

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Monforton v. Laslovich No. COPP 2016-CFP-002 (A)	DISMISSAL OF COMPLAINT
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On February 11, 2016, Matthew Monforton, a resident of Bozeman, Montana filed a complaint against Monica Lindeen, 2012 candidate for State Auditor and Jesse Laslovich, 2012 candidate for Attorney General. Mr. Monforton alleged in his complaint that Ms. Lindeen and Mr. Laslovich violated campaign practice laws.

Mr. Laslovich and Ms. Lindeen have each filed as a candidate for statewide office in the 2016 elections. The Commissioner has split the complaint into Part A and Part B to allow a separate discussion and a separate Decision as to Mr. Laslovich and Ms. Lindeen. This (A) Decision applies solely to Mr. Laslovich. There is an accompanying (B) Decision that applies solely to Ms. Lindeen.

DISCUSSION

The Complaint allegations are first identified and addressed. An additional campaign practice issue is then raised and discussed.

I. The Treasurer and State Employee Issue

The Complaint alleges that certain actions of an individual, Lynne Egan, violate Montana campaign practice laws governing conduct of a campaign treasurer. The Complaint further alleges that Ms. Egan, a state employee, violated Montana campaign practice laws governing political activity of public employees.

A. Campaign Deposit Issue

The following facts apply to an analysis of whether a campaign contribution can be deposited by a person other than the campaign treasurer.

Finding of Fact No. 1: On June 30, 2011, Jesse Laslovich, a resident of Helena, Montana submitted a C-1 (Statement of Candidate) form to the Commissioner of Political Practices office (COPP). Candidate Laslovich listed himself as a Democratic candidate for Attorney General for the State of Montana. (Commissioner's records.)

Finding of Fact No. 2: The C-1 form (See FOF No. 1) filed by Candidate Laslovich listed John Edwards as the campaign treasurer. There was no deputy treasurer listed. (Commissioner's records.)

Finding of Fact No. 3: During 2011 and 2012 Lynn Egan made some deposits of campaign contributions for the Laslovich campaign. Her involvement was limited to delivery of the deposit. (Investigator's notes.¹ Egan deposition excerpt.²)

¹ The COPP's investigator interviewed Ms. Egan on February 17, 2016.

² An excerpt of pages 88-100 of Ms. Egan's deposition, taken August 14, 2012 in a separate proceeding, accompanied the Complaint.

Candidate Laslovich was a candidate for Montana statewide office (FOF No. 1). Candidate Laslovich appointed John Edwards as his campaign treasurer (FOF No. 2). Lynne Egan was not listed as a campaign treasurer or deputy treasurer (*Id.*) but did assist the Laslovich campaign by making deposits of campaign contributions. (FOF No. 3). The Complaint asserts that by making deposits of campaign contributions Ms. Egan violated Montana law governing actions of a campaign treasurer.

As explained further below, there is no statutory language that directly determines this Decision. Instead, this Decision is based on an administrative interpretation of statute. In making such an interpretation the Commissioner will, if necessary, consider and apply basic principles of constitutional law applicable to such a Decision.³

This Commissioner has, in the *Landsgaard* Decision (FN 3), previously quoted University of Montana law professor Anthony Johnstone, to the effect that “Montana’s campaign finance laws are relatively simple, stable, and (until recently) rarely adjudicated.”⁴ The “recent” litigation referred to by Professor Johnstone began with the 2010 U.S. Supreme Court decision in the famous *Citizens United* case.⁵ The holdings and comments in the *Citizens United* decision were followed by three years of federal court litigation in Montana

³ See Discussion in *Landsgaard v. Peterson*, COPP 2014-CFP-008 (Commissioner Motl).

⁴ Anthony Johnstone, associate professor (constitutional law) University of Montana *Republican Form of Government in Montana*, Montana Law Review, Vol. 74, p. 701 at p. 723 (2013).

⁵ *Citizens United v. Fed. Election Comm*, 130 S. Ct. 876 (2010).

leading to a massive judicial dissection of Montana’s campaign practice laws by federal courts. Judicial intervention by federal courts into Montana’s campaign practice laws was observed to be extensive so as to become “the most significant federal constitutional intervention in Montana politics...” in the last 50 years.⁶ The constitutional concerns established by federal courts apply in this Matter and require an examination of the reporting and disclosure interest that is constitutionally necessary to preserve a campaign practice requirement.

