BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

MONTANA REPUBLICAN PARTY via DANIELLE TRIBBLE **v.** **BEN ALKE (ATTORNEY GENERAL CANDIDATE)**	**COPP-2023-CFP-018** **PARTIAL DISMISSAL AND FINDING OF FACTS SUFFICIENT TO SUPPORT VIOLATIONS DISMISSED - PROSECUTION NOT JUSTIFIED** **ORDER OF CORRECTIVE ACTION**

COMPLAINT

On October 12, 2023, the Montana Republican Party, via Danielle Tribble, filed a campaign practices complaint against Montana Attorney General candidate Ben Alke. The complainant alleges Mr. Alke failed to appropriately report expenditures and/or debts related to a campaign launch video and campaign events in Helena and Bozeman on September 27 and 28, 2023, respectively.

I determined that the complaint met the requirements of Admin. R. Mont. (ARM) 44.11.106 and requested a response from Mr. Alke's campaign pursuant to Mont. Code Ann. (MCA) § 13-37-132. The requested response was timely provided and received by this office on June 27, 2023. In accordance with Montana law and COPP practices, the complaint and response are posted for review on COPP's website, politicalpractices.mt.gov

ISSUES

Reporting of candidate expenditures as loans, timely reporting of debts and obligations, personal vs. campaign travel, and reporting expenditures with adequate detail, MCA § 13-37-229(2)(a)(vi) ARM 44.11.502(2) ARM 44.11.403(1) MCA § § 13-37-226 and 229 MCA § 13-37-228(3)

BACKGROUND

While Mr. Alke's matter here is not unique or worthy of special notice, the timing of this decision as we enter the next reporting cycle for the 2024 election provides an opportunity to discuss enforcement laws with respect to disclosure

requirements.[1] Candidate Alke's reports also provide an opportunity to address how candidates and committees report debts: and more specifically when that needs to occur. Again, candidate Alke is worthy of no special notice in this regard. His situation is not unique. This just presents an opportunity to illustrate the requirements of the disclosure law in advance of the 2024 General Election.

a. *Disclosure, generally.*

Disclosure, including timely disclosure, advances an important and well-recognized government interest by providing information to the voting public about those vying for their attention. *Ream v. Bankhead*, COPP-1996-CFP-09/10/1999, at 7. Government agencies, like COPP, serve as a point where the public has access to that information in a uniform and understandable way. *Ellsworth v. Bullock*, COPP-2016-CFP-041, at 6. Legislatively enacted statutes have already decided what transactions require disclosure and when they must be reported. MCA, Title 13, chapter 37, part 2. Disclosure ensures that voters have the facts necessary to evaluate messages during the election. It also provides general transparency to the public and those acting on their behalf. Lastly, it provides information to government agencies in other areas of enforcement. Taken together, these functions promote confidence and integrity in the election process. See generally, *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1006 (9th Cir. 2010).

Montana's reporting requirements have already been upheld by federal courts as simple and straightforward, which means our requirements withstand constitutional scrutiny and are not overly burdensome on candidates or political committees. *National Association for Gun Rights (NAGR), Inc. v. Mangan,* 933 F.3d 1102 (9th Cir. 2019). While most laws that affect First Amendment rights are subject to strict scrutiny - a compelling interest that is narrowly applied - laws that merely require disclosure can meet a lower standard of intermediate or exacting scrutiny. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 367, 130 S. Ct. 876, 914 (2010). This means the purpose of the law serves a substantially important

[1] This discussion is also included in other recent decisions, including *MTGOP v. Mullen*, COPP-2024-CFP-030, and *O'Neill v. Wilson,* COPP-2024-CFP-022.

interest and the law is written to achieve that interest. *Id.* Disclosure laws may burden candidates and political committees, but they do not impose a ceiling on campaign activities or restrict speech. *Citizens United v, FEC*, 130 S. Ct., 914. Consequently, disclosure laws that withstand exacting scrutiny are generally deemed constitutional. This general rule is not absolute. In limited instances, even disclosure laws that impact First Amendment rights of association face strict scrutiny analysis. *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 141 S. Ct. 2373 (2021). Broad definitions with sweeping implications, applied in a subjective manner, as well as vague laws that fail to provide fair notice also implicate First Amendment rights requiring more stringent scrutiny. See, generally, *Butcher v. Knudsen*, 38 F.4th 1163 (9th Cir. 2022).

