

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Adams v. Sands, et. al. No. COPP 2015-CFP-013	Summary of Facts and Finding of Insufficient Evidence to Show a Violation of Montana's Campaign Practices Act DISMISSAL OF COMPLAINT
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On September 23, 2015, Timothy Adams, a resident of Bozeman, Montana filed a complaint against 2014 Montana Senate Candidates Diane Sands, Franke Wilmer and Steve Fugate as well as Steve Bullock, the current governor and candidate for reelection in 2016. The complaint alleged that the four candidates violated campaign practice laws by improperly contributing or accepting surplus campaign funds.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance law addressed by this Decision is that of determining the point at which campaign funds become surplus campaign funds, with restrictions then placed on the use of such funds.

SUMMARY OF RELEVANT FACTS:

The facts necessary for a determination in this matter are as follows:

Finding of Fact No. 1: Diane Sands, Steve Fugate and Franke Wilmer were 2014 Democratic Party candidates for a Senate seat in the 2015 Montana Legislature:

- Diane Sands, Senate District 49 (Missoula County)
- Steve Fugate, Senate District 22 (Yellowstone County)
- Franke Wilmer, Senate District 32 (Gallatin County)

Diane Sands was the only candidate out of the three to win in the general election. Ms. Sands went on to serve in the 2015 Montana Legislative session.

(Secretary of State (SOS) website).

Finding of Fact No. 2: Ms. Sands (Democrat) won the general election against Dick Haines (Republican). Candidate Sands contributed the \$100 to “Bullock for Montana” on March 1, 2015. Candidate Sands filed a March 10, 2015 C-5 campaign finance report but has not yet filed a closing report. (Commissioner’s records).

Finding of Fact No. 3: Mr. Fugate (Democrat) lost the general election to Doug Kary (Republican). Candidate Fugate filed his closing report with the COPP on November 19, 2014 and within that report, listed a contribution of \$1,700 to the Montana Democratic Party (MDLCC) on November 11, 2014 (8 days before closing his campaign account). Candidate Fugate’s attorney responded to the complaint with a plain factual denial: “Mr. Fugate did not donate funds to the Bullock re-election campaign.” (SOS and Commissioner’s records).

Finding of Fact No. 4: Ms. Wilmer (Democrat) lost the 2014 general election to Jedediah Hinkle (Republican). Candidate Wilmer contributed \$200 to “Friends of Steve Bullock” on June 8, 2015 and listed that contribution in her campaign closing report submitted June 29, 2014 (the contribution was made 21 days before Candidate Wilmer closed her campaign account). (Commissioner’s records).

Finding of Fact No. 5: The Bullock campaign accepted campaign contributions from Candidates Sands and Wilmer but did not receive a contribution from Candidate Fugate. (Commissioner’s records).

DISCUSSION

A candidate's campaign account is, of course, an artificially created pool of money, as are campaign accounts maintained by any form of political committee. Funds deposited into a candidate's campaign account come from individuals and political committees in the form of contributions subject to contribution limits. A candidate can expend those funds for campaign purposes with those purposes generally defined to include an expense payment "...made by a candidate ...to support or oppose a candidate..." §13-1-101(17)(a)MCA.¹ There are few exceptions to a candidate's authority to determine such a payment, with the primary exception being that a candidate cannot use campaign funds to pay a campaign filing fee or to pay "personal travel expenses, food, clothing, lodging, or personal necessities..." §13-1-101(17)(a) MCA.

For decades Montana candidates for public office have routinely and regularly engaged in campaign expenditures in the form of contributions to other candidates for public office. The candidate contributions are made with funds from candidate campaign accounts. There are no reporting or disclosure issues involving candidate campaign contributions in this Matter as each contribution was fully reported and disclosed as an expense by the donor candidate and a contribution by the receiving candidate (See FOFs No. 2

¹ Citations made in this Decision reference the 2015 Montana Code Annotated rather than the 2013 version of the Montana Code in place at the time of 2014 elections. The numbering sequence in the 2015 Code changed from 2013 but the substance of the referenced section of law did not change. Use of 2015 citations allows a reader to more readily locate the cited law.

through 4).² The Complaint in this matter, however, asserts that the particular contributions were made after the time of election such that they no longer are afforded the status of a campaign expenditure by a candidate.

