

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

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| MONTANA REPUBLICAN PARTY via DANIELLE BRADLEY v. RYAN BUSSE (GUBERNATORIAL CANDIDATE) | COPP-2023-CFP-017 COPP-2024-CFP-027 FINDING OF FACTS SUFFICIENT TO SUPPORT VIOLATIONS ORDER OF CORRECTIVE ACTION DISMISSAL CONTINGENT ON CORRECTIVE ACTION |
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COMPLAINTS

On October 12, 2023, Danielle Bradley filed a complaint for the Montana Republican Party (MTGOP), against Montana gubernatorial candidate Ryan Busse, of Kalispell, MT. The complaint alleges various reporting errors or omissions on Mr. Busse’s October 5, 2023, C-5 periodic campaign finance report. Danielle Bradley is the executive director of the MTGOP. Candidate Busse is the Democratic Party gubernatorial nominee.

Ms. Bradley filed a second complaint for the MTGOP against candidate Busse on June 17, 2024. This second complaint alleges that candidate Busse failed to identify the “specific services provided” when reporting certain campaign expenditures, and that the Busse campaign’s contractual relationship with Mr. Busse’s spouse is an improper use of campaign funds.

The parties in both of these complaints are the same and there are common or substantially similar issues of law and fact presented. Therefore, these complaints are being combined for purposes of this decision.¹ This avoids unnecessary delay and expense for both of the parties and for COPP.

Both complaints conform to the requirements of Admin. R. Mont. 44.11.106 and allege violations of statutes which fall under my jurisdiction as Commissioner

¹ Complaints where the commissioner has taken this approach include *Hogan v. Olson and Knudsen*, COPP-2024-CFP-017 and 018; and *O’Hara v. Cascade County Republican Central Committee*, COPP-2016-CFP-004 and 013.

of Political Practices. Therefore, I accepted the complaints as filed, and in accordance with MCA § 13-37-132, I requested responses from Mr. Busse. The Busse campaign timely addressed the attribution complaint on October 17, 2023, and followed with a response to all other allegations contained in COPP-2023-CFP-017 on October 27, 2023, and to COPP-2024-CFP-034 on June 28, 2024. The complaint and responses are posted on COPP's website, politicalpractices.mt.gov.

ISSUES

The October 12, 2023, complaint alleges that the Busse campaign violated MCA § 13-37-226 by failing to report several contributions received or expenditures made associated with various campaign events or activities, and MCA § 13-35-225 by failing to include “paid for by” attribution on a campaign video posted to social media.

The June 17, 2024, complaint alleges the Busse campaign violated disclosure requirements for candidates when reporting expenditures, Montana MCA § 13-37-229(2)(b); personal use of campaign funds, MCA § 13-37-240 and ARM 44.11.608.

In addition to allegations contained in complaints, the commissioner is required to investigate other violations of law or rule. MCA § 13-37-111(2)(a). Consequently, this decision additionally addresses: proper reporting of debts, MCA § 13-37-229(2)(a)(v); proper reporting of contributions by a candidate to their campaign, ARM 44.11.501 and ARM 44.11.403(1); reporting of personal travel expenses, MCA § 13-1-101(21)(b)(ii); and reporting food and drink donations as contributions, MCA § 13-1-101(21)(b)(ii).

BACKGROUND

COPP establishes a uniform system of disclosure and reporting applicable to all candidates and political committees. MCA, Title 13, chapter 37, part 2.

Disclosure ensures that voters have the facts necessary to evaluate messages competing for their attention. *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1006 (9th Cir. 2010). 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. *Id.*

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).²

On September 15, 2023, Ryan Busse, filed a C-1 Statement of Candidate as a Democratic candidate for the office of Governor of the State of Montana. The Busse campaign timely filed their initial C-5 campaign finance report, dated September 14 through September 30, 2023, on October 5, 2023. This report did not directly disclose any contributions received, expenditures made, or debts owed pertaining to the allegations in the above-named complaint. (COPP records). The campaign amended this report on January 5, 2024, disclosing campaign debts owed by the campaign to Left Hook for “Ad production” in the amount of \$20,000.00, Aaron Murphy Consulting for “Printing” in the amount of \$493.91, and five (5) debts owed to Mr. Busse personally for “mileage,” totaling \$664.85.

