

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Trap Free (K.C. York) and Christopher Justice v. Montana Trappers Association and Montanans for Effective Wildlife Management No. COPP 2014-CFP-023	Finding of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act
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On May 22, 2014, Trap Free Montana Public Lands (Trap Free), a 2014 ballot issue committee supporting the passage of Initiative I-169, filed a campaign practice complaint against two political committees: 1) Montanans for Effective Wildlife Management (MEWM), a 2014 ballot issue committee opposing passage of Initiative I-169; and 2) Montana Trappers Association (MTA), a Montana corporation/association that is registered with the COPP as an incidental political committee.

On August 7, 2014 Christopher Justice, a resident of Missoula, Montana, also filed a campaign practice complaint against MEWM and MTA. The Commissioner combined the two complaints into the single Matter identified

above.

The two complaints allege that MEWM and/or MTA violated Montana finance and practice laws by using property of the State of Montana for campaign purposes and by failing to properly report or account for campaign contributions and expenditures.

SUBSTANTIVE ISSUES ADDRESSED

The substantive areas of campaign finance law addressed by this decision are: 1) Election use of property belonging to the State of Montana; 2) Naming and Labeling of political committees; and, 3) Reporting and disclosure of expenditures and contributions by political committees.

Introduction

For the past decade groups of Montana citizens have sought, through the initiative process, to ban the trapping of fur bearing animals on public land in Montana. Other groups of Montanans have opposed these initiative efforts.¹ In 2014 those groups again squared off on opposite sides of a proposed law offered for approval through the initiative process. The following foundational facts apply to that 2014 campaign.

Finding of Fact No. 1: A ballot committee called Trap Free Montana Public Lands (Trap Free) registered with the Commissioner of Political Practices Office (COPP) on January 21, 2014. Trap Free listed their ballot issue as “support the Montana Trap Free Public Lands Act, November 2014 election.” (Commissioner’s records).

¹ The Commissioner notes that neither side of this issue involved an on-going entity with its own professional staff. Instead, each side is led and staffed by Montanans who are largely volunteering their time and donating their money because they believe there is public good advanced by their position on this issue. The laudable democratic function of the each side, however, does not excuse anyone from following applicable campaign practice laws. It may, however, become a factor in mitigation in the manner discussed further in this Decision.

Finding of Fact No. 2: Ballot Issue I-167 was submitted to the Montana Secretary of State, and proceeded through the required review with final language approved for signature gathering on September 6, 2013. The subject of I-167 was “prohibit trapping of certain animals by private individuals on any public lands within the State of Montana.” (Montana Secretary of State (SOS) website).

Finding of Fact No. 3: Ballot Issue I-169 was submitted to the Montana Secretary of State, and proceeded through required review with final language approved for signature gathering on February 12, 2014. The subject of I-169 was to “prohibit trapping of certain animals by private individuals on any public lands within the State of Montana.” (SOS website).

Finding of Fact No. 4: Neither I-167 or I-169 received sufficient signatures on initiative petitions to qualify the initiative for vote on the 2014 election ballot. (SOS website).

Under Montana law an initiative effort is recognized as a “ballot issue” after the language of the initiative moves through review by legislative services and the attorney general. This process produces the final ballot issue language, the statements of purpose/implication and the fiscal impact statement. This information forms the initiative petition language allowing the Montana Secretary of State to prepare the “form of petition” that, once prepared, declares a statewide initiative to be recognized as a “ballot issue” 13-1-101(17)(b) MCA.

Once a statewide initiative is declared a ballot issue any political committee making an expenditure for or against that ballot issue must file a political committee certification with the COPP within 5 days of making an expenditure and report expenditures thereafter. §13-37-201 MCA. In this matter I-167 and I-169 were declared ballot issues on September 6, 2013 and February 12, 2014, respectively (FOF Nos. 3 and 4). The following analysis is

based on these dates.

I. Use of State of Montana Property

The Justice complaint filed in this Matter alleges that property belonging to the State of Montana was improperly used to advocate a “No” vote on I-169.

The facts relevant to this allegation are as follows:

Finding of Fact No. 5: In 2014 Jason Maxwell served as the vice-president (west) of the Montana Trapper’s Association. (Commissioner’s records, MTA website and social media webpages).

