

**BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)**

<b>AARON J. LEAS</b>  v.  <b>MONTANA STATE REPRESENTATIVE KIM ABBOTT (MONTANA HOUSE DISTRICT 83)</b>	<b>COPP-2023-CFP-026</b>  <b>FINDING OF FACTS SUFFICIENT TO SUPPORT VIOLATIONS</b>
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**COMPLAINT**

On December 1, 2023, Aaron J. Leas of East Helena, MT, filed a campaign practices complaint against Montana House District 83 Representative Kim Abbott, of Helena, MT. The complaint alleged that Rep. Abbott failed to timely file post-election campaign finance reports with COPP in conjunction with her participation in Montana’s November 2022 general election. The submitted complaint conforms to the requirements of Admin. R. Mont. 44.11.106 and alleges violations of statutes which fall under my jurisdiction as Commissioner of Political Practices. Therefore, I accepted it as filed, and in accordance with COPP procedures requested a response from Representative Abbott. Rep. Abbott timely filed a response on December 15, 2023. The complaint and response are posted on COPP’s website, [politicalpractices.gov](http://politicalpractices.gov).

**ISSUES**

Filing of campaign finance reports, closing campaign reports, and dispersal of surplus campaign funds by candidates; Montana Code Annotated (MCA) §13-37-226, Time for filing reports, §13-37-228, Time period covered by reports, § 13-37-240, Surplus campaign funds; ARM 44.11.702, Disposal of surplus campaign funds and property and ARM 44.11.711, Closing an account – Disbursement of surplus account funds.

**BACKGROUND**

Rep. Abbott participated in Montana’s 2022 primary and general elections as a candidate seeking election to the Montana Legislature as a representative for House District 83 in Lewis and Clark County. Rep. Abbott was successfully elected to that office in the November 2022 general election.

Montana candidates for election are required to file a C-1, Statement of Candidacy, with

COPP, as well as C-5 periodic finance reports according to the COPP calendar. MCA §§ 13-37-201, 226. C-5 finance reports are due monthly throughout a campaign and continue to be required following the election until a candidate disburses any excess funds and closes their campaign account with COPP. MCA §§ 13-37-226, 228.

Following the November 2022 election, C-5 reports for the reporting period of October 15 through November 15, 2022, were due on November 20, 2022. Rep. Abbott filed this report on November 28, 2022. This report disclosed that Rep. Abbott received \$2300.00 in total campaign contributions and made \$4743,33 in expenditures during the reporting period. Additionally, Rep Abbott filed six C-7, and four C-7E, reports which are required to disclose contributions received (C-7) and expenditures made (C-7E) following the closing date of the last report (October 15, 2022) and prior to the date of the election (November 8, 2022). Transactions reported on C-7 and C-7E reports are included on the applicable C-5 report. Rep. Abbott's C-5 report for October 15 through November 15, 2022, lists an ending Cash in Bank balance for the reporting period of \$4050.24.

Following an election, if a candidate does not file a closing report, they are required to file C-5 reports on March 10 and September 10 of each year until they do so. Rep. Abbott did not file a March or September 2023, finance report. COPP compliance specialists contacted Rep. Abbott via email message on March 8, April 7, and July 2023, to notify her of her obligation to continue periodic filings or file a closing report.

This complaint was received on December 1, 2023, and on December 15, 2023, Rep. Abbott timely provided her formal written response. In her response, Ms. Abbott stated that she “failed to check the “closing report” box on the periodic report [her] campaign filed on 11/28/2022.” Response, 1. Rep. Abbott indicated that her campaign “behaved as though her committee was closed” and that all contributions and expenditures had been accurately reported. *Id.* Rep. Abbott further stated that the only activity occurring after her November 28, 2022, report was “the reissuing and depositing of a check from Act Blue that had been misplaced and the disposal of excess funds in accordance with Montana law.” *Id.*

If a candidate files a closing statement while their account still shows a Cash in Bank balance, they must dispose of the funds within 120 days as provided for in ARM 44.11.702. If a candidate was successfully elected, they may alternatively establish a Continuing Services Account and deposit their surplus funds into this account. MCA § 13-37-402. Restrictions on the

disposal of surplus campaign funds are set forth in MCA §§ 13-37-240, 402, and ARM 44.11.703. Following the disbursement of surplus funds, the candidate must file a C-118 reporting the disbursement, or a C-118C if the candidate established a continuing services account. In her response, Ms. Abbott indicated that she would “drop by a copy of the disposal of funds form in person.” Response, 1. As of the date of this decision, Rep. Abbott has not provided COPP with any additional documentation.

