

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Connell v. Boulanger No. COPP 2014-CFP-036	Summary of Facts and Finding of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act
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Scott Boulanger is a resident of Darby, Montana. In 2014 Mr. Boulanger was a candidate for election to the Montana legislature, Senate District 43 (SD43). Patrick Connell is a resident of Hamilton, Montana. On September 10, 2014, Mr. Connell filed a complaint with the COPP alleging that Candidate Boulanger had failed to properly report his campaign expenditures.

**SUBSTANTIVE ISSUES ADDRESSED**

The substantive areas of campaign finance law addressed by this Decision concern a candidate's reporting, disclosure and record keeping obligations under Montana law.

**FOUNDATIONAL FINDING OF FACTS**

The foundation facts necessary for this Decision are as follows:

Finding of Fact No. 1: In December of 2012 Scott Boulanger was appointed by the Ravalli County Commission as Senator representing SD 44. The SD 44 position was vacant because the elected senator (Bob Lake) was later elected a Public Service Commissioner for the State of Montana. (Secretary of State (SOS) Website, Ravalli County Republicans Website.)

Finding of Fact No. 2: Following appointment, Mr. Boulanger served as Senator representing SD 44 at the 2013 Montana legislature. (SOS Website).

Finding of Fact No. 3: Montana's redistricting work changed the senate district number for Ravalli County from SD 44 to SD 43, starting with the 2014 elections. (SOS Website).

Finding of Fact No. 4: Patrick Connell was elected to the Montana legislature in 2010 and 2012, representing House District 87 (HD 87). (SOS Website).

Finding of Fact No. 5: Mr. Connell and Mr. Boulanger ran as opponents in the 2014 Republican primary election for nomination as the Republican candidate for election from SD 43. Mr. Connell won the 2014 Republican primary election and the general election and served as Senator from SD 43 at the 2015 session of the Montana legislature. (SOS Website).

## **DISCUSSION**

Mr. Boulanger was a 2014 candidate for election to the Montana legislature from SD 43 (FOF No. 5). Mr. Connell's complaint alleges that Candidate Boulanger's 2014 campaign did not report certain campaign expenditures. As explained below, the COPP identifies and raises additional campaign issues related to Candidate Boulanger's contribution handling and reporting obligations.<sup>1</sup> Each of these issues is discussed further below.

### **I. Campaign Treasurer**

Montana's Campaign Practice Act encourages and requires candidates and

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<sup>1</sup> Once a complaint is filed the Commissioner "shall" investigate any additional alleged violation of the Montana Campaign Practices Act. §13-37-111(2)(a) MCA.

political committees to fully report and disclose campaign contributions and expenditures.<sup>2</sup> Consistent with this approach candidates for public office in Montana, including Candidate Boulanger, are required to “appoint one campaign treasurer” (§13-37-201, MCA).

Finding of Fact No. 6: Candidate Boulanger filed his “Statement of Candidacy” (Form C-1) for the 2014 election from SD 43 with the COPP on June 3, 2013. The form lists Scott Boulanger as campaign treasurer. (Commissioner’s records).

Finding of Fact No. 7: Candidate Boulanger filed his pre-primary and post-primary campaign finance reports in May and June of 2014. Each report was signed by Jackie Kucera as “treasurer.” (Commissioner’s records).

Finding of Fact No. 8: Candidate Boulanger amended his statement of candidacy on September 2, 2014 listing Jackie Kucera as treasurer. (Commissioner’s records).

Ms. Kucera’s signature as treasurer on Candidate Boulanger’s campaign finance reports filed before September 2, 2014 was not proper. Under Montana law the signature on a campaign finance report “must be verified as true and correct by the oath or affirmation of the individual filing the report.” §13-37-231 MCA.

Sufficiency Finding No. 1: The Commissioner finds that sufficient facts exist to show that Candidate Boulanger acted in violation of Montana’s campaign practice law by causing certain of his campaign finance reports to be signed (filed) by someone who was not authorized to take this act under Montana law.

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<sup>2</sup> The 2015 Montana legislature emphasized and enhanced this approach, adding reporting periods and expanding the election activity that needs to be valued and reported.