Finding of Fact No. 6: On June 14, 2014 Jason Maxwell drove a pick-up truck to the farmer’s market in Hamilton, Montana. The truck was pulling a trailer prominently labeled as “Montana Fish, Wildlife and Parks, State Furbearer Program.” (Commissioner’s records).

Finding of Fact No. 7: Jason Maxwell, in plain sight of anyone watching, unloaded several display cases containing furbearing animals from the trailer and rolled those display cases into the adjacent Montana Trapper’s Association farmers’ market booth which was marked with a large banner sign, orange in color, imploring the reader to “Vote No on I-169.” (Commissioner’s records).²

Finding of Fact No. 8: The Commissioner’s investigator determined that the trailer is titled to the State of Montana through a state agency (Fish, Wildlife and Parks) and further determined that the contents of the trailer were professionally prepared mounted displays of Montana fur bearing animals. (Commissioner’s records).

On June 14, 2014 Initiative 169 was a ballot issue (FOF No. 3). Under Montana law the MTA was free to spend money on transportation, banner preparation, booth rental and other costs advocating a “No” vote against I-169 at the Hamilton Farmers Market on June 14, 2014.

² Jason Maxwell also set up a MTA booth in at least one Hamilton Farmers’ market held in May of 2014.

The question, though, is whether the MTA could advocate against I-169 with resources, the use of which in ballot issue campaigns was otherwise prohibited by law. Under Montana law a public employee "...may not use public time, facilities, equipment, supplies, personnel or funds to solicit support for or opposition to ...a ballot issue..." 2-2-121(3)(a) MCA.³ The Montana Trappers Association, through its vice-president Jason Maxwell, used public equipment and supplies (FOF Nos. 5-8) to advocate a "No" vote against I-169.

The use of public resources in campaigns has been the subject of several Court Opinions and Attorney General Opinions as well as COPP Advisory Opinions and Decisions.⁴ Each of these Opinions or Decisions repeated the principle that public resources are not to be used to advance campaign positions. Those Opinions and Decisions, however, apply to the actions of a public employee. In this Matter the MTA and Jason Maxwell are not a state agency or state employee such that they can be held to the standards applicable to a state employee or agency.

There is, of course, a means of accountability and responsibility for the inappropriateness of this action as the MTA gained possession of State of

³ While Title 2 sets out ethics law, a public employee also commits a campaign practice violation if he or she solicits support for or opposition to a ballot issue. §13-35-226(4) MCA. There are exceptions to this law as to public employees. None of these exceptions apply in this Matter.

⁴ Court Decisions: *Molnar v. Fox*, 2013 MT 132; 370 Mont. 238, ¶¶23-46; 301 P.3d 824. AG Opinions: Mont. Atty. Gen. Op. 51-1 (2005); COPP Decisions: *Mont Democratic Party v. Martz*, (Sept. 25, 2002); *Seher & Valazquez v. Galt*, (July 26, 2004); *Fraiser v. Charlton & Simonich*, (May 2, 2005); *Fasbender v. Toole*, (February 21, 2012). COPP Advisory Opinions: Public Official Acts, COPP-2014-AO-002; Ethics of Dual Public Employment, COPP-2014-AO-006; Public Employee Campaigning Issues, COPP-2014-AO-007.

Montana property through a contractual relationship with a State of Montana agency⁵. While the MTA itself, through Jason Maxwell, took the action that created injury to the public perception of fairness of Montana's election process it is the responsible state employee or agency, not Jason Maxwell or the MTA, that will need to take responsibility for, and pay the social debt for, the misuse of state property.

II. The Name of Montanans for Effective Wildlife Management

The ballot committee opposing I-169 was called Montanans for Effective Wildlife Management:

Finding of Fact No. 9: Montanans for Effective Wildlife Management filed its amended C-2 as a ballot committee for the 2014 election on September 11, 2013, shortly after I-167 was approved as to the form of petition. The ballot committee was a "continued" entity from ballot issue campaigns in earlier elections. The October 7, 2013 campaign finance report shows a "transfer" of \$5,732.62 from the 2010 ballot committee of the same name. Terry Sheppard, the treasurer of the Montana Trappers Association incidental political committee, is listed as the deputy treasurer of Montanans for Effective Wildlife Management. (Commissioner's records).