The complaint and the provided responses agree on the following facts:

- Mr. Busse posted a campaign announcement video to social media on September 14, 2023.
- Mr. Busse posted a video to X on September 29, 2023.
- Mr. Busse held a campaign kick-off event on September 15, 2023.
- Mr. Busse conducted a direct mail fundraiser in and around September 2023.
- Mr. Busse traveled to Helena and held a campaign event on or around September 25, 2023.
- Mr. Busse traveled to Billings, MT, and made a campaign appearance on Billings radio on September 28, 2023.
- Mr. Busse employed Aspen Communications, a company in which his wife holds majority interest to provide certain services to the campaign.

² An in-depth discussion of Montana’s disclosure laws can be found in *MTGOP v. Mullen*, COPP-2024-CFP-030, 1-4, and *O’Neill v. Wilson*, COPP-2024-CFP-022, 1-4.

DISCUSSION

The first complaint submitted by MTGOP alleges various reporting violations while the second complaint alleges reporting violations as well as misuse of campaign funds. The allegation that the Busse campaign misused funds by engaging his wife's company to provide services to his campaign can be summarily dismissed as baseless and frivolous. *Landsgaard v. Peterson and Wilks*, COPP-2014-CFP-008. Therefore, it is appropriate to address and dismiss the allegation related to the use of Aspen Communications before considering potential reporting violations, which I do now as follows:

I. Montana law does not prohibit the Busse campaign from engaging the professional services of a vendor in which he or his spouse have a financial interest.

The complainant relies on MCA § 13-37-240 to assert that Mr. Busse or the Busse campaign cannot use the services of Aspen Communications because the entity is owned by candidate Busse's spouse. This assertion is patently false and entirely unsupported by law or facts. Consequently, I can dismiss the claim as frivolous and baseless. Whether Mr. Busse and/or his wife are part-owners in a company that provides professional services to the Busse campaign is inconsequential when the services are provided in a manner that any other vendor would provide them. Montana law simply does not prohibit this sort of activity or arrangement. MTGOP offers no supporting evidence that would tend to show the use of Aspen Communications is improper or that services are being provided at below normal market rates. The legal basis to dismiss this claim is as follows:

Personal use of campaign funds

First, the specific statute referenced by the MTGOP to advance these allegations, MCA § 13-37-240, is specific to surplus campaign funds. While the statute prevents candidates from utilizing surplus campaign funds for personal benefit, campaign funds only become surplus campaign funds "when all debts and other obligations of the campaign have been paid or settled, pursuant to ARM 44.11.608, no further campaign contributions will be received, and no further

campaign expenditures will be made.” ARM 44.11.702(2). As a Democratic candidate for the office of Governor in Montana, who participated in Montana’s June 5, 2024, primary election, and has advanced to the general election, candidate Busse was clearly continuing to receive campaign contributions and make campaign expenditures at the time each alleged violation occurred. Because Mr. Busse was engaged in legitimate campaign activities at the time of the alleged violations, Mr. Busse’s campaign funds would not be considered surplus campaign funds. Further, Mr. Busse’s campaign funds will only become surplus campaign funds for purposes of considering MCA § 13-37-240 at some point after the general election, when he has ceased engaging in relevant campaign contribution and expenditure activity. As surplus campaign funds are not involved, MCA § 13-37-240 does not apply here.

This, of course, does not mean that Montana candidates are free to utilize campaign funds for personal reasons during a campaign. ARM 44.11.608 specifically prohibits the personal use of campaign funds by candidates. This rule defines personal use as those expenditures that “have no direct connection with, or effect upon, expenditures to support or oppose candidates or issues, and those that would exist irrespective of a candidate’s campaign,” *Id.* (2). Permissible campaign expenditures are those “that serve to support or oppose a candidate or issue,” *Id.* Essentially, if an expenditure of campaign funds is made by a candidate or their campaign specifically to obtain items or services meant to support their candidacy, a campaign expenditure has occurred. *Wemple v. Connell*, illustrates the purpose and scope of the law. COPP-2014-CFP-041. Conversely, if the candidate or a member of their campaign uses campaign funds to pay for expenses that would exist irrespective of their candidacy – such as personal food, family lodging, or private school tuition for children - improper personal use of campaign funds has occurred.

In reviewing Mr. Busse’s campaign finance reports filed with COPP, and the formal response provided by the campaign, it is clear each expenditure to Aspen Communications was made specifically and solely to obtain items or services intended “to support” his gubernatorial campaign. This makes them allowable campaign expenditures as defined under ARM 44.11.608(2). Actual campaign

services were provided by Aspen Communications to the Busse campaign, and in exchange, monetary payment was provided by the Busse campaign to Aspen Communications.

