

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

<b>EDWARD J. BYRNE</b>  v. <b>ROB TRACY (HD 11 Candidate)</b>	<b>COPP-2024-CFP-004</b>  <b>DISMISSAL</b>
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**COMPLAINT**

On March 12, 2024, Edward J. Byrne of Bigfork, MT filed a campaign practices complaint against Rob Tracy, a declared candidate for election to House District 11. The complaint alleged that candidate Tracy had “knowingly committed a deceptive election practice by filing to run in a county (Flathead) that he does not reside in,” that he failed to properly list his physical address on a C-1 Statement of Candidate filed with COPP, and that he is not eligible to seek election in HD 11. I determined that the complaint met the requirements of Admin R. Mont. (ARM) 44.11.106 and requested a response from Mr. Tracy pursuant to Mont. Code Ann. (MCA) § 13-37-132. The requested response was provided via email on March 24, 2024. In accordance with Montana law and COPP practices, the complaint, response, and other materials are posted for review on the COPP website, [politicalpractices.mt.gov](http://politicalpractices.mt.gov).

**ISSUES**

Deceptive election practices, MCA § 13-35-207; information required on a candidate registration, MCA § 13-37-201.

**DISCUSSION**

*Deceptive election practices*

Rob Tracy filed as a candidate for election to Montana’s House of Representatives, District 11 by filing a C-1 Statement of Candidate with the Commissioner of Political Practices on June 14, 2023. On this C-1 Statement of Candidate, candidate Tracy listed both his physical and mailing address as PO Box 694 in Bigfork, MT. Candidate Tracy formally filed as a

candidate seeking election to HD 11 with Montana's Secretary of State's Office (SOS) on February 1, 2024. On this SOS registration, candidate Tracy listed two (2) addresses: PO Box 694, in Bigfork; and 189 McCaffery Lake Lane, also in Bigfork. As will apply in Montana's 2024 primary and general elections, HD 11 is located entirely within Flathead County.<sup>1</sup> Bigfork, MT is also located within Flathead County.

Pursuant to applicable law, Mr. Tracy must support his stated residency in Flathead County with objective evidence. For example, an individual is presumed to reside with their family, but as MCA § 13-1-112(7), and many COPP residency-related cases show, this is supporting evidence, and not a dispositive factor or element. On March 24, 2024, Mr. Tracy provided a formal response to this complaint to COPP via email message. In this response, Mr. Tracy provided objective evidence of residency in Flathead County, including:

- A copy of his duly issued Montana driver's license, issued on January 19, 2023, which lists Mr. Tracy's address as 189 McCaffery Lake Lane in Bigfork (*Response*, 4);
- Copies of a Temporary Vehicle Registration and the vehicle title for a personal vehicle owned by Mr. Tracy, which each list a street address for Mr. Tracy of 189 McCaffery Lake Ln. in Bigfork and a mailing address of PO Box 694 in Bigfork (*Response*, 5-7);
- A copy of a Consumer Lending Plan entered into between Mr. Tracy and Parkside Credit Union in Whitefish, which lists Mr. Tracy's address as 189 McCaffery Lake Ln. in Bigfork (*Response*, 11);
- Receipts and a note from individual building owner James Meyer, indicating that Mr. Tracy paid monthly rent on a unit of housing located at 189 McCaffery Lake Ln. in Bigfork and stating that Mr. Tracy "resides in the lower level of the house" at that address (*Response*, 11-14); and
- A copy of a Certificate of Registration for Mr. Tracy from Flathead County Election Administrator Debbie Pierson, certifying that Mr. Tracy is a duly registered voter in that County, with a listed physical address of 189 McCaffery Lake Ln. in Bigfork and mailing address of PO Box 694 in Bigfork (*Response*, 15).

The response also includes a written statement from Mr. Tracy explaining that "I live at 189 McCaffery Lake Lane, Bigfork, Montana and it is my intent to reside in Flathead County. I am registered to vote in Flathead County, I receive my mail in Flathead County, and I recreate in Flathead County" (*Response*, 1). As part of its investigation into this matter, on March 25, 2024,

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<sup>1</sup> [https://leg.mt.gov/content/Districting/2020/Maps/State-Legislative/Final-SOS-Submission/Reports/Index\\_Counties-to-LegDistricts\\_2024-2032.pdf](https://leg.mt.gov/content/Districting/2020/Maps/State-Legislative/Final-SOS-Submission/Reports/Index_Counties-to-LegDistricts_2024-2032.pdf)

COPP contacted the office of Flathead County Election Administrator Debbie Pierson in attempt to independently verify Mr. Tracy's current voter registration status. On March 26, that office replied to COPP with prior Voter Registration Applications and related documentation filed by Mr. Tracy. Included in these documents was a copy of a cancellation of absentee voter registration in Lake County signed by Mr. Tracy on September 24, 2022, and provided to the Lake County election office. This document included a handwritten note from Mr. Tracy stating "Toni, I have moved and will register in Flathead County" and provides 189 McCaffrey Lake Lane in Bigfork as his Full Residence Address. COPP was also provided a copy of a Montana Voter Registration Application filed by Mr. Tracy with the Flathead County Election Administrator dated November 4, 2022, indicating his Montana Residence Address as 189 McCaffrey Lake Lane in Bigfork.

Candidate residency, specifically pertaining to Montana's deceptive election practices statute, has been considered on several previous occasions by COPP. Particularly relevant to this matter are *Motta v. Laslovich* (2009), *Luckey v. Brown* (2020), and *What the Funk 406 v. Gist* (2023). In each case, the allegation that a candidate had committed a deceptive election practice as defined under MCA § 13-35-207 was dismissed because the candidate qualified as a resident of the locality in which they had indicated residency on their Statement of Candidate filed with COPP. Each candidate supported expressed intent with objective evidence. Mr. Tracy has done the same here.