Montana law requires that a PAC name itself using a name that "clearly identifies the economic or special interest, if identifiable, of a majority of its contributors." §13-37-210 MCA. A determination of whether the naming and labeling statute has been violated is based on a review of employer and occupation information presented in the C-6 forms. *BFP v. Responsible Land Use*, (January 6, 2010, Commissioner Unsworth).⁶

⁵ The decision as to whether the State of Montana agency or employee has responsibility for this action is reserved for future examination.

⁶ This issue was not specifically named in the complaints but once a complaint is filed the Commissioner is required to examine other possible violations of campaign practice laws. §13-37-111(2)(a) MCA.

The Commissioner's investigator assembled and reviewed all C-6 forms submitted by Montanans for Effective Wildlife Management following the filing of its September 11, 2014 C-2 form. That review shows that identified contributor disclosure as follows: 10-1-13 to 12-31-13 (one individual contributor, a "trapper"); 3-06 to 4-05-14 (6 contributors - 4 individuals and two groups- including 2 "trappers" and the Montana Trappers Association); 4-06 to 4-14-14 (4 contributors, all "trappers"); 4-25 to 6-05-14 (1 new individual contributor and 1 new group contributor, the North Dakota Fur Trappers); 6-06 to 6-18-14 (1 new individual contributor). In total Montanans for Effective Wildlife Management identified and listed 14 separate contributors (11 individuals and 3 groups) by name. Of these 14 identified contributors 9 were listed as trappers or had the name "trapper" in the name of their group.⁷

Sufficiency Finding No. 1: Sufficient facts exist to show that the name Montanans for Effective Wildlife Management failed to meet the naming and labeling requirements violation of Montana law because it did not identify the economic⁸ and special interest of "trappers" in its name.

Prior Commissioners have used the method of identifying and counting contributors by identified economic or special interest when determining whether or not to make a "naming and labeling" sufficiency finding. *Hanson v. No on CA-30*, November 15, 1996, (Commissioner Argenbright). In making such a determination the Commissioner examines as to "...whether or not an

⁷ In making this sufficiency finding the Commissioner notes that the Montana Trappers Association was counted as one contributor despite making multiple contributions. Donations made by a "fox farmer" and by the Ravalli County Fish and Wildlife Coalition were not counted as a "trapper" donation.

⁸ The Montana Trappers Association website is replete with discussion of 2014 being a year of robust financial return to Montana trappers because of the significant increase in the price of furs.

economic or special interest between the two contributors to the [political] committee exists.” *Feaver v Billings Education Advocates*, June 17, 1996 (Commissioner Argenbright). *Common Cause v. Committee to Defend First Amendment Rights*, October 11, 1996 (Commissioner Argenbright).

In this Matter, the Commissioner looked to and counted 14 listed contributors to the ballot committee and identified the special interest shared by 9 of the contributors as trapping.⁹ Under Montana law any identifiable economic or special interest promoting or opposing a ballot issue may not disguise its special interest by use of a name that does not identify that economic or special interest. It was trappers, in and out of Montana, who opposed I-169 and Montanans for Effective Wildlife Management was required by law to include the descriptive word “trappers” in its name.

III. Reporting and Disclosure

Montana law requires transparency in campaigns, including ballot issue campaigns. Montana law requires that a ballot committee report and disclose “the total sum of individual contributions” that are less than \$35 in amount. (§ 13-37-229(4), MCA). Further, under Montana law a campaign must disclose all “expenditures made” during a campaign (§ 13-37-225 MCA).

There were two political committees formed in opposition to those certain 2014 ballot issues (I-167 and I-169) proposing to ban trapping on public lands. The ballot committee, Montanans for Effective Wildlife Management, is

⁹ The Commissioner considered that Montanans for Effective Wildlife Management reported \$4,948 in under \$35 contributors. (Commissioner’s records). These names, not being disclosed, cannot be counted or considered when making a naming and labeling determination.

described in FOF No. 9, above. The associated incidental committee of the Montana Trappers Association is as follows:

Finding of Fact No. 10: The Montana Trappers Association filed its C-2 statement of organization as an incidental committee in October of 2009, listing its opposition to I-160, a 2010 initiative proposing to ban trapping on public lands. The political committee treasurer was Terry Sheppard. The political committee filed its first 2014 campaign finance report on March 10, 2014 under its 2009 statement of organization. On April 3, 2014 the Montana Trappers Association filed a new incidental committee C-2 statement of organization listing opposition to I-169. Terry Sheppard was listed as treasurer. (Commissioner's records).