As Montana Supreme Court Justice Baker indicated in her *WTP v. Attorney General* dissent, following *Citizens United*, Montana "should focus on preserving disclosure requirements....in order to protect the overriding interest in preventing corruption." *WTP v. Attorney General*, 363 Mont. 220, 241, 271 P.3d 1, 2011 MT 328, ¶ 50. Justice Baker notes from the court record that "disclosure requirements are the means by which to address the State's compelling interest in preserving the integrity of the election process" and that "disclosure requirements are among the "constitutional tools" available to the states in the wake of *Citizens United*." *Id.* In addition, Justice Baker relies on *HLW v. Brumsickle* for the proposition that "[t]he value of disclosure in preventing corruption cannot be understated. *Id.* at 59.

Disclosure laws establish a reporting system that includes laws, rules, and reporting deadlines, which are imposed upon all candidates and political committees. The principal function is always to provide information voters may deem important when deciding how to cast their vote. Consequently, it is critical that disclosure occurs before the election rather than after an election. The purpose of disclosure is only achieved if reports are timely filed with COPP.

Accurate reporting is just as important. Candidates and committees should report all activity meant to influence the results of our elections. Critical terms, such as contributions and expenditures, are specifically defined to include all

campaign related activities. MCA § 13-1-101(9), (21). Thus, timely reporting plus accurate reporting equals full disclosure. MCA § § 13-37-201, 226, 228, 229.

COPP establishes a uniform system of disclosure and reporting applicable to all candidates and political committees. MCA Title 13, chapter 37, part 2. We employ compliance specialists to assist individuals filing these reports. When complaints are filed alleging violations, we investigate those complaints and apply substantive facts to the established law. MCA § 13-37-111. If prosecution is justified COPP can pursue penalties for intentional and negligent violations. MCA § 13-37-128. These enforcement decisions are posted, and the commissioner reviews prior similar decisions to achieve stability as to how these laws are interpreted. *Welch Advisory*, COPP-2014-AO-009. Only courts, rather than administrative agencies, have jurisdiction to decide constitutional issues, but agencies are required to interpret laws in a manner that recognizes constitutional issues, so the law is applied in a constitutional way. See *Id.*, 7-8 citing, *Brisendine v. Dep't of Commerce*, 253 Mont. 361, 366, 833 P.2d 1019, 1021-22 (1992), and *City of Great Falls v. Morris*, 332 Mont. 85, 134 P.3d 692, 2006 MT 93 ¶ 19.

b. *Debt disclosure.*

A candidate or political committee has a responsibility to report debts at the time an obligation for a campaign expenditure is incurred rather than when an invoice is received, or the payment is made. § 13-37-229(2)(a)(vi) and 44.11.502(2), ARM, see also *Perkins v. Downing*, COPP 2020-CFP-022. In *Ward v. Tucker*, COPP-2020-CFP-021, candidate Tucker failed to meet the requirements of law when she incurred an obligation in one period but reported it in another.

In *Ward v. Marceau*, candidate Marceau failed to disclose eight separate debts in the period the debts were incurred. COPP-2022-CFP-008. In *Downing*, *Tucker*, and *Marceau*, each candidate maintained they had not yet been invoiced or billed when the agreement was made with respect to the service. In *Downing* there were issues with respect to the vendor's performance, so the amount owed was still being negotiated. None of this negated the requirement with respect to reporting the debt when it was incurred.

