

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

DeLorenzo v Cate No. COPP 2012-CFP-13	Summary of Facts and Finding of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act
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Gilbert "Butch" Cate, Jr. of Eureka Montana was a candidate in the 2012 primary election for a County Commissioner's seat, District 3, Lincoln County, Montana. On May 30, 2012, Eureka resident Gary DeLorenzo filed a complaint against Mr. Cate, alleging Mr. Cate's failure to properly and timely report campaign contributions and/or expenditures.

SUBSTANTIVE ISSUES ADDRESSED

The substantive areas of campaign finance law addressed by this decision are: Timely reporting of contributions to and expenditures by a candidate.

SUMMARY OF RELEVANT FACTS

The facts necessary for determination of this matter are as follows:

1. Mr. Cate filed as a Candidate for Lincoln County Commissioner, District 3 on March 13, 2012. Mr. Cate did so by filling out the appropriate form (Form C-1-A) and filing the same with the Commissioner. Commissioner's

records.

2. Mr. Cate checked Box A on the reporting status portion of Form C-1-A. Box A reads as follows: "I certify that I will not receive or expend any funds (including personal funds) in support of my candidacy..." Commissioner's records.

3. The Lincoln County Commission District 3 race was non-partisan. Ten candidates, including Mr. Cate and Mr. DeLorenzo, were on the ballot. Neither Mr. Cate or Mr. DeLorenzo received enough votes in the primary election to advance to the general election. Secretary of State Website, Commissioner's records.

4. The primary election date was June 5, 2012. Secretary of State Website, Commissioner's records.

5. Mr. DeLorenzo filed a form C-1-A on February 21, 2012. Mr. DeLorenzo checked box "B" stating he would report if he received or spent over \$500. Mr. DeLorenzo named a campaign treasurer and designated a bank as a repository for campaign funds. Commissioner's records.

6. Mr. DeLorenzo timely filed pre-primary and post-primary election reports. Mr. DeLorenzo's pre-primary report shows that his campaign had \$2610 in contributions, including \$2100 of his own money. Mr. DeLorenzo's expenditures were reported as \$2,294.94 with the largest costs being for newspaper ads and signs. Commissioner's records.

7. Mr. Cate did not file a pre-election report. This was not inconsistent with his candidate declaration that he would spend no funds on his election.

8. Mr. DeLorenzo's complaint was the first notice to the Commissioner that Mr. Cate was acting contrary to his candidate declaration. Upon receipt of the complaint an investigation was conducted. The Commissioner's investigator determined, in talking to Mr. Cate, that he had campaign expenditures. On March 29, 2013, after being contacted by the Commissioner's investigator, Mr. Cate filed a campaign finance report listing contributions of \$3341, including \$2500 of the candidate's own funds, \$671 from a fundraiser and \$100 from a single identified contributor. The report further listed expenses of \$3894.31, including \$1950 in sign costs and \$305 in newspaper ads. Commissioner's records. An amended reported was filed on July 2, 2013.

9. The Commissioner's investigator confirmed that Mr. Cate did not file a pre-election report with the election official of Lincoln County. Commissioner's records.

10. Because Mr. Cate did not create a campaign the Commissioner finds as fact that he did not have a campaign treasurer during the time he sought election.

11. The Commissioner further finds as fact that Mr. Cate:
- a. Failed to timely make disclosures required on a pre-election report;
 - b. Failed to timely file a pre-election reports (at either state of county sites);
 - c. Failed to timely file his post-election reports; and,
 - d. Failed to timely correct his candidate statement made on Form C1-A.

DISCUSSION

Montana's campaign related laws require full "paid for by" attribution, as well as full and timely disclosure of campaign contributions and expenditures. A candidate is required to timely file a certification [§13-37-201 MCA], provide specific attribution on all campaign communications [§13-35-225 MCA], timely keep and maintain accounts of contributions and expenditures [§13-37-208 MCA]; timely file reports to the Commissioner's office of such contributions and expenditures [§13-37-226 MCA] and, if a candidate for local office, also timely file reports with the election administrator of the appropriate county [§13-37-225 MCA]. Campaign communication, properly attributed, provides transparency about the source of and funding of the communication. The campaign reports, once filed, are available for review by the public, thereby providing transparency and shared access to campaign finance information.

