

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Rutherford v. Beaver No. COPP 2021-CFP-015	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION; DISMISSAL OF ALLEGATIONS AS FRIVOLOUS
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On June 3, 2021, Darryl Rutherford of Helena, Montana filed a campaign practices complaint against Terry Beaver, also of Helena. The complaint alleges that candidate Beaver failed to timely register as a candidate with the COPP despite participating as a candidate for election in a 2021 school trustee election.

SUBSTANTIVE ISSUES ADDRESSED

Timely filing of required campaign finance and practices records.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Helena Public Schools held a school trustee election on May 4, 2021. (Commissioner's Records).

Finding of Fact No. 2: On June 7, 2021, as part of the COPP's investigation into this complaint, Lewis & Clark County Elections Supervisor Audrey McCue emailed the COPP a copy of a Declaration of Intent and Oath of Candidacy filed with the county elections office by candidate Beaver and dated March 11, 2021, signaling his participation as a candidate in Helena Public Schools' May 4, 2021 school trustee election. Elections Supervisor McCue additionally states in the email that "Since we [the Lewis & Clark County Elections department] run the Helena School District's

election, we accept filing forms...I received a copy of Mr. Beaver's filing form on Friday, March 12...I'm not sure if the school district office received it on March 11 or March 12". (Commissioner's Records).

Finding of Fact No. 3: On April 1, 2021, Terry Beaver filed a C-1A Statement of Candidate as a candidate for election to a school trustee position in Helena Public Schools' May 4, 2021 election with the COPP. Candidate Beaver filed as a 'B' box candidate, certifying that his combined contributions and expenditures total would not exceed \$500.00. (Commissioner's Records).

DISCUSSION

The complaint argues that despite participating as a candidate for election to school trustee positions in Helena Public Schools' May 4, 2021 school trustee election, candidate Beaver did not timely file a statement of candidate with the COPP.

Mont. Code Ann. §13-37-201 requires that candidates seeking election to public office register with the COPP "within 5 days after becoming a candidate". While some school trustee candidates are exempted from this requirement under Mont. Code Ann. §13-37-206(1), neither the Helena Elementary or Helena High School districts would not be among the exempted districts. Candidates for election to a trustee position in Helena Public Schools are required to register with the COPP, Mont. Code Ann. §13-37-201.

In this matter, Lewis & Clark County Elections Supervisor Audrie McCue confirmed that Terry Beaver had registered with the county elections department as a candidate for election to a school trustee position in 2021 (FOF No. 2). By filing a "declaration" of candidacy with the local election administrator (the Lewis & Clark County Elections department) for Helena

Public Schools' 2021 school trustee election, Terry Beaver became a 2021 candidate as that term is defined, Mont. Code Ann. §13-1-101(8).

Terry Beaver became a candidate in Helena Public Schools' May 4, 2021 school trustee election on March 12, 2021 by filing a Declaration of Intent and Oath of Candidacy for Trustee Candidates with the Lewis & Clark County Elections department (FOF No. 2). Under Mont. Code Ann. §13-37-206(1), candidate Beaver was required to file a Statement of Candidate with the COPP for this election on or before March 17, 2021, five days after becoming a candidate. Candidate Beaver filed a Statement of Candidate with the COPP on April 1, 2021, later than five days after becoming a candidate (FOF No. 3).

Sufficiency Finding No. 1: Candidate Beaver failed to timely file the required Statement of Candidate record with the COPP within 5 days of becoming a candidate for School District Trustee.

There are sufficient facts to show candidate Beaver 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, a Montana campaign finance and practice violation.

Additional Allegations

The complainant in this matter presented several additional alleged violations of campaign finance and practices law by candidate Beaver. Each of these additional alleged violations were dismissed by the COPP at the time of receipt.

The complaint alleges several violations of campaign finance and practices law by candidate Beaver in election years 2003, 2006, 2012, and

2015. The election years where these alleged violations occurred exceeds the time school election candidates are required to preserve campaign records under Mont. Code Ann. §13-37-208(3), and therefore exceed the relevant statute of limitations. All alleged allegations occurring in election years 2003, 2006, 2012, and 2015 are hereby dismissed.

The complaint also alleges that candidate Beaver failed to file a candidate registration as required in election year 2018. Candidate Beaver appropriately filed a hard copy (paper) C-1A Statement of Candidate as a candidate for election in a school election with the COPP in election year 2018. Candidates for election to a school position were not required to electronically file their Statement of Candidate in election year 2018. Candidate Beaver filed as a 'B' box candidate in election year 2018, certifying that his combined contributions and expenditures total would not exceed \$500.00. The allegation is hereby dismissed.

Finally, the complaint alleges that candidate Beaver has not disclosed "ANY financial dealings for running since 2003". This allegation is determined to be so expansive as to be frivolous. The complaint did not provide any evidence or point to any specific campaign activity disputing the appropriateness of candidate Beaver's 2018 or 2021 filings as a 'B' box candidate. 'B' box candidates are not required to file campaign finance reports with the COPP under 44.11.304, Administrative Rules of Montana. The allegation is hereby dismissed as frivolous.

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 beaver 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).

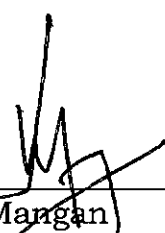
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of candidate Beaver. 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. § 13-37-206(1). *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 14th day of June 2021.



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