Each of these two political committees is now examined for compliance with reporting and disclosure of expenses and contributions.

A. Disclosure and Reporting of Expenses

An expenditure is broadly defined as “a purchase, payment, distribution, loan, advance, promise, pledge or gift money made for the purpose of influencing an election”. §13-1-101(11) MCA. Under Montana law a campaign must disclose all “expenditures made” during a campaign (§ 13-37-225 MCA).

There were 20 separate expenses reported and disclosed by the MEWM ballot committee and MTA incidental committee:

Finding of Fact No. 11: MEWM, the ballot committee, reported directly making 16 ballot campaign expenses starting in September of 2013 and ending in October of 2014.

- a. In 2013, beginning in September, MEWM reported 6 expenses including \$1,617.91 for fundraising prizes, \$390.83 for fundraising tickets and \$85.85 costs for the banner for fundraising; \$695 for printing brochures; and \$41.54 for leaflets and \$25.37 in banking fees.
- b. In 2014 MEWM reported 10 expenses including three \$300 a month advertising expenses for the months of April, May and June of 2014; \$242.76 for printing “No

on I-169” posters and shirts; \$82.50 on June 17 to Big Bear Sign Company for an informational banner; \$300 for informational brochures, labels and patches; \$198 to print Anti-I-169 trifolds, \$100 for booth space and \$790 for a billboard rental.

- c. There were no expenditures reported by MEWM for the time period of November 2013 through February of 2014. (Commissioner's records).

Finding of Fact No. 12: MTA reported making 4 campaign expenses (and MEWM also reported the same as in-kind contributions): \$13,000 paid in three payments to MS Strategies (\$5,000 paid in March of 2014, \$5,000 in April; \$3,000 in June) and \$22.24 paid in reimbursement for fax costs. (Commissioner's records).

In the total 20 expenses reported by the two political committees, almost all of which are for fixed costs such as printing or advertising. There were no expenses reported for grassroots or organizing costs, including copy or mailing costs.¹⁰ As FOF No. 11(c) states, there were months (November of 2013 through February of 2014) when the two committees reported no expenditures at all in opposition to I-169.

This sparse reporting of ballot campaign expenditures by the two political committees is rejected as inaccurate by the COPP because, as set out below, the two committees engaged in consistent campaign activity that is not reflected by the expenses. The 2014 MTA bank records alone show dozens of MTA expense checks, including checks issued for thousands of dollars in “reimbursements”, none of which are reported or disclosed as an expenditure

¹⁰ The complaint filed in this Matter points out that no expenditures were reported for certain event centered actions against I-169 taken by MEWM/MTA, including large scale events involving posters (advocating a NO on I-169), booth rental and publications.

against I-169.¹¹ Further, on September 4, 2014 MTA paid its final bill of \$3,000 to MS Strategies for invoice No. 2014-004 and did not report that cost as a campaign expense, despite having reported the prior three invoices.

Accordingly, the Commissioner finds as follows:

Sufficiency Finding No. 2: Sufficient facts exist to show that the MTA, as an incidental committee, and the MEWM, as a ballot committee, failed to report expenses of activity opposing I-169, including \$3,000 of payments to MS Strategies.

A ballot issue campaign is just that – a political campaign designed to establish (or oppose establishment of) new law or policy for the State of Montana. As early as 1998 past Commissioners have issued Decisions holding ballot committees and associated incidental committees to the full reporting and disclosure standards of Montana’s campaign practice act.¹² There simply is no excuse in law or precedent in prior Decisions for a 2014 ballot committee and associated incidental committee to fail to report and disclose the full range and

¹¹ Throughout 2013 and 2014 the actions of the trappers organized as MEWM and MTA were prominently focused on I-169, its predecessor initiatives and its predicted successor initiatives. In the fall of 2013 the MTA president’s report to member trappers included a report from trapper Paul Fielder in which he reported extensive work opposing I-169, including delivery of “MTA comments [on initiative language] ...along with supporting documents.”¹¹ Throughout late 2013 and into 2014 the MTA website recorded MTA events in Lolo, Hamilton and Missoula where “No” on I-169 literature and signs were on display. Beginning in February of 2014 and ending in mid-March of 2014, MTA held a special “trapper’s auction” in which it auctioned donated items to raise money to fight I-169.