In its response, the Busse campaign notes that the campaign has entered into written contracts with Aspen Communications, and that it pays “fairly” for all services provided. COPP’s investigation discovered no evidence to dispute the assertion that the arrangement between the Busse campaign and Aspen Communication is anything but fair and was entered into through normal arms-length negotiations, and MTGOP offers no such evidence in support of their claim. Further there is no evidence offered by MTGOP or discovered by COPP suggesting that Mr. Busse has utilized campaign funds to pay Aspen Communications for services unrelated to his gubernatorial campaign.

Nothing in MCA Title 13, chapters 35 or 37 or ARM 44.11.608 prohibits a candidate from utilizing a given vendor when making legitimate campaign expenditures simply because familial or personal connections may exist. As long as the expenditures are made to obtain legitimate campaign services, Mr. Busse, like any other candidate, is free to utilize vendors of his own choosing.

Absent supporting evidence to the contrary, COPP can ascertain from the record that this is an arms-length negotiated agreement where both parties to the agreement receive mutual satisfaction and are in compliance with the law. There is no evidence presented in the complaint or upon reviewing the record that supports any finding similar to what occurred in the *Bonogofsky v. Western Tradition Partnership* and related COPP decisions. COPP-2010-CFP-007.

The law MTGOP relies on, MCA § 13-37-240, does not apply, and there are no other laws that would apply to these circumstances in any event.

Consequently, after weighing facts presented in the complaint and in the record, and reviewing the law and prior COPP decisions, the allegation lodged against the Busse campaign related to Aspen Communications is hereby dismissed as frivolous and baseless.

II. Expenditures must be reported with adequate detail

The complaint submitted by MTGOP on June 17, 2024, additionally argues that reported expenditures to vendor Left Hook for “statewide broadcast tv ad buy” and vendor Blue Deal for “signs” disclosed by candidate Busse on his May 16 through June 15, 2024, C-5 campaign finance report are not “described in sufficient detail to disclose the specific services performed” as required under Montana law.

Legislative history of expenditure reporting

A brief consideration of the history and context of campaign finance expenditure reporting is required when considering MCA § 13-37-229(2)(b)’s “specific services” provision and how it applies in the current circumstance. Historically, COPP relied on requirements formerly outlined in ARM 44.11.502(7) when considering allegations of this nature.

[F]or the purposes of the disclosure requirements of 13-37-229 and 13-37-232, MCA, the “purpose” of each expenditure as reported on the commissioner’s campaign finance reporting forms shall specifically describe the purpose, quantity, subject matter, as appropriate to each expenditure, and must be detailed enough to distinguish among expenditures for similar purposes. For example, two expenditures for direct mail advertisements should not both be reported as “Flyers.” ARM 44.11.502(7) (2021).

The above administrative rule served to make pertinent information about a candidate or political committee’s expenditures - the who, what, when, where, and why - readily available and easily discernable to the public. As an additional benefit, the existence of this rule assisted the commissioner when considering and resolving complaints. As discussed in *Montana Freedom Caucus v. Representative Zephyr*, when balancing “the additional burdens” these requirements imposed on candidates and political committees “with the public interest in viewing the reports, commissioners have always sided in favor of the public...[r]eporting and disclosure is required so that the public understands the contribution and expenditure of funds used to support or oppose candidates in Montana elections. COPP-2023-CFP-010, 18-19, citing *Montana Democratic Party v. Montana Republican Legislative Campaign Committee*, COPP-2016-CFP-029, at 2. ARM 44.11.502(7) presented a

clear standard which the agency could consider and potentially rely on to make a determination.

The 2021 Montana Legislature, via passage of SB 224 (MT Laws Ch. No. 571)³, required COPP to repeal ARM 44.11.502(7). When introducing SB 224 in the Senate State Administration Committee⁴, sponsoring Sen. Fitzpatrick stated the bill was introduced in part “to get rid of some of the nitpicky things that we all hate” regarding campaign finance disclosure requirements, with the repeal of ARM 44.11.502(7)’s language being intended to curb “the Commissioner’s power to add more disclosure limits.” He further stated his belief that campaign finance disclosure requirements such as those implemented by 44.11.502(7) were “policy decisions” best made by the Legislature, not the Commissioner or COPP staff. Similarly, when introducing the bill in the House State Administration Committee⁵, Sen. Fitzpatrick described it as an “attempt to bring common sense and sanity” back to Montana’s campaign finance reporting and disclosure requirements, with the most important part being its “striking out...the power of the Commissioner to keep adding categories of information” candidates are required to provide when reporting expenditures made.