Under Montana law Ms. Kucera could not make such an oath or affirmation the person filing the report “must be the candidate or an officer ... who is on file...with the commissioner.” §13-37-231 MCA. Ms. Kucera was neither a candidate nor a campaign committee officer whose name was on file with the COPP at the time that she signed the campaign finance reports.<sup>3</sup>

## II. Separation of Campaign Accounts

Under Montana law any candidate, including Candidate Boulanger, is subject to a limit on the amount of contribution received from a political committee or individual. §13-37-216(1)(a) MCA. That limit applies per election, with a contested primary and a general election counted as separate elections. §13-37-216(6) MCA.

Candidate Boulanger was involved in a contested primary election (FOF No. 3). Accordingly, Candidate Boulanger could accept up to \$340 (\$170 per election) from one individual during his primary election with \$170 of that amount to be held in trust in a separate account for use in the general election: “[g]eneral election contributions received prior to the primary election must be maintained in a separate account and shall not be used until after the primary election.” 44.10.330(2)(c) ARM.

Finding of Fact No. 9: During the primary election Candidate Boulanger accepted almost \$3,000 in general election contributions. (Commissioner’s records).

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<sup>3</sup> The Commissioner’s investigator interviewed Ms. Kucera who explained that she had no involvement with the details or recordkeeping of any Boulanger campaign contributions or expenditures. Ms. Kucera stated her activities were limited to preparing campaign finance reports based on documents and records provided by Candidate Boulanger and his wife.

Finding of Fact No. 10: Candidate Boulanger deposited the general election funds into the same depository account used for his primary election funds. Candidate Boulanger did not place the general election funds into a separate account as shown by the issuance of refunds of general election contributions from the same bank account used for primary election contributions and expenditures. (Commissioner's records).

Based on Findings of Fact Nos. 9 and 10 the Commissioner determines the following:

Sufficiency Finding No. 2: There are sufficient facts to show that Candidate Boulanger acted in violation of Montana's campaign practice law by depositing primary and general election funds into the same bank account, thereby failing to establish the "separate" general election account required by law.

Candidate Boulanger did not prevail in the SD 43 Republican primary election and was therefore required by Montana law to return all general election contributions: "[a primary election loser]...must return the [general] election contributions to the donors." 44.10.330(3) ARM. The COPP staff understands that this requirement of segregated funds may be ignored by a number of candidates in contested primaries.<sup>4</sup> There has only been one prior complaint regarding this issue and in that primary election the legislative candidate had set up a separate campaign account in which he had placed general election contributions. *Kenat v. VanDyk*, COPP-2014-CFP-004.

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<sup>4</sup> Neither Republican candidate in the 2014 SD 43 Republican primary election (*See Wemple v. Connell*, COPP-2014-CFP-041) established a separate general election campaign account. The COPP, however, cannot condone or excuse this conduct as it is directly contrary to 44.10.330(2)(c) ARM. At least part of the COPP's mission is to protect candidates and this ARM serves candidates as well as the public.

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This Decision demonstrates the legal and practical reasons as to why the separate account requirement exists. The COPP investigator determined the following as to Candidate Boulanger's handling of the general election funds:

Finding of Fact No. 11: The amended pre-primary Boulanger campaign finance report lists \$2,990 in general election contributions from 22 contributors. (Commissioner's records).

Finding of Fact No. 12: The Boulanger campaign bank records show \$3,120 in refunds to 24 contributors. (Boulanger campaign bank statements).

Finding of Fact No. 13: The campaign finance report information does not match the campaign bank account information in the following details:

- a. Two of the 22 general election contributors (Marie Meyers at \$160 and Patricia Anderson at \$80) listed on the Boulanger campaign finance report did not receive refunds.
- b. Two individuals (Matt Rosendale and Jean Rosendale) received refunds (\$160 each) but were not listed on the Boulanger campaign finance report as giving a general election contribution.<sup>5</sup>
- c. One individual, Joel Brake, is shown in the bank records as making a \$340 contribution but is listed on the Boulanger campaign finance report only for a \$170 primary election contribution and was not provided a refund.<sup>6</sup>
- d. One individual, Teresa Roberts, is provided a \$100 refund without being listed in the campaign finance report or shown as a contributor by the campaign bank records.
- e. One individual, Paul Benson, is shown by bank and candidate records as contributing and depositing \$250 but was not listed as a contributor in campaign finance reports and did not receive a refund. (Boulanger campaign bank records).