If the exact amount of a debt is unknown the candidate or committee is required to provide an estimate since the public has a right to know all debts, including estimated debts, incurred in the appropriate reporting period. *Akey v. Clark*, COPP-1998-CFP-03/36/1999, see also *Buyan v. Schulz*, COPP-2016-CFP-037, *Ellsworth v. Bullock*, COPP-2016-CFP-041 and *Amerman v. McGrath*, COPP-2016-CFP-043, at 5. In *Amerman v. McGrath*, the candidate relied on the notion of reporting based on actual payment. Her argument, like others, was unsuccessful. The commissioner addressed this notion of candidates reporting based on the date of payment and determined it "would not accomplish timely disclosure of campaign activity and is subject to manipulation by a candidate." *Id.*, at 4. I concur.

c. *Applying law with respect to circumstances.*

If the public, candidates, political committees, or journalists reading COPP decisions notice what appears to be a more rigid application of disclosure laws than other laws, it is predominantly due to what courts have allowed and permit when we apply disclosure laws versus other laws under the agency's authority. When we reach decisions, we remain mindful of what standards the courts apply.

These laws must be equally and objectively applied to all candidates and political committees so I will set forth various factors later in this decision. This approach was taken by the commissioner in *Landsgaard v. Peterson and Wilks* with respect to how frivolous complaints are determined and handled. COPP-2014-CFP-008. It is appropriate that I do something similar here regarding the importance of accurate and timely disclosure and what factors determine whether a matter justifies prosecution.

With this background provided, I will address the specific disclosure related complaint pertaining to Mr. Alke, followed by a discussion and application of the factors I apply when determining if prosecution is justified.

DISCUSSION

Ben Alke, of Bozeman, MT, filed a C-1 Statement of Candidate for the office of Montana Attorney General on July 25, 2023. Montana election law requires candidates to file periodic campaign finance reports with COPP, in accordance with

a statutorily mandated calendar, reporting contributions received and expenditures made by their campaigns. Relevant to this complaint, Mr. Alke timely filed C-5 campaign finance reports on October 5, 2023, for the reporting period of July 25, through September 30, 2023; and on January 5, 2024, for the reporting period of October 1 through December 31, 2023. COPP records show continued timely filing of C-5 reports by the Alke campaign and an amended filing of the initial C-5 campaign finance report on May 22, 2024.

The Alke campaign's initial finance report, dated October 5, 2023, did not directly disclose any contributions received, expenditures made, or debts owed pertaining to the September 27 and 28, 2023 campaign events in Helena and Bozeman, or a campaign launch video. The second finance report filed on January 5, 2024, disclosed six in-kind contributions made by candidate Alke to his campaign, all for "gas for travel to campaign events," in the amounts of $58.58, $74.45, $75.90, $59.20, $75.51, and $79.37. This report also disclosed an October 31, 2023, expenditure to the Goetz Law Firm in the amount of $587.62 for "food and beverage supplies for an event for roughly 50 people," as well as several expenditures to Plazby LLC including an October 17 payment in the amount of $9,007.49 for mailings, envelopes and a "[v]ideo production shoot." On May 22, 2024, the Alke campaign filed an amended version of the initial, October 5, 2023, C-5 campaign finance report. Like the original report, this amended report did not directly disclose any contributions received, expenditures made, or debts owed pertaining to the events at issue in this matter. (COPP Records.)

The complainant alleges reporting violations based on a failure to report travel and other expenses related to two campaign events and the production of a launch video for Mr. Alke's campaign for Attorney General. The issues presented are discussed below as; a) reporting loans from a candidate to their campaign; b) reporting campaign debts; and c) personal vs. campaign travel expenses. Reporting expenditures with adequate detail is also addressed as a related matter.

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I. The Alke campaign failed to timely report campaign expenses paid personally by Mr. Alke as a loan to his campaign.

