

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Rappleye v. Asher No. COPP 2021-CFP-011	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On April 22, 2021, Courtney Rappleye of Kalispell, Montana, filed a campaign practices complaint against Heather Asher, also of Kalispell. The complaint alleges that candidate Asher failed to properly register as a candidate with the COPP despite participating as a candidate for election in a 2021 school trustee election.

SUBSTANTIVE ISSUES ADDRESSED

The proper and timely filing as a candidate with the Commissioner of Political Practices office.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Kalispell School District #5 will hold a school trustee election on May 4, 2021. (Commissioner’s Records.)

Finding of Fact No. 2: On April 12, 2021, as part of the COPP’s investigation into separate complaints, Kalispell School District #5’s Director of Business Services Gwyn Anderson emailed the COPP copies of “all the Declaration of Intent and Oath of Candidacy forms that were filed” with Kalispell School District #5 “for the May 2021 trustee election”. Included was a copy of a Declaration of Intent and Oath of Candidacy for Trustee Candidates signed by

Heather Asher and dated March 5, 2021, signaling her participation as a candidate in the Kalispell School District's May 4, 2021 school trustee election. (Commissioner's Records.)

Finding of Fact No. 3: On March 18, 2021, Heather Asher filed a C-1A Statement of Candidate as a candidate for election to a school trustee position in Kalispell School District's May 4, 2021 election with the COPP. (Commissioner's Records.)

DISCUSSION

The complaint alleges Heather Asher failed to timely file a statement of candidate with the COPP as candidate for a 2020 school trustee election.

Mont. Code Ann. §13-37-201 requires that candidates seeking election to public office register as such with the COPP "within 5 days after becoming a candidate". While some school trustee candidates are exempted from this requirement under §13-37-206(1), Kalispell School District #5 would not be among the exempted districts. School trustee candidates in Kalispell School District #5 would need to register as a candidate with the COPP under applicable Montana campaign finance law.

Heather Asher became a candidate in the Kalispell School District #5's May 4, 2021 school trustee election on March 5, 2021 by filing a Declaration of Intent and Oath of Candidacy for Trustee Candidates with the school district (FOF No. 2). Under Mont. Code Ann. §13-37-206(1), candidate Asher was required to file a Statement of Candidate with the COPP for this election on or before March 10, 2021, five days after becoming a candidate. Candidate Asher filed a Statement of Candidate with the COPP on March 18, 2021 (FOF No. 3).

Candidate Asher violated the requirements of Mont. Code Ann. §13-37-206(1) by failing to file a Statement of Candidate with the COPP within five days.

Sufficiency Finding No. 1: Candidate Asher failed to file his Statement of Candidate with the COPP within 5 days of becoming a 2021 candidate for Kalispell School District #5 Trustee as required by Montana law.

The Commissioner finds candidate Asher failed to timely file a C-1A Statement of Candidate with the COPP indicating her candidacy for a 2021 school trustee position, a Montana campaign practices violation.

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 candidate Asher 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).

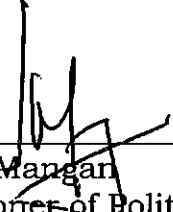
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of candidate Asher. 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 Heather 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. *See id.*, at § 13-37-128. Full due process is provided to the alleged violator because the district court Heather consider the matter *de novo*.

DATED this 27th day of April 2021.



Jeffrey A. Mangan
Commissioner of Political Practices
Of the State of Montana
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Helena, MT 59620
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DECLARATION OF INTENT AND OATH OF CANDIDACY FOR TRUSTEE CANDIDATES

To the School District Clerk of School District No. 5, Flathead County, State of Montana:

Filing for the office of School District Trustee: For a 3-year term at the Annual Regular School District Election to be held on the 4th day of May, 2021.

Candidate Name (Print, as it should appear on the ballot):

Heather Asher

Mailing address: 118 Snowcrest Ct.

City and State: Kalispell, MT Zip Code: 59901

Residence address: 118 Snowcrest Ct.

City and State: Kalispell, MT Zip Code: 59901

Contact Phone: 406-249-8240 Email Address: mommie@icloud.com

I hereby affirm that I possess, or will possess, within the constitutional and statutory deadlines, the qualifications prescribed by the Constitution and law of the United States and the State of Montana.

DATED this 5 day of March, 2021

[Signature]
(Signature of Candidate)

Candidate must sign and acknowledge this Declaration of Intent before a Notary Public, if mailed, or before the Election Administrator or Deputy, if delivered in person.

State of Montana, County of Flathead

Signed and sworn to before me this 5 day of March, 2021, by Heather Asher
Printed Name of Candidate

[Signature]
Signature of Notary or Public Official

Beth F. Kornick
Printed name of Notary or Public Official

Notary Public for the State of Montana (include stamp/seal)

Residing at: Somers

My Commission Expires: July 16, 2024

