

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Nelon v. Miller No. COPP 2022-CFP-013	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On June 13, 2022, Michelle Nelon of Dillon, MT filed a campaign practices complaint against Robert Miller, also of Dillon. The complaint alleged that candidate Miller failed to timely file a C-1A Statement of Candidate with the COPP, failed to file C-5 campaign finance reports as required, and failed to include proper 'paid for by' attribution messaging on campaign materials.

SUBSTANTIVE ISSUES ADDRESSED

Timely filing of campaign finance reports.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Robert Miller filed a C-1A Statement of Candidate as a candidate for election to the position of County Superintendent of Schools in Beaverhead County with the COPP on March 15, 2022. On the Statement of Candidate, candidate Miller indicated that campaign activity would not meet or exceed \$500.00. (Commissioner's Records.)

Finding of Fact No. 1A: Robert Miller filed a Declaration of Intent and Oath of Candidacy as a candidate for election to the position of County Superintendent of Schools in Beaverhead County with the Beaverhead County elections office on January 13, 2022. As part of officially filing as a candidate for election to a county office

in Beaverhead County, candidate Miller paid a filing fee of \$275.00. (Commissioner's Records.)

Finding of Fact No. 1B: Candidate Miller will advance to Montana's November 8, 2022 general election as the Republican candidate for County Superintendent of Schools in Beaverhead County. Candidate Miller received 56% of votes case in the June 7, 2022 Republican primary election for that office.¹ (Commissioner's Records.)

Finding of Fact No. 2: On May 17, 2022, candidate Miller emailed COPP regarding his C-1A Statement of Candidate. The message states:

When I filed this report, I was under the impression that there was NOT going to be an opponent in the primary. That has changed; an opponent has filed for the position. I will be spending more than \$500 I had planned (and which was entered in the first report. What do I have to do at this time to make sure I'm following the rules in the statute?

COPP responded to this email instructing candidate Miller that he needed to Amend his C-1A Statement of Candidate to show campaign activity would meet or exceed \$500.00, that he was to "[I]mmediately file a C5 report that starts when you expended or received your first campaign funds", and "[f]rom this point forward, follow the reporting calendar". COPP provided a link to the 2022 candidate campaign finance reporting calendar with this email response to candidate Miller. (Commissioner's Records.)

Finding of Fact No. 2A: On May 20, 2022, candidate Miller filed multiple Amended versions of his C-1A Statement. The most recently filed version still certifies that campaign activity would not meet or exceed \$500.00. (Commissioner's Records.)

Finding of Fact No. 3: On June 21, 2022, candidate Miller provided COPP with his formal response to this complaint. The response stated that "[m]y first filing stated that I would not spend \$500.00 (as I expected no opponent)", but that "I began spending money on advertisement". The response also indicated that candidate Miller had received contributions from individuals other than himself, "nothing more than \$100.00 from any one individual. In fact my "war chest" totaled \$340.00". (Commissioner's Records.)

¹ <https://electionresults.mt.gov/ResultsSW.aspx?type=CTYALL&cty=01&map=CTY>

Finding of Fact No. 4: On June 21, 2022, candidate Miller filed an Initial C-5 campaign finance report, dated January 13, 2022 through April 16, 2022. This report disclosed only candidate Miller's payment of the \$275.00 filing fee to Beaverhead County, reported as an in-kind contribution made by candidate Miller personally to his campaign (see Table 1). (Commissioner's Records.)

Finding of Fact No. 5: On June 21, 2022, candidate Miller filed a Periodic C-5 campaign finance report, dated April 17, 2022 through May 14, 2022. This report disclosed one (1) in-kind contribution from candidate Miller to his campaign valued at \$275.00, described as "Dillon Tribune, ads in paper", and three (3) monetary contributions from individuals other than candidate Miller, totaling \$240.00 (see Table 1). (Commissioner's Records.)

