

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

Matter of Taylor Complaint
COPP-2012-CFP-028

SUMMARY OF FACTS

STATEMENT OF FINDING OF
SUFFICIENT EVIDENCE TO
SHOW A VIOLATION OF TITLE
13, CHAPTERS 35 OR 37

Alan Hale of Jefferson County was a candidate for the Montana House of Representatives, District 77, in the 2012 primary and general (by write-in) elections. On October 3, 2012, Jefferson County resident Mark Taylor filed a complaint against Mr. Hale based on a failure to properly label or attribute a campaign mailer.

SUBSTANTIVE ISSUES ADDRESSED

The substantive areas of campaign finance law addressed by this decision are: 1) Proper labeling or attribution of campaign literature; 2) Timely reporting of contributions to and expenditures by a candidate; and, 3) The requirement of a closing campaign report.

SUMMARY OF RELEVANT FACTS

Mr. Hale filed as a Candidate for House District 77 on January 19, 2012.

Mr. Hale filed an original and amended candidate's campaign finance report for the period ending May 19, 2012 showing contributions (receipts) of \$1305, expenses of \$1172.80 and cash in bank of \$132.20. All expenses and contributions were attributed to the primary election.

Mr. Hale filed a second report (May 20 to June 20, 2012) showing no receipts or expenditures and maintaining a cash-in-bank balance of \$132.20. Mr. Hale filed a third report (June 21 to October 20, 2012) showing a personal contribution by the candidate to his campaign account in the amount of \$319.31 and a cash-in-bank balance of \$451.51. No further or closing report was filed.

Mr. Hale did not prevail in the primary election, with another candidate receiving the endorsement of the Republican Party. Mr. Hale engaged in a write-in candidacy in the general election, sending out an electioneering postcard, a copy of which was attached to the October 3, 2012 complaint filed by Mark Taylor. A copy of the post-card accompanies this Summary of Facts and Statement of Finding.

An investigator from the Commissioner's office contacted the Hale household shortly after receiving the complaint. Gail Hale, Mr. Hale's wife and the treasurer of the Hale campaign committee, admitted that the Hale campaign created and mailed the postcards addressed by the Taylor complaint. Mrs. Hale brought to the Commissioner's office documents showing that the post card was printed and mailed through the Neighborhood Office of Helena, Montana at a cost of \$367.46, including \$95 for printing and \$272.46 for

mailing. The billing invoice from the Neighborhood Office was dated October 1, 2012.

DISCUSSION

Montana's campaign related laws require full "paid for by" attribution, as well as full and timely disclosure of campaign contributions and expenditures. A candidate is required to timely file a certification [§13-37-201 MCA], provide specific attribution on all campaign communications [§13-35-225 MCA], timely keep and maintain accounts of contributions and expenditures [§13-37-208 MCA] and timely file reports to the Commissioner's office of such contributions and expenditures [§13-37-226]. Campaign communication, properly attributed, provides transparency about the source of and funding of the communication. The campaign reports, once filed, are available for review by the public, thereby providing transparency and shared access to campaign finance information.

Mr. Hale was a candidate in the 2012 primary and general (by write-in) elections for the Montana House of Representatives, District 77. As such a candidate Mr. Hale was required to label all election communication with "...the attribution 'paid for by' followed by the name and address of the person who made or financed the expenditure for the communication." §13-35-225 MCA. The post card prepared and sent by Mr. Hale lacked any such attribution, much less the specific attribution required when the candidate himself finances the communication.

Mr. Hale campaigned in the 2012 primary and general elections for HD 77.

Mr. Hale filed the required 12 day pre-general campaign finance report [**See** §13-35-226(3)(a)] MCA. Mr. Hale's campaign finance report, however, reported no expenditures and therefore Mr. Hale did not report the cost of the election communication for which this complaint is filed.

FACTUAL FINDINGS ESTABLISHING CAMPAIGN PRACTICE VIOLATIONS

The established facts show that Mr. Hale failed to properly attribute an election communication. The established facts show that Mr. Hale failed to properly report an election expense.

PROSECUTION INCLUDING CONSIDERATION OF DE MINIMIS AND EXCUSABLE NEGLECT PRINCIPLES

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 attribution requirements for election materials is mandatory: "...must clearly and conspicuously include the attribution..." §13-35-225(1) MCA.

This Commissioner, having been charged to investigate and decide, hereby determines that Mr. Hale has, as a matter of law, violated Montana's campaign practice laws, including §13-35-225 MCA and § 13-37-226, 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.