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<sup>5</sup> The Boulanger campaign bank records show that Matt Rosendale and Jean Rosendale did, in fact, contribute \$320 each. It is the campaign finance report that is in error as it lists only the Rosendales' \$160 contribution to the primary election.

<sup>6</sup> It is possible that Mr. Brake's spouse also contributed \$170 but only Mr. Brake's name is listed as a contributor in the Boulanger campaign finance report.

Based on FOF Nos. 11-13 the Commissioner makes the following sufficiency finding:

Sufficiency Finding No. 3: There are sufficient facts to show that Candidate Boulanger acted in violation of Montana’s campaign practice law by failing to properly refund general election contributions.

Candidate Boulanger did not initially understand that he had to return the general election contributions.<sup>7</sup> Yet, Candidate Boulanger was forewarned as COPP staff had been talking to Candidate Boulanger since late August of 2014 about the need to close his SD 43 Republican primary election campaign account, along with the necessity of the return of any general election campaign funds received during his SD 43 primary election.<sup>8</sup> Still, Candidate Boulanger may have rushed to make the general election refunds, despite the 3 month passage of time since the date of the primary election. The Complaint was filed on September 10, 2014 and it likely triggered Candidate Boulanger’s first set of refunds of general election contributions, made on September 12, 2014.<sup>9</sup> It seems likely that the rushed action, inadequate record keeping, lack of understanding of legal requirements and confusion caused by the mixing of primary and general election funds into one account all contributed to sufficiency finding No. 3.

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<sup>7</sup> Candidate Boulanger conversations with COPP staff.

<sup>8</sup> See Commissioner letter dated August 29, 2014 attached to this Decision.

<sup>9</sup> Under Montana law “[i]f a candidate receives contributions for the general election prior to the primary, and does not proceed to the general election, the candidate must return the [general election] contributions to the donors.” 44.10.330 ARM.

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### III. Filing of Campaign Finance Reports

Candidate Boulanger was required to report and disclose as Montana's campaign finance report filing requirements are mandatory: "shall file" (see §§13-37-225, 226 MCA). Montana law applying to 2014 elections required that legislative candidates file their campaign finance report "on the 12<sup>th</sup> day preceding the date on which an election is held..." and on 20<sup>th</sup> day after the election §13-37-226(3) MCA. June 3, 2014 was the date set for primary elections in Montana. The 12<sup>th</sup> day preceding the June 3 primary election was May 22, 2014 and 20<sup>th</sup> day after the election was June 23, 2014.

Finding of Fact No. 14: Candidate Boulanger filed three C-5 campaign finance reports with the Commissioner of Political Practices Office (COPP):

- a. A pre-primary report on May 23, 2014 (amended on June 23, 2014);
- b. A C-7 Notice of Pre-election contribution form;
- c. A post primary report on June 19, 2014.
- d. There are no further reports filed, including a closing report.  
(Commissioner's records).

The Commissioner determines, based on FOF No. 14, that Candidate Boulanger filed his pre-primary campaign finance report one day late. In addition to the campaign finance reports required before and after an election, a candidate must also account for the totality of funds (contributions and expenditures) flowing through his or her campaign account. Section 13-37-226(1)(f) MCA requires that a candidate file a closing report and any necessary interim reports: "...on the 10<sup>th</sup> day of March and September of each year following an election until the candidate... files a closing report as specified in §13-37-228(3)." Candidate Boulanger did not file a report on March 10, 2015

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nor did he file a closing report. (FOF No. 14). Accordingly, the Commissioner makes a sufficiency finding as follows:

Sufficiency Finding No. 4: The Commissioner finds that sufficient facts exist to show that Candidate Boulanger acted in violation of Montana’s campaign practice law by late filing his pre-election report and by failing to file his March 10, 2015 report or his closing report.