A candidate's expenditures in support of his candidacy are reportable as in-kind contributions, or if the candidate intends to be reimbursed by the campaign, as in-kind loans from the candidate to their campaign. ARM 44.11.501(4). Candidate loans, like all loans, must be reported in the reporting period in which they are made. ARM 44.11.405. The complainant alleges that Mr. Alke failed to report expenses related to a Helena campaign event held on September 27, 2023. In their response, the Alke campaign states Mr. Alke paid for the expenses associated with this event directly, and later submitted receipts with a request for reimbursement. As documentation supporting this transaction, the Alke campaign supplied COPP with a receipt from Brother's Tapworks in Helena.

The administrative rules outlining the requirements for candidate expenditures provide the following:

> [A] candidate who makes personal expenditures benefitting his or her campaign, shall also report and disclose the expenditures as in-kind contributions or loans to the campaign, see ARM 44.11.501. ARM 44.11.403(1).
>
> A campaign expense paid personally by an individual in his or her own campaign is always coordinated with, and is a campaign expense of, the campaign that must be reported and disclosed as an expense by the campaign in the same manner as an expense paid through the campaign depository account. Any such candidate personal expenditure repaid by the candidate's campaign shall be disclosed and reported both as a campaign expenditure and as a repaid loan, ARM 44.11.501(4)(a), (b)(i).

Here, when Mr. Alke personally paid expenses associated with the September 27, 2023, event held in Helena, MT, intending to be reimbursed by his campaign, the Alke campaign received a loan from Mr. Alke. Alternatively, if Mr. Alke intended to contribute this cost to the campaign, it would be reported as an in-kind contribution. Rather than properly reporting Mr. Alke's personal payment as a loan on the October 5, 2024, C-5, the Alke campaign reported only the reimbursement on the January 5, 2024, finance report. This expense was initially reported as

reimbursement for "bar tab at Bozeman event for approximately 50 attendees." (COPP Records.) On August 14, 2024, COPP's attorney spoke with Mr. Alke via telephone and confirmed that this reimbursement was for the Helena event implicated here, rather than any Bozeman event. Consequently, the violation here is failure to timely and properly report the expense paid by Mr. Alke as a loan.

II. The Alke campaign reported two expenditures that should have been properly reported as debts in the prior reporting period.

MCA § 13-37-229(2)(a)(vi) stipulates that a candidates must report all expenditures made to support or oppose their candidacy, including the "amount and nature of debts owed." Applicable administrative rules clearly lay out how candidates are required to report debts owed. ARM 44.11.502(2), explains "[a]n obligation to pay for a campaign expenditure is incurred on the date the obligation is made, and shall be reported as a debt of the campaign until the campaign pays the obligation by making an expenditure." Further, candidates are required to disclose the full amount of debts owed at the time the debt is incurred. *Ward v. Marceau*, COPP-2022-CFP-008, 4-12.

Here, two campaign actions or activities financed by Montana Attorney General candidate Ben Alke qualify as debts owed and are therefore subject to reporting requirements. MCA § 13-37-229(2)(a)(vi). First, a campaign event was hosted by Geotz, Geddes, & Gardner, P.C. in Bozeman, Montana, on September 28, 2023. The hosts provided the Alke campaign an invoice for expenses on October 19, 2023, in the amount of $586.72 which was subsequently reported as an expenditure on their January 5, 2024, campaign finance report for the period of October 1 through December 31, 2023.

Although the invoice was received by the Alke campaign during the period in which it was reported, the campaign is obligated to report the debt when the obligation was made. ARM 44.11.502(2), See also, *Ward v. Tucker*, COPP-2020-CFP-021. The expenses incurred covered catering, beer, and wine for the event. Unless there was an understanding that the items would be donated, the obligation to pay

for these expenses necessarily arose, at or before, the time of the event. See *Perkins*, 3, and *Marceau*, 5.