Mr. Cate was a candidate in the 2012 primary election for the Lincoln County Montana Commission District 3. As such a candidate Mr. Cate was required to label all election communication with "...the attribution 'paid for by' followed by the name and address of the person who made or financed the expenditure for the communication." §13-35-225 MCA. While a candidate for local public office does not need to report if he or she receives and spends less than \$500 in their campaign [see §13-37-226(4) MCA], Mr. Cate exceeded this amount and was therefore subject to Montana's reporting requirements. Specifically, Mr. Cate was required to appoint a treasurer [§13-37-201 MCA], keep and maintain campaign finance records [§13-37-208 MCA], file campaign

reports [§§13-37-225, 226 MCA], and file those reports at the time specified by §13-37-226(3) MCA.

Mr. Cate campaigned in a 2012 primary election. Mr. Cate, however, failed to follow each and all of the laws listed above.

ENFORCEMENT

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must make, a decision 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. In this matter Montana’s campaign finance report filing requirements are mandatory: “shall file” [**See** §13-37-226 MCA]. The filing date requirements are date certain. Therefore, any failure to meet a mandatory, date-certain filing date is a violation of §13-37-226 MCA. Likewise, the attribution requirement for election materials is mandatory: “...must clearly and conspicuously include the attribution...” §13-35-225(1) MCA.

This Commissioner, having been charged to investigate and decide, hereby determines that Mr. Cate has, as a matter of law, violated Montana’s campaign

practice laws, including §13-35-225 MCA and §§13-37-225, 226 MCA. Having determined that a campaign practice violation has occurred, 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.

Mr. Cate's late reports show that he engaged in a level of fundraising and expenditure activity comparable to that of Mr. DeLorenzo [FF Nos. 6-8]. Even without Mr. DeLorenzo's example the amount of money Mr. Cate spent is so far in excess of \$500 that the Commissioner finds that Mr. Cate cannot have an excuse for failing to correct his Form C-1-A and taking steps to report and disclose. With Mr. DeLorenzo's example Mr. Cate's omission is glaring. Two candidates run for the same local office engaging in comparable campaign expenses (signs, newspaper ads) and one candidate reports and the other does not. One candidate complies to state law and the other does not. That contrast, if allowed, does damage to the rule of law and to the fair play underpinning of civic discourse. Excusable neglect cannot be applied to Mr. Cate's failures. **See** discussion of excusable neglect principles in *Matters of Vincent* Nos. CPP-2013-CFP-006 and 009. Likewise, the amounts of money and the nature of the violation are too significant to be excused as *de minimis*. **See** discussion of *de minimis* principles in *Matters of Vincent* Nos. CPP-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 prosecution and/or a civil fine is justified [**See** §13-37-124 MCA]. This Commissioner hereby,

through this decision, issues a “sufficient evidence” Finding and Decision justifying civil prosecution under §13-37-124 MCA. Because reporting was required in both Lewis and Clark and Lincoln counties, both counties are venue for an allegation of a campaign practice violation. **See** §13-37-124 MCA. By the choice of the Commissioner this matter will now be submitted to [or “noticed to”] the Lewis and Clark County attorney for his review for appropriate civil action. §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 Chapter 37, including those of §13-37-226. [**See** 13-37-128 MCA]. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.


At the point this Matter is returned for negotiation of the fine or for

litigation, mitigation principles will be considered. **See** discussion of mitigation principles in *Matters of Vincent* Nos. CPP-2013-CFP-006 and 009.

CONCLUSION

Based on the preceding discussion as Commissioner I find and decide that there is sufficient evidence to show that Mr. Cate violated Montana's campaign practices laws, including §13-35-225 and §§13-37-225, 226, MCA, and that a civil penalty action under § 13-37-128, MCA is warranted. This matter is hereby submitted to [or "noticed to"] the Lewis and Clark County Attorney for his review for appropriate civil action under section 13-37-124(1) MCA. Upon return to the Commissioner of this Matter by the County Attorney, this Commissioner will work with Mr. Cate, in manner set out above, in determining the amount of civil penalty, should Mr. Cate choose to settle this Matter with a negotiated fine.

DATED this 15th day of July, 2013.



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