Candidate Boulanger is no longer a candidate for office in Montana, having lost the 2014 SD 43 Republican primary election. However, Candidate Boulanger’s responsibility as a candidate to account and report to the public as to his 2014 campaign continues until a closing report is filed. Until the missing reports are properly completed and filed Montana law dictates that Mr. Boulanger’s name cannot appear on a ballot as a candidate for elected office in the State of Montana.<sup>10</sup>

#### IV. Reporting of Contributions and Expenses

The money that supports (campaign contributions) and is spent by (campaign expenses) a candidate’s campaign is subject to complete transparency, made useful to voters and the opposing candidate by an accompanying requirement of timely reporting. Montana law defines a simple, but complete, system of dealing with and accounting for contributions and expenses:

- 1) Within 5 days of becoming a candidate, a candidate must file a certification with the COPP. (§13-37-201 MCA). That certification

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<sup>10</sup> Under Montana law “[t]he name of a candidate may not appear on the official ballot for an election if the candidate ... fails to file any statement or report as required ... by this chapter.” §13-37-126(1) MCA. The Commissioner is directed [“shall”] to notify the Montana Secretary of State of any purported candidate who has failed to file any such required campaign finance report.

filing must include “one primary campaign depository.” (§13-37-205 MCA).

- 2) The campaign depository must be used for “deposit[ing] all contributions received and disburse[ing] all expenditures made by the candidate.” (§13-37-205 MCA).

#### A. CONTRIBUTIONS

Candidate Boulanger designated Farmers State Bank in Victor, Montana as the campaign depository for his campaign account. Montana law requires that “all contributions received” (§13-37-205 MCA) must be deposited by Candidate Boulanger into his Farmers State Bank campaign account. Montana law further requires that Candidate Boulanger file a campaign report disclosing all expenditures and contributions made within the reporting period. §13-37-225 MCA.

This Decision compares contributions deposited into Candidate Boulanger’s campaign bank account with contributions reported by the amended pre-primary campaign finance report submitted by Candidate Boulanger. The Boulanger campaign finance report was filed with and available at the COPP offices.<sup>11</sup> The Commissioner subpoenaed a copy of the Boulanger campaign bank account records from Farmers State Bank in Victor, Montana. This Decision examines and compares Candidate Boulanger’s pre-primary campaign finance report and the campaign bank account records for

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<sup>11</sup> The Commissioner used Candidate’s Boulanger’s amended pre-primary campaign finance report dated June 23, 2014.

the pre-primary election period. Based on that examination the Commissioner determines as follows:

Finding of Fact No. 15: Candidate Boulanger reported campaign receipts on his SD 43 pre-primary amended campaign finance report as follows:

- a. \$1,859.05 (\$100 cash and \$1,759.05 in-kind) in Candidate donations.<sup>12</sup>
- b. \$0 from fundraisers
- c. \$1,540 from PACs
- d. \$17,080 from contributors over \$35 (includes \$2,990 general).
- e. \$514 from contributors under \$35. (Commissioner's records).

Finding of Fact No. 16: FOF No 15 reports a total of \$19,234 in cash receipts by Candidate Boulanger's campaign.<sup>13</sup> This amount is derived by adding the amounts listed in FOF 15 (b-e) plus the \$100 from (a) Any in-kind contribution is not included in the cash total. (Commissioner's records).

Finding of Fact No. 17: A review of Candidate Boulanger's campaign bank records for the period of the pre-primary campaign finance report shows the following deposits into the campaign account: \$ 100 (July, 2013); \$0 (August); \$480 (September); \$250 (October); \$640 (November); \$0 (December); \$4,375(January, 2014); \$898 (February); \$720 (March); \$3,570 (April); \$4,459 (May), \$3,740 (June record, through May 17)<sup>14</sup>. These deposits total \$19,232. (Commissioner's records).

The amount deposited and reported by the Boulanger are within \$2 of each other and seemingly demonstrate no campaign issue with

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<sup>12</sup> Candidate Boulanger's amended pre-primary report attempts to list the in-kind to a monetary contribution but there is no such monetary contribution deposited into the campaign bank account.

<sup>13</sup> Candidate Boulanger placed general election and primary election contributions into the same campaign bank account.