There are two particular sources of Montana law, §13-37-207 MCA and 44.10.503 ARM, that regulate the manner of deposit of campaign contributions into a campaign account. Prior Commissioners have addressed reporting (including accounting) and timeliness aspects of §13-37-207 MCA or 44.10.503 ARM: determining that only a treasurer or deputy treasurer may write (sign) campaign checks, *Little v. Bullock*, October 25, 2012 (Deputy Commissioner Dufrechou); determining that checks must be deposited within five days of receipt, *Wilcox v. Raser*, May 26, 2010 (Commissioner Unsworth), *Hart v. Bullock*, November 23, 2012 (Deputy Commissioner Dufrechou); determining that the treasurer must keep an accounting of contribution deposits, *O’Hara v. Pinocci*, COPP 2014-CFP-027 (Commissioner Motl), *O’Hara v. Ponte*, COPP 2014-CFP-014 (Commissioner Motl). Each of these Decisions articulates current campaign reporting and disclosure practices that are encouraged and, if necessary, enforced by the staff of the COPP. The Commissioner determines that all of these Decisions discuss and approve regulation that serves a

⁶ Johnstone, *Montana Law Review*, Vol. 74, p. 707.

constitutionally permissible purpose in advancing Montana’s reporting and disclosure interest in ensuring that campaign finance information is promptly and accurately reported and disclosed to the people of Montana.

This Complaint, however, demands a rigid application of regulatory action that is not directly linked to a reporting or disclosure purpose. The Complaint alleges a violation based on a technical act: the physical act of delivering a campaign contribution for deposit in the campaign bank account. This complaint allegation is not based on Montana statutory law. The applicable statute (§13-37-207 MCA) requires that all funds received by a campaign be promptly deposited⁷ into the campaign bank account. The statute further requires that a campaign treasurer must keep the records of the deposit. *Id.* In contrast, there is no requirement in the statute that the physical deposit of the contribution into the campaign bank account must be personally made by the treasurer. *Id.*

Given the lack of statutory requirement, the complaint allegation calls for a particular administrative interpretation of §13-37-207 MCA. In 2012 the applicable administrative regulation read “no contribution received shall be deposited ...except by the appointed campaign treasurer.” 44.10.503(1) ARM.⁸ That ARM subsection language was followed by a subsection stating that “all funds received by the campaign treasurer shall be deposited as specified in

⁷ Within five days of receipt.

⁸ The Accounting and Reporting manual for 2012 candidates also stated that “only an appointed and certified treasurer or an appointed and certified deputy treasurer may make deposits to or draw checks on the campaign account.”

section 13-37-207 MCA.” 44.10.503(2) ARM. The COPP has made one applicable Decision and it noted that a contribution deposit by the political committee’s accountant is “in violation of the rule [44.10.503 ARM]” because the accountant is not a treasurer or deputy treasurer.⁹ There was no discussion in the 1996 Decision of any reporting or disclosure purpose advanced by requiring campaign deposits be limited to the treasurer or deputy treasurer.

This Decision requires a COPP administrative interpretation of the requirements regarding deposit of campaign contributions as applied to a 2012 campaign.¹⁰ Accordingly, the Commissioner interprets §13-37-207 MCA and 44.10.503(2) ARM to require that campaign contribution deposits for a 2012 campaign must be made under the control of the campaign treasurer. The Commissioner, however, does not interpret §13-37-207 MCA and 44.10.503(2) ARM to require that each contribution deposit be made in person, solely by the campaign treasurer or deputy treasurer.

In making this determination the Commissioner notes that reporting and disclosure is served by accounting, recordkeeping and timeliness requirements placed on a campaign treasurer by §13-37-207 MCA and the Decisions listed above. In contrast, there is no reporting and disclosure purpose served by interpreting 44.10.503(1) ARM to append an unnecessary burden on the

⁹ *Motl v. Committee against I-125* October 11, 1996 (Commissioner Argenbright).

¹⁰ The administrative regulation applicable to 2016 campaigns is 44.11.409 ARM and it simply requires that “all funds received by the campaign treasurer shall be deposited as specified in 13-27-207 MCA.”

treasurer to personally make deposits that he or she is separately required to account for. It does not matter who performed the ministerial act of making a campaign contribution deposit, so long as the treasurer ensures the deposit is timely made and fully accounted for, reported and disclosed. In making this Determination, the Commissioner notes that COPP staff has consistently provided this same advice to candidates and treasurers since 2010.¹¹

With the above in mind, the Commissioner dismisses the portion of the complaint alleging a campaign practice violation based on a deposit of campaign contributions by a person other than the treasurer or deputy treasurer.

B. The Public Employee Issue

The Complaint makes reference to Ms. Egan performing actions “during working days.” The Commissioner interprets this reference as being an allegation of improper use of public time for campaign purposes.