Next, the complainant asserts that the Alke campaign released a "launch video" on or about September 27, 2023. (Complaint,1.) In their response, the Alke campaign does not deny this allegation. Rather, the Alke campaign states the cost for filming and production of the launch video was paid on October 17, 2023, following invoicing and "satisfactory delivery of the product." (Response, 4.) This transaction was reported as an expenditure to Plazby LLC, on Mr. Alke's January 5, 2024, finance report for the period of October 1 through December 31, 2023. While "satisfactory delivery" of the video and invoicing from Plazby LLC may have been appropriate before payment was tendered for the video, when the Alke campaign contracted with Plazby LLC to produce the launch video, the obligation to pay for the video arose. This necessarily occurred well in advance of the videos release on September 27, 2023, and therefore in accordance with ARM 44.11.502(2), should have been reported as a debt at that time. See generally, *Akey*, *Marceau* and *Perkins*. If a final cost has not been determined, the campaign is nevertheless required to report the estimated cost. ARM 44.11.506(2), *Ellsworth v. Bullock*, COPP-2016-CFP-041, at 5.

The Alke campaign ultimately disclosed these two debts, $587.62 associated with the September 28, 2023, Bozeman event, and $9,007.49 for filming and, production of the 'launch' video, as expenditures on the October 1 through December 31, 2023, report. (Copp Records.) However, in accordance with ARM 44.11.502(2), both of these transactions should have been recorded as debts in the reporting period in which the obligation arose rather than as expenditures in the following reporting period.

Sufficient evidence exists to show the Alke campaign violated MCA § 13-37-229(2)(a)(vi) on two occasions by failing to report campaign debts related to a campaign event in Bozeman, MT, and a campaign launch video, in the time and manner required by law.

III. Personal travel expenses are not reportable expenditures

As part of the above allegation, that the Alke campaign failed to report expenses related to the September 27, 2023, campaign event in Helena, the complainant additionally notes that Mr. Alke's travel expenses to the event were not reported.

While travel in support of Mr. Alke's candidacy is a reportable expenditure, the definition for the term "expenditure" provided by Montana election law specifically includes an exception for "payments by a candidate for *personal travel expenses*, food, clothing, lodging, or personal necessities for the candidate and the candidate's family." MCA § 13-1-101(21)(b)(ii) (emphasis added).

Here, the Alke campaign's formal response indicated that "Mr. Alke regularly comes to Helena to visit family and friends, as he grew up here. Mr. Alke covered his own expenses as a part of visiting his family." (Response, 3.)

COPP accepts Mr. Alke's explanation that his travel to Helena was primarily for "personal" reasons, to visit family, and therefore the related expenses do not qualify as campaign expenditures subject to reporting and disclosure to COPP. While it is inarguable that Mr. Alke engaged in campaign activity while in Helena, COPP does not have sufficient evidence to refute or otherwise disbelieve his asserted narrative that the major purpose of the travel was personal. Sufficient evidence has not been provided to support the allegation that Mr. Alke failed to report travel expenses. Consequently, this allegation is dismissed in full.

Reporting period for fuel expenditures

Although Mr. Alke was not required to report his fuel costs for the event in question, the campaign requested clarification regarding reporting requirements for fuel. Specifically, the respondents ask, if Mr. Alke traveled to Helena on or about September 27, 2023, but did not refuel until October 2, 2023, when leaving Helena, should the expense be reported in the reporting period which includes September 27 or in the following period, which includes October 2, 2023, the date Mr. Alke refueled? In accordance with ARM 44.11.502(3), expenditures should be reported in

the reporting period during which they were made. Therefore, fuel expenditures are reportable at the time the fuel is purchased. The same principle applies if a candidate is reporting their mileage as a loan to the campaign, that obligation arises when the travel occurs and therefore should be reported as a loan from the candidate during that reporting period.