Mr. Hale was a sitting legislator, elected in 2010, when he ran for office in 2012. Excusable neglect cannot be applied to Mr. Hale's failures. **See** discussion of excusable neglect principles in *Matters of Vincent* Nos. CPP-2013-CFP-006 and 009. Likewise, the amounts of money and the nature of the violation are too significant to be excused as *de minimis*. **See** discussion of *de minimis* principles in *Matters of Vincent* Nos. CPP-2013-CFP-006 and 009. With the above analysis in mind, this Matter is also not appropriate for application of an excusable neglect theory.

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil 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. This matter will now be submitted to [or "noticed to"] the Lewis and Clark County attorney for his

review for appropriate civil action. **See** §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 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 Chapter 37, including those of §13-37-226. [**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 will be considered. It is hereby determined that case specific mitigation, stemming from the facts of this Matter, is not appropriate and will be not be a factor in negotiations. **See** discussion of mitigation principles in *Matters of Vincent* Nos. CPP-2013-CFP-006 and 009. Mr. Hale's status as a legislator running for reelection creates an expectation of normal familiarity with campaign practice laws such that he cannot claim any

particular mitigation related solely to him.

Having found that case specific mitigation cannot apply in this Matter, this Commissioner notes and appreciates Mr. Hale's status as a citizen willing to step out from his peers to take on the public service responsibility of being a legislator. However, the public service purpose of Mr. Hale's election activity, while laudatory, cannot mitigate or excuse Mr. Hale's failure to follow campaign practice law. Each election cycle shows that there are many Montanans who, like Mr. Hale, seek the honor and responsibility of public service. Accordingly, Montana's campaign practices law determines the greater good when it requires that any Montanan running for public office properly and timely disclose and report.

AMENDED AND FINAL REPORT

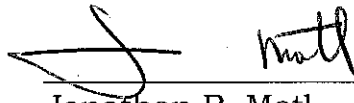
Mr. Hale's campaign must file an amended and closing report disclosing all expenditures made [See §13-37-228, MCA]. The Commissioner's Office will work with Mr. Hale to accept this report. There will be no further violation or fine related to this amended and final filing so long as it occurs within a reasonable amount of time following the date of the Decision in this Matter.

CONCLUSION

Based on the preceding discussion as Commissioner I find and decide that there is sufficient evidence to show that Mr. Hale violated Montana's campaign practices laws, including §13-35-225 and §13-37-226, 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

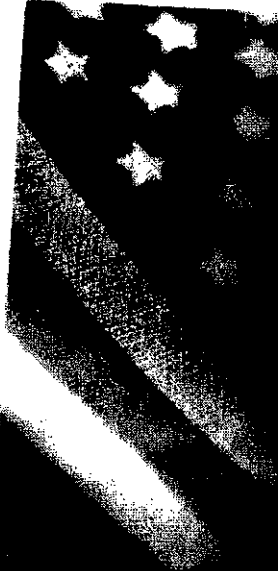
review for appropriate civil action under section 13-37-124(1) MCA.¹ Upon return to the Commissioner of this Matter by the County Attorney, this Commissioner will work with Mr. Hale, in manner set out above, in determining the amount of civil penalty, should Mr. Hale choose to settle this Matter with a negotiated fine.

DATED this 26th day of June, 2013.



Jonathan R. Motl
Commissioner of Political Practices

¹ Notification is to "...the county attorney in which the alleged violation occurred..." §13-37-124(1) MCA. The failure to attribute occurred in Jefferson County and the failure to report occurred in Lewis and Clark County. This Commissioner chooses to Notice this matter to the county attorney in Lewis and Clark County.



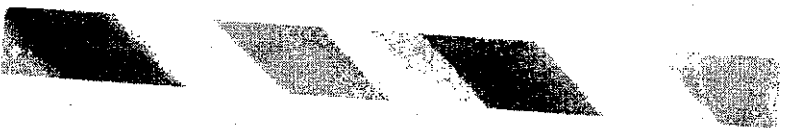
H.D. 77

VOTE for the man
with Experience
and a Proven Record

WRITE-IN PROVEN

ALAN HALE (R)
H.D. 77 Nov. 6th

Why Vote Counts!



Pro-Life	<input checked="" type="checkbox"/> PROVEN	Pro Business	<input checked="" type="checkbox"/> PROVEN
Pro 2nd Amendment Right	<input checked="" type="checkbox"/> PROVEN	Pro Agriculture	<input checked="" type="checkbox"/> PROVEN
Pro Jobs	<input checked="" type="checkbox"/> PROVEN	Pro Smaller Government	<input checked="" type="checkbox"/> PROVEN
Pro Natural Resource Production	<input checked="" type="checkbox"/> PROVEN	WRITE-IN	<input checked="" type="checkbox"/> PROVEN

ALAN HALE (R)
H.D. 77 Nov. 6th

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