<sup>14</sup> The reporting period ended May 17 but Candidate Boulanger's pre-primary report included \$980 from his May 19 deposit so that \$980 is included in the total.

contributions. The COPP investigator, however, found the following facts showing that the actual contributions and contributors reported do not match those shown by the campaign bank records:

Finding of Fact No. 18: A comparison of Candidate Boulanger's campaign bank records to the pre-primary campaign finance report shows the following differences: Matt Rosendale's banking deposit was \$320 but the campaign finance report lists the contribution at \$160; Jean Rosendale's banking deposit was \$320 but the campaign finance report lists the contribution at \$160; Joel Brake's banking deposit was \$340 but the campaign finance report lists the contribution at \$170; Wellington Roemer's banking deposit was \$300 but the campaign finance reports lists the contribution at \$150; Paul Benson contributed \$250 through a credit card deposit made on April 16, 2014 but he was not listed as a contributor on the campaign finance report; and Trudy Davidson made two \$50 credit card contributions (\$100 total) to the campaign on April 25, 2014 but was only disclosed as making a single \$50 contribution. The campaign finance report therefore fails to list \$940 from six contributors whose funds were deposited into the campaign bank account and fails to list the name of one contributor (Paul Benson) entirely. (Commissioner's records).

This \$940 in deposited but undisclosed Boulanger campaign contributions is compounded by the Boulanger campaign's paradoxical reporting of contributions for which no records exist showing that they were deposited into the campaign bank account:

Finding of Fact No. 19: After considerable time and effort the COPP investigator was able to determine that the following 5 contributors and \$690 in contributions listed in the Boulanger pre-primary report cannot be matched with any deposit (cash, credit card or check) into the Boulanger campaign account: \$160 (Robert Jirsa); \$160 (Kristi Blazer); \$160 (Mark Taylor); \$160

(Elaine Taylor); and \$50 Niki Sardot.<sup>15</sup>  
(Commissioner's records, campaign bank records).

Based on FOF Nos. 17 and 18 the Commissioner determines the following:

Sufficiency Finding No. 5: There are sufficient facts to show that Candidate Boulanger acted in violation of Montana's campaign practice law by failing to deposit contributions in the campaign depository and by failing to report contributions in his campaign finance report.

Montana law requires that "all contributions received" (§13-37-205 MCA) must be deposited into the candidate campaign bank account. Montana law further requires that each candidate for office in Montana, including Candidate Boulanger, must report and disclose each contribution of \$35 or more received during the time period covered by the campaign finance report. §13-37-229. Sufficiency Finding No. 5 finds sufficient facts to show that Candidate Boulanger's conduct did not comply with these campaign practice laws.

#### B. EXPENDITURES

Under Montana law, each candidate for public office, including Candidate Boulanger, must pay expenses by "disbursing" funds from his or her designated campaign depository (§13-37-205 MCA). Further, Candidate Boulanger's campaign treasurer "shall keep detailed accounts of all ... expenditures made ..." (§13-37-208(1)(a) MCA). Candidate Boulanger then

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<sup>15</sup> The Investigator determined that the Boulanger campaign bank records showed \$1,691 in cash or credit card deposits, including \$421 applied from a late credited (October 2014) Dashboard credit card payment. The investigator was able to secure some records from the Boulanger campaign and matched \$1,110 in contributions from 7 contributors to cash or credit card payments. The contributors listed in FOF No. 18 remain as lacking any support by campaign records.

“shall file periodic reports of ...expenditures made by...” the campaign. ((§13-37-225(1) MCA). All expenditures made must be reported and disclosed for the time period covered by a campaign finance report. (§13-37-230 MCA)

Finding of Fact No. 20: Candidate Boulanger’s pre-primary bank account records report expenditures of (July, 2013) \$21.59, (January, 2014) \$234.82, (February, 2014) \$500.00, (April, 2014) \$2,930.58, (May, 2014) \$1,284.64, June (through May 19) \$10,688.05. The reported expenditures were made by 23 checks and one bank charge totaling \$15,659.68. (Commissioner’s records).

Finding of Fact No. 21: Campaign Boulanger’s campaign finance report lists 23 campaign expenditures totaling \$15, 602.74. (Commissioner’s records).

Finding of Fact No. 22: On September 10, 2014, Patrick Connell filed a complaint with the COPP against Scott Boulanger. Mr. Connell alleged that Mr. Boulanger “omitted” three expenditures from his C-5 campaign reports: A May 11, 2014 campaign advertisement in the Ravalli Republic; Facebook “campaign page” fees and the cost of a campaign fundraiser held May 22, 2014. (Complaint).

