

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

JAYSON O'NEILL v. CORY SWANSON (Montana Supreme Court, Chief Justice candidate)	COPP-2024-CFP-023 DISMISSAL
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COMPLAINT

On May 22, 2024, Jayson O'Neill of Helena, MT, filed a campaign finance and practices complaint against Montana Supreme Court candidate Cory Swanson. The complaint alleged that candidate Swanson failed to timely and appropriately disclose contributions received or expenditures made by his campaign to attend a Lincoln-Reagan Day Dinner held by the Broadwater County Republicans, and that attendance at the event itself may have constituted acceptance of a prohibited contribution from a political party committee.

I determined that the complaint met the requirements of Admin. R. Mont. (ARM) 44.11.106 and requested a response from Mr. Swanson pursuant to MCA § 13-37-132. The requested response was timely provided and received by this office on June 7, 2024. In accordance with Montana law and COPP practices, the complaint and response are posted for review on the COPP website.

ISSUES

Prohibitions on campaign contributions made to judicial candidates by political party committees, Montana Code Annotated (MCA) § 13-35-231; reporting of contributions received and expenditures made by candidates, MCA § 13-35-229.

BACKGROUND

Cory Swanson currently serves as the County Attorney for Broadwater County. On November 29, 2023, Mr. Swanson filed with COPP as a candidate for the position of Chief Justice of the Supreme Court. On his C-1 Statement of Candidate, Mr. Swanson listed a PO Box in Helena, MT as his address, but he maintains a residence in Townsend, MT, the county seat of Broadwater County. Mr. Swanson attended a Broadwater County Republican Central Committee

event, the Lincoln-Reagan Day Dinner on April 20, 2024.

In Montana, candidates for public office are required by law to file periodic campaign finance reports with COPP, in accordance with a statutorily mandated calendar, reporting contributions received and expenditures made by their campaigns. On April 17, Mr. Swanson's campaign timely filed a C-5 report for the reporting period of March 16, 2024, through April 15, 2024. This report did not report any transactions related to the Lincoln-Reagan Day Dinner which Mr. Swanson attended during this reporting period.

Judicial candidates are not permitted to accept contributions from political party committees.

DISCUSSION

The complainant states that Mr. Swanson violated Montana election law by attending the April 20, 2024, Lincoln-Reagan Day Dinner, hosted by the Broadwater County Republican Central Committee and failing to report this event and associated travel as a campaign expenditure, or in the alternative, accepting and failing to report a prohibited contribution from a political party.

I. Mr. Swanson's travel to, and attendance at, the Lincoln-Reagan Day Dinner was not a reportable campaign expenditure.

Montana law requires that candidates, political committees, and joint fundraising committees, report all contributions received and expenditures "made by or on the behalf of a candidate, political committee, or joint fundraising committee." MCA § 13-37-225. For the purposes of campaign finance reporting, an expenditure "means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value" made to support or oppose a candidate or ballot issue. MCA § 13-1-101(21).

Mr. Swanson's attendance at the Lincoln-Reagan Day Dinner, was not intended to support Mr. Swanson's candidacy.

In order to find that Mr. Swanson's dinner was reportable as an expenditure, evidence must show that Mr. Swanson attended the Lincoln-Reagan Day Dinner in order to support his candidacy. Montana election law provides the following definition:

"[S]upport or oppose", including any variation on the theme, means; (a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination,

election or defeat of one or more clearly identified candidates. MCA 13-1-101(54).

Here, there has been no evidence provided that indicates Mr. Swanson engaged in activity at the Lincoln-Reagan Day Dinner that expressly supported his campaign. While he may have engaged with voters at the dinner, without more, such as a speaking engagement in which he called for voters to support or elect him, or alternatively, to reject or defeat his opposition, it cannot be said that he attended the dinner to expressly support his candidacy. The statute additionally states that support also means:

otherwise referring to or depicting one or more clearly identified candidates. . . in a manner that is susceptible of no reasonable interpretation other than as a call for nomination, election, or defeat of the candidate. MCA 13-1-101(54)(b).

