

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Ward v. Cascade County Republicans PAC No. COPP 2022-CFP-002	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On March 14, 2022, John Ward of Helena, Montana filed a campaign practices complaint against the Cascade County Republicans PAC (CCR PAC). The complaint alleged that the CCR PAC accepted a contribution of surplus campaign funds from a candidate in violation of Montana campaign finance law.

SUBSTANTIVE ISSUES ADDRESSED

The acceptance of surplus campaign funds by a political committee.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: On March 30, 2021, the Cascade County Republicans PAC (CCR PAC) filed a C-2 Statement of Organization as an Independent political committee. The C-2 lists Beth Cooper of Great Falls, Montana as the committee Treasurer and Rudolph Tankink of Great Falls, Montana as the committee's only Additional Officer. The C-2 was last Amended on April 5, 2021. (Commissioner's Records.)

Finding of Fact No. 2: On January 4, 2022, CCR PAC filed a C-6 committee finance report, dated October 1, 2021 through December 31, 2021. This report disclosed contribution received by

the committee in the amount of \$1,627.25 from individual contributor Steve Gist.

Also included on this report was an expenditure made by the CCR PAC in the amount of \$100.00 dated October 7, 2021 to individual Paige Turoski described as “Campaign Donation”. (Commissioner’s Records.)

Finding of Fact No. 2.1: Paige Turoski participated as a candidate for election to a City Council position in the City of Great Fall’s November 2021 municipal (city) general election.¹ (Commissioner’s Records.)

Finding of Fact No. 3: Steve Gist participated as a candidate for election to House District 25 in Cascade County in Montana’s 2020 general election. On January 5, 2022, candidate Gist filed a Closing C-5 campaign finance report, which included a campaign expenditure in the amount of \$1,627.25 dated December 15, 2021 made to the CCR PAC described as “Donation to PAC from leftover funds”. Candidate Gist did not report any contributions or expenditures received after December 15, 2021. The \$1,627.25 contributed by candidate Gist to the CCR PAC represented all remaining funds in the campaign account at the time of the contribution, bringing the account balance to \$0.00. (Commissioner’s Records.)

Finding of Fact No. 4: On March 29, 2022, COPP received an email from Michael Polaski, who identified himself as the Chairman of the Cascade County Republicans PAC, which he noted served as the CCR PAC’s response to this complaint. The response quoted 44.11.702(7) to argue that “The CCR PAC has not earmarked those funds [the \$1,627.50 contribution received from candidate Gist] for a specific campaign and that is what the rule states not that it is prohibited”. (Commissioner’s Records.)

Finding of Fact No. 5: On March 30, 2022, COPP received an email from Beth Cooper, CCR PAC Treasurer, containing an additional response to this complaint. This additional response stated that CCR PAC “did receive a check from Steve Gist. However, from what we understand from ARM 44.11.702. (7), we, as a Republican PAC (and not a campaign, as Mr. Ward says we are), we can receive surplus funds from candidates...as long as we do not earmark them for a SPECIFIC campaign”. (Commissioner’s Records.)

¹ <https://www.greatfalls Tribune.com/story/news/2021/11/02/great-falls-montana-city-elections-2021-mayor-city-commission-results/6250793001/>

Finding of Fact No. 6: On October 4, 2021, CCR PAC filed a C-6 committee finance report, dated July 1, 2021 through September 30, 2021. Included on this report was an expenditure made by the CCR PAC in the amount of \$100.00 dated September 25, 2021 to individual Fred Burow described as “CAMPAIGN CONTRIBUTION”. (Commissioner’s Records.)

Finding of Fact No. 6.1: Fred Burrow participated as a candidate for election to the position of Mayor in the City of Great Fall’s November 2021 municipal (city) general election.² (Commissioner’s Records.)

DISCUSSION

The complainant in this matter alleges that the Cascade County Republicans PAC (CCR PAC) knowingly accepted a contribution of surplus funds from a candidate for election in violation of applicable Montana campaign finance rules/laws.

All available facts in this matter establish the CCR PAC accepted a contribution from 2020 candidate Steve Gist. The CCR PAC reported receiving a contribution in the amount of \$1,627.25 from candidate Gist on a campaign finance report filed with the COPP, and candidate Gist reported providing a contribution in the same amount to CCR PAC on a campaign finance report filed in connection to his 2020 campaign (FOF Nos. 2, 3). CCR PAC additionally confirmed its receipt of this contribution from candidate Gist in both of its complaint responses provided to COPP (FOF Nos. 4, 5). Surplus campaign funds are defined under 44.11.702(2), ARM, as:

those campaign funds remaining when all debts and other obligations of the campaign have been paid or settled, pursuant to

² <https://www.greatfallstribune.com/story/news/2021/11/02/great-falls-montana-city-elections-2021-mayor-city-commission-results/6250793001/>

ARM 44.11.608, no further campaign contributions will be received, and no further campaign expenditures will be made.

Candidate Gist included the contribution on his 2020 campaign's closing C-5 campaign finance report and dated it December 15, 2021, with no other campaign activity occurring later than that date (FOF No. 3). Further, the \$1,627.25 contributed by candidate Gist to the CCR PAC represented all remaining funds in the campaign account at the time of the contribution, bringing the 2020 campaign's account balance to \$0.00. Candidate Gist's 2020 campaign did not have any remaining debts or obligations to settle, further contributions to receive, or expenditures to make by the time the campaign made the \$1,627.25 contribution to the CCR PAC. For these reasons, the funds qualify as surplus campaign funds.

