

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Royston v Crosby  No. COPP 2012-CFP-41	Summary of Facts and Finding of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act  DISMISSAL OF COMPLAINT UPON APPLICATION OF <i>DE MINIMIS</i> PRINCIPLE
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At the times involved in this Matter Becki Crosby was a resident of Livingston, Montana and a supporter of Clint Tinsley, a candidate in the 2012 election for a Park County, Montana Commissioner.

On November 18, 2012, Wilsall resident Sheila Royston filed a complaint against Crosby alleging violations of Montana's campaign practices law.

**SUBSTANTIVE ISSUES ADDRESSED**

The substantive areas of campaign finance law addressed by this decision are: independent expenditures; political committee registration; naming and labeling of political committees; attribution; and, *de minimis*.

**FINDING OF FACTS**

The facts necessary for this Decision are as follows:

1. The 2012 general election in Montana was held on November 6, 2012. Secretary of State (SOS) website.

2. Clint Tinsley was a candidate in the November 6, 2012 election for the position of District 3 Commissioner of Park County, Montana. SOS website.
3. Ms. Royston's complaint alleges that Livingston resident Becki Crosby spent \$273 in support of Mr. Tinsley's candidacy by paying for two support ads placed in the Livingston Enterprise.
4. Ms. Crosby responded to the complaint by agreeing that the ads were placed and agreeing to the cost of \$273. However, Ms. Crosby stated that the ads were paid for by the 26 people whose names were listed in the ad. Commissioner's records. A copy of the ad (Ad) accompanies this Decision as Exhibit 1.
5. The Ad states "Vote Clint Tinsley" and has attribution language that states: "Paid for by Becki Crosby."
6. There is no evidence of coordination between the candidate and Becki Crosby and the Commissioner finds that coordination is not an issue in this decision.
7. The Commissioner further finds that the \$273 expenditure is an independent expenditure.
8. Ms. Crosby has informed the Commissioner that all 26 contributors to the Ad were employees of the City of Livingston.
9. A review of Clint Tinsley's campaign records and the Commissioner's general records shows that:
  - a. There are no political committees registered with the

Commissioner under Ms. Crosby's name.

- b. Becki Crosby was not reported as a contributor by the Tinsley campaign, either in cash or in-kind.
- c. Three of the 26 people whose names were listed in the Ad are also listed by the Tinsley campaign as contributors. Those people are Cyndi Alverson (\$100), Lee Frederick (\$50) and Sandy Wulf (\$50). Tinsley's campaign records show over 60 individual contributions to his campaign.
- d. The \$273 advertising expenditure was not reported by the Tinsley campaign as either an in-kind contribution or an expenditure.
- e. The \$273 advertising expenditure was not reported by Ms. Crosby or any other entity as either an in-kind contribution or an expenditure.

### **DISCUSSION**

Ms. Crosby organized a group of Livingston City employees who banded together, with a small sum of money from each, to place an Ad in support of the political candidacy of their boss and co-worker, Mr. Tinsley [FF Nos. 4, 8]. Ms. Crosby did not register a political committee nor did she report and disclose the money raised and spent [FF No. 9(e)].

The complaint in this Matter alleges that Ms. Crosby's actions violate Montana's contribution limit laws. Ms. Crosby's actions, however, require a nuanced analysis of Montana's campaign practice law in order to take into consideration an analysis of political committee requirements and the

application of the *de minimis* principles.

Ms. Crosby organized a group of 26 people (the Crosby group) who contributed money and their names to the Ad [FF No. 4]. In total the Crosby group raised and spent \$273 in twice printing the Ad [FF No. 4]. The Ad expressly advocated a vote for candidate Tinsley [FF No 5]. The Ad was a campaign expenditure under Title 13: "...anything of value made for the purpose of influencing the results of an election." §13-1-101(11)(a) MCA.

Under Montana law the Crosby group became a political committee in that it was "...a combination of two or more individuals ...who makes a contribution or expenditure...to support...a candidate..." §13-1-101(22) MCA. By its actions the Crosby group became either an incidental committee or a particular candidate committee. **See** 44.10.327(2)(a)(ii) and 2(c) ARM. These forms of a political committee are discussed further below.

There is no connection or "coordination" alleged or shown between the candidate and the committee [FF No. 6]. The Commissioner has determined that the expenditure was an independent expenditure [FF No. 7]. This finding is consistent with ARM 44.10.323(3) definition of an independent expenditure as "...communications expressly advocating the success or defeat of a candidate or ballot issue...". Accordingly, this Commissioner determines that this Matter concerns the application of Montana's Campaign Practices law to the independent expenditure actions of an incidental or particular candidate political committee.