IV. Contributions and expenditures must be reported with adequate detail to allow the public to ascertain the purpose of the expenditure.

The complainant's allegations have been addressed and decided above. However, "Montana law also permits COPP to ascertain whether other violations exist." *MFC v. Zephyr*, COPP-2023-CFP-010, at 2. In researching the Alke campaign's finance reports, COPP discovered several payments for fuel reported on the January 5, 2023, C-5 finance report described simply as "gas for travel to campaign events."

ARM 44.11.502 and MCA § 13-37-229(b) provide the level of detail required when reporting expenditures. In *Eaton v. Gross* the commissioner held, "generic expenditure descriptions are more akin to a list or a category than a description and do not provide the "purpose, quantity, subject matter" of the expense which are the details required to be reported by 44.11.502(7), ARM." COPP-2018-CFP-021. In *Montana Freedom Caucus v. Representative Zephyr*, the commissioner determined that expenditure reports must "[p]rovide descriptions that provide an ascertainable explanation of what the spending was actually for. . ." COPP-2023-CFP-1010 at18.

Here, the Alke campaign has reported numerous fuel expenditures as "travel to campaign events." This description is akin to a list or category as discussed in *Eaton* and does not provide adequate detail without the inclusion of a location. COPP is unable to ascertain whether the Alke campaign reported travel expenses to any specific event, (including the Helena and Bozeman events addressed by the complainant) because the necessary detail is not provided.

In their response, the Alke campaign stated that Mr. Alke, despite the personal nature of his trip to Helena, concluded it would be best to report this expense in the interest of transparency. However, there are no expenses for fuel listed that identically match the receipts provided to COPP by the respondent.

While there is an expenditure on the date in question for $58.58, the receipt provided by the respondent is for $58.35." (Response, 3.) While this is likely a typographical error, a simple inclusion of the location and type of event would clear up any confusion. Absent such details, neither COPP, the complainant, nor any other interested parties, are able to ascertain what travel has been reported and what travel has not. Subsequent finance reports filed by the Alke campaign have included these necessary details.

Although sufficient evidence exists to conclude the Alke campaign violated MCA § 13 -37-229(b), in accordance with the discretionary authority provided by MCA § 13-37-124, I find prosecution for this violation is not justified. As I determined in *Zephyr*, it is fundamentally unfair that a candidate is treated differently when a violation is revealed in the course of a complaint investigation than if a violation is found during the routine inspection of reports. *Zephyr*, 26. If COPP had found this particular deficiency in the course of a routine inspection, this matter would have been solved by providing notice to the respondent and a potential Order of noncompliance if the respondent did not comply. The fair approach is to provide notice and demand prompt corrective action.

Order of corrective action

Therefore, I determine this matter is best resolved by an order of corrective action. In order to avoid an order of noncompliance, the Alke campaign must amend their January 5, 2024, C-5 finance report to include additional details regarding all travel expenses, specifically the events, dates, and purpose of travel reported therein. This action must be taken within five days of the date of this decision, or an order of noncompliance will immediately be issued by the commissioner in accordance with MCA § 13-37-121.

ENFORCEMENT

The duty of the commissioner to investigate alleged violations of election law is statutorily mandated. MCA § 13-37-111. Upon a determination that sufficient evidence of election violations exists, the commissioner next determines if there are circumstances or explanations that may affect whether prosecution is justified. *Rose*

v. Glines, COPP-2022-CFP-030. "The determination of whether a prosecution is justified must take into account the law and the particular factual circumstances of each case, and the prosecutor can decide not to prosecute when they in good faith believe that a prosecution is not in the best interest of the state." *Zephyr,* COPP-2023-CFP-010, at 26.

In *Montana Freedom Caucus v. Zephyr,* I discussed whether the referral to a county attorney must occur in a perfunctory manner whenever sufficient evidence of a violation is found, or whether I may use the discretion provided to me in MCA § 13-37-124(1) to first determine if prosecution of the matter is justified. I find the latter approach, which considers not only whether sufficient evidence exists, but whether prosecution is in the best interest of the state, to be the more thorough and reasoned approach.

