

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Adams v. Brown  No. COPP 2015-CFP-005	Findings of Sufficient Facts to Show a Campaign Practice Violation
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On May 18, 2015, Timothy Adams, a resident of Bozeman, Montana filed a complaint with the Commissioner of Political Practices (COPP) against Zach Brown. Mr. Brown was a candidate for election to the Montana house at the time of events set out in the Complaint and currently serves Montana State Representative for House District 63 (HD 63). Mr. Adams's complaint alleged that Candidate Brown engaged in a number of reporting and disclosure violations of Montana campaign practice law.

**DISCUSSION**

The Complaint allegations are identified and discussed separately below.

1. Filing

Montana law required that Candidate Brown file a Statement of Candidate (Form C-1) with the COPP setting out certain information including the name and address of his treasurer and the name of the bank holding the campaign account for Candidate Brown. §§13-37-201, 205 MCA.

Finding of Fact No. 1: On February 18, 2014 Candidate Brown submitted a C-1 Statement of Candidate form to the Commissioner of Political Practices (COPP) to run as a Democratic candidate for House District 63 (Gallatin County). Candidate Brown listed Dorothy Bradley as his campaign treasurer and Ethan Wilkes as his deputy treasurer. Candidate Brown listed his address as 503 S. Willson, Bozeman, MT 59715, the home of Candidate Brown's mother, Lynda Brown. Candidate Brown also listed 503 S. Willson as the address for his treasurer and deputy treasurer. Candidate Brown listed First Security Bank in Bozeman as the depository for the campaign account. (COPP records.)

Finding of Fact No. 2: On May 21, 2014 Candidate Brown amended his C-1 form by listing Adam Cook as his "second" deputy treasurer. Mr. Cook's address was listed as "503 S. Willson, Bozeman, MT 59715." (COPP records.)

The Commissioner determines that the Candidate Brown's Statement of Candidacy properly disclosed the office sought (HD 63) and properly listed the bank holding the campaign account.

The Complaint alleges that Candidate Brown improperly listed his mother's home as his candidacy address. That issue has been dealt with in past COPP decisions. A candidate may list his or her parents' home for residency purposes, given sufficient family ties, business interests and voting residency consistent with that address. *Motta v. Laslovich*, November 18, 2009 (Commissioner Unsworth); *Pinnocci v. Hagan*, No. COPP 2014-CFP-021. Candidate Brown's campaign literature claims extensive Bozeman area family ties. The Commissioner determines that Candidate Brown may use his mother's Bozeman address for campaign purposes and dismisses this allegation of the Complaint.

The Complaint next alleges that Candidate Brown improperly listed his mother's address as the address of his treasurer and deputy treasurer. Under Montana law Candidate Brown shall "certify the full name and complete address of the campaign treasurer." §13-37-201 MCA. Dorothy Bradley is an esteemed Bozeman area political figure, having been elected for 8 terms to the Montana house from Bozeman. Nevertheless, Ms. Bradley now lives outside of Bozeman.<sup>1</sup> The listing of Ms. Bradley's address (and the address of the deputy treasurer) as 503 S. Willson, Bozeman clashes with the requirements of statute.<sup>2</sup>

This the first time that the COPP has considered whether a treasurer's address was properly listed. Mary Baker, the COPP's long-time director of candidate services, informs that the COPP has long allowed campaigns to use a campaign mailing address as the address for the treasurer.<sup>3</sup> Consistent with this reporting and disclosure culture, the COPP accepts 503 S. Willson as a campaign address applied to the treasurer but cautions candidates to avoid the impression that they are attempting to create the appearance of an in-district residence address though use of a residential street address. Candidates who do not list the treasurer's actual mailing address should use a P. O. Box address for the campaign so as to make it clear that they are using a campaign address.

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<sup>1</sup> Dorothy Bradley contributed to Candidate Brown's 2014 HD 63 campaign. Her mailing address is listed at PO Box 316, Clyde Park, Montana on Candidate Brown's campaign finance reports.

