

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Fitzpatrick v. Kantorowicz No. COPP 2016-CFP-018	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On May 27, 2016, Steve Fitzpatrick, a resident of Great Falls, Montana, filed a complaint against JC Kantorowicz, a resident of Great Falls, Montana. Messrs. Fitzpatrick and Kantorowicz are both candidates seeking 2016 election to the Montana legislature Montana from Senate District 10 (SD 10). The Complaint alleges that Candidate Kantorowicz failed to properly report and disclose his 2016 campaign activity.

Foundational Findings of Fact

The following finding of fact is necessary before proceeding to discussion of this Matter:

Finding of Fact No. 1. Steve Fitzpatrick and J. C. Kantorowicz are 2016 primary election candidates for Republican Party nomination to the general election to be elected Senator from SD 10. Deborah Magin is the only Democratic Party nominee for election from SD 10 and will therefore proceed to the general election to face the winner of the Republican primary election. (Montana Secretary of State Website.)

Discussion

The Complaint alleges that Candidate Kantorowicz engaged in campaign activity that resulted in violations of Montana campaign practice laws. Each alleged violation is discussed separately below.

1. Failure to Electronically File a Campaign Finance Report

Candidate Kantorowicz is a 2016 primary election SD 10 candidate. (FOF No. 1).

Finding of Fact No. 2: Candidate Kantorowicz filed his initial 2016 campaign finance report on May 2, 2016. The report was filed hard copy. An electronic copy of the initial report was filed under CERS on May 24, 2016. (Commissioner's records).

Candidate Kantorowicz's initial report was due on the "35th" day pre-primary election or by May 3, 2016. A 2016 candidate for the Montana legislature is required to file campaign finance reports electronically using the COPP Campaign Electronic Reporting System (CERS). 44.11.302 ARM. This means Candidate Kantorowicz was required to file an electronic version of his campaign finance report no later than May 3, 2016.

Candidate Kantorowicz, by failing to file timely file electronically, failed to meet the requirements of 44.11.302 ARM. That alone, however, does not lead to a campaign practice violation as the COPP, in the person of Mary Baker, can waive the requirement of electronic filing. 44.11.302(2) ARM.¹ Candidate Kantorowicz did not request or receive such a waiver.

Candidate Kantorowicz, however, did engage with the COPP staff

¹ Ms. Baker exercised authority to waive electronic filing for the May 3 deadline for five candidates.

concerning electronic filing before May 3, 2016. While the issues that Candidate Kantorowicz claimed as a barrier to electronic filing were phantom issues (COPP staff, if consulted, would have been able to guide a proper electronic filing), it is clear that Candidate Kantorowicz was attempting to cooperate and file electronically. Candidate Kantorowicz's attempts to file electronically were finally successful after his campaign worked with COPP staffer Kym Trujillo. Accordingly, the Commissioner finds a campaign practice violation but set it aside under the principle of *de minimis*.

Sufficiency Finding No. 1. That sufficient facts exist to show that Candidate Kantorowicz failed to timely electronically file his initial campaign finance report, as required by Montana's campaign practice laws.

Candidate Kantorowicz did file an electronic version of his initial campaign finance report, albeit 21 days late (FOF NO 2.) Given the first time nature of the filing the 21 days late filing is dismissed as *de minimis* as to this reporting period. There will be no such application of *de minimis* for future reporting periods.

2. Late Filing of the Candidate Certification Form

Under Montana law Candidate Kantorowicz was required to file a certification as a candidate with the COPP "within five days of becoming a candidate." §13-37-201(2), MCA. A "candidate" is defined as "an individual...who has made expenditures." §13-37-101(8)(b), MCA. The COPP has interpreted these statutes to mean that certification of candidacy is required "within 5 days of the first day that the individual solicits or accepts

contributions to, or makes expenditures for, his or her campaign.” *LaBreche v Gianforte*, COPP-2015-CFP-010.

Candidate Kantorowicz filed his Statement of Candidate form (Form C-1) with the COPP on December 4, 2015. Candidate Kantorowicz’s campaign finance reports, however, disclose campaign expenses on November 16 and 23, 2015.

Sufficiency Finding No. 2. That sufficient facts exist to show that Candidate Kantorowicz failed to timely file his Statement of Candidacy form with the COPP, as required by Montana’s campaign practice laws.

The Complaint also alleges a campaign practice violation involving the Cascade County Republican Central Committee and Candidate Kantorowicz. The Commissioner declines to address this issue but reserves the same to decide as part of the pending separate complaints filed against the Cascade County Republican Central Committee.

ENFORCEMENT OF SUFFICIENCY FINDINGS

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner “shall investigate” any alleged violation of campaign practices law. §13-37-111(2)(a), MCA. 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, as set out in this Decision, to show that Candidate Kantorowicz 's 2014 HD 72 campaign 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 fully and 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, 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, 009. For the special reasons discussed in this Decision the Commissioner does apply *de minimis* to excuse the failure to timely file the electronic report.

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to all sufficiency findings, civil/criminal prosecution and/or a civil fine is justified. §13-37-124, MCA. The Commissioner hereby issues a "sufficient evidence" Finding and Decision justifying civil prosecution of Candidate Kantorowicz. 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.

While it is expected that a 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 campaign practice 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 31st day of May, 2016.

A handwritten signature in black ink, appearing to be 'J. Motl', is written over a horizontal line. The signature is stylized and somewhat cursive.

Jonathan R. Motl
Commissioner of Political Practices
Of the State of Montana
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