

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

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| Montana Republican Party v. Wright No. COPP 2012-CFP-001 | Summary of Facts and Finding of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act |
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Beau Wright is a resident of Lewistown, Montana. In March of 2009 Mr. Wright filed a statement of organization (form C-1) with the COPP creating a political action committee (PAC) called Montana Hunters and Anglers. (Commissioner's records). On February 1, 2010 Mr. Wright signed and filed a campaign finance report with the COPP for the Montana Hunters and Anglers PAC. On January 31, 2012 Bowen Greenwood, in his capacity as executive director of the Montana Republican Party, filed the complaint in this Matter alleging the inaccurate and incomplete listing of the name, address and employer of a contributor to Montana Hunters and Anglers PAC.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance law addressed by this decision is improper disclosure under §13-37-229(2) MCA.

SUMMARY OF RELEVANT FACTS

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

1. The Montana Hunters and Anglers PAC filed its initial campaign finance report for the time period ending January 1, 2010. (Commissioner's records).
2. The initial campaign finance report filed by Montana Hunters and Anglers PAC lists 18 contributors who gave a total of \$7,165 to the PAC. (Commissioner's records).
3. The largest contribution was \$5,000, listed as coming from "S.P. Conrad, PO Box 310, Houlma, LA 70361." (Commissioner's records).

DISCUSSION

Mr. Wright, on behalf of Montana Hunters and Anglers PAC, listed the particular contribution in a particular manner (see FOF No. 3). Montana law requires that this listing include "the full name, mailing address, occupation, and employer...." [§13-37-229(2) MCA] of any contributor. The listing by Montana Hunters and Anglers PAC was not accurate as the correct listing of the contributor should have been "Conrad S. P. Williams, III, PO Box 2017, Houma, LA 70361-2017." (Admitted response).

There is no allegation that any other information was improperly reported or disclosed to the COPP by Montana Hunters and Anglers PAC. The issue thus presented is whether a single deficient disclosure, lacking in the correct name, address and employer of the contributor, is enough to trigger a

determination of a violation of Montana's campaign practice act.

The Commissioner notes that this Office has recently discussed certain principles applied to determine disfavored complaints, including "got you" complaints and complaints based on *de minimis* violations of campaign practice law. *Lansgaard v. Peterson*, COPP-2014-CFP-008. At first glance a complaint of violation based on a single incorrect disclosure would appear to be so disfavored. Complaints, however, are measured by the actual facts and the actual facts of this matter require a more thorough analysis.

Turning to the contribution at issue, the Commissioner determines that listing the source of the contribution as "S.P. Conrad, PO Box 310, Houlma, LA 70361" does not accomplish disclosure as there is no logical or practical way a reviewer of the report could have known the contributor was "Conrad S. P. Williams, III, PO Box 2017, Houma, LA 70361-2017." It is therefore unquestioned that there is a violation of §13-37-229(2) MCA as a Montana Hunters and Anglers PAC campaign finance report failed to list or disclose "the full name, mailing address, occupation, and employer...." of the contributor. The issue remaining, however, is whether this "single contributor" violation is technical and dismissed as *de minimus*.¹

The Commissioner begins this discussion by noting that dozens of PAC and candidate campaign reports that are now filed with the COPP also show a

¹ Reporting/disclosure requirements are designed to create disclosure to the public, not a platform for filing complaints about minor disclosure violations. There are many such errors in reports. The COPP staff conducts an automatic inspection of each campaign finance report (§13-37-121 MCA) and works with the candidate or PAC to correct obvious omissions. The Montana Hunters and Anglers PAC error was the listing of an incorrect name and address and that type of error is not likely to be discovered by inspection.

lack of the full §13-37-229(2) MCA information as to some contributors. The general policy of the COPP is that any complaint based solely on a failure(s) to fully report/disclose in compliance with §13-37-229(2) MCA will be dismissed as a complaint based on a *de minimis* violation. This general policy has its basis in the purpose of disclosure/reporting. That is, the reporting/disclosure law serves the public's (and opposing candidate/PAC) need for access to information. In contrast, the law is not a platform for an opposing political party or opposing interest to scour campaign finance reports searching for technical violations so as to embarrass or attack an opponent.

With the above general policy and purpose in mind, the Commissioner looks at the contribution to determine if reporting/disclosure was otherwise accomplished and significant harm to public information resulted from the failure to comply with the full requirements of §13-37-229(2) MCA. Applying this approach to this Matter, the Commissioner has already determined that reporting/disclosure was not accomplished as a listing of "S.P. Conrad, PO Box 310, Houlma, LA 70361" would not tell the public that the contributor was "Conrad S. P. Williams, III, PO Box 2017, Houma, LA 70361-2017." Next, the Commissioner determines that significant harm resulted because of the size of contribution (\$5,000), the source of the contribution (a known political participant) and the use of the contribution by the PAC (independent expenditure electioneering). This may be a single contributor instance, but the import of the single contribution requires that it meet the full disclosure standards of §13-37-229(2) MCA. The public was deprived of information by a

failure of disclosure required by law.