<sup>2</sup> COPP regulations also require "the complete name and address of its campaign treasurer." 44.10.405(1)(c).

<sup>3</sup> In particular the COPP has required only a mailing address (a PO Box is accepted) rather than a physical address for the treasurer.

The remaining treasurer issue raised by the Complaint is that of a dual deputy treasurer. Montana law allows “no more than one [deputy treasurer] in each county in which the campaign is conducted.” §13-37-202(1) MCA. Candidate Brown’s campaign is confined to one county and he did not conform to law when he appointed a “second” deputy treasurer (FOF No. 2).

Sufficiency Finding No. 1: The Commissioner determines that sufficient facts exist to show that Candidate Brown failed to meet Montana campaign practice standards when he appointed a second deputy treasurer.

This Commissioner notes that Montana campaign and practice law, at one time in the past, appeared to intend a separation of sorts between a candidate and the treasurer of the funds used in his or her candidacy. That separation no longer exists. A candidate may now serve as his or her own campaign treasurer (§13-37-203 MCA) and may choose to list only his or her name on campaign materials (§13-35-225(1)(a)MCA), leaving the treasurer’s name and address off entirely. Nevertheless, candidates often choose established and respected persons (such as Ms. Bradley) to list as treasurer, hoping that the esteem provided the treasurer will transfer to the candidate. In that circumstance the candidate should take care to avoid the residence confusion for the treasurer that Candidate Brown created.

## 2. Failure to Attribute

The Complaint alleges that Candidate Brown acted such that he violated a number of Montana laws when his campaign paid for certain get-out-the-vote

events including an October 30, 2014 Get-Out-The-Vote Halloween party and a shuttle car service for voters on November 4, 2014.

Finding of Fact No. 3: There was a Halloween dance party held in Bozeman, Montana featuring a band called the Dead Hipster. Anyone was admitted free to the dance party if he or she filled out a pledge to vote. The event was advertised through announcements at several classes at Montana State University. There were no advocacy statements for or against any candidate set out on the pledge documents or made during the announcements. Candidate Brown's campaign handed out campaign literature at the entrance to the event but those campaign documents were fully attributed. (COPP records.)

Finding of Fact No. 4: On November 4, 2014 shuttle cars were provided at Montana State University to take students to the polls for voting. (COPP records.)

Finding of Fact No. 5: A review of Candidate Brown's campaign finance records shows that his campaign paid for the venue rental for the Halloween party event (FOF No. 3) and financed some of the shuttle cars for student voting (FOF No. 5). (COPP records.)

This portion of the Complaint raised a nuanced issue of general importance to campaigns. The Complaint urges a finding of violation based on an expansive reading of campaign activity requiring attribution.<sup>4</sup> Constitutional considerations, however, require a narrow reading, not an expansive reading.<sup>5</sup> Further, Montana's 2014 attribution law set out a narrow reading as it

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<sup>4</sup> The Complaint urges use of the broad "influencing the results" definition set out §13-1-101(11)(a) MCA.

<sup>5</sup> See the discussion in *Landsgaard v. Peterson*, COPP-2014-CFP-008.

required attribution only for “communications advocating the success or defeat of a candidate.”<sup>6</sup>

With the above considerations in mind the Commissioner dismisses the attribution related portions of the complaint. The charge that Candidate Brown is responsible for attribution related to the Halloween party is dismissed because the pledge or invitation document did not advocate for or against Candidate Brown’s campaign (FOF No. 3).<sup>7</sup> The charge that Candidate Brown’s shuttle car expense created an attribution obligation is dismissed because there is nothing showing that Candidate Brown’s campaign used the time spent in the shuttle to advocate for a vote.<sup>8</sup> Instead, the opposite is shown, that is that admission to the dance and use of the cars (and the flyers announcing the cars) were provided to any person without inquiry as to who they would be voting for.<sup>9</sup>

### 3. Failure to Report and Disclose

The Complaint alleges several failures of Candidate Brown’s duty to report and disclose campaign contributions and expenses.