While I feel this approach best serves the interest of Montanans, no clear criteria for determining if prosecution is justified has been clearly articulated by past commissioners. Enforcement requires objective standards. The following outlines the four primary factors I will consider in determining when prosecution is justified.[2]

As addressed in *Butcher v. Knudsen,* I must take into account vagueness with respect to the activity and remain mindful of other purposes a speaker might be engaged in rather than just rigidly applying definitions without regard to circumstances. Thus, being mindful of *Butcher* and the other cases, together with past COPP decisions, the following factors will apply:

1. *Proximity to an election*

First, the purpose of campaign finance reporting is to provide voters with accurate and relevant information that will inform their decisions at the ballot box. Therefore, inaccurate and late reports that occur in close proximity to an

[2] This discussion is also included in other recent decisions, including *MTGOP v. Mullen,* COPP-2024-CFP-030, and *O'Neill v. Wilson,* COPP-2024-CFP-022.

election, thus depriving voters of information they are entitled to before voting, will be considered egregious violations.

2. *Pattern of behavior*

Next, prosecution is nearly always justified when a pattern of noncompliance exists. Habitually late or inaccurate reporting increases the likelihood of errors and shows a lack of commitment to transparency and the interests of Montana voters. Therefore, decisions involving repeat offenders, candidates or committees with multiple late reports within one election cycle, and those that are currently the subject of an Order of noncompliance, will nearly always be referred for prosecution.

3. *The size of misreported contributions or expenditures*

The size of contributions or expenditures that go unreported increases the seriousness of the violation. Therefore, when violations involve amounts that cannot be excused as de minimis, or are sizeable relative to contribution limits, these matters are also likely to be referred.

4. *Responsiveness*

Part of the established process of handling complaints involves requesting a response from the alleged violator. When a response is received, I may consider any mitigating factors presented in determining whether prosecution is justified. I may also consider whether the alleged violator makes prompt corrections when errors are realized. This includes reference to when a complaint is filed and whether the alleged violator was actively engaged with a COPP compliance specialist or if the candidate ignored the provided notices.

I intend to apply the four factors outlined above whenever I consider if prosecution is justified. Other mitigating factors I may consider, include whether multiple violations exist rather than an isolated occurrence and whether pursuing a particular violation is an economic use of taxpayer resources.

If, after applying the above factors, I find sufficient evidence to justify a prosecution, I am then mandated to notify the affected county attorney and transfer all relevant information, allowing the county attorney the opportunity to prosecute

the offending party. MCA § 13-37-124(1). The county attorney has 30 days in which to initiate a civil or criminal action, at which time, if action is not taken the matter is waived back to the commissioner. *Id.* If the matter is waived back, the commissioner "may then initiate" legal action, but may exercise his discretion as to whether the matter is best solved by a civil action or the payment of a negotiated fine. MCA § 13-37-124(1), See also, *Bradshaw v. Bahr*, COPP-2018-CFP-008, at 4.

The minimum statutory penalty, even for a single late report, is $500, but can be three times the amount of unreported contributions or expenditures. MCA § 13-37-128. In negotiating a fine, the commissioner may exercise his discretion and consider any and all mitigating factors. *Bradshaw*, at 4. If the matter is not resolved through the aforementioned negotiation, the commissioner retains statutory authority to bring a claim in district court against any person "who intentionally or negligently violates any requirement of campaign practice law." *Id.* at 5.

The district court will consider the matter de novo, providing full due process to the alleged violator. The court, not the commissioner, determines the amount of liability when civil actions are filed under MCA § 13-37-128, and the court may take into account the seriousness of the violation(s) and the degree of a defendant's culpability. MCA § 13-37-129. Because the court factors in culpability and ultimately determines the penalty, as commissioner I feel compelled to seek the maximum allowable if a settlement cannot be reached. This serves the contemplated purpose of the statute and defends the rights belonging to the public. The respondent, rather than the commissioner, should defend against the full measure of the law.

