

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Adams v. Gallatin County Democratic Central Committee No. COPP 2015-CFP-002	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On April 29, 2015, Timothy Adams, of Bozeman, Montana filed a complaint against the Gallatin County Democratic Central Committee for failing to properly file several campaign finance reports.

DISCUSSION

A political committee, whether in the form of an independent, political party, ballot or incidental committee, is required to timely register (§13-37-201 MCA) and timely file reports of campaign contributions and/or expenditures (§§13-37-225, 226 MCA). The complaint asserts that certain campaign finance reports filed by the Gallatin County Democratic Central Committee (GCDCC) in 2011 and 2014 were deficient.

1. The GCDCC Campaign Finance Reports

The Complaint alleges that the 2011 campaign finance report filed by

GCDCC did not disclose the name and address of multiple contributors, as required by law. The following findings of fact are made.

Finding of Fact No. 1: The GCDCC was registered with the COPP as a political party committee for the purposes of the 2011 campaign finance report. The registration was through a C-2 form filed on June 28, 2010 appointing Tim Christiansen as treasurer. (Commissioner's records).

Finding of Fact No. 2: On January 31, 2012 the GCDCC filed a campaign finance report (Form C-6) for the calendar year time period of 1/01/11 through 12/31/11. (Commissioner's records).

Finding of Fact No. 3: The 2011 calendar year report by the GCDCC was due January 31, 2012. (Commissioner's records).

Under 2010 and 2012 Montana law a political party is classified as an "independent committee." §13-37-226(5) MCA. The year 2011 was an off election year. In off election years political committees, including GCDCC, file a single report at the close of the "calendar year" on a date prescribed by the Commissioner. §13-37-226(5)(d) MCA. GCDCC filed its 2011 calendar year report (FOF No. 2) within the January 31, 2012 time period set by the COPP (FOF No. 3).

The GCDCC campaign finance report was timely filed. The 2011 report along with a certain 2014 report, however, failed to meet the certain disclosure requirements of Montana law.

Finding of Fact No. 4: The 2011 calendar year GCDCC campaign finance report filed January 31, 2012 lacked the mailing address, occupation and employer information for contributors as well as the mailing address information for vendors. (Commissioner's records).

Finding of Fact No. 5: On February 23, 2012 the COPP staff person inspecting the GCDCC report contacted the treasurer to ask for the missing address, occupation and employer information. The staffer informed the GCDCC that “[t]he potential for a complaint is very high and could cost your Party a significant penalty”. (Commissioner’s records).

Finding of Fact No. 6: There initially was limited effort by the GCDCC to correct the report by providing the missing information. The full missing information was not provided until May of 2015, after the Complaint was filed on April 19, 2015. (Commissioner’s records).

Finding of Fact No. 7: Following the filing of the Complaint the GCDCC supplied the missing address, occupation and employer information to the COPP. (Commissioner’s records).

Finding of Fact No. 8: The GCDCC is a political committee run by volunteers. Its 2011 treasurer, Tim Christiansen, filed electronically through CERS for the first time. On July 15, 2013 a new GCDCC treasurer, Susan Tarpey, was appointed and she continued to file electronically. (Commissioner’s records).

Finding of Fact No. 9: Several of the GCDCC campaign finance reports filed in 2014 lacked the mailing address, occupation and employer information for contributors as well as the detail required for fundraising events. (Commissioner’s records).

Montana law requires that a political committee, including a political party committee, disclose the “name, mailing address, occupation and employer” of each contributor (§13-37-229(2) MCA) and the “name and mailing address...[along with]...the amount, date and purpose of each expenditure” (§13-37-230(1) MCA). The 2011 calendar year campaign finance report filed by GCDCC did not disclose all of the required contributor and expenditure information. It is not unusual for a volunteer run political committee, such as the GCDCC, to file a deficient campaign finance report. Montana law

anticipates this circumstance and provides that the COPP conduct a facial inspection to determine missing information necessary for full disclosure (§13-37-121(1) MCA).

In 2012 COPP staffer Karen Musgrave conducted the inspection of the calendar year 2011 GCDCC campaign finance report. Her inspection noted the missing address, occupation and employer information, requested the production of the missing information and warned the GCDCC that it may result in a complaint if the information was not supplied (FOF No. 6). While the GCDCC treasurer responded to similar requests for missing information in 2012 reports, he did not fully respond to the request for missing 2011 information. The necessary information was not supplied until May 30, 2015, after the Complaint was filed.