¹² The 1998 Decisions alone required reporting of the cost of copying, document distribution, mailing, advertising, paid services, forums, travel, mailing lists, fax costs, *Englund v. Montanans for Common Sense Water Laws*, April 30, 1998, (Commissioner Argenbright. See also *Heffernan v. Montana Chamber of Commerce*, June 2000, (Commissioner Vaughney). Commissioner Vaughney later determined that petition drafting time (along with other professional consulting work supplied by incidental committees) had to be reported by a ballot committee. *Motl v. Citizens for More Responsive Government*, April 2004, (Commissioner Vaughney). Still further, “frequent and repeated” use of office space, equipment and supplies whether supplied by an individual or business must be reported as a campaign expense. See *Stipulation to settle MontPIRG et. al* complaint, July 2003, (Commissioner Vaughney).

extent of campaign expenses.

This Commissioner notes that the COPP is open to MTA (and any other group involved in an initiative effort) developing and using a rational and explainable method of disclosing and reporting expenses engaged in by the group and its members in support of or in opposition to an initiative. But there has to be a rational approach to such disclosure and reporting and it is not rational for a group like MTA with documented regular campaign activity to report such few and isolated campaign expenses.

B. Disclosure and Reporting of Contributions

Under Montana law a political committee must disclose “contributions” made to the political committee (§ 13-37-225 MCA) with campaign finance reports disclosing all aggregate contributions of \$35 or more, “the full name, mailing address, occupation, and employer” of the contributor. (§ 13-37-229(2), MCA). Contributions were reported by the MEWM and MTA political committees follows:

Finding of Fact No. 13: MEWM reported contributions from 14 identified contributors (see this Decision, above) along with \$4,948 in under \$35 contributions and \$1,785 in cash from the MTA. (Commissioner's records).

Finding of Fact No. 14: A comparison of the MEWM campaign finance reports summarized in FOF No. 13 to the MTA bank records, MEWM bank records and MTA campaign finance reports shows the following differences:

- a. The MEWM bank records show seven contributors of over \$35 whose funds were deposited into the MEWM campaign account but not disclosed on the campaign finance reports: Rangitsch Bros LLC (\$90); CT Farms/Tom Barnes (\$155); Kenneth Simpson (\$50); Brian Gartner (\$80); CT Farms/Tom

Barnes (\$150); John Gartner (\$200) and Thomas Jackson (\$75). (Commissioner's records).

- b. The MEWM campaign finance reports show that the MTA transferred 5 payments of funds totaling \$1,785 to the MEWM. The MTA bank records, however, show 12 checks written to MEWM totaling \$2,189. Still further, the MTA campaign finance report discloses 9 "fund transfers" to the MEWM totaling \$2,109. (Commissioner's records).
- c. The three sources of data set out in (b) should show the same amount of money and they do not.

Finding of Fact No. 15: The MTA filed an initial incidental committee report on March 10, 2014 followed by campaign finance reports on April 9, May 8, May 13, May 27, and June 4, June 17, July 3, August 11, September 4, October 17 and October 30 The closing report was filed on November 17. (Commissioner's records).

Finding of Fact No. 16: The MTA incidental committee reports, as amended, report and disclose the following contribution information:

- a. That 11 individuals gave \$1,535 to the MTA incidental committee earmarked for use against I-169.
- b. That MTA contributed from its general funds the remaining amount reported as used by the MTA to make expenditures in opposition to I-169.

Finding of Fact No. 17: The MTA held a special fundraising auction that started on February 24, 2014 and ended on March 15, 2014. The auction raised at least \$24,384.98.¹³ The auction was a web based event launched with the proclamation that "the auction is to benefit the Montana Trappers Association in the fight against initiative 169. All proceeds will go directly to the MTA to help offset the costs associated with fighting this initiative." The auction ended with statements that "trappers from all over the county jump in there and help with the fight." (Commissioner's records).