Enforcement applied to Mr. Alke

While clear violations of election law occurred, I find prosecution is not justified for the following reasons: First, considering the proximity to the election, these violations occurred more than eight months before the primary election, and because Mr. Alke did not have a primary challenger, more than a year in advance of any election in which Mr. Alke will participate. The second factor, pattern of behavior, weighs against prosecution, as the violations found exist only on one

report filed by the Alke campaign. Outside of this one report, the Alke campaign has actively sought COPP advice to assure compliance. The third factor, the size of misreported contributions or expenditures, weighs in favor of prosecution because the late reported expenditure for the launch video was substantial at more than $9000.00. Finally, the fourth factor, responsiveness, weighs against prosecution. Although COPP initially had difficulty resolving some issues with the Alke campaign, this was primarily due to a limited point of contact provided on Mr. Alke's C-1. This Statement of Candidate has since been updated with new contacts which have readily responded to requests for information. Further, when Mr. Alke himself was contacted, he responded readily to calls from COPP staff and also reached out for further instruction.

Errors such as those made by the Alke campaign, when solely caused by a misunderstanding of the law, have been deemed not justified for prosecution by prior commissioners. *Motl v. CMRG,* COPP-2001-CFP-2/21/2002 and *Hardin v. Skinner and Ringling* 5, COPP-2010-CFP-12-17/2012. Generally, ignorance of the law is not an excuse, and such errors will not be dismissed out of hand. However, weighed with the other factors described above, any harm to voters and other interested parties is de minimis and I find that pursuing this matter is not in the best interest of Montana citizens. If the Alke campaign complies with the order of corrective action described above, all complaint allegations will be dismissed. *MFC v. Rep. Zephyr*, COPP-2023-CFP-010.

CONCLUSION

Based on the above discussion, I find there is sufficient evidence to determine the following:

- Mr. Alke violated MCA § 13-37-228(3) by failing to timely and properly disclose a loan he made to his campaign for expenses related to a September 27, 2023, campaign event in Helena, MT. Prosecution is not justified, and this matter is dismissed.
- Mr. Alke violated MCA § 13-37-229 by failing to timely and properly report debts related to a September 28, 2023, campaign event in Bozeman, MT, and the production of a launch video. Prosecution is not justified, and this matter is dismissed.

- Mr. Alke violated MCA § 13-37-229 by failing to adequately describe expenditures for travel on several occasions, this matter is not presently referred to the Gallatin County Attorney pending corrective action.
- Mr. Alke did not violate Montana election law by not reporting personal travel expenses as campaign expenditures. This allegation is dismissed.

While COPP will not be referring this violation for prosecution, this matter will be noted as a contributing factor in any future determinations if more violations occur or a pattern of noncompliance develops.

I also want to specifically note that circumstances involved with this matter were complicated in large part due to the information candidate Alke's campaign included on his Form C-1 COPP Statement of Candidacy. While the information provided met the basic requirements of law, they were deficient with respect to COPP compliance staff being able to effectively communicate with the campaign or the candidate regarding issues as they developed. Much of what occurred here could have been avoided, and the public would have had accurate and timely information it was entitled to, if the C-1 contained better information that allowed timely communication. Mr. Alke has resolved matters with respect to his C-1, and I urge other candidates to review their own C-1 to confirm the information contained on the form is not only accurate but provides more than one path of communication between the campaign and COPP staff.

The allegations in the submitted complaint have been considered as described above and are hereby dismissed. Assuming candidate Alke takes the corrective action required, the matters identified by COPP are also dismissed.

Dated this 28th of August 2024,

Chris J. Gallus
Commissioner of Political Practices
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