In 2014 COPP staffer Karen Musgrave again inspected the GCDCC reports, including the campaign finance report due October 26, 2014. On December 3, 2014 Musgrave noted the missing Billy McWilliams address and further noted that the word “anonymous” should not be used in regard to any contribution disclosure. (Commissioner’s records). Musgrave asked that both deficiencies be corrected on the October 26, 2014 report. On February 2, 2015 the GCDCC responded by amending the report to provide the missing McWilliams address and the description of the event in place of the word anonymous.

Sufficiency Finding No. 1. The Commissioner determines that sufficient facts exist to show that GCDCC failed to properly report and disclose in its 2011 calendar year campaign finance report. (Commissioner’s records).

Sufficiency Finding No. 2. The Commissioner determines that sufficient facts exist to show that GCDCC failed to properly report and disclose when it used the word anonymous in regard to donations listed in its campaign finance report. (Commissioner's records).

The Commissioner (and each of the COPP staff) understand and appreciate that volunteers are essential to Montana's political process. However, it is also essential that information be reported and disclosed in a manner that provides public access to the information as timely as possible. This transfer of campaign finance information to the public is generally described as transparency.

The reporting and transparency gap in the October 26, 2014 GCDCC report can be seen by a review of COPP documents. The COPP staff completed inspection of the GCDCC campaign finance report on November 6, 2014 and listed deficiencies in an email to the GCDCC treasurer on December 3, 2014.¹ The GCDCC corrective response was made in February of 2015, leaving an information gap of three months.²

The GCDCC response time is important because the public was deprived of access to correct campaign finance information during the delay in responding. In this Matter the GCDCC response was through an amended electronically filed campaign finance report, meaning the corrected information was

¹ The COPP email documents are publically available for inspection but only in hard copy form at the COPP office. The COPP staff is required by statute to finish inspections within 20 days. The number of inspections means that comments on deficiencies are sometimes made at a later date, as was done in this Matter.

² The GCDPP response was made by filing an amended electronic report and thus transparency was achieved because this amended report could be viewed on the website. Had the amendment been made by hard-copy it could be seen by the public only by a review of the actual file at the COPP office in Helena. The COPP staff is going to attempt to post the correspondence and hard copy amendments to the website starting with the 2016 elections.

immediately transparent. That same transparency does not exist in regard to the GCDCC 2011 corrected information as that correction was filed hard copy with the COPP and placed in the GCDCC file.

The Commissioner notes that in 2016 more candidates and committees will be required to electronically file. That expanded electronic filing, coupled with increased ability of COPP staff to data-entry hard copy information, should get more campaign finance information out of hard copy files and into the electronic files accessible on the COPP website thereby increasing transparency.

ENFORCEMENT OF SUFFICIENCY FINDINGS

The Commissioner has limited discretion when making the determination 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 (*see* Sufficiency Findings, as set out in this Decision) to show that entities listed in the sufficiency findings

in this Decision have 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 timely report and disclose cannot generally be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law. *See* discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. Likewise, the Commissioner does not normally accept that failures to file or report be excused as *de minimis*. *See* discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. In this Matter the Commissioner exercises discretion and applies *de minimis* to excuse the late reporting of the Billy McWilliams address. The Commissioner does not apply *de minimis* to the other matters set out in the Sufficiency Findings.

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 of each of the entities named in a sufficiency finding for late filing. Because of the nature of the violations (the failure to report and disclose occurred in Lewis and Clark County) this matter is 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 prosecute within 30 days [§13-37-124(1) MCA] this Matter returns to this Commissioner for possible prosecution. *Id.*

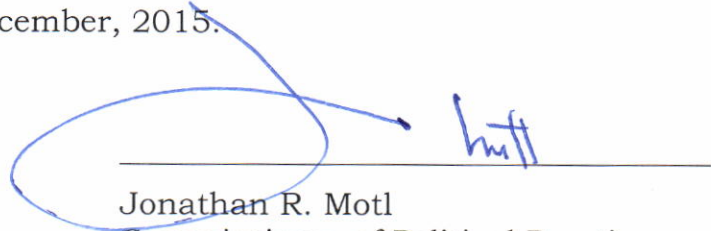
Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that this Matter is waived back, the Finding and Decision in this Matter does not necessarily lead to civil or criminal prosecution as the Commissioner 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 setting that fine the Commissioner will consider matters affecting mitigation, including the fact that the entity named in the sufficiency finding promptly filed when contacted by the COPP and, further, now seeks to resolve this issue by self-reporting the violation.

While it is expected that a mitigated fine amount will 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 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*.

Should this Matter not settle the Commissioner reserves his right, upon

return of the Finding by the County Attorney, to instigate an enforcement action on behalf of the people of Montana.

DATED this 17th day of December, 2015.



Jonathan R. Motl
Commissioner of Political Practices
Of the State of Montana
P. O. Box 202401
1205 8th Avenue
Helena, MT 59620