

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Missoula County Republican Central Committee v. Engen No. COPP 2015-CFP-014	Summary of Facts and Finding of Insufficient Evidence to Show a Violation of Montana's Campaign Practices Act <p style="text-align:center"><u>Dismissal of Complaint</u></p>
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On September 30, 2015, the Missoula County Republican Central Committee located in Missoula, MT filed a complaint against John Engen, the current Mayor for the City of Missoula. The committee alleged that Mayor Engen violated campaign practice laws as a candidate during his 2013 campaign for re-election.

DISCUSSION

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. Candidate Engen, as a candidate for public office in Montana, was subject to campaign finance reporting and disclosure requirements.

The Foundation Facts necessary for this Decision are as follows:

Finding of Fact No. 1: The position of Mayor for the city of Missoula is an elected, 4 year non-partisan position. In 2013 John Engen was a candidate for reelection as Mayor. (Missoula County Elections Office, Missoula City Clerk's Office).

Finding of Fact No. 2: The 2013 Mayoral race had one election - a municipal general election (no primary election was held) which took place on November 5, 2013. Five candidates were on the general election ballot: John Engen was re-elected with 11,366 votes, Peggy Cain received 2,839, Dean McCollom 1,222, Michael Hyde 1,098 and Lyn Hellegaard (a write-in) 634 votes. (Missoula County Election's Office).

The complaint in this Matter raises allegations based on an inspection of the campaign finance reports filed by Candidate Engen for his 2013 campaign for election as Mayor of the City of Missoula. The allegations are that the Engen campaign improperly took receipt of certain excess contributions and failed to disclose expenses of a fundraising event.

1. Certain Excess Contributions

The 2013 Missoula Mayoral race involved one election – the general election (FOF No. 2). This meant that an individual could contribute no more than \$160 to Candidate Engen's 2013 campaign.¹ The Complaint alleges that Candidate Engen's campaign finance reports show that Brent Campbell and Cliff Larsen made contributions to the Engen campaign that exceeded the contribution limits imposed by Montana law.

The Commissioner's investigator reviewed the Engen campaign finance reports and determined as follows:

Finding of Fact No. 3: Brent Campbell is listed for two contributions totaling \$320 (\$160 on March 29, 2013 and \$160 on October 4, 2013).

¹ In 2013 Montana law set the maximum contribution allowed from individuals to local government candidate, including candidate Engen, at \$160 per election (§13-37-261 MCA and 44.10.338 ARM (2012)).

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Cliff Larsen is listed for two contributions totaling \$250 (\$150 on March 29, 2013 and \$100 on September 4, 2013) (Commissioner's records).

Past Commissioners have determined over-the-limit contributions by strict assignment of contributions to the name of a contributor revealed in a facial inspection of campaign reports, as the complainant did in this Matter.² Had such a strict assignment approach been applied in this Matter, the Engen campaign would have accepted over the limit contributions from both Campbell and Larsen.

In 2014, however, this Commissioner issued two Decisions modifying the strict assignment approach by allowing candidates limited discretion in allocating contributions between a husband and wife.³ The general reasons for affording candidate discretion as to spousal contributions were set out in the discussion portion of the listed Decisions (FN 3). One such reason offered was that affording such discretion to divide a single over the limit contribution between spouses (thereby rendering two contributions within the limit) respected the constitutional mandate to provide enhanced opportunity for contributions that fit within the modest contribution limits set by Montana law. Within the past month this Commissioner has again addressed this issue in a reconsideration of *Bishop v. Miller* (FN 2). This Decision described the allowed candidate discretion as to individual contributions: "a candidate [will be]

² *Gunter v. Orzech*, December 19, 2008 (Commissioner Unsworth); *Meier v. Horn*, August 22, 2011 (Commissioner Gallik); *Bishop v. Miller*, June 20, 2012 (Commissioner Murry).

³ *Landsgaard v. Peterson*, COPP-2014-CFP-008 and *Kenat v. VanDyk*, COPP-2013-CFP-004. Discretion was also allowed as to allocation of contributions between primary and general elections.

provided discretion (barring contrary directions from a donor) to designate division of a contribution amount issued in one check between spouses and between primary and general elections.” *Bishop v. Miller*, COPP-2012-CFP-056, FN 12.