#### a. Names and Addresses

A campaign, including that of Candidate Brown, is required to “keep

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<sup>6</sup> §13-35-225(1) MCA. This was a 2014 campaign, taking place before the passage of the Disclose Act which substantially modified this section of law in regard to 2016 campaigns.

<sup>7</sup> Candidate Brown campaign documents were handed out at the door but those documents were properly attributed.

<sup>8</sup> This discussion is limited to attribution of a particular document or machine (the car) as Candidate Brown disclosed the costs of each in his campaign finance reports (See FOF No. 5).

<sup>9</sup> This Decision is limited by its facts, including the get-out-the-vote activities in a campus environment. Further, the issue is solely that of attribution as the cost of election activity was reported and disclosed by the candidate. Second, attribution requirements are now markedly altered by changes in law made by the 2015 Montana legislature.

detailed accounts of all contributions received and expenditures made” (§13-37-208(1)(a) MCA). Candidate Brown then “shall file periodic reports of contributions and expenditures” (§13-37-225(1) MCA). The report detail is required to include “the full name, mailing address, occupation and employer” of each contributor. §13-37-229(2) MCA. The report detail is also required to include “the full name and mailing address of each person to whom expenditures have been made.” §13-37-230(1)(a) MCA.

Finding of Fact No. 6: On November 23, 2014 Candidate Brown filed a closing report for his 2014 campaign. The Complaint details the incomplete items listed in the closing report. The Complaint alleges, and the Commissioner determines, that multiple contributors or vendors were listed in the closing report without the complete information required by statute. (COPP records.)

Candidates commonly fail to provide the full range of information for each contributor or expense vendor, as required by statute. Surprisingly few complaints have been filed over this infraction. But, when such a complaint is filed the COPP must apply law and find a violation. *Essmann v. Patients for Reform*, No. COPP-2012-CFP-034 (Commissioner Motl).

Sufficiency Finding No. 2: The Commissioner determines that sufficient facts exist to show that Candidate Brown failed to meet Montana campaign practice standards when he did not provide all required information as to contributors and expense vendors.

The Commissioner notes that Candidate Brown has filed a corrective campaign finance report supplying much of the missing information. While that report cannot correct the campaign practice violation (the information is late filed and therefore fails to give timely transparency), it will be a factor in mitigation of the

fine assessed for the violation. It is only a timely and complete system of campaign finance reporting that provides the transparency and fairness to the public, voters and the opposing candidate that is required by law.

b. Lynda Brown Excess Contribution

The Complaint alleges an excess contribution from Candidate Brown's mother, Lynda Brown.

Finding of Fact No. 7: Candidate Brown's campaign finance reports disclose an in-kind contribution from Lynda Brown in the amount of \$256 and a reimbursement payment to Lynda Brown of \$75.70. (COPP records.)

Under Montana law Lynda Brown is limited to a maximum contribution of \$170 to a candidate for a 2014 Montana legislative position, including her son's (Candidate Brown) campaign. 44.10.338 ARM. Ms. Brown's contribution of \$256 exceeded that amount. The Brown campaign clearly intended to reimburse the excess contribution (FOF No. 7) but miscalculated the amount refunded by \$10. Candidate Brown's response promised to correct the error. Any campaign practice violation from this \$10 error is dismissed as *de minimis*. See *Royston v. Crosby*, No. COPP-2012-CFP-041.

4. Constituency Services Account

The Complaint alleges that Candidate Brown failed to properly convert his excess campaign funds to a constituency account.

Finding of Fact No. 8: On November 4, 2014 a general election was held. Two candidates ran for election from HD 63: Zach Brown (Democrat) and Nathan MacLaren (Republican). Candidate Brown won the general election



and went on to serve in the 2015 legislative session.  
(Montana Secretary of State's Office).