Finding of Fact No. 23: On September 29, 2014, Mr. Boulanger submitted his response to Mr. Connell’s complaint. In the response, Mr. Boulanger stated: payment for the May 11, 2014 advertisement in the Ravalli Republic was included in the \$1,795.05 that was listed as an in-kind personal contribution by the candidate in his pre-primary report. Further, Candidate Boulanger’s response admits a failure: to report his campaign Facebook page costs; to report costs for a May 22, 2014 fundraiser; to report the cost of address labels and to report costs of movie theatre campaign advertisements. (Commissioner’s records).

Finding of Fact No. 24: Candidate Boulanger’s C-5 pre-primary campaign finance report listed \$1,759.05 as an “in-kind” contribution under “Candidate’s Personal Contribution.” Within that column listing, handwritten in

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pen, reads: “checks, sign mat., misc., office supplies, filing fee, etc.” No costs were listed as to each item. There was no further expense report of any of the items of the \$1,759.05 under campaign expenses. (Commissioner’s records).

Finding of Fact No. 25: Candidate Boulanger’s campaign finance reports do not list any Facebook or social media costs. Candidate Boulanger provided the COPP with copies of campaign page invoices totaling \$3,309.33 from “Facebook, Inc.” (Commissioner’s records).

Finding of Fact No. 26: Candidate Boulanger’s campaign bank account issued 9 checks for payments that were not listed on campaign finance reports: \$50 to Central Communications on May 10, 2014; \$245 to USPS on May 28, 2014; \$52.25 to Allegra on June 16, 2014; \$159 to La Venture on June 16, 2014; \$199 to MT GOP on June 19, 2014; \$250 to Phanplex on July 1, 2014; \$2,000 to Capitol One Credit Card on November 21, 2014; \$79.90 to La Venture on January 1, 2015; and, \$50 to RCRW on April 12, 2015. These expenses total \$3,085.15(Commissioner’s records).

Finding of Fact No. 27: The completely unreported expenditures set out in FOF Nos. 25 and 26 total \$6,394.48. The in-kind expenditure of \$1,759.05 was reported in total amount but not as to each expenditure or the purpose of the expenditure. (Commissioner’s records).

Based on these facts the Commissioner makes the following

sufficiency findings:

Sufficiency Finding 6: Sufficient facts exist (FOF Nos. 20-27) to show that Candidate Boulanger failed to properly report and disclose over \$6,000 in campaign expenditures as required by Montana law.

Montana law requires that “[a]ll expenditures, except expenditures from a petty cash fund, shall be made by check drawn on the designated depository.”

44.10.503 ARM, COPP accounting manual p. 14. While Candidate Boulanger

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claims confusion, it is hard to imagine a clearer directive than that set out in the COPP accounting manual provided to all 2012 candidates for Montana public office:

It is essential that all monetary receipts – including a candidate’s own funds- be deposited in the campaign account and that all money spent by the campaign be by checks drawn on this account (the only exception is the petty cash fund). Proper use of the campaign checking account will make record keeping and reporting much easier.

COPP Candidate Manual, page 6.

Candidate Boulanger compounded the failure to disclose and reported campaign expenses by issuing a check in November of 2014 for \$2,000 to a credit card company for a “debt” that was not reported on any Candidate Boulanger campaign finance report.<sup>16</sup>

Late payment of an undisclosed debt is a campaign practice violation by itself. Past Commissioners have rigorously applied laws requiring that campaigns “estimate their debts when they are incurred”, not after an election when the bill is paid. *Akey v. Clark*, March 26, 1999 (Commissioner Vaughey); because “the public has a right to full disclosure of all debts and estimated debts incurred by a candidate during the appropriate reporting periods.” *Ream v. Bankhead*, September 10, 1999 (Commissioner Vaughey). This reporting of debt covers services, advertisements campaign expenses in general (*Wilcox v. Raser*, May 26, 2010 (Commissioner Unsworth)) and even the expenses owed musicians (*Hardin v. Ringling* 5, December 17, 2012 (Commissioner Murry).

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<sup>16</sup> Candidate Boulanger has been unable to produce sufficient records showing a receipt or bill of what he paid with the \$2,000 check. This is an issue that Candidate Boulanger will need to deal with by filing a properly supported final or closing report.

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This Commissioner has similarly Decided. *Williams v. Andersen*, COPP-2014-CFP-035.