The Engen campaign has designated the Campbell and Larsen contributions as divided between spouses.⁴ The division resulted in four individuals making contributions, none of which exceeded \$160 contribution limit per election. Because there was no excess contribution the allegations of the complaint as to excessive contributions are dismissed.

There is a reporting and disclosure obligation to timely list the names of the spouses in the appropriate campaign finance report. To any extent necessary the failure to meet this obligation is further dismissed as *de minimus*.⁵ As explained in *Landsgarrd v. Peterson* (FN 3), the COPP protects Montana’s modest contribution limits by taking actions that afford discretion in the designation of spousal contributions. This Decision is consistent with that approach.⁶

⁴ Commissioner’s Investigators Notes. The March 29, 2013 contributions of \$160 and \$150, respectively, were designated by the Engen campaign to Karla Davis (then spouse of Brent Campbell) and Trish Larsen (spouse of Cliff Larsen).

⁵ This *de minimis* finding is specifically limited to its facts -- 2 instances where the Engen campaign failed to list the spouse’s names in association with her portion of the divided contribution. Campaigns should strive for (and will generally be held to) complete and timely disclosure of every contribution.

⁶ Montana’s contribution limits were established by initiative vote. The limits were protected from constitutional challenge by presentation of data showing the limits affected only “large” contributions and that large contributions enhanced corruption of Montana public officials. *Mont. Right to Life Ass’n v. Eddleman*, 343 F. 3d 1085 (9th Cir. 2003) and the federal district court trial underlying that Decision. Allowance of candidate discretion as to spousal designation shows that the limits, while modest, are afforded full reach as between spouses.

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2. Expenses

Under Montana law, each candidate for public office, including Candidate Engen, “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) The complaint alleges that Mayor Engen failed to report expenditures for a certain October 4, 2013 fundraising event. The facts relative to this allegation are as follows:

Finding of Fact No. 4: On October 4, 2013 Brent Campbell opened his Missoula home on the day of the UofM homecoming game for a party attended by “political” people, as he had done for the past 16 years. The party was part “an opportunity to get old [political] friends together and visit” and part a fundraiser for Candidate Engen. (*Missoulian* article, October 4, 2013).

Given the reporting and disclosure requirements of Montana law (§13-37-230 MCA), the Commissioner’s investigator examined Candidate Engen’s campaign finance reports. The post-general campaign finance report for the Engen campaign reported and disclosed two particular expense items: \$225.32 as “reimbursement, Event Food” on 10/05/13 and \$21.98 as “reimbursement – Event Wine” on 10/13/13. Each of these reported expenses was determined to be for the October 4 fundraising event.⁷

The Commissioner determines that the Engen campaign expense disclosure is sufficient. In making this determination the Commissioner notes that the Candidate Engen fundraiser was held in a private home as a co-event

⁷ The Commissioner’s investigator confirmed the apparent purpose in a phone call.
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with a general party thrown by the homeowner (FOF No. 4). Under Montana law contributions and expenditures do not include "...meals and lodging provided by individuals in their private residences for a candidate or other individuals." §13-1-101(7)(b) MCA (2013).

There are nuances to this exception in that the meals provided must come from a non-commercial (home) source, such as a potluck of meal items cooked in the home of participants.⁸ Here none of the nuances apply since the Campbell event was multi-purpose, held in a private home and the Engen campaign reported expenses for the commercially prepared food it brought to the event. The Commissioner determines that there are insufficient facts to infer (much less find) a campaign practice violations and the failure to report expenses allegations of the complaint are hereby dismissed.

SUMMARY

The complaint allegations have been considered as described above are dismissed for lack of sufficient facts and the Complaint is hereby dismissed in full.

DATED this 5th day of October, 2015.



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⁸ See and contrast *Legard v. Sanders County PAC*, No. COPP-2012-CFP-016 with *Buell v. Footloose Montana*, COPP-2010-CFP-011, and *Clark v Datsopoulos, MacDonald & Lind*, COPP-2014-CFP-033(A).

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