I. Candidate Bullock

Candidate Bullock was a recipient of campaign donations from two candidates who made contributions from their campaign accounts after the date of the November 4, 2014 election. While the actions of those candidates do deserve analysis (see discussion, below) this same level of scrutiny does not apply to Candidate Bullock. There is nothing about a contribution from a candidate account that triggers any concern when received by another candidate (see Discussion, above).³ Candidate Bullock was free to accept the contribution. The complaint against Candidate Bullock is hereby dismissed in full without further analysis.⁴

II. Candidates Fugate, Sands, and Wilmer

Candidates Fugate, Sands and Wilmer each made a contribution from his or her campaign account to a third party political entity after November 4, 2014, the date of election. Candidates Sands and Wilmer gave to Candidate Bullock (FOF Nos. 2 and 4) while Candidate Fugate gave to the Montana Democratic Party (FOF No. 3).

² The Montana Democratic Party timely and fully reported the Fugate contribution, as did Candidate Bullock with the Sands and Wilmer contributions. These contributions are subject to the applicable contribution limits set by Montana law.

³ In contrast a contribution made by corporate check would trigger concern such that it should not be accepted as a contribution by a candidate. §13-35-227 MCA.

⁴ The Commissioner expects that the Bullock campaign would prefer dismissal of this portion of the complaint as frivolous. The Commissioner declines to do so because the Complaint raises a legitimate question as to the underlying actions of donor candidates, even if the question does not extend to Candidate Bullock as the candidate receiving donations.

The Complaint asserts that these contributions are not allowed by Montana law because a candidate may not use surplus campaign funds to “...contribute...to another campaign...” §13-37-240 MCA. The problem with this legal argument, as Respondents’ counsel is quick to point out, is that surplus campaign funds are created “...by the filing of the closing campaign report pursuant to 13-37-228.” *Id.* In this Matter all three candidates made the contributions before they filed their closing reports. (FOF Nos. 2-4). Because a closing report had not been filed, the surplus campaign funds statute, and its limitations, do not apply. As a straightforward legal argument the complaint must fail if based solely on §13-37-240 MCA.

The complaint, however, raises an issue that deserves a more nuanced examination under Montana’s campaign practice law. Under Montana law an individual’s authority to engage in a campaign expense depends solely on his or her status as a candidate. (§13-1-101(17)(a) MCA). All three individuals in this Matter had resolved their elections at the time that each made the contributions which are the subject of the complaint. The issue is therefore whether these individuals were still acting as candidates who could claim authority to make a contribution under the §13-1-101(17)(a) MCA when they made the contributions at issue in this Matter.

It is true, as argued by Respondents’ counsel, that there is no definite time limit set in Montana law for closing a candidate’s campaign account, thereby triggering the surplus campaign account restrictions. (See 13-37-228, MCA). Nor, should there be a time set by statute as it is possible that a candidate with

campaign debt may need to keep the account open for the time necessary to raise money to repay debt. Section 13-37-228(3) MCA takes this factor into consideration and requires that a candidate (“shall”) close his or her campaign account “whenever all debts and obligations are satisfied and further contributions or expenditures will not be received or made that relate to the campaign...”

We are at a time when dealing with Montana’s campaign practice laws when even the edges of campaign laws are being explored and probed.⁵ There are ever increasing amounts money being spent in campaign activity and in the examination of campaign activity.⁶

Montana’s campaign practice law has not, to this time, been interpreted to define the allowed edge of (and a candidate’s use of) a campaign account following the date of the election served by the campaign account. Specifically, the COPP has not before considered the interplay of the words “debts”, “obligations”, “contributions” and “expenditures” in §13-37-228(3). It does so now. By this Decision the COPP determines that §13-37-228(3) defines the dominate campaign measurement to be that of debts and obligations of the campaign, with the ability for a candidate to make contributions and expenditures after an election dependent on the relationship of the contribution or expenditure to the debts and obligations of the campaign.