The Commissioner declines to make a finding as to the in-kind expenditures listed at FOF No. 24. Under Montana law all expenditures must be reported as “amount, date and purpose of each expenditure...” §13-37-230(1) MCA. Candidate Boulanger did not remotely meet this requirement as to the \$1,759.05 of in-kind candidate expenses listed in FOF No. 24. There is, however, some confusion as to use of and reporting of in-kind candidate expenses in the manner required by §13-37-230(1) MCA.<sup>17</sup> Accordingly, the Commissioner will apply a variation of excusable neglect and excuse the consequences of this particular failure.

As to future candidates and future campaigns, the Commissioner determines that any in-kind expenditure must be reported as an expense in the full detail required by Montana law. The COPP is engaging in rule making and expects to further define this determination in an appropriate rule or rules.

#### V. Inadequate Contribution Records

Montana law requires that any candidate, including Candidate Boulanger: “shall keep detailed accounts of all contributions received...current within 10 days after the date of receiving a contribution...” (§13-37-208(1)(a) MCA). These records must be sufficient to show that Candidate Boulanger has disclosed all contributions received (§13-37-229 MCA)

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<sup>17</sup> See *Wemple v. Connell*, COPP-2014-CFP-041.

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The Commissioner's investigator was unable, despite repeated requests, to secure sufficient accounting or records from Candidate Boulanger. This included the failure to produce a "deposit slip" or "[a] statement showing the amount received from or provided by each person..." §13-37-207(2) MCA. The candidate could not explain the difference and lacks the required documentation to do so.

Sufficiency Finding No. 7: The Commissioner finds that sufficient facts exist to show that Candidate Boulanger acted in violation of Montana's campaign practice law by failing to keep records sufficient to account for all contributions.

Montana's requirements of reporting, disclosure and record keeping are designed to insure transparency and fairness to the public, voters and the opposing candidate. Stated another way by Ravalli County Senator Fred Thomas:

*We [legislators] are to follow the [campaign practice] law to the N'th degree, report every dime to our campaign, report every expense that we incur in the time and manner that it's supposed to happen. I don't have any problem with that, that's our job as candidates. We are a citizen legislature and that we owe it to our citizens, our voters in our district and the state voters as well.<sup>18</sup>*

The Commissioner determines that sufficient facts exist to show that Candidate Boulanger failed to meet legal requirements of record keeping as stated in Sufficiency Finding No. 7. Further, the Commissioner determines that Candidate Boulanger did not meet the "N'th degree" standard articulated by Senator Thomas.

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<sup>18</sup> April 24, 2015 Senate floor debate on the confirmation of Commissioner Motl.  
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## **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 Candidate Boulanger’s campaign may have violated Montana’s campaign practice laws, including, but not limited to the several campaign practice laws set out above. 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.

To a substantial degree Candidate Boulanger ignored Montana’s campaign practice act. There is no element of the Act that escaped some infringement by Candidate Boulanger who used an unauthorized signee, filed late, failed to report contributions, failed to report expenses, failed to produce

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sufficient campaign records and failed to properly segregate general election contributions. 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.

Likewise, the Commissioner does not accept that failures to file or report can normally 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, much less a failure to file, demonstrates harm.

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) as well as any other action the Commissioner is directed to take. In this Matter that “other action” includes denial of listing as a candidate on any ballot until missing reports are filed (§13-37-126 MCA) and removal of a candidate’s name from the ballot, as directed by §13-35-106 MCA.

Mr. Boulanger can still, to a substantial degree, mitigate the harm he is causing to himself by his continued campaign practice act violations. Specifically, Mr. Boulanger needs to properly handle and then close his 2014 campaign account. Further, Mr. Boulanger needs to cease making expenditures for what appears to be future campaigns out of a campaign

account that is only to be used for the SD 43 Republican Primary election. Finally, Mr. Boulanger cannot pay himself for campaign debt that he has not reported and disclosed on his campaign finance reports.<sup>19</sup>

The Commissioner understands that Mr. Boulanger has future candidacy aspirations. Mr. Boulanger must, however, deal properly with his 2014 candidacy before turning his attention to future campaigns. Accordingly, the Commissioner hereby informs Mr. Boulanger that the COPP will, at the appropriate time, under the authority of §13-37-126 MCA notify the appropriate election administrator that the name of Scott Boulanger may not appear as a candidate on the ballot of any future election until he files amended reports and a closing report for the 2014 SD 43 primary election that properly report and disclose all contributions, expenditures and the refund of general election contributions. These reports must be signed by Mr. Boulanger.