An allegation of improper use of public time requires an assessment of facts measured against two statutes: one prohibiting a public employee from using public time or resources to solicit support or opposition of a candidate’s campaign (§2-2-121(3)(a) MCA) and another preserving a public employee’s right to engage in personal political expression (§2-2-121(3)(c) MCA). These statutes trigger Title 13 review, with the review taking place under the language of §13-35-226(4) MCA: “[a] public employee may not solicit support for or

¹¹ Interview with Mary Baker. See also Footnote 10.

opposition to ...election of any person to public office ... while on the job or at the place of employment” and the authority vested in the COPP by § 13-35-226(5) MCA. This statute incorporates the standards of § 2-2-121 MCA.

This Office has applied § 13-35-226(4) MCA to measure the propriety of election related activity engaged in by public officials and entities: *Roberts v. Griffin*, November 19, 2009 (Commissioner Unsworth); *Hansen v. Billings School District #2*, COPP-2013-CFP-027 (Commissioner Motl); *Essmann v. McCulloch*, COPP-2014-CFP-053 (Commissioner Motl); *Nelson v. City of Billings*, COPP-2014-CFP-052 (Commissioner Motl); *Grabow v. Malone*, COPP-2014-CFP-060 (Commissioner Motl); and *Botchek v. Target Range School*, COPP-2015-CFP-001 (Commissioner Motl).

The facts necessary for this assessment are as follows:

Finding of Fact No. 4 At all times discussed in this Decision Ms. Egan was an employee of the State of Montana, employed by Office of the Montana State Auditor and Insurance Commissioner. (Investigator’s notes; State Website).

Finding of Fact No. 5: During 2011 and 2012 Ms. Egan assisted in preparing and filing Laslovich campaign finance reports. This work involved meetings that took place in Ms. Egan’s office. This work also involved Ms. Egan leaving work to deposit Laslovich campaign contributions, delivered into her possession at her State office. (Investigator’s notes; Egan deposition excerpt.)

Finding of Fact No. 6: Ms. Egan states that she was careful that any campaign activity was conducted during personal time and states that no state resources of any sort (including time) were used during these activities. (Investigator’s notes; Egan deposition excerpt.)

The complaint paints a picture of generally undisciplined actions by Ms. Egan. Upon examination, the complaint used too broad a brush as the facts, when detailed, show that Ms. Egan understood her obligations as a public employee and carefully designed and structured her campaign-related actions so as not to violate law.

Turning first to the public time issue raised by § 2-2-121 MCA, the attorney general has determined that “although ‘public time’ is not defined, a reasonable construction would be those hours for which an employee receives payment from a public employer.” AG Opinion Vol. 51, No. 1 (January 31, 2005). Here, Ms. Egan was careful to use unpaid or personal time (breaks, after hours, lunch time) to perform any actions related to the Laslovich campaign. (FOF No. 5.) There are no facts supporting the Complaint’s claim that Ms. Egan engaged in a use of public time for campaign activity.¹²

Turning next to use of public resources raised by § 2-2-121 MCA, on occasion Ms. Egan incidentally used her office space for protected personal speech made during lunch or break time, but that use of space did not involve any resource output by the State of Montana. There was no additional rent paid, electricity paid or resource use of any sort. There are no facts supporting the Complaint’s claim of a use of public resources.

¹² The Laslovich campaign finance closing report, filed June 25, 2012, shows a campaign payment of \$737.99 to Ms. Egan for “financial [reporting] services.”

Finally, the Commissioner turns to the separate language of §13-35-226(4) MCA which prohibits solicitation of “support for or opposition to” any candidate “while on the job or at the place of employment.” Again, this section of law “does not restrict the right of an employee...to express personal political views.” *Id.* Ms. Egan did engage in actions supporting the candidacy of Mr. Laslovich while at her place of employment in a state building. (FOF No. 5.) But there is no evidence at all that those acts were anything but private between Ms. Egan and Mr. Laslovich. In particular, there is no evidence that Ms. Eagan solicited “support for” Candidate Laslovich from anyone (including co-workers) while on the job or at her place of employment. In fact, the evidence shows the opposite -- that is, that Ms. Egan was very discrete in her activity. As a matter of normal statutory interpretation, without solicitation there can be no violation of the separate language of §13-35-226(4) MCA.

The Complaint, however, urges a special or enhanced review of Ms. Egan’s actions, based solely on the nature of the engaged-in activity (campaign support). As explained further below, the Commissioner cannot engage in such a special review. By adding language to §13-35-226(4) MCA protecting the expression of “personal political views” by public employees, the legislature has made it clear that it wants a normal (non-political) review of a public employee’s acts such as those by Ms. Egan.