¹³ The MTA website listed the \$24,384.98 amount immediately upon conclusion of the auction but the MTA bank records show that it later used the auction proceeds to purchase a \$30,000 Certificate of Deposit.

Under Montana law a campaign must disclose all “contributions” made to the campaign (§ 13-37-225 MCA). The Commissioner determines that MEWM’s own bank records and a comparison of political committee records show that it failed to report and disclose multiple contributors who gave directly to the MEWM ballot committee (FOF No. 14). This provides little confidence that the MEWM accurately reported the proceeds from its own fundraising event, managed by MTA. ¹⁴

A more significant failure in reporting and disclosing contributions, however, occurred with the MTA incidental committee. The Montana Trappers Association reported as an incidental committee. Under Montana law an incidental committee must report contributions “...that are earmarked for a specified...ballot issue...” 44.10.411(5) ARM. An earmarked contribution “...is a contribution made with the direction, express or implied, that all or part of it be ...expended on behalf of a specified ... ballot issue.” 44.10.519(1) ARM. ¹⁵ Past Commissioners have applied this law to require reporting by incidental committees. *BFP Action Committee v. Bitterroot Building Association*, January 6, 2010, (Commissioner Unsworth). This Commissioner determines that the MTA auction created such earmarked contributions to the MTA incidental committee

¹⁴ In September of 2013 Montanans for Effective Wildlife Management reported spending \$1,617.91 on purchasing prizes (likely 5 guns) for fundraising purposes. (FOF No. 13). Beginning in October of 2013 the Montana Trappers Association advertised raffle tickets for a Montanans for Effective Wildlife Management “Five Gun Sweepstakes”, with a drawing to be held on September 13, 2014 (Commissioner’s records). Montanans for Effective Wildlife Management reported the names of 14 such contributors (FOF No. 13) and disclosed an additional amount of \$6,733 in amounts of less than \$35 (\$4,948 reported in funds directly received along with \$1,785 reported as transferred by the MTA incidental committee).

¹⁵ The exceptions at 44.10.519(1)(a)(iii)(iv) ARM do not apply. The MTA political committee did not spend the contribution but intends to apply the proceeds to a future and different initiative.

(see FOF No. 17) that must be reported as campaign contributions against passage of I-169 by the MTA incidental committee.

Based on the above findings of fact and the above discuss the Commissioner makes the following sufficiency finding

Sufficiency Finding No. 3: There are sufficient facts to show that the MEWM ballot committee failed to report contributions and that MTA incidental committee failed to report as contributions the amounts (approximately \$25,000) paid by bidders in the trappers anti I-169 auction, as required by Montana law. If an item was donated but not sold at the auction then the fair market value of the item must be reported as a contribution as well.

The Commissioner notes that this sufficiency finding is made after full consideration of the “volunteer” exception for contributions and expenditures set out at §13-1-101(7)(11) MCA. No amount of flexibility for self-determination by a group can explain or excuse the degree of failure to report contributions set out in this Matter.

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.

This Commissioner, having been charged to investigate and decide, hereby

determines that there is sufficient evidence to show that the MEWM ballot committee and MTA incidental committee violated the campaign practice laws identified in this Decision. 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.

The failure to properly disclose and report to the magnitude identified in this Matter cannot be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law. See discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009.

Likewise, the Commissioner does not accept that failures to file or report can normally be excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. In particular, the Commissioner has limited discretion to apply *de minimis* to untimely reporting. Reporting is only valid when it is timely accomplished and any delay demonstrates harm. The number of reporting violations in this case also militates against a *de minimis* finding.

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). The Commissioner hereby, through this Decision, issues a “sufficient evidence” Finding and Decision justifying civil prosecution of the MEWM and MTA political

committees. Because of the nature of the violations (the failure to report and disclose 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 setting that fine the Commissioner will consider matters affecting mitigation, if any. 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 §§ 13-37-226 and 228, 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*.

Should this Matter not settle the Commissioner reserves his right, upon return of the Finding by the County Attorney, to instigate an enforcement

action on behalf of the people of Montana.

DATED this 17th day of September, 2015.

A handwritten signature in black ink, consisting of a large, stylized loop followed by the initials 'motl'.

Jonathan R. Motl
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