The Commissioner hereby, through this decision, also issues a “sufficient evidence” Finding and Decision justifying civil prosecution of Candidate Boulanger for late filing, failing to report, improper accounting, improper use of campaign funds and general improper campaign practices implicating the full reach of chapters 35 and 37 of Title 13 MCA. Because of nature of violations (the failure to timely and adequately report and disclose occurred in Lewis and Clark County) this matter is referred to the County Attorney of Lewis and Clark


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<sup>19</sup> Mr. Boulanger’s November 21, 2014 expense of \$2,000 is not connected to any item of debt on his campaign finance report. Mr. Boulanger has claimed “debt” in conversations with COPP staff but there is no such debt or loan listed on the campaign finance reports currently filed.

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 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 10<sup>th</sup> day of August, 2015.



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Jonathan R. Motl  
Commissioner of Political Practices  
Of the State of Montana  
P. O. Box 202401  
1209 8<sup>th</sup> Avenue  
Helena, MT 59620

COMMISSIONER OF  
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August 29, 2014

Scott Boulanger  
PO Box 733  
Darby, MT 59829

*Via: email and US Mail*

Dear Mr. Boulanger:

I write in response to an inquiry you posed to COPP staffer, Kym Trujillo. Your inquiry posed a question that the Office thought best addressed by the Commissioner.

You explained that you were a candidate for the 2014 Republican nomination for SD 43, losing in the primary election to Candidate Connell who also sought Republican nomination for the same office. Accordingly, Mr. Connell will appear on the general election ballot as the 2014 Republican nominee for SD 43, opposed by Democratic nominee Schumaker.

You stated that you were considering running a write-in campaign in the 2014 SD43 general election. You asked whether you could use surplus funds from your 2014 SD43 Republican primary election campaign because you "would still be running for SD43 and still running as a Republican."

Kym's immediate oral response to your inquiry was "No" because your SD43 write-in campaign would be a separate election, rather than a continuation of your primary election. This letter confirms and further explains Kym's response.

As Kym stated, the 2014 primary election for which you raised funds is over. Under Montana law "the individual receiving the highest number of valid votes for any office at an election is elected or nominated to that office." §13-1-103. The candidate who received the most votes in the 2014 Republican

primary election for SD 43 was candidate Connell. It is Mr. Connell, not yourself, who passes to the general election where he will appear on the official ballot as the Republican Party nominee for the 2014 general election to SD 43. Because your campaign for Republican Party nominee to 2014 SD43 election is over, any remaining funds from that campaign are surplus funds. Montana law specifically states that “[i]n disposing of surplus [campaign] funds, a candidate may not contribute the funds to another campaign, including the candidate’s own future campaign, or use the funds for personal benefit.” §13-37-240 MCA.

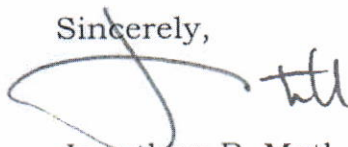
Consistent with the above analysis, Montana law requires that “a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent.” §13-10-211(1) MCA. The timing, place of filing and content of this declaration is set out in the statute. Once you file this declaration you will start your new candidacy as a “write-in” candidate for SD 43. Your status as a Republican is of no import because Montana law states that “[a] write-in candidate who files a declaration of intent for a general election may not file with a partisan, nonpartisan or independent designation.” §13-10-211(7) MCA.

Because you are running in as a new write-in candidate in the general election you begin anew with contribution limits, reporting and disclosure. In turn, campaign finance reports for the write-in election are filed for and concern only the new election.

With the above in mind if you pursue a 2014 write-in campaign for general election I strongly urge you prepare and file a closing report for 2014 Republican nominee primary election campaign showing how you distributed surplus campaign funds. This will resolve the disposal of those funds and insure that your new campaign does not face a complaint over those funds.

I thank you for your inquiry and I hope this letter answers your questions. Please let me know if you need a more formal response such as an opinion letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Motl', written over a large, loopy scribble.

Jonathan R. Motl  
Commissioner of Political Practices