SB 224’s passage and implementation did not change COPP’s requirement to “inspect” each campaign finance report filed by candidates and political committees for compliance with Montana election law under MCA § 13-37-121(1), including the disclosure requirements of MCA § 13-37-229(2)(b). At the conclusion of an inspection, COPP staff must “notify” the candidate or committee of any area where they have failed to meet these requirements. *Id.* Prior to SB 224’s passage, COPP compliance specialists would review each expenditure as reported by a candidate and, if not already clearly provided, request the specific purpose, quantity and subject matter (if relevant) be added. If multiple expenditures were described using

³ <https://bills.legmt.gov/#/bill/2021/LC0532>

⁴ <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-/41478?agendaId=198797>

⁵ <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-/40984?agendaId=205737#info>

substantially similar or identical language, compliance specialists would request enough detail be provided to differentiate between them. After SB 224's passage, compliance specialists, at the encouragement of then Commissioner Mangan, stopped requesting this type of information through the inspection process, seeing it as the type of "nitpicky" action Sen. Fitzpatrick and the majority of the Montana Legislature was seeking to get rid of.

In implementing this change, while I must continue to insist that campaign reports adequately explain their purpose so the public can understand them, I must also be mindful of the rights candidates and committees have when it comes to enforcement. Laws must be clear and unambiguous before enforcement can occur because these are penal codes that regulate free speech. *MRP v. Gov. Schweitzer*, COPP-2008-ETH-(Final Order 03/01/2012).

Application

Here, the plain language of the law is abundantly clear in certain respects, and the MTGOP is correct in its assertion that certain campaign expenditures made by candidates must itemize and describe the "specific services performed." MCA § 13-37-229(2)(b), holds that:

Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate, political committee, or joint fundraising committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.

This statute specifically applies to expenditures made to a "consultant, advertising agency, polling firm, or other person that performs services for or on behalf of" a candidate or political committee. First, COPP must determine if this statute applies to these specific expenditures, and if so, are Mr. Busse's descriptions of "statewide broadcast tv ad buy" and "signs" sufficient.

As stated above, MCA § 13-37-229(2)(b) only applies to expenditures made to a "consultant, advertising agency, polling firm, or other person that performs services for or on behalf of" a candidate or their campaign. Unfortunately, the

statute does not specify what “services” are or are intended to be included, immediately leaving its full meaning up to subjective interpretation. The first relevant vendor in this matter, Left Hook, clearly appears to qualify as a “consultant” and or “advertising agency” under the statute. On its website, Left Hook advertises specific services it provides as “strategy consulting,” “message & creative development,” “communications and crisis management” and “media buying & placement,” among others.⁶ Mr. Busse was therefore required to itemize and describe the “specific services performed.” In this case, the provided description was “statewide broadcast tv ad buy.”

The second vendor, Blue Deal, does not appear to qualify. In reviewing its website, Blue Deal appears to provide tangible, physical material to candidates or individuals, specifically apparel, stickers & decals, stationery & literature, and signage.⁷ While Blue Deal can, for a fee, be used to design material beyond standard templates already available for purchase (customers may also upload their own artwork or templates to be printed), it does not appear to have any involvement in the actual content or distribution of material. Being more akin to a print shop than anything else, it is debatable if Blue Deal qualifies as a “consultant, advertising agency, polling firm, or other person that performs *services*” to whom the Busse campaign would need to itemize and describe the “specific services performed” when reporting. MCA § 13-37-229(2)(b) (*emphasis added*). In any event, Mr. Busse did identify what was directly provided by Blue Deal- “signs.” As noted by the Busse campaign in its official response to this complaint, “signs” is commonly used by candidates and political committees, with COPP rarely (if ever) requesting additional detail be provided to describe such an expense.

In this case, a COPP compliance specialist conducted an inspection of Mr. Busse’s May 16 - June 15, 2024, C-5 campaign finance report, afterwards (via email message sent on July 5, 2024) communicating back to the campaign that certain expenditures required additional information to meet § 13-37-229(2)’s disclosure

⁶ <https://www.lefthookstrategy.com/>

⁷ <https://thebluedeal.com/>

requirements. Neither the “statewide broadcast tv ad buy” expenditure made to Left Hook nor the “signs” expenditure made to Blue Deal were included as expenditures requiring additional information.

The relevant expenditures were reviewed and COPP determined that the information provided by Mr. Busse was sufficient to meet the requirements of MCA § 13-37-229(2). This is a reasonable and defensible conclusion, one that warrants a dismissal of these allegations.

While not identified in the original complaint, an example of when “personal services” are not adequately described can be found below under the subheading *Reporting repayment of debts*, where I discuss the Busse campaign’s reporting of expenditures to Aaron Murphy Consulting

III. The Busse campaign failed to timely report debts owed for the production of a video announcing Busse’s campaign for governor and printing costs for remittance envelopes.