## **DISCUSSION**

### **I. Timely filing of C-5 periodic campaign finance reports**

The complainant asserts that Rep. Abbott failed to file reports due on March 10 and September 10, 2023, denying the public “the ability to see any additional contributions or expenditures that may have occurred.”

Montana’s mandatory campaign finance report filing requirements are enumerated in MCA § 13-37-226. Reports are due quarterly in the year preceding an election, monthly during an election, and semiannually in the year following an election until a closing report is filed. MCA § 13-37-226. The filing date requirements are date certain. In *Bradshaw v. Bahr*, the Commissioner found that “*any* failure to meet a mandatory, date-certain filing date is a violation of § 13-37-226 MCA.” COPP-2018-CFP-008, *emphasis added*.

The first C-5 report due following the 2022 election, was due on November 20, 2022. Rep. Abbott filed a periodic report on November 28, 2022, eight days following the date due. Per MCA § 13-37-228(3), following participation in a general election, candidates are to file a closing campaign finance report “whenever all debts and obligations are satisfied and further contributions or expenditures will not be received or made that relate to the campaign.” Because Rep. Abbott did not close her campaign account, the COPP reporting calendar and Montana election law specify additional C-5 reports were due on March 10 and September 10, 2023. MCA § 13-37-226(e).

On December 12, 2023, Rep. Abbott, following receipt of this complaint, amended her November 2022 report to be a closing report. COPP Records. Rep. Abbott did not report any additional contributions or expenditures on this report. There is no time specified by statute in which a closing report must be filed, only that a closing report should be filed “whenever all debts and obligations are satisfied and further contributions or expenditures will not be received or made that relate to the campaign.” MCA § 13-37-228(3). However, Rep. Abbott did not file a

closing report until over a year after the campaign's final reportable contribution or expenditure activity had occurred. Based on a plain reading of statute, I must determine that Rep. Abbott failed to file a closing campaign finance report in the time and manner specified by MCA § 13-37-228(3).

Although Rep. Abbott has now filed a closing report, she nevertheless filed one report (due November 20, 2022) eight days late. Additionally, by not timely closing her campaign and later amending the November 28, 2022, report to be a closing report, Rep. Abbott failed to file post-election reports on March 10 and September 10, 2023, as mandated by MCA § 13-37-226.

Sufficient evidence exists to determine Rep. Abbott violated MCA § 13-37-226 on three occasions by failing to timely file a C-5 periodic campaign finance report due on November 20, 2022, and failing entirely to file periodic campaign finance reports due on March 10 and September 10, 2023.

## **II. Disbursing surplus campaign funds**

The complainant's single allegation is addressed above. However, "Montana law also permits COPP to ascertain whether other violations exist." *MFC v. Zephyr*, COPP-2023-CFP-010, 2. Here, following COPP's request for a response to this complaint, Rep. Abbott immediately addressed the allegations by amending her November 2022 report to be a closing report. Unfortunately, this action does not fully resolve Rep. Abbott's reporting obligations related to the 2022 election. Rep. Abbott closed her campaign account with a remaining balance of \$4050.24 and has failed to provide COPP with the required C-118 or C-118C form which documents how those funds were disbursed.

MCA § 13-37-240 provides "A candidate shall dispose of any surplus funds from the candidate's campaign within 120 days after the time of filing the closing campaign report." ARM 44.11.702 enumerates the procedures for disbursing funds, or alternatively establishing a continuing services account as allowed by MCA 13-37-402. ARM 44.11.702(5) specifically requires "those candidates with surplus campaign funds shall file a supplement to the closing campaign report, on a form prescribed by the commissioner, showing the disposition of surplus campaign funds or property. . . the supplement shall be filed within 135 days after the closing report is filed." COPP facilitates the reporting of excess funds disbursement through forms C-118 and C-118C. One of these forms must be filed within 135 days of a closing report if a candidate

has funds in their account at the time a closing report is filed. ARM 44.11.702(5).

