

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Petrini v. Houck No. COPP 2015-CFP-011	Finding of Sufficient Facts to Show a Violation of Montana's Campaign Practice Act
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On September 21, 2015, Don Petrini, a resident of Great Falls, Montana and 2015 candidate for Great Falls city commissioner filed a complaint against Tracy Houck, also a 2015 candidate for city commissioner and resident of Great Falls, Montana. Mr. Petrini alleged that Ms. Houck violated campaign practice laws.

Foundation Facts

The foundational facts necessary for this Decision are the following:

Finding of Fact No. 1: The City of Great Falls, Montana is governed by a Commission comprised of four commissioners and one mayor. A Commissioner is a non-partisan elected position with a term of four years. (Cascade County Elections Office).

Finding of Fact No. 2: The 2015 municipal general election in Great Falls will elect the Mayor (one vacancy with a 2 year term) and 2 City Commissioners (two vacancies with four year terms). (Great Falls City Commissioners webpage).

Finding of Fact No. 3: There were eight candidates on the primary ballot in the 2015 municipal election for Great Falls city commissioner. On Tuesday, September 15, 2015 a primary election was held with the following results:

Bill Bronson – 4,924
Tracy Houck – 3,515
Rick Tryon – 3,059
Don Petrini – 3,044
Kenny Volk – 3,015
Bradley Livingston – 2,639
Neil Tredray – 458
Write-in (Joe Briggs) – 50

Bill Bronson, Tracy Houck, Rick Tryon and Don Petrini were the top four vote getters and those four candidates will be on the ballot for 2015 General Election November 4, 2015. (KBZK TV Great Falls and Cascade County Election’s Office).

Discussion

Mr. Petrini’s complaint was filed on September 21, 2015. The Complaint alleges that Candidate Houck improperly spent money on campaign activity including campaign advertisements on Facebook, campaign signs and campaign flyers.

I. Failure to File Proper Candidate Certification

Montana’s Campaign Practice Act encourages and requires candidates and political committees to fully report and disclose campaign contributions and expenditures.¹ Accordingly, each candidate for public office in Montana, including Candidate Houck, is required to file a certification with the COPP “within 5 days of becoming a candidate.” §13-37-201(2) MCA.

Finding of Fact No. 4: On July 7, 2015 Candidate Houck filed the required candidate registration form (Form C-1-A)

¹ The 2015 Montana legislature emphasized and enhanced this approach, adding reporting periods and expanding the election activity that needs to be valued and reported.

with the COPP (the form was dated July 2, 2015) for Great Falls city commission. Candidate Houck checked “Box A” on her C-1-A: “I certify that I will not receive or expend any funds (including personal funds) in support of my candidacy”. Candidate Houck did not list a treasurer or bank in which she established a campaign account. (Commissioner’s records).

Generally, candidates for public office in Montana, including Candidate Houck, are required to “appoint one campaign treasurer” (§13-37-201, MCA) and list a “campaign depository” (§13-37-205, MCA). However, a local government candidate who, like Houck, states that they will spend no money (FOF No. 5) need not list this information and need not file campaign finance reports (§13-37-226(3) MCA).

Houck’s July 7, 2015, C-1-A filing (FOF No. 4) was therefore initially proper as it was simply her verification of intent to accept no campaign contributions and to make no campaign expenditures. Houck’s C-1-A filing became improper, however, once Candidate Houck acted to accept contributions or make expenditures in regard to her September 15, 2015 primary election. Candidate Houck’s response to the Petrini Complaint unequivocally admits campaign expenditures as it states that in mid-August “I [Candidate Houck] spent personal dollars via Staples.com and purchased magnetic door signs, T-shirts, cards and caps.” Further, the Commissioner’s investigator determined that Candidate Houck opened a campaign bank account on August 26, 2015 making an initial deposit of \$205, most of which was a \$160 campaign contribution from Brian Hoven of Great Falls. (Commissioner’s records).

Candidate Houck defends her August 2015 campaign activity as permissible, claiming that by then she had filed an amended C-1-A form for her candidacy.