MCA § 13-37-229(2)(a)(vi) requires candidates report “the amount and nature of debts and obligations owed by a ... candidate” during each reporting period. Debts are incurred by a campaign *at the time an obligation is made and must be reported within the reporting period wherein the obligation arose. Ward v. Tucker*, COPP-2020-CFP-021 (*emphasis added*). ARM 44.11.502(2) explicitly states “[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.” See *Perkins v. Downing*, COPP 2020-CFP-022, and *Ward v. Marceau*, COPP-2022-CFP-008. 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. This longstanding approach that COPP has consistently taken is applied and further explained in *MTGOP v. Alke*. COPP-2023-CFP-018, see also, *Perkins v. Downing*.

On September 14, 2023, the Busse campaign posted a video announcing Ryan Busse’s candidacy on X formally known as Twitter. No expense related to this

campaign video was reported on the Busse campaign's C-5 periodic finance report for the applicable period of September 14 through September 30, 2023. In their response, the campaign states that at the time this C-5 was due, they had not yet received an invoice from the video's producer, Left Hook Strategy, and the estimated amount was "still being negotiated." The response further provides that the campaign "had not yet finalized the business and payment terms for their arrangement." (Response, II, 1-2.)

Here, an obligation arose at the time the Busse campaign contracted or otherwise arranged for Left Hook Strategy to produce the video. Any agreement, even an oral agreement, to pay for services creates an obligation that results in a campaign expenditure. These actions and arrangements necessarily occurred well in advance of the videos release on September 14, 2023. Therefore, in accordance with ARM 44.11.502(2), this cost was required to be reported as a debt on the C-5 report due October 5, 2023. In their response, the Busse campaign stated that they would amend their report to disclose the now agreed upon amount of \$20,000 as a debt owed to Left Hook Strategy. *Id.*

COPP records indicate that the Busse campaign amended their September 14 through September 30, 2023, C-5 finance report on January 5, April 22, and August 29, 2024. Although COPP noted the Busse campaign had amended their report to declare the obligation to Left Hook Strategy on April 22, 2024, the Busse campaign has provided evidence that this action was taken on January 5, 2024.

The complainant additionally points to remittance envelopes that appear in an eight second X/Twitter video that appeared on September 29, 2023, but did not appear on the applicable C-5 report. The Busse campaign does not dispute this allegation. In their response, the campaign states that failure to report a debt of \$493.91 for 1,500 remittance envelopes was due "to a compliance error" and "[t]he campaign will file an amended report disclosing the correct amount of debt owed." (Response, II, 2.).

Again, the Busse campaign has provided evidence that they amended their September 14 through September 30, 2023, report on January 5, 2024, to show a debt to Aaron Murphy Consulting, detailed as “printing.”

Unfortunately, under some circumstances, such as when a single report is amended numerous times, it can be difficult, if not impossible, for COPP to ascertain what amendments were made at what time. Consequently, here I rely on the evidence provided by the campaign to conclude that although the Busse campaign violated MCA § 13-37-229 on two occasions by failing to timely report debts owed for a campaign launch video and remittance envelopes in the reporting period during which they occurred, they did ultimately rectify this deficiency by making the appropriate amendments approximately ten weeks after they received notification via this complaint.

The timing of the provided amendments does not determine if a violation exists but does impact my determination as to whether prosecution is justified. In *Motl v. Citizens for More Responsive Gov't. (CMRG)*, the commissioner determined that prosecution was not justified because the commissioner found there was no evidence showing CMRG intended to evade disclosure, and the transgressions resulted from miscommunication between various responsible parties. COPP-2001-CFP-02/21/2002, at 9 - 10. Shortly after beginning the campaign in 2023, Mr. Busse’s campaign changed certain roles with respect to reporting responsibilities and general compliance, which ultimately resulted in good faith efforts to make amendments. While COPP normally requires corrections occur more quickly, in this particular instance, it is certainly understandable that a longer period of time was necessary. As was the case in CMRG, the Busse campaign was responsive with respect to promptly amending their reports. While late, the changes were at least made at the time the next report was due.

Reporting repayment of debts

Here, while the reported debt states “printing” as the purpose, the repayment of this debt is inappropriately included in an expenditure for “State Consulting.” MCA § 13-37-229(2)(b), holds that:

Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate, political committee, or joint fundraising committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.