Finding of Fact No. 9: Candidate Brown ended his 2014 campaign with surplus campaign funds, identifying the surplus funds in a "closing" campaign finance report filed November 23, 2014. (COPP records)

Montana law requires that any candidate's campaign, including that of Candidate Brown, be treated as a self-contained event with accounting showing use of all funds used in the campaign. Accordingly, Montana law required that Candidate Brown dispose of surplus campaign funds within 120 days of filing his closing report. 44.10.335(1) ARM. Candidate Brown was further required to file a supplemental report detailing the means of disposal. 44.10.335(5) ARM. As an elected official Candidate Brown was eligible to open a constituency services account into which he could deposit (dispose of) the surplus campaign funds. 44.10.541 ARM.

Sufficiency Finding No. 3: The Commissioner determines that sufficient facts exist to show that Candidate Brown failed to meet Montana campaign practice standards in regard to the timely handling of surplus campaign funds.

Candidate Brown has now opened a constituency account but he did not do so within the timeline set by Montana law.<sup>10</sup> His handling of the surplus funds was untimely but otherwise proper. His conduct does not excuse a campaign practice violation but it will be a factor in mitigation.

### **ENFORCEMENT OF SUFFICIENCY FINDINGS**

The Commissioner has limited discretion when making the determination

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<sup>10</sup> On April 17, 2015 Candidate Brown filed the appropriate form (Form C-118C) transferring his campaign's surplus campaign funds to a Constituency Services Account.

as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must act on, an alleged campaign practice violation as the law mandates that the Commissioner (“shall investigate,” *see* §13-37-111(2)(a) MCA) investigate any alleged violation of campaign practices law. The mandate to investigate is followed by a mandate to take action as the law requires that if there is “sufficient evidence” of a violation the Commissioner must (“shall notify,” *see* §13-37-124 MCA) 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, as set out in this Decision, to show that Candidate Brown’s campaign has, as a matter of law, violated Montana’s campaign practice laws, including those set out in this 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 completely report contribution and expense information as well as the failure to properly deal with treasurer information was due to lack of diligence. Excusable neglect cannot be applied to lack of diligence. *See* discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. Likewise the harm to the public caused by a delay in reporting and disclosure is substantial and obvious so as not to be excused as

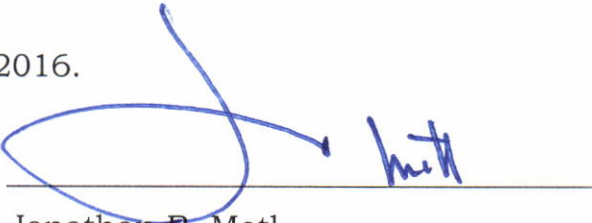
*de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009.

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil/criminal prosecution and/or a civil fine is justified (See §13-37-124 MCA). The Commissioner hereby, through this decision, issues a “sufficient evidence” Finding and Decision justifying civil prosecution under §13-37-124 MCA. Because of the nature of the violations (the failure to report and disclose occurred in Lewis and Clark County), this Matter, upon issuance of the final Decision, will be referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. §13-37-124(1) MCA. Should the County Attorney waive the right to prosecute (§13-37-124(2) MCA) or fail to timely prosecute (§13-37-124(1) MCA) this Matter returns to this Commissioner for possible prosecution. *Id.*

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 this Matter is waived back, the Finding and Decision in this Matter does not necessarily lead to civil or criminal prosecution as the Commissioner has discretion (“may then initiate” See §13-37-124(1) MCA) in regard to a legal action. Instead, most of the Matters decided by a Commissioner are resolved by payment of a negotiated fine. 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 law, including

those of §13-37-226 MCA. (See 13-37-128 MCA). Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 25<sup>th</sup> day of January, 2016.



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