Mr. Swanson’s assertion that his expenses associated with the Lincoln-Reagan Day Dinner were for “personal travel to my hometown dinner for a meal that [he] personally ate” is a reasonable interpretation other than a call for nomination. (Response, 1.)

A candidate’s personal travel expenses are not reportable expenditures.

The administrative rule which applies to expenditures, specifically excludes “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).

In this case, COPP accepts Mr. Swanson’s explanation that his attendance at the April 20 Lincoln-Reagan Day Dinner was personal in nature, rather than campaign activity. Being personal in nature, the \$40.00 paid by Mr. Swanson to attend and partake in the actual dinner portion of the event does not qualify as an expenditure under MCA § 13-1-101(21)(b)(ii). Consequently, he was not required to report this cost as an expenditure in his campaign finance filing with COPP.

II. Mr. Swanson did not unlawfully receive a contribution from the Broadwater County Central Committee.

Montana election law clearly and unambiguously provides that a political party committee may not provide campaign contributions to judicial candidates. MCA § 13-35-231.

Mr. Swanson, as a candidate for the Chief Justice position on the Montana Supreme

Court, qualifies as a judicial candidate. The Broadwater County Republican Central Committee, host of the April 20 Lincoln-Reagan Day Dinner, is a political committee as defined by MCA §§ 13-1-101(35) and (36).¹ Consequently, Mr. Swanson is prohibited from accepting campaign contributions from the Broadwater County Republican Central Committee.

Here, Mr. Swanson's attendance at the April 20 Lincoln-Reagan Day Dinner does not constitute a contribution provided by the Broadwater County Republican Central Committee. As explained in his response, Mr. Swanson paid, using personal funds, to attend the event - paying the same \$40.00 listed as the price of attendance on information advertising the event. (Response, 1.) Having paid the listed price of admittance to attend the event, Mr. Swanson did not receive a campaign contribution from the host committee. The allegation that he may have accepted a prohibited political party contribution is therefore dismissed in full.

SUMMARY

While Mr. Swanson, as a candidate for the Chief Justice position on the Montana Supreme Court, may have engaged in campaign-related activity, such as speaking with constituents or accepting contributions, at or after this event, such activity is not prohibited under Montana election law. As noted in *Montana Freedom Caucus v. Representative Zooley Zephyr*, legislators and other elected public officials are permitted to attend events unrelated to a current campaign. COPP-2023-CFP-010. The same logic applies to candidates attending events in a personal rather than campaign capacity. Simply being a candidate for election to public office does not deprive Mr. Swanson of the ability to attend hometown events as an individual or in his capacity as Broadwater County Attorney. See, *Zephyr*. Such a prohibition would create an untenable constraint on First Amendment rights of speech and association. See, *Fed. Election Comm'n v. Wisconsin Right To Life, Inc.*, 551 U.S. 449 (2007), *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

The complainant has provided no evidence that Mr. Swanson's attendance at this event was a campaign activity for Mr. Swanson and COPP finds no reason to doubt the veracity of Mr.

¹ The Broadwater County Republican Central Committee was previously registered with COPP as a political party committee and appears to meet the definition of political party committee under Montana law. However, Broadwater County Republican Central Committee is not currently registered as such with COPP. Reporting and filing violations on the part of Broadwater County Republican Central Committee will be addressed separately.

Swanson's assertion that he attended the Lincoln-Reagan Day Dinner in a personal capacity.

CONCLUSION

Sufficient evidence has not been presented to find Mr. Swanson violated Montana election law. Therefore, the complainant's allegations are hereby dismissed in full.

Dated this 23rd day of July, 2024.



Chris J. Gallus

Commissioner of Political Practices
of the State of Montana
P.O. Box 202401
1209 8th Avenue
Helena, MT 59620