Application of this statute was discussed at length in Section II above, where other expenditures were found not to require additional details because they were not “expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate. . .” *Id.* Here, Aaron Murphy Consulting is clearly a consultant and printing services paid for and provided by Aaron Murphy Consulting are exactly the type of services that must be “itemized and described in sufficient detail to disclose the specific services performed. . .”⁸ Neither the complainant, the public, nor COPP, could be expected to ascertain from the explanation “State Consulting” that printing of envelopes was included.

In Mr. Murphy’s September 18, 2024, letter to the Commissioner, he states not only that the ‘expenditure’ listed in the January 5, 2024, C-5 report for \$20,513.80 to Aaron Murphy Consulting includes \$493.91 for remittance envelopes, but also \$19.89 for name tags, \$10,000 for consulting services in September of 2023, and \$10,000 for consulting services in October of 2023. Under these circumstances it would be impracticable if not impossible for interested parties to ascertain what a payment was for by matching it to an earlier entry for the same amount as they are able to do when researching candidate Busse’s own loans to the campaign.

Therefore, while the Busse campaign has rectified the initial failure to report two debts to Left Hook Strategies and Aaron Murphy Consulting in violation of MCA § 13-37-229, additional action is required to properly report repayment of these debts.

⁸ [General-expenditure-guidance,-consultants,-ad-agencies-and-polling-firms.pdf \(mt.gov\)](#)

IV. Travel expenditures by Mr. Busse

The complainant next alleges that Mr. Busse failed to report expenditures for travel to the September 25, 2023, campaign event in Helena, and a September 28, 2023, radio appearance in Billings.

Candidates must report all expenditures and contributions in support of their candidacy. MCA § 13-37-229. An “[e]xpenditure” means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value: made by a candidate or political committee to support or oppose a candidate or a ballot issue. MCA § 13-1-101(21)(a)(i). Travel to a campaign event is unquestionably a reportable expenditure. *Ellsworth*.

Travel to Helena

Relevant to Mr. Busse’s travel, the complainant first alleges that Mr. Busse failed to report travel expenses for a Helena campaign event held on September 25, 2023. In their response, the Busse campaign states Mr. Busse personally paid for his travel to and from Helena for this event, but because Mr. Busse often travels to Helena for personal reasons such as to visit family, he was not certain that the trip would be exclusively for campaign purposes. Following the event, Mr. Busse “confirmed the trip in question was exclusively for a Campaign purpose” and “Mr. Busse will seek reimbursement for mileage costs in accordance with COPP guidance.” (Response II, 2).

Montana Administrative Rules clearly state, “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). (*Wilson*)

Mr. Busse does not dispute that he made the trip to Helena intending to attend a campaign function. Consequently, as clearly explained in the above administrative rule, Mr. Busse should have reported any expenditures for travel as a loan to the campaign at the time he made the expenditure, and subsequently reported a campaign expenditure and repaid loan when he was reimbursed for the expense. ARM 44.11.403(1), *Ellsworth*. Rather than the ‘wait and see’ approach the Busse campaign takes, an appropriate course of action would be to report the travel as a loan to the campaign and subsequently forgive any portion that is attributable to personal activities that occurred.

Therefore, Mr. Busse violated MCA § 13-37-226 by failing to timely report campaign expenditures for travel to the Helena campaign event on September 25, 2023, made personally by the candidate, as loans or in-kind contributions to the campaign.

Travel to Billings

Next, the complainant alleges Mr. Busse failed to report travel expenses to Billings for a campaign event and radio appearance on September 27 and 28, 2023. The definition for the term “expenditure” provided in 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, in their response, the Busse campaign states that Mr. Busse traveled to Billings for a “book signing and presentation at Rocky Mountain College” which was organized by the college and unrelated to the campaign. The response further states that the fundraiser and interview were subsequently scheduled “based on his existing travel schedule.” Because Mr. Busse had already planned for travel to Billings that was unrelated to the campaign, the campaign asserts that Mr. Busse does not intend to seek reimbursement for this expense. (Response II, 4.)

Although travel for campaign purposes must be reported, if campaigning occurs ancillary to travel and no expenses are covered by the campaign, there is no

requirement that this expense be reported. *Zephyr*, 15. In the present circumstance, Mr. Busse's travel was business related, and although he also engaged in a campaign event, he made the decision not to allocate any of the related travel to his campaign.

At the time of our initial review, the Busse campaign had amended their initial C-5 for the reporting period of September 15 through September 30, 2023, but five candidate debts for fuel which do not indicate the purpose of related travel remained. Consequently, COPP or other interested parties were unable to conclude whether travel to the September 25, 2023, event was included.