In the normal course of a day at work Montana State Government, public employees, through judicious and discrete use of personal time, take phone

calls, messages, packages, and personal visits from friends, relatives, medical care offices, schools, soccer clubs, and veterinary offices. These contacts, although personal to the public employee, are generally not considered improper so long as there is no use of state time or involvement of state resources. Public employees meet these criteria through judicious use of personal break and lunch time to cover any such unplanned interruption in the work day. Ms. Egan's use of her personal time to cover actions connected with her "personal political views" must be considered in the same light as any other activity engaged in a public employee. So long as Ms. Egan did not solicit support, did not use public time and did not use public resources, the content of her personal action (an act of personal political view versus dealing with a child's school schedule) cannot be dug out and considered. This is a sound principle, set in law by the Montana legislature, as it protects all employees in their personal political views whether those views are consistent or inconsistent with others who may share the office with the employee.

Because there was no public time or public resources used, and because there was no solicitation regarding a candidate, any allegation of improper conduct by a state employee is dismissed in regard to these issues. In making this Decision the Commissioner notes a public employee may use his or her personal title (or even a uniform) while expressing personal political beliefs, AG Opinion Vol 51, No. 1 (January 31, 2005). In this instance, the facts establish that Ms. Egan was careful and appropriate in separating public work from personal political speech.

II. Reporting Obligations

Once a complaint is filed the Commissioner “shall investigate any other alleged violation ...” §13-37-111(2)(a) MCA. This investigative authority includes authority to investigate “all statements” and examine “each statement or report” filed with the COPP. §13-37-111,-123 MCA. The Commissioner is afforded discretion in exercising this authority. *Powell v. Motl*, OP-07111, Supreme Court of Montana, November 6, 2014 Order.

Candidate Laslovich filed as a candidate for statewide office (FOF No. 1) and was accordingly required to file campaign finance reports on the schedule set for 2012 statewide candidates. A review of the Laslovich campaign finance reports¹³ showed that the reports met the filing requirement of “periodic reports of contributions and expenditures” (§13-37-225(1) MCA.) The review also determined that campaign finance report information, with corrections, included “the full name, mailing address, occupation and employer” of each contributor (§13-37-229(2) MCA] and “the full name and mailing address of each person to whom expenditures have been made” §13-37-230(1)(a) MCA.

The Commissioner makes note of one particular filing by Candidate Laslovich. Under Montana law, Candidate Laslovich was required to file

¹³ The Commissioner’s investigator reviewed the entire set of campaign finance reports filed by Candidate Laslovich for 2010 campaign for Attorney General.

monthly reports, including a report due “on the 10th day of March.” §13-37-226(1)(b) MCA.¹⁴ The following finding of fact is made:

Finding of Fact No. 7: On March 12, 2012 the Laslovich campaign submitted a C-5 campaign finance report for the period of January 1, 2012 to March 5, 2012 listing \$22,318 in primary election contributions and \$920 in general election contributions with \$9,913.71 in expenditures. (Commissioner’s records.)

Candidate Laslovich filed the March 10, 2012 on March 12, 2012. (FOF No. 7). That filing date becomes particularly nuanced, because March 10, 2012 was a Saturday and Candidate Laslovich filed his campaign finance report with the COPP on Monday, March 12, 2012.

In 2012 candidates for statewide office were required to file (“shall file”) electronically (§13-37-226(1) MCA). Candidate Laslovich did file electronically, but not until March 12, 2012, two days after the statutory deadline. Under COPP policy that March 12 filing is still timely because the electronic reporting by candidates cannot be assured unless State of Montana support services are available to assist the candidate in completing the electronic filing.¹⁵ These services are not available on weekends to candidates and, as a result, the COPP, while encouraging independent filing by candidates over a weekend, treats a next business day filing as meeting a deadline that falls on a Saturday, Sunday or a legal Holiday.

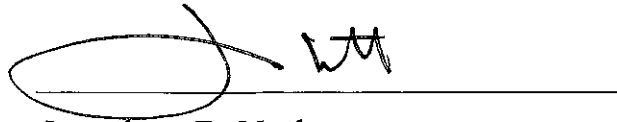
¹⁴ The citations in this Decision are to the 2011 version of the Montana Code.

¹⁵ Support services include help from COPP staff and, if necessary, help from the State of Montana Information Technology services. This potential need for electronic filing assistance holds true for 2016 campaign finance report filing. During the most recent 2016 reporting period the campaigns of both major candidates for governor worked directly with COPP staff in order to accomplish electronic filing.

Dismissal

There being no sufficiency findings this Decision Dismisses this Matter in full.

DATED this 6th day of March, 2016.

A handwritten signature in black ink, consisting of a large, stylized loop followed by the letters 'JM', is written over a horizontal line.

Jonathan R. Motl
Commissioner of Political Practices
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