The Commissioner hereby determines that the post-election contribution

⁵ See discussion of personal use in *Wemple v Connell*, COPP 2014-CFP-041.

⁶ For example, this is the 5th COPP complaint filed in 2015 by Timothy Adams, each alleging separate violations of Montana’s Campaign Practice Act.

actions of 2014 Candidates Fugate and Wilmer are related to the obligations of their 2014 campaign. Each candidate closed their campaign account within a few months following the 2014 election and each made a final contribution to an aligned fellow candidate or party as part of the campaign account closing process.

The post-election contribution action of Candidate Sands, however, lacks such a connection to the underlying 2014 campaign. Candidate Sands' contribution was made through a campaign account kept open for an extended period of time after the election for no reason connected to a contribution or obligation of the underlying campaign. This lack of connection is made even more apparent because Candidate Sands prevailed in the election and could have established a constituency services account.

The COPP has a general obligation to assist and support candidates for public office (as these people perform a public service to all Montanans), so long as that assistance does not conflict with the COPP's greater duty to enforce campaign finance reporting and disclosure on behalf of the people of Montana. In the past the COPP has deferred to candidates, such as Candidate Sands, who subjectively decide to keep campaign accounts open even though there is no apparent need to use the campaign account to satisfy campaign debts and obligations. The COPP will not continue such deference in the future but instead hereby informs candidates that campaign accounts must be timely closed, as directed by §13-37-228(3) MCA.

Candidate Sands (and any other candidate currently in a similar situation)

is hereby excused from a campaign practice violation under the theory of excusable neglect.⁷ Such deference will not be extended to Candidate Sands or any other candidate as to a future complaint based on similar facts in a future election. Candidate Sands is directed to close her campaign account within ten days of the date of this Decision and to either place the remaining funds into a constituency account or distribute the same under the restrictions of §13-37-240 MCA.

The people of Montana passed the surplus campaign fund law by initiative vote in 1994. A surplus campaign account is meant to supplant a campaign account in a manner that focuses surplus campaign funds on constituency services rather than candidate campaign activity.⁸ The law governing surplus campaign fund use goes hand in hand with the application of §13-37-228(3) in the manner set out in this Decision. The future policy of the COPP will be as set out herein.

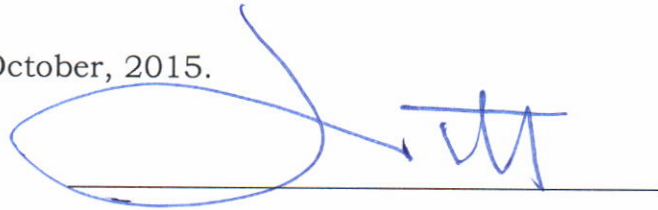
OVERALL DECISION

This Commissioner, having duly considered the matters raised in the Complaint, and having completed his review and investigation, hereby holds and determines, under the above stated reasoning, that there is insufficient evidence, to justify a civil adjudication against the parties complained of in this Matter. The Commissioner hereby dismisses this complaint in full.

⁷ Candidate Sands actions relied on established culture and practice of COPP deference to a candidate on the issue involved in this Matter. Until the COPP declared this deference to cease (as it has with this Decision) a candidate's actions meets the standards of excusable neglect as that analysis is applied to each Decision made by the COPP. See *Womack v. Jenks*, COPP-2013-CFP-023; *Delgado v. Salomon*, COPP-2014-CFP-029; *Vincent Decisions*, COPP-2013-CFP-006 and 009.

⁸ See 44.10.539 ARM, particularly (1)(e) of this ARM.

DATED this 26th day of October, 2015.



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