While the Busse campaign did violate MCA § 13-37-229 by failing to adequately describe debts for fuel to indicate the purpose of these expenditures, the Busse campaign has since taken corrective action to include the necessary details. The allegation that the Busse campaign failed to report travel to Billings is dismissed. However, the Busse campaign did violate MCA § 13-37-229 by failing to adequately describe debts for fuel to indicate the purpose of these expenditures.

V. Donations of food, beverages, and venue provided for campaign events, are reportable as in-kind contributions.

The complainant next alleges that the Busse campaign failed to report expenditures for food, beverages, and venues related to the campaign kick-off event on September 15, 2023, and the Helena campaign event on September 25, 2023.

As stated above, candidates must report all expenditures and contributions in support of their candidacy. MCA § 13-37-229. An "[e]xpenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value: made by a candidate or political committee to support or oppose a candidate or a ballot issue." MCA § 13-1-101(21)(a)(i). Food, beverages, and venues used for campaign events which support or oppose a candidate are reportable contributions or expenditures.

Kick-off event, September 15, 2023

The response explains that this event was hosted by Mr. Busse in his personal residence and attendees brought their own food and drinks to this event,

potluck style. COPP has historically considered small, homemade food items de minimis under MCA § 13-1-101(21)(b)(ii). While certainly food or drinks of a larger manner or variety, as provided for the Helena event, do qualify as contributions, smaller potluck style provisions as occurred here are exempt from reporting. *Legard and French v. Sanders Co.* COPP-2012-CFP-016/018, at 7. Additionally, there is a specific exception for “the use of a person’s real property for a fundraising reception or other political event” as occurred here, when Mr. Busse held this event at his residence. MCA § 13-1-101(9)(b)(iii).

Therefore, expenses related to the campaign event in Kalispell, MT, on September 15, 2023, are either specifically excluded from reporting or are considered de minimis and the Busse campaign did not violate Montana election law by failing to report donations of food and beverages or the use of Busse’s home for this event.

Helena event, September 25, 2023.

According to the provided response, the campaign event held in Helena on September 25, 2023, was held at a private residence, food and beverages were donated, and no other expenses were incurred. While the venue in this circumstance is expressly excused from reporting by MCA § 13-1-101(9)(b)(iii), no such exclusion exists for food and beverages donated for this event. Here, the response states that food and beverages for this event, valued at \$497.65 were donated by a single individual, Ann Brodsky. These are not “small, homemade food items,” which would be considered de minimis under MCA § 13-1-101(21)(b)(ii) and are therefore subject to reporting requirements. In their response, the Busse campaign provides “the Campaign will amend its C-5 report to disclose that amount as an in-kind contribution.” (Response II, 3-4.) The Busse campaign has since made this correction and Ms. Brodsky’s in-kind contributions are properly reported.

Consequently, allegations related to the Kalispell event are dismissed and although the Busse campaign violated MCA § 13-37-229 by failing to report an in-kind contribution of \$497.65 related to the Helena event on September 25, 2023, this violation has since been addressed through corrective action.

VI. Mr. Busse’s social media post was not a paid advertisement and therefore does not require “paid for by” attribution.

Finally, this complaint alleges that Mr. Busse failed to include the “paid for by” attribution statement on a social media post posted to X on September 29, 2023. This video features campaign workers opening a post office box which shows the remittance envelopes addressed earlier in this decision.

MCA 13-35-225(1) states:

All election communications, electioneering communications, and independent expenditures must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication.

In responding to this complaint, Mr. Busse claims that neither he personally, nor the campaign, paid “to boost [the video] on X formally known as Twitter or any other social media platforms.” COPP review of Mr. Busse’s X/Twitter feed seems to confirm this, as the video appears as just a standard post, a feature available (for free) to all users. Because Mr. Busse did not pay to promote or distribute this social media post, it did not require inclusion of the “paid for by” attribution statement. The “paid advertisement” element is missing from this social media post. Therefore, it is not an election communication, electioneering communication, or independent expenditure, MCA §§ 13-1-101(15), (19), and (28). “Such unpaid posting of political content is currently allowed...It is paid political content that may be required to be reported and attributed under Montana Political Campaign Finance law.” *Bennett v. Vent Missoula*, COPP-2017-CFP-007, at 3-4.

Consequently, the Busse campaign did not violate MCA § 13-35-225 by failing to include a “paid for by” attribution statement on a video posted to X on September 29, 2023.

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*, 26.

Recently, in *MTGOP v. Mullen*, COPP-2024-CFP-030, *MTGOP v. Alke*, COPP-2023-COPP-018, and *O’Neill v. Wilson*, COPP-2024-CFP-022, I discussed in detail the objective factors I apply in determining when prosecution is justified. These primarily consist of proximity to the election, a campaign’s pattern of behavior, the size of contributions or expenditures which have gone unreported, and finally, responsiveness of the campaign. The above factors are listed in order of relevance, with proximity to the election being the most determinative factor.