Finding of Fact No. 5: The Petrini complaint was filed on September 21, 2015. A copy of the complaint was e-mailed to Candidate Houck on September 23, 2015. Candidate Houck contacted the Commissioner's investigator on September 23, 2015 and asserted that she had filed an amended C-1-A form in "mid-July", claiming she did so with the COPP and with the Cascade County Election Administrator's office. (Investigator's notes).

Finding of Fact No. 6: The Commissioner's investigator examined the COPP's records and contacted the Cascade County Election Administrator's office. Neither the COPP or the Cascade County Election Administrator's office had an amended C-1-A form on file for Candidate Houck. (Investigator's notes).

Finding of Fact No. 7: The Commissioner's investigator invited Candidate Houck to produce a copy of the "mid-July" amended C-1-A form but she was unable to do so.² (Investigator's notes).

Finding of Fact No. 8: Candidate Houck filed an amended C-1-A form on September 24, 2015.³ The amended form lists a "C" Box reporting status for Candidate Houck: "I expect to receive contributions and/or make expenditures exceeding \$500 (including personal funds). I will file financial reports (from C-5) according to schedule." (Commissioner's records).

Based on the above Findings of Fact the Commissioner determines that sufficient facts exist to show a campaign practice violation by Candidate Houck.

² Candidate Houck did produce an unsigned, amended C-1-A form dated 7-15-2015. That form, however, is identical (except for the date) to the accompanying C-1-A form filed on September 24, 2015 (See FOF No. 8). More importantly Candidate Houck did not file the pre-election campaign finance report due September 3, 2015, something she logically would have done had she deliberately and knowingly filed an amended C-1-A form on July 15, 2015 as such form included an acknowledgement of her obligation to file the campaign finance report.

³ Candidate Houck dated her typed signature September 22, 2015. It is the date of filing (one day after the complaint was accepted for filing) that determines this Decision.

Sufficiency Finding No. 1: There are sufficient facts to show that Candidate Houck violated Montana’s Campaign Practice Act (including, if legally necessary, §13-37-231 MCA) by accepting campaign contributions and making campaign expenditures during a time when she had filed a C-1-A form (including an affidavit) stating that she would not receive or expend any such funds.⁴

There is always a tension in holding public office, both in the election to public office and in the service that follows, between the individual needs of the person serving and the duty to the public inherent in service in public office. Montana law resolves that tension by requiring that a public officer “shall carry out the individual’s duties for the benefit of the people of the state [of Montana]” §2-2-103(1) MCA.

One way to ascertain that a candidate understands the public trust inherent in office holding is by measure of a candidate’s actions in fully and timely disclosing campaign finance information to the public. The Commissioner notes that the 2015 Great Falls City Commission election involved 8 candidates seeking 2 Commissioner positions. (FOF No. 3) Interest in the office clearly was high and one candidate (Mr. Petrini) was concerned enough about Candidate Houck’s actions to file this complaint against her.

II. Filing of Campaign Finance Reports

Candidate Houck acknowledged that by mid-July of 2015 she intended to operate as a “C” Box candidate for local government office. As a “C” Box candidate Candidate Houck was required to report and disclose: “shall file” (see §§13-37-225, 226 MCA). Montana law applying to 2015 elections required that city commission candidates file their campaign finance report “on the 12th day

⁴ The C-1-A form with its “A” box checked was available for public review on the COPP website. The contrast between Candidate Houck’s public position (no contributions, no expenditures) and her visible campaign activity led to the complaint in this Matter.

preceding the date on which an election is held...” and on 20th day after the election §13-37-226(3) MCA. September 15, 2015 was the date set for the Great Falls city primary election. The 12th day preceding the September 15 primary election was September 3, 2015 and 20th day after the election was October 5, 2015.

Finding of Fact No. 9: Candidate Houck filed her first C-5 campaign finance reports with the COPP on September 30, 2015. These reports covered the periods of July 15, 2015 to September 15, 2015 and September 16 2015 to September 30, 2015. (Commissioner’s records).

The Commissioner determines, based on FOF No. 9, that Candidate Houck filed her pre-primary campaign finance report 27 days late. Accordingly, the Commissioner makes a sufficiency finding as follows:

Sufficiency Finding No. 2: The Commissioner finds that sufficient facts exist to show that Candidate Houck acted in violation of Montana’s campaign practice law by late filing her pre-election campaign finance report.