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## 1. Contribution Limits Do Not Apply

Ms. Royston assumed that Ms. Crosby made the expenditure personally and complained that the \$273 expenditure became a contribution to candidate Tinsley that exceeded the \$160 contribution limit allowed to candidates for local government. **See** §13-37-216(1)(a)(iii) MCA. The Crosby expenditure, however, was not a contribution to the Tinsley campaign but an independent expenditure in support of candidate Tinsley [FF Nos. 6 and 7]. As an independent expenditure the amount is not subject to limits and Ms. Crosby's actions did not violate contribution limits.

Contribution limits, however, are not the only campaign practice laws implicated by Ms. Crosby's actions as she acted as part of a group of people when making the \$273 expenditure.

## 2. Other Parts of Montana's Campaign Practices Law Apply

The Crosby group has admitted to \$273 in election independent expenditures [See FF No. 4]. The Crosby group thereby became a political committee classified either an incidental committee or a particular candidate committee. **See** above discussion.

As a particular candidate committee [44.10.327(2)(a)(ii) ARM] the Crosby Group should fall within the reporting requirements of §13-37-226(4) MCA.<sup>1</sup> However, since this section of law fails to include particular candidate committees involved in local candidate elections, it

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<sup>1</sup> This statute applies to candidates for local office, such as County Commission, and to political committees involved in local [ballot] issues but for some reason does not include political committees involved in local office candidate races.

is necessary to turn to an incidental committee classification in order to determine reporting requirements.

The Commissioner determines that the Crosby group is also an incidental committee [44.10.327 2(c) ARM] because it engaged in a single instance of campaign activity. This makes the Crosby group's election activity transient or incidental, as contrasted to frequent activity that would require different political committee classification.

As an incidental committee the Crosby group was required to register and file a report according to rules established by the Commissioner. **See** §13-37-226(6) MCA. In turn, the Commissioner's rules require an incidental committee to file a statement of organization [44.10.411(1) ARM] and, when making contributions to a local candidate, file reports two days prior to deadlines set by 13-37-226(3)(a)(b). **See** 44.10.411(3) ARM. An incidental committee, however, is not required to report expenditures on behalf of a local candidate if those expenditures are less than \$500. *Id.*

In this matter, classified as an incidental committee, the Crosby group was not required to file a report because its total expenditure for Mr. Tinsley, a local candidate, was less than \$500. The Commissioner's regulations, however, still require that the incidental committee (thus, the Crosby group) file a statement of organization. Further, if a statement of organization was filed this Commissioner determines that, given that Livingston city employees were the exclusive source of funds, Montana's naming and labeling statute [§13-37-210

MCA] applies and that the political committee, once formed, should have been named something similar to “Livingston City Employees in Support of Tinsley.”

Finally, the Ad was an election communication and, as such, an attribution was required. §13-35-225 MCA. The Ad fails to meet this requirement because it identified the “paid for by” entity as Ms. Crosby when, in fact, the entity was the Crosby group.

#### **FINDINGS OF CAMPAIGN PRACTICE VIOLATION**

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must make, a decision 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 campaign finance report filing requirements are mandatory: “shall file” [**See** §13-37-226 MCA]. The filing date requirements are date certain. Therefore, any failure to meet a mandatory, date-certain filing date is a violation of §13-37-226 MCA. Likewise, the requirements for incidental committee election expenditures are mandatory: “...shall file...”  
44.10.411 ARM.

This Commissioner, having been charged to investigate and decide, hereby determines that Ms. Crosby has, as a matter of law, committed a violation of Montana's campaign practice laws, including §§13-35-225, 13-37-210, and ARM44.10.411. There are no reporting violations because the expenditure is less than \$500. **See** above. The Crosby Group violations (attributed to Ms. Crosby) are limited to failing to register as a political committee, failing to attribute properly and failing to meet naming/labeling requirements. 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.

Excusable neglect does not apply since Ms. Crosby intended to publish the Ad that lead to the violation. While Ms. Crosby calls the failure to register, attribute and report an "oversight", a showing of excusable neglect generally requires justification for error beyond mere carelessness or ignorance of the law. *Empire Lath & Plaster, Inc. v. American Casualty Co.*, 256 Mont. 413, 417, 847 P.2d 276, 278 (1993). Neglect that is "due to forgetfulness and the press of other, more important business is not sufficient to establish excusable neglect." *Foster Apiaries, Inc. v. Hubbard Apiaries, Inc.*, 193 Mont. 156, 161, 630 P.2d 1213, 1216 (1981). **See** discussion of excusable neglect principles in *Matters of Vincent* Nos. CPP-2013-CFP-006 and 009.