In this matter, Rep. Abbott is considered to have filed the closing campaign finance report on December 15, 2023. COPP Records. Per MCA § 13-37-240(1), Rep. Abbott needed to disclose how her 2022 campaign had disbursed its surplus funds no later than April 28, 2024, 135 days after the closing report was filed on December 15, 2023. While Rep. Abbott indicated in her formal response that she would hand-deliver to COPP the relevant disbursement information for her surplus 2022 campaign funds, this action was never taken. After filing the closing report on December 15, 2023, Rep. Abbott did not at any time provide COPP with any documentation detailing how she had disbursed of the remaining \$4,050.24 balance in the 2022 HD 83 account.

In this regard, Rep. Abbott has failed to provide required disclosure as to how surplus funds were disbursed or distributed by the campaign. Interested observers, including COPP staff and the original complainant, are totally in the dark as to what Rep. Abbott has done with the 2022 campaign's \$4,050.24 surplus. If Rep. Abbott has not disbursed the excess funds or opened a continuing services account, she is in violation of MCA § 13-37-240(1). Alternatively, if she has done so, she has violated ARM 44.11.702(5) by failing to file the appropriate form with COPP.

### 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.<sup>1</sup> *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."<sup>2</sup> *Montana Freedom Caucus v. Zoey Zephyr*, COPP-2023-CFP-010, at 26.

The Commissioner is additionally bound by MCA § 13-37-130 which holds "[a]n action may not be brought under 13-37-128 and 13-37-129 more than 2 years after the occurrence of the

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<sup>1</sup> An extensive discussion of the commissioner's discretion can be found in *Montana Freedom Caucus v. Zoey Zephyr*, COPP-2023-CFP-010.

<sup>2</sup> See also, *In the Matter of Citizens for More Responsive Government*, (*Motl v. CMRG*, COPP-2001-CFP-2/21/2002), *In the Matter of the Complaint Against Ronald Murray*, (*Washburn v. Murray*, COPP-2013-CFP-02), and *Fitzpatrick v. Zook*, COPP-2010-CFP-06/14/2011.

facts that give rise to the action.” Here, there are five different occurrences which may give rise to a cause of action. Rep. Abbott’s closing report was filed on December 15, 2023. Although Rep. Abbott filed this closing report by amending a previously filed report, December 15, 2023, is the date from which Rep. Abbott had 135 days to report the disbursement of excess funds by filing a C-128. Consequently, Rep. Abbott’s failure to file a C-128 on or before April 28, 2024, determines all appropriate dates relating to this matter.

When the commissioner finds sufficient evidence to justify a prosecution, the commissioner notifies the affected county attorney and transfers 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, 4. In negotiating a fine, the commissioner may exercise his discretion and consider any and all mitigating factors. *Bradshaw*, 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.*, 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.

## CONCLUSION

Based on the above discussion, I find there is sufficient evidence to show Rep. Abbott violated Montana election law. This Commissioner, having been charged to investigate and decide, hereby determines that Representative Abbott violated Montana election law and a civil action or penalty under MCA § 13-37-128 is justified. Sufficient evidence exists to show the following:

- Representative Abbott violated MCA § 13-37-228(3) by failing to close her campaign account in a timely manner.



- Representative Abbott violated MCA § 13-37-226 on three occasions by filing her C-5 periodic campaign finance report due on November 20, 2022, eight days late, and failing entirely to file the required C-5 periodic campaign finance reports due on March 10 and September 10, 2022.
- Representative Abbott violated MCA § 13-37-240 by failing to disburse her excess campaign funds within 120 days of filing her closing report, or, alternatively, Representative Abbott violated ARM 44.11.702(5) by failing to report this disbursement to COPP within 135 days of filing her closing report.

Having determined that prosecution is justified, I will now refer this matter to the Lewis and Clark County Attorney in accordance with the provisions of MCA § 13-37-124. The County Attorney's office is free to conduct their own investigation under MCA § 13-37-125, request additional material from COPP, or refer the matter back to this office for potential prosecution. Most matters are returned to COPP and are concluded with a negotiated settlement where mitigating factors are considered, and a civil penalty is determined pursuant to MCA § 13-37-128. If a negotiated settlement is unsuccessful, the Commissioner will pursue the matter in Lewis and Clark County District Court.

Dated this 11th of July, 2024



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