Here, proximity to the election weighs against prosecution. The violations for which there is sufficient evidence occurred in September, 2023, well in advance of the June 4, 2024, primary election. Correction of these matters, however, did not occur until January of 2024, approximately ten weeks after the Busse campaign was made aware of this issue. Nevertheless, the appropriate corrections were made five months before the primary election, providing adequate time for voters to access the information.

The second factor, pattern of behavior, does not tip the scale in any direction. While the initial C-5 includes a number of errors, subsequent reports show a significant effort on the part of the Busse campaign to adhere to reporting requirements.

Third, the size of unreported contributions or expenditures, weighs in favor of prosecution. The failure to report a \$20,000 expenditure for more than 14 weeks cannot be excused, particularly considering that the campaign was notified of this error and assured COPP they would rectify the deficiency, yet failed to do so for approximately ten weeks.

Finally, the final factor, responsiveness of the campaign, tips the scales in favor of the respondent. The Busse campaign was forthcoming with any information requested and has shown an effort to comply with statutory reporting requirements, making significant improvements in their reporting after the initial report. In drafting this decision, the Busse campaign was notified of areas where additional expenditure details were required and the campaign has timely amended their C-5 reports to provide those details.

Taken together, the above factors do not weigh heavily enough in favor of prosecution for COPP to refer this matter to the county attorney so long as any corrective actions are promptly addressed. There is little reason to expend more valuable resources to file a civil action when all the issues have been addressed and Montana voters are able to access information regarding the Busse campaigns activities in advance of the upcoming general election.

CONCLUSION

The above-described complaint has been considered as described above and sufficient evidence exists to determine the following:

- The Busse campaign did not inappropriately employ Aspen Communications resulting in the use of campaign funds for personal benefit.
- “Signs” and “statewide tv broadcast ad buy” provide adequate descriptions of expenditures.
- The Busse campaign did not violate Montana election law by failing to report travel expenditures related to a campaign event in Billings, MT, on September 28, 2023.
- The Busse campaign did not violate Montana election law by failing to report the use of a personal residence for a campaign event in Helena, on MT, on September 26, 2023.
- The Busse campaign did not violate Montana election law by failing to report the use of Mr. Busse’s personal residence and de minimis contributions of food and beverage related to a campaign event in Kalispell, MT, on September, 15, 2023.

The specific matters described above are not violations of election law and are hereby dismissed in full.

The following findings are violations of Montana law but considering corrective action taken by the campaign and the factors detailed in the enforcement section of this decision, these violations have not been deemed justified for prosecution:

- The Busse campaign violated MCA § 13-37-229 by failing to timely report debts owed for the production of a campaign video.
- The Busse campaign violated MCA § 13-37-229 by failing to timely report a debt owed for printing remittance envelopes.
- The Busse campaign violated MCA § 13-37-229 by failing to adequately describe expenditures for travel.
- The Busse campaign violated MCA § 13-37-229 by failing to timely report an in-kind contribution of food and beverages for a campaign event.

While the matters described above will not be referred to the Flathead County attorney at this time, they may be considered as mitigating factors in determining if a future violation is justified for prosecution in the event a pattern of noncompliance develops.

The following matter also constitutes a violation of Montana election law but may be remedied by prompt corrective action to avoid referral to the Flathead County Attorney.

- The Busse campaign violated MCA § 13-37-229(2)(b) by failing to adequately describe payments to Aaron Murphy consulting for remittance envelopes, name tags, and two separate months of consulting fees.

This issue will not be referred for prosecution pending corrective action on the part of the Busse campaign. COPP hereby issues an Order of Corrective Action requiring the Busse campaign to:

- Add expenditure detail to the payment of \$20,513.80 to indicate reimbursement for the printing costs of 1,500 remittance envelopes, name tags and two separate months of consulting fees.

Further, although not a technical violation of Montana statute, the Busse campaign is advised to report the portion of the above payment attributable to debts as payments under the payment tab in CERS as they have done with repayment of loans to Mr. Busse.

If the above corrective action is taken on or before September 27, 2024, these allegations will also be dismissed. If the corrective actions are not taken on or before September 27, 2024, I reserve the right to refer these matters to the Flathead County Attorney for civil action in accordance with the provisions of MCA §§ 13-37-124 and 128. I will address the implications of any such referral if that becomes necessary.

Dated this 20th day of September, 2024.



Chris J. Gallus

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