Finding of Fact No. 6: On June 21, 2022, candidate Miller filed a Periodic C-5 campaign finance report, dated May 15, 2022, through June 15, 2022. This report disclosed one (1) monetary contribution of \$500.00 from candidate Miller to his campaign, as well as one (1) monetary contribution from an individual other than candidate Miller in the amount of \$40.00 (see Table 1). COPP contacted candidate Miller via telephone on June 22, 2022, to inquire about the date of the personal \$500.00 contribution, and candidate Miller explained that this contribution was made on June 6, 2022. The report also disclosed four (4) campaign expenditures made by candidate Miller for the purchase of various campaign advertising materials, totaling \$587.00 (see Table 2). (Commissioner's Records.)

Finding of Fact No. 7: Included with the complaint were copies of two (2) newspaper advertisements supporting candidate Miller. Each included an attribution message of "Paid for by Miller for Superintendent Dillon, MT". (Commissioner's Records.)

Table 1: Campaign contributions, monetary and in-kind, received by candidate Miller

Name of Contributor	Date of Contribution	Description (if in-kind contribution)	Amount of Contribution	Total to Date
Miller, Robert	01/13/2022	Filing fee	\$275.00	\$275.00
Schultz, Michael	04/18/2022		\$100.00	\$375.00
Stonelake, Marlene	04/19/2022		\$100.00	\$475.00
Miller, Richard	04/20/2022		\$40.00	\$515.00

Miller, Robert	05/09/2022	Dillon Tribune, ads in paper	\$275.00	\$790.00
Feldt, Walter C	05/28/2022		\$40.00	\$830.00
Miller, Robert	06/06/2022		\$500.00	\$1,330.00

Table 2: Campaign expenditures made by candidate Miller

Vendor/Entity	Date	Purpose	Amount
Big Tyme Sportswear and Design	06/06/2022	Advertisement Banner ad	\$288.00
Big Tyme Sportswear and Design	06/03/2022	Advertising Banner	\$144.00
Crawford Digital Solutions	05/18/2022	Advertisement- Digital (Facebook)	\$35.00
Dillonite Daily	05/18/2022*	Ads in local paper	\$120.00
			\$587.00

*A date of May 4, 2022 is provided for this activity on a receipt included with candidate Miller's response

DISCUSSION

Part One: Statement of Candidate

The first allegation made in this matter is that candidate Miller failed to timely file his C-1A 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". In this matter, candidate Miller became a candidate on January 13, 2022, by filing a Declaration of Intent and Oath of Candidacy as a candidate for election to the position of County Superintendent of Schools in Beaverhead County with the Beaverhead County elections office (FOF No. 1A). By filing a "declaration" of candidacy with the Beaverhead County elections office for a local elected office in Beaverhead County, Robert Miller became a 2022 candidate as that term is defined, Mont. Code Ann. §13-1-101(8).

Under Mont. Code Ann. §13-37-201, candidate Miller was required to file a Statement of Candidate with the COPP on or before January 18, 2022, five days after becoming a candidate. Candidate Miller filed his C-1A Statement of Candidate with the COPP on March 15, 2022, later than five days after becoming a candidate (FOF No. 1).

Miller's failure to timely file a Statement of Candidate is a violation of statutory requirements of Mont. Code Ann. §13-37-201.

Sufficiency Finding No. 1: Candidate Miller failed to timely file his Statement of Candidate with the COPP within 5 days of becoming a 2022 candidate for a County office as required by Montana law.

The Commissioner notes the candidate did file a C-1A Statement of Candidate with the COPP prior to the Commissioner's 2022 set statutory date for notifying local election administrators that a candidate's name may be placed on the primary ballot².

Part Two: Campaign Finance Reports

The second allegation made in this complaint is that candidate Miller failed to file campaign finance reports with COPP.