44.11.702(7), ARM, specifically notes that candidates "shall not contribute surplus campaign funds to a political committee" (emphasis added). The Rule does provide an exemption stating that candidates can contribute surplus campaign funds to a political party or political party committee "so long as the funds are not earmarked for a specific campaign". As stated, the exemption applies only to situations where surplus campaign funds are contributed by a candidate to a political party or political party committee. The contribution of surplus funds to any other type of political committee is not permissible under Montana law.

On its C-2 Statement of Organization, CCR PAC registered in Montana as an *independent* political committee (FOF No. 1). As defined, Mont. Code Ann. §13-1-101(25), CCR PAC is appropriately classified with COPP as an

independent political committee.³ CCR PAC does not qualify as a political party committee and would not be classified as such, Mont. Code Ann. §13-1-101(37).⁴

Being an *independent* political committee, candidates could not contribute surplus campaign funds to CCR PAC under 44.11.702(7), ARM. By making a contribution of surplus campaign funds to an independent political committee (CCR PAC), candidate Gist violated the provisions of 44.11.702(7), ARM. Similarly, by accepting a contribution of surplus campaign funds from a candidate (candidate Gist), CCR PAC violated the provisions of 44.11.702(7), ARM.

Sufficiency Finding No. 1: The Cascade County Republicans PAC accepted a contribution in the amount of \$1627.25 from a candidate's surplus campaign funds.

The Commissioner determines there are sufficient facts to determine the Cascade County Republicans PAC accepted a monetary contribution in the amount of \$1627.25 derived from a 2020 candidate campaign's surplus funds, in violation of Montana campaign finance law.

The Commissioner hereby orders the Cascade County Republicans PAC to disburse the \$1627.25 back to candidate Gist or disburse the full amount to

³ "Independent committee" means a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant to the limits set forth in 13-37-216(1).

⁴ "Political party committee" means a political committee formed by a political party organization and includes all county and city central committees.

a Montana non-profit organization in accordance with the provisions of ARM 44.11.702 et. seq. within 10 days of this Decision.

Timely Filing of Committee Finance Reports

Once a complaint is filed the Commissioner “shall investigate any other alleged violation ...” Mont. Code Ann. §13-37-111(2)(a). This investigative authority includes authority to investigate “all statements” and examine “each statement or report” filed with the COPP. §§13-37-111, 123 MCA. The Commissioner is afforded discretion in exercising this authority. *Powell v. Motl*, OP-07111, Supreme Court of Montana, November 6, 2014 Order.

COPP’s investigation into this complaint determined that CCR PAC failed to timely file two campaign finance reports disclosing contributions made by the committee to 2021 municipal (city) candidates in the City of Great Falls. Specifically, the committee failed to timely disclose a \$100.00 contribution made to 2021 City of Great Falls mayoral candidate Fred Burow and a \$100.00 contribution made to City of Great Falls city council candidate Paige Turoski (FOF Nos. 2, 2.1, 6, 6.1).

Mont. Code Ann. §13-37-226(2) specifically determines dates political committees such as CCR PAC are to file required campaign finance reports. Once a committee becomes involved in a given municipal election, it is to file finance reports on the 30th day of each month for that election year, beginning in June and lasting through November, Mont. Code Ann. §13-37-226(4)(b).

CCR PAC’s participation in Montana’s 2021 municipal elections began when the committee provided a reportable financial contribution to candidate

Burow on September 25, 2021 (FOF Nos. 6, 6.1). By making a reportable campaign contribution to Great Falls mayoral candidate Fred Burow, CCR PAC was required to file monthly C-6 committee finance reports on the 30th of September, October, and November, 2021.

CCR PAC failed to meet the September 30, 2021 reporting deadline, instead disclosing expenditure activity through the end of September 2021 on a finance report filed October 4, 2021 (FOF No. 6). The committee late-filed the required September 30 report by four days.

CCR PAC also failed to meet the October 30, 2021 reporting deadline, instead filing a year-end report for election year 2021 on January 4, 2022 (FOF No. 2). CCR PAC late-filed its required October 30, 2021 report by sixty-six days. In this instance, CCR PAC failed to disclose a contribution in the amount of \$100.00 made to 2021 municipal candidate Paige Turoski in October 2021 until well after the conclusion of the 2021 municipal general election in which the candidate was participating (FOF Nos. 2, 2.1). This late-filing deprived other participating candidates, political committees, and the citizens of the City of Great Falls of campaign finance information as the election was occurring, a violation of Montana's campaign finance and disclosure requirements (FOF No. 2.1).

Finally, CCR PAC failed to meet the November 30, 2021 reporting deadline, instead filing a year-end report for 2021 on January 4, 2022 (FOF No. 2). CCR PAC late-filed its required November 30, 2021 report by thirty-five days.

Sufficiency Finding No. 2: The Cascade County Republicans PAC failed to timely file committee finance reports on September 30, October 30, and November 30, 2021.

The Commissioner determines there are sufficient facts to determine the Cascade County Republicans PAC failed to properly and timely file committee finance reports as required by Montana campaign finance 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 Cascade County Republicans PAC 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).

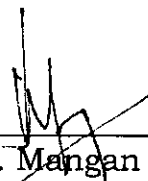
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Cascade County Republicans PAC. 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. § 13-37-226(4)(b) and 44.11.702(7). *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 6th day of April 2022.



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