

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Anderson v. Anderson No. COPP 2015-CFP-012	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On September 23, 2015, Dick Anderson Construction, a business located in Helena, Montana filed a complaint against itself for failing to register (in a timely manner) as an “incidental committee.”

ISSUES ADDRESSED BY THIS FINAL DECISION

The campaign finance issue addressed by this Decision is that of timely registration as a political committee.

DISCUSSION

A political committee, whether in the form of an independent, 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 following findings of fact apply:

Finding of Fact No. 1: On April 16, 2015, “Yes for Kids”, a committee in support of the June 18, 2015 Helena elementary school bond, submitted a C-2 Statement of Candidate form to the COPP to register as a “political action committee.” In June of 2015, the Commissioner of Political

Practices sent “Yes for Kids” a letter advising that their committee is classified as a “Ballot issue committee.” (Commissioner’s records).

Finding of Fact No. 2: On its July 8, 2015 C-6 campaign finance report for the period of June 4, 2015 to July 9, 2015, “Yes for Kids”, among other contributions, reported a \$3,000 contribution from “Dick Anderson Construction”. (Commissioner’s records).

Finding of Fact No. 3: On August 5, 2015, the COPP sent a letter to Dick Anderson Construction advising that “Yes for Kids” reported a \$3,000 contribution their business such that it would need to register with the COPP as an incidental committee. (Commissioner’s records).

Finding of Fact No. 4: On August 25, 2015, Dick Anderson Construction submitted a C-2 Statement of Organization form with the COPP to register as an incidental committee. That same day, Dick Anderson Construction Incidental Committee filed C-4 campaign finance initial and closing reports listing a \$3,000 contribution dated June 5, 2015 to “Yes for Kids.” (Commissioner’s records).

Finding of Fact No. 5: On September 4, 2015 the COPP, by letter, accepted the committee registration as an incidental committee and also accepted the campaign finance report as a closing report. The COPP letter informed that the political committee certification was late filed. (Commissioner’s records).

Finding of Fact No. 6: The C-2 registration form lists “Dick Anderson Construction” as the name of the Committee and “Corey McGreevey”, a Dick Anderson Construction supervisor, as the name of the committee treasurer. (Commissioner’s records).

The Commissioner begins analysis by first examining the late registration issue. The Dick Anderson Construction incidental committee was required to register (file a C-2 form) as a political committee within 5 days of making its contribution to the ballot committee. The contribution by Dick Anderson

Construction to the ballot committee was made on June 5, 2015 (FOF No. 4), meaning that Dick Anderson Construction needed to file its COPP registration as an incidental committee no later than June 10, 2015. (§13-37-201 MCA). The incidental committee, however, registered on August 25, 2015, meaning it late filed its registration by 76 days.

Sufficiency Finding No. 1: The Commissioner determines that sufficient facts exist to show that Dick Anderson Construction failed to timely register as a political committee. (Commissioner's records).

The Commissioner notes that on July 8, 2015 the Yes For Kids ballot committee reported a \$3,000 contribution by Dick Anderson Construction (FOF No. 3). The Commissioner has already determined that a principal committee's timely report of a contribution later reported by an incidental committee meets the public disclosure obligation as to the contribution. *Ponte v. Montana Base*, COPP-2014-CFP-012.¹ This does not, however, excuse the lack of timely disclosure of the incidental committee information provided by the C-2 registration form. *Id.*, See also *Greenwood v. MSWD*, COPP-2014-CFP-054.

In this Matter there was a period of 28 days (the time period between June 10 and July 8, 2015) when an incidental committee had been created by contribution but during which there was no information on file with the COPP showing that the incidental committee existed. Even though the information in

¹ This timely report by the ballot committee timely provides the contribution information to the public such that Dick Anderson Construction does not have a violation for late reporting of a contribution.

the C-2 form was almost the same as the information in the ballot committee C-6 disclosure (compare FOF Nos. 4 and 6), there were 28 days when that information was not provided to the public through access to the C-2 form at the COPP website or Office.

The Commissioner recognizes and appreciates the sense of civic responsibility demonstrated by Dick Anderson Construction in that by filing a complaint against itself it seeks to promptly resolve and settle its social obligation in this Matter. This action will be recognized as mitigation, below.

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 may have violated Montana’s campaign practice laws,

including, but not limited to §13-37-201 and all associated ARMs. 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 file cannot 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.

The Commissioner has applied the principle of *de minimis* to excuse the late reporting by the several incidental committees but does not do so for late filing, as discussed above in this Decision. 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 particular, the Commissioner has limited discretion to apply *de minimis* to untimely reporting. Reporting is only valid when it is timely accomplished and any delay demonstrates harm. Applying the *Ponte v. Montana Base* precedent the Commissioner does not apply *de minimis* to the late filing.

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 nature of violations (the failure to timely file 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 24th day of September, 2015.



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