The principle of *de minimis*, however, does apply to this Matter. The Commissioner recognizes that *de minimis* application is separately measured when dealing with an incidental committee. *Canyon Ferry Road Baptist Church*



*v Unsworth* 556 F3d 1021 (9<sup>th</sup> Cir. 2009). The Commissioner further recognizes that a *de minimis* application must be made when required by the facts of the Matter. *Id.*

The Commissioner has applied *de minimis* to an indefinite expenditure of potentially up to \$428 by an incidental committee. *Raffiani v Montana Shrugged* COPP- 2010- CFP 17. In this matter the expenditure is not indefinite – it is in the definite amount of \$273. The Commissioner hereby applies *de minimis* to the \$273 expenditure and therefore finds that the independent expenditure in that amount is excused as a trigger for the registration, attribution and naming/labeling requirements that would otherwise be applicable to the Crosby group. The reasons for this decision are as follows:

First, the legislature has already established a *de minimis* amount of \$500 in regard to reporting requirements for local candidate races.

Second, the expenditure comes from the act of 26 people contributing \$10 each and there is no attempt to avoid a contribution limit as none of the people involved exceeded a contribution limit with their \$10 contribution.

Third, there was no attempt to launder money (see §13-37-217 MCA) as each of the 26 contributors listed their name in the Ad.

Fourth, the funded campaign activity (a list of community supporters) is a classic Montana [in this case incidental committee] campaign practice that serves the function of civic discourse.

Fifth, the amount involved was sufficient to carry out a minimal amount of

speech in the context of the election.

Sixth, the speech was entirely independent without any indication whatsoever of orchestration or coordination with the candidate.

With the above considerations in mind this Commissioner finds that the \$273 was expended in the furtherance of first amendment speech rights and made in a manner that afforded civic discourse while also allowing recognition, disclosure and fairness independent of disclosure or reporting standards. Accordingly, under the facts of this Matter, the Crosby group speech rights should not be burdened by the requirements to register as a political committee, attribute or to name/label the political committee. The violations are excused or dismissed as *de minimis*. *Canyon Ferry Road Baptist Church v Unsworth* 556 F3d 1021 (9<sup>th</sup> Cir. 2009).

Because there is a finding of violation and a determination that *de minimis* is applicable, civil prosecution and/or a civil fine is not justified [**See** §13-37-124 MCA]. This Commissioner hereby dismisses this matter from prosecution. In making this dismissal, however, the Commissioner encourages individuals, such as Ms. Crosby, to carefully consider the requirements of Montana law as applied to their campaign activity, even if the campaign expenditure involved is small, perhaps less than the \$273 that was found to be *de minimis* in this Matter.

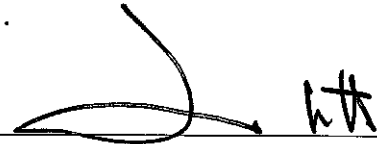
While the facts of this Matter allow application of the *de minimis* principle, most Matters before the Commissioner do not allow application of such a principle resulting in prosecution. See *Baker v Key* COPP-2011-CFP-32.

Montana's laws and rules generally require reporting and disclosure of campaign expenditures or contributions. The Commissioner, subject to the *de minimis* limit discussed above, must enforce reporting and disclosure as the law requires this and enforcement promotes fair speech leading to better civic discourse which, in turn, leads to more effective governance.

**CONCLUSION**

Based on the preceding discussion as Commissioner I find and decide that there is sufficient evidence to show that Ms. Crosby and the Crosby Group violated Montana's campaign practices laws, including §§ 13-35-225, 13-37-210, and ARM44.10.531. These violations, however, are excused upon application of the *de minimis* principle such that prosecution is not justified and will not be pursued.

DATED this 30<sup>th</sup> day of July, 2013.



A handwritten signature in black ink, appearing to read 'Jonathan R. Motl', is written over a horizontal line. To the right of the signature, the initials 'hth' are written in a similar ink.

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**VOTE**

**CLINT  
TINSLEY**

**"WE KNOW" "HE KNOWS"  
"HOW TO GET  
THE WORK DONE"**

Hal Haefs  
Tom Schweigert  
Denny Fisher  
Cody Harper  
Becki Crosby  
Cyndi Alverson  
Diane Powers  
Lee & David Frederick  
Rich Stordalen  
Eddie Miller  
Tom Bergsing  
Dwight Haines  
Mike Stordalen

Sandy & Mark Wulf  
Craig Hahn  
Judy Roy  
Brad Haefs  
Eileen Malcott  
Al Fuhs  
Mark Egeland  
Steve Brewer  
Mike Frederick  
Eric Schneider  
Jessie Hogg  
Dusty Maher  
Pam Payovich

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