On his C-1A Statement of Candidate as filed with COPP, candidate Miller indicated that campaign activity would not meet or exceed \$500.00 (FOF Nos. 1, 2A). Local candidates who certify to COPP that campaign activity will not exceed \$500.00, including county candidates such as candidate Miller, are exempt from filing finance reports with the COPP, 44.11.304(1), ARM. Local

² In 2022, March 22, 2022 was the date required for the Commissioner to fulfill its statutory duty to notify the Montana SOS and election administrators of those candidates who's names could not be placed on the ballot under 13-10-208, MCA.

candidates who certify campaign activity will not exceed \$500.00 are required to begin filing finance reports “within five business days of the date when such expenditures or contributions exceed \$500” by filing “an initial report disclosing all contributions and expenditures to that date” and “shall file all future reports required by 13-37-226, MCA”, 44.11.304(2), ARM.

In this case, campaign contributions received by candidate Miller exceeded \$500.00 on April 20, 2022 (FOF Nos. 4, 5)(Table 1). Under 44.11.304(2), ARM, candidate Miller was required to file an initial campaign finance report no later than April 27, 2022, five business days later. Candidate Miller did not file his initial C-5 campaign finance report with COPP until June 21, 2022, after his receipt of this complaint, fifty-five (55) days late (FOF No. 4).

By receiving campaign contributions in excess of \$500.00, candidate Miller was next to file the May 20, 2022 and June 20, 2022 campaign finance reports required under Mont. Code Ann. §13-37-226(1)(b). Candidate Miller did not file C-5 campaign finance reports on or before May 20, 2022 or June 20, 2022. Instead, candidate Miller filed periodic campaign finance reports, dated April 17-May 14 and May 15-June 15, on June 21, 2022 (FOF Nos. 5, 6). Put simply, candidate Miller filed the required May 20 report thirty-two (32) days late, and the June 20 report one (1) day late.

Mont. Code Ann. §13-37-226(1)(c) also requires that candidates disclose contributions of \$125.00 or more received from a single source “within 2 business days of receiving the contribution...if the contribution is received between the 15th day of the month preceding an election in which the

candidate participates and the day before the election”.³ In other words, any contributions of \$125.00 or more from a single source received by candidate Miller between May 15, 2022, and June 6, 2022,- the day before Montana’s June 7, 2022, primary election- were required to be disclosed within 2 business days. Candidate Miller did receive one such contribution, on June 6 making a personal contribution of \$500.00 to his campaign (FOF No. 6), (Table 1). Under Mont. Code Ann. §13-37-226(1)(c), candidate Miller was required to disclose this contribution no later than June 8, 2022, 2 business days after receiving the contribution. Candidate Miller failed to do, only disclosing the contribution via a C-5 report filed on June 21.

Similarly, Mont. Code Ann. §13-37-226(1)(d) requires that candidates disclose expenditures of \$125.00 or more within 2 business days “if made between the 15th day of the month preceding an election in which the candidate participates and the day before the election”.⁴ In other words, any expenditures of \$125.00 or more made by candidate Miller between May 15, 2022. and June 6, 2022,- the day before Montana’s June 7, 2022, primary election- were required to be disclosed within 2 business days. Candidate Miller made two such expenditures. The first occurred on June 3, 2022, in the amount of \$144.00, to vendor Big Tyme Sportswear and Design for an “Advertising Banner” (FOF.No. 6), (Table 2). Under Mont. Code Ann. §13-37-226(1)(d) candidate Miller was required to disclose this expenditure no later

³ For candidates for Statewide office, the amount is \$250.00

⁴ For candidates for Statewide office, the amount is \$250.00

than June 7, 2022, 2 business days after making the expenditure. The second occurred on June 6, 2022, in the amount of \$288.00, to vendor Big Tyme Sportswear and Design for an “Advertising Banner” (FOF No. 6), (Table 2). Under Mont. Code Ann. §13-37-226(1)(d) candidate Miller was required to disclose this expenditure no later than June 8, 2022, 2 business days after making the expenditure. Candidate Miller failed to report either expenditure within 2 business days, only disclosing each expenditure via a C-5 report filed on June 21.