The complainant also requested a determination that the improper disclosure violated Montana's anti-laundering statute, §13-37-217 MCA. The Commissioner declines this determination. The improper disclosure gave an indecipherable name, rather than another name. The statute that is violated is §13-37-229(2) MCA.

Finally, the Commissioner notes that the information required to be disclosed by §13-37-229(2) MCA is information supplied to a PAC or candidate by the contributor. It is possible that this information could be withheld or wrongfully supplied. According, excusable neglect could apply if the improper disclosure was caused by a third party (the contributor), rather than the PAC or candidate.

The Commissioner now discusses excusable neglect in terms of the people involved in this Matter. Beau Wright started the Montana Hunters and Anglers PAC in March of 2009 (FOF No. 1). Mr. Wright accepted the \$5,000 check on behalf of the PAC and endorsed the same as "deposit only." (Commissioner's records). The check was dated June 1, 2009 and drawn on the account of: "Mr. Conrad S. P. Williams III, PO Box 2017, Houma, LA". Mr. Wright saw the check (he endorsed it) and therefore saw the name and address of the payee. There can no excuse for Mr. Wright's failure to accurately copy the contributor information from the check to the campaign finance report.

Even if there was such an excuse the nature of the PAC and the people involved in the PAC emphasize that this particular improper disclosure could

not be explained as excusable neglect. The Hunters and Anglers PAC was accompanied by a similarly named (Montana Hunter and Anglers) non-profit corporation.² High Country News (May 28, 2012 edition) reported that Land Tawney of Missoula, Montana was the “founder” of the PAC and the President of the non-profit.³ The registered agent for the corporation is veteran Missoula conservation lawyer, Thomas France. (*Id.*)⁴ The 2011 IRS 990 return for the corporation was signed by veteran Democratic party political operative, Barrett Kaiser. (Commissioner’s records).

The Montana Hunters and Anglers groups state they exist to “maintain our [Montana’s] incredible wildlife legacy.” (Commissioner’s records). Conrad S. P. Williams, III, a lawyer, shares that goal as he has: “long been involved, both professionally and personally, in cases and causes involving protection of the environment [and] wildlife...” including serving on the Board of Directors of the Montana Wildlife Federation. (Williams’ letter to Commissioner dated February 23, 2014). Mr. Williams is well known to Messrs. France, Tawney and Kaiser. (Commissioners records). Given this core group of people familiar with Mr. Williams, there can be no organizational excuse for the failure to properly list and disclose Mr. Williams name, address and occupation.

² In February of 2011 Beau Wright filed papers at the Montana Secretary of State incorporating a Montana non-profit called “Montana Hunters and Anglers Leadership Fund.” (Commissioner’s records).

³ The Tawney family has several generations of family members who have advocated conservation causes in Montana. High Country News (May 28, 2012 edition).

⁴ A review of internet listings shows that the Montana Hunters and Anglers groups use several names. The group Land Tawney is President of appears to call itself Montana Hunters and Anglers Action. Website information.

ENFORCEMENT

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must act on a complaint 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 disclosure requirement for election contributions is mandatory: “...shall disclose...” §13-37-229 MCA.

This Commissioner, having been charged to investigate and decide, hereby determines that Mr. Wright has, as a matter of law, violated Montana’s campaign practice laws, specifically §13-37-229(2) 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.

As discussed above, this Decision, excusable neglect cannot be applied to Mr. Wright’s actions. See discussion of excusable neglect principles in *Matters of Vincent*, Nos. CPP-2013-CFP-006 and 009.

Likewise, *de minimis* is discussed above, this Decision, and it does not

apply. *See also* 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/criminal 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 of nature of violations (the failure to report 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 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 §13-37-229(2) 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*.

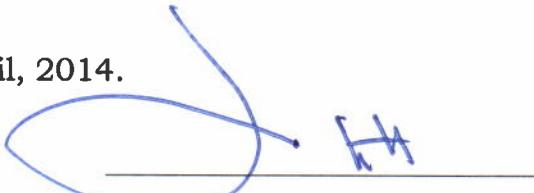
At the point this Matter is returned for negotiation of the fine or for litigation, mitigation principles will be considered. See discussion of mitigation principles in *Matters of Vincent*, Nos. CPP-2013-CFP-006 and 009. The Commissioner notes that Mr. Wright showed complete cooperation and willingness to amend once notified of the violation by the Commissioner's investigator. The Commissioner further notes (and apologizes to the Complainant and Mr. Wright) that the Decision in this Matter has taken over two years to write since the date the complaint was filed. The time lag involved in the Commissioner's delay in resolving this Matter will not be included in any calculation of fine.

CONCLUSION

Based on the preceding discussion as Commissioner I find and decide that there is sufficient evidence to show that Mr. Wright violated Montana's campaign practices laws, specifically §13-37-229(2) 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. Wright, in manner set out above, in

determining the amount of penalty, should Mr. Wright choose to settle this Matter with a negotiated penalty.

DATED this 14th day of April, 2014.

A handwritten signature in blue ink, appearing to read "H", is enclosed within a blue oval. A horizontal line extends from the right side of the oval.

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