Consistent with *Laslovich*, *Brown*, and *Gist*, in this matter Mr. Tracy would be considered a resident of Flathead County. Viewed in its entirety, his response leaves no doubt that Flathead County is the place he has chosen to remain "when not called elsewhere for labor or other special or temporary purpose" and is also the place to which he "returns in seasons of repose." MCA § 1-1-215(1) (2023). Mr. Tracy has taken no action to *lose* his Flathead County residence or *gain* residence in another locale, such as registering to vote in any other county. MCA § 1-1-215(3). This choice is supported by objective evidence provided by Mr. Tracy in his response. Any personal ties Mr. Tracy may have to Lake County do not invalidate his chosen residence in Flathead County.

Further, for me to determine that Mr. Tracy violated MCA § 13-35-207, I must establish evidence that he acted purposely and knowingly because the statute references and is enforced pursuant to penalties provided within Title 45, chapter 7, part 2, which is part of Montana's

criminal code. This complaint does not provide any evidence to suggest that Mr. Tracy acted purposely or knowingly in falsely swearing his residency as being in Flathead County on the Statement of Candidate filed with COPP. In fact, I must conclude the opposite – Mr. Tracy is a resident of Flathead County, and truthfully certified this residency on the Statement of Candidate he filed with COPP.

I must dismiss the allegation that Mr. Tracy violated MCA §13-35-207, Deceptive election practices.

Candidate registration- information required

The second alleged violation presented by the complainant in this matter is an assertion that Mr. Tracy failed to properly provide his physical address on the C-1 Statement of Candidate filed with COPP. As noted above, on the C-1 Statement of Candidate filed with COPP, Mr. Tracy provided only a Post Office Box- PO Box 694 in Bigfork- as the campaign address. An individual named Dana Ianni is listed as the campaign treasurer, with the same Post Office Box address provided. No physical address is included anywhere on the C-1 Statement of Candidate.

MCA § 13-37-201(1) holds that each candidate “shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer” with COPP. The statute does not appear to differentiate at all between a physical address and mailing address. ARM 44.11.220, the Administrative Rule relating to the Statement of Candidate, also holds that the document shall include “the complete name and address of the candidate’s campaign treasurer” but does not differentiate between a physical address and mailing address.

In this matter, Mr. Tracy filed a C-1 Statement of Candidate with COPP certifying the name and mailing address of campaign treasurer Dana Ianni. I must dismiss the claim that Mr. Tracy failed to properly include the campaign’s physical address on his Statement of Candidate, as neither MCA § 13-37-201(1) or ARM 44.11.220, includes such a requirement.

Legislative candidate eligibility

Finally, the complainant in this matter alleges that Mr. Tracy “cannot run for HD 11 in Flathead County” since his “time of repose” and therefore residency is in Lake County. While this is not a claim falling under COPP’s jurisdiction, I briefly consider it, mainly to provide clarification for the complainant.

Mr. Tracy in his response correctly notes that qualification for the Montana Legislature is established by the Montana Constitution. Specifically, “A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. ***For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts*** or of the district if it contains all or parts of more than one county” Mont. Const. art. 5, § 4, (*emphasis added*).

In this matter, the complainant makes no assertion that Mr. Tracy has not been a resident of Montana “for at least one year preceding” the upcoming November 5, 2024 general election. HD 11 is contained solely within Flathead County; even if assuming that Mr. Tracy was not a resident of Flathead County at the time of filing as a candidate with COPP (June 13, 2023) or formally filing with SOS (February 1, 2024), he did not, at that time, need to be in order to seek election to the office. Instead, he simply needed to establish residency in Flathead County on or before May 5, 2024 - “six months next preceding” the November 5 general election. Indeed, the candidate calendar published on SOS’s agency website denotes May 5, 2024 as the date by which “legislative candidates must live in appropriate county...or legislative district”.<sup>2</sup>

#### Removal from the ballot

While the complainant does not request specific relief, the logical conclusion is that the complainant would like Mr. Tracy removed from the ballot. Even if this decision concluded that MCA § 13-35-207 was violated, which it did not, this is not an action within my authority. MCA § 13-37-128 specifies exclusive remedies which I or the affected county attorney may seek, and removal from the ballot is not one of them. An elector may contest the nomination of an unqualified candidate, in any election in which they are entitled to vote, through the district court in the county in which the election is to be held. MCA §§ 13-36-101-102. If a candidate is not eligible due to residence, the *Secretary of State* “shall notify the candidate that the candidate is required to withdraw.” MCA § 13-12-201(3) (*emphasis added*). While a COPP decision in this matter may provide supporting evidence for an elector seeking a candidate’s removal from the ballot, it is not within my authority to pursue such a remedy.


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<sup>2</sup> [https://sosmt.gov/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd\\_category\\_id=27&wpfd\\_file\\_id=57577&token=381a48d8c2bf0b2bd5ad49ddd9272565&preview=1](https://sosmt.gov/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd_category_id=27&wpfd_file_id=57577&token=381a48d8c2bf0b2bd5ad49ddd9272565&preview=1)

## CONCLUSION

No violations of Montana election law are supported by the evidence presented. The complaint allegations have been considered as described above and this complaint is hereby dismissed in full.

Dated this 29th of March, 2024



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Chris J. Gallus  
Commissioner of Political Practices  
of the State of Montana  
P.O. Box 202401  
1209 8<sup>th</sup> Avenue  
Helena, MT 59620