Montana’s campaign finance report filing requirements are mandatory: “shall file” (See §13-37-226 MCA). The filing date requirements are date certain. In Bradshaw v. Bahr, COPP 2018-CFP-008, Commissioner Mangan found candidate Bahr had filed two days late and wrote “any failure to meet a mandatory, date-certain filing date is a violation of §13-37-226, MCA.” In this matter, Candidate Miller failed to timely file an initial campaign finance report on or before April 27, failed to file the campaign’s finance reports due on May 20 and June 20, failed to disclose a contribution greater than \$125.00 received between May 15 and June 6 from a single source within 2 business days, and failed to disclose 2 expenditures of \$125.00 or more made between May 15 and June 6 within 2 business days.

Sufficiency Finding No. 2: Candidate Miller failed to timely file his initial campaign finance report upon exceeding \$500 in campaign finance activity.

Sufficiency Finding No. 3: Candidate Miller failed to properly amend his Statement of Candidate filing with the COPP upon the campaign exceeding \$500 in campaign finance activity.

Sufficiency Finding No. 4: Candidate Miller failed to timely file his May 20 and June 20, 2022 campaign finance reports.

Sufficiency Finding No. 5: Candidate Miller failed to disclose pre-election contributions and expenditures on 3 occasions from May 15 to June 6, 2022.

Timely and proper reporting is essential to provide the public, press, and opposing candidates the opportunity to view and review a campaign's finances. Candidate Miller's late filing of three (3) C-5 campaign financial reports, failure to disclose a pre-election contribution as required, and failure to disclose two pre-election expenditures as required each constitute a campaign finance violation under Mont. Code Ann. §13-37-226(1).

Part Three: Attribution

The final allegation made in this complaint is that candidate Miller failed to include the proper 'paid for by' attribution messaging on campaign materials.

Under Montana law "all election communications...must clearly and conspicuously include the attribution 'paid for by' followed by the name and address of the person who made or financed the expenditure for the communication", Mont. Code Ann. §13-35-225(1). COPP notes that the attribution message included on the newspaper advertisements referenced with this complaint of "Paid for by Miller for Superintendent Dillon, MT" fails to include the candidate/campaign's address as required (FOF No. 7).

Montana law requires an accelerated review ("as soon as practicable") of a campaign practice complaint alleging an attribution violation. Mont. Code Ann. §13-35-225(6) provides a specific remedy process and timeline for

attribution complaints- the candidate/committee subject to an attribution complaint is provided 2 business days to bring unattributed material into compliance by adding full attribution messaging if more than 7 days from an election, or 24 hours to bring unattributed material into compliance by adding full attribution messaging if 7 days or less prior to an election. If unattributed material is brought into compliance in the time provided by law, the Commissioner is to dismiss the attribution complaint.

In this matter, the attribution complaint was not filed with COPP until after Montana's June 7, 2022, primary election had been conducted. Because the primary election had already been completed by the time COPP received this attribution complaint, the time period and process for remedying unattributed materials provided under Mont. Code Ann. §13-35-225(6) had already passed. The attribution complaint should be dismissed for that reason.

Had the attribution complaint or concerns been addressed to COPP prior to completion of the primary election, COPP would have contacted candidate Miller and worked with him to bring unattributed material into compliance as provided for by Mont. Code Ann. §13-35-225(6). For any attribution complaint, formal or informal, it is standard practice for COPP Compliance Specialists to contact the candidate and work with them to bring unattributed material into compliance in the timeline provided by law.

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 Miller 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.

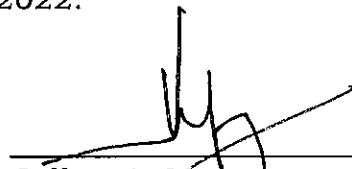
The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of candidate Miller. Because of the nature of the, this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. *Id.*, at (1). 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. §§ 13-37-201, 226. *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 23rd day of June 2022.



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