent company) indicating that candidate Tucker made payment in the amount of \$299.00 to KQDI-AM for the radio ads on May 19, 2020. (Commissioner's Records).

## **DISCUSSION**

The Complaint alleges that candidate Tucker failed to properly report campaign expenditure activity on finance reports filed with the COPP. Specifically, it alleges that candidate Tucker did not disclose her campaign's purchase of radio advertisements on the proper C-5 report.

Candidate Tucker signed an agreement with the radio station KDQI-AM for the purchase of radio ads on May 14, 2020 (FOF Nos. 2, 5). Candidate Tucker did not pay for this activity at the time of agreement, instead providing payment on May 19, 2020 (FOF No. 5). By doing so, candidate Tucker incurred a debt to be reported as such, Mont. Code Ann §13-37-229(2)(a)(vi), "the amount and nature of debts and obligations owed...".

44.11.502(2), ARM, states that “An obligation to pay for a campaign **expenditure is incurred on the date the obligation is made, and shall be reported as a debt** of the campaign until the campaign pays the obligation by making an expenditure” (emphasis added). In this matter, candidate Tucker incurred a campaign obligation on May 14, 2020, by signing the agreement with KDQI-AM. Candidate Tucker was required to report the radio ads as a debt incurred by the campaign on May 14, 2020. The debt would have been required to be included on candidate Tucker’s May 20 periodic C-5 report. Candidate Tucker did not report the campaign owing any debts on her April 16-May 15 C-5 finance report (FOF No. 3). Candidate Tucker did disclose the campaign’s purchase of radio ads on the date payment had been provided, in this matter on a May 22, 2020 C-7E report (FOF No. 4).

Sufficiency Finding No. 1: Candidate Tucker failed to properly report a debt in the amount of \$299.00, incurred on May 14, 2020 on her periodic C-5 campaign finance report, dated April 16, 2020 through May 15, 2020.

By failing to report a campaign obligation owed on May 14, 2020, as a debt owed by the campaign on the relevant campaign financial report, candidate Tucker failed to meet the requirements of Mont. Code Ann. §13-37-229(2)(a)(vi), a campaign finance violation. The Commissioner notes candidate Tucker disclosed the expenditure on May 22, 2020 at the time payment was made.

The Commissioner reminds all candidates, candidate’s campaigns, and committees that they must report contracted or obligated expenditure activities

as a debt on the date the expense was incurred when payment is not made at the time of obligation.

### **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 Sally Tucker 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 Sally Tucker. Because of the nature of the violation, this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. *Id.*, at (1). Should the County Attorney waive the right to prosecute (*id.*, at (2)) or fail to prosecute within 30 days (*id.*, at (1)) this Matter returns to this Commissioner for possible prosecution.

Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that the Matter is waived back, this Finding and Decision does not necessarily lead to civil prosecution as the Commissioner has discretion (“may then initiate” *see id.*) in regard to a legal action. Instead, most of the Matters decided by a Commissioner are resolved by payment of a negotiated fine. In setting that fine the Commissioner will consider matters affecting mitigation, including the cooperation in correcting the issue when the matter was raised in the Complaint.

While it is expected that a fine amount can be negotiated and paid, in the event that a fine is not negotiated and the Matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of campaign practice law, including those of Mont. Code Ann. § 13-37-229(2)(a)(vi). *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 20 day of July 2020.



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