III. Reporting of Contributions and Expenses

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. Under Montana law, each candidate for public office, including Candidate Houck, must pay expenses by “disbursing” funds from his or her designated campaign depository (§13-37-205 MCA). Further, Candidate Houck’s campaign treasurer “shall keep detailed accounts of all ... expenditures made ...” (§13-37-208(1)(a) MCA). Candidate Houck then “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).

Finding of Fact No. 10: Candidate Houck's response to the Complaint states that "[i]n mid-August I [as a candidate] did spend personal dollars via Staples.com and purchased magnetic door signs, t-shirts, cards and caps." The response further states that she paid fees to Facebook and received the volunteer services of a professional photographer. (Commissioner's records.)

Finding of Fact No. 11: An examination of the campaign finance reports (including amended reports) submitted by Candidate Houck discloses the following expenses:

- a. \$67.02 in-kind (Candidate Houck) for Facebook ads.
 - b. \$150 in-kind (Robert Childs) for photo costs
 - c. \$59.98 in-kind for car magnets (Julu Jerman)
- (Commissioner's records.)

While a number of contributors are disclosed, there are no other expenditures listed in Candidate Houck's campaign finance reports, nor are there expenditure checks issued by Candidate Houck's campaign account. The Commissioner's investigator was unable to reconcile findings of facts Nos. 10 and 11. Candidate Houck admitted August 2015 expenditures for "t-shirts, cards and caps" (FOF No. 10) for which no expenditure item (either as in-kind or cash) is listed on the campaign finance reports (FOF No. 11) filed by Candidate Houck. Further, Candidate Houck asserts that she received free graphic art services but lists no costs for flyers, paper or postage.

Sufficiency Finding No. 3: The Commissioner finds that sufficient facts exist to show that Candidate Houck acted in violation of Montana's campaign practice law by late reporting or failing to report campaign expenses.

The Commissioner appreciates that Candidate Houck is incurring expenses in her campaign through the in-kind contributions of supporters. But that

approach does not lessen the responsibility to fully report and disclose. Pages 10 and 11 of the COPP's Accounting and Reporting Manual for 2015 Candidates states that all in-kind contributions must be accounted for. See also ARM 44.10.321(2). The in-kind "cost" has been defined by the COPP to include a proportional share of "overhead" involved in use of any "office space, equipment and supplies." *Griffin v. MontPIRG*, August 2002, (Commissioner Vaughey).⁵

ENFORCEMENT OF SUFFICIENCY FINDINGS

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must act on, an alleged campaign practice violation 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. 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 Houck has, as a matter of law, violated Montana's campaign practice laws, including, but not limited to the laws set out above

⁵ The 56 page *Griffin* Decision and its accompanying 13 page settlement agreement (both accessible on the COPP homepage) discuss and determine a number of instances of reportable cost based on specific uses of office space, equipment and supplies. A candidate has clear direction of the application of law to determine whether there is an in-kind expense based on the *Griffin* Decision and associated regulations, statutes and Decisions.

along with all associated ARMs. 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.

Candidate Houck was directly engaged in the failure to timely file. Excusable neglect cannot be applied to such choices. See discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. Failures to timely file go to the core of Montana's candidate reporting and disclosure requirements and therefore cannot be excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009.

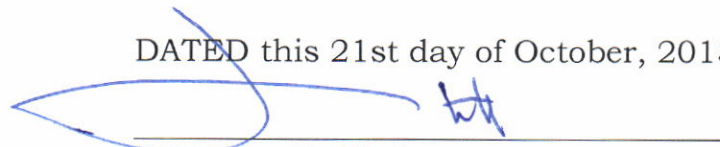
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil/criminal prosecution and/or a civil fine is justified [See §13-37-124 MCA]. This Commissioner hereby, through this decision, issues a "sufficient evidence" Finding and Decision justifying civil prosecution under §13-37-124 MCA. Because of nature of violations (the failure to timely file 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 set out in this Decision. [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.⁶ Corrective filings of amended campaign finance reports will be a mitigation factor.

DATED this 21st day of October, 2015.



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⁶ See discussion of mitigation in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009.