

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

AARON J. LEAS v. JANET ARMSTRONG	COPP-2024-CFP-008 FINDING OF SUFFICIENT FACTS TO SUPPORT VIOLATIONS – DISMISSED AS FRIVOLOUS
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COMPLAINT

On April 12, 2024, Aaron J. Leas of East Helena, MT, filed the above-named campaign practices complaint against Janet Armstrong, an incumbent candidate for Helena Public Schools Board of Trustees. The complaint alleges that Ms. Armstrong failed to file as a candidate with COPP and was therefore ineligible to serve if elected. The complainant additionally asserts that Ms. Armstrong’s nomination by acclamation is invalid as “there is no designation in law to make that possible.”

ISSUES

Candidate filing requirements, Montana Code Annotated (MCA) § 13-37-201. Election by acclamation MCA § 20-3-313.

BACKGROUND

Helena Public Schools Board of Trustees member, Janet Armstrong formally filed as a candidate for re-election to Helena Elementary/High School District #1 on March 8, 2024, by filing a Declaration of Intent and Oath of Candidacy with the Lewis & Clark County Elections Office. COPP staff contacted the Lewis & Clark County Elections Office on March 28, 2024, and Helena Elementary/High School District #1’s Business Services and Payroll Department on April 5, 2024, in order to inform them Ms. Armstrong had not filed with this office and to provide instruction on how to do so. Ms. Armstrong eventually filed a C-1A Statement of Candidate on April 10, 2024, on which she additionally certified that campaign contributions and expenditures would be less than \$500. COPP Records. This complaint was received on April 12, 2024, two days after Ms. Armstrong filed with COPP.

Upon receipt of this complaint, COPP requested a response from Ms. Armstrong which she timely provided on April, 25, 2024. In her response, Ms. Armstrong states that she was travelling internationally from March 11 to May 21, 2024. During this time, Ms. Armstrong damaged her cell phone and was out of contact for two weeks while awaiting a new phone and required an additional week to gain access to her emails.

According to the Lewis & Clark County Elections Office, no election for trustee positions was held as there was not “a competitive race for the Helena School District.” COPP Records. As there were not more candidates than there were trustee positions to be filled, all candidates that had formally filed with the Lewis & Clark Elections Office were elected via acclamation, pursuant to MCA § 20-3-313.

DISCUSSION

The discussion to follow first determines whether Ms. Armstrong violated Montana election law and then addresses the complainant’s requested relief, that Janet Armstrong “not be allowed onto the Helena School Board Ballot this year.” Additionally, this decision will address whether COPP has the authority to prevent Ms. Armstrong from serving as school board trustee, and whether Ms. Armstrong’s appointment to the school board by acclamation is valid.

COPP filing requirements

An individual becomes a candidate in Montana in one of two ways. First, by filing a “declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law.” MCA § 13-1-101(8)(a). Candidates for school district trustee must submit a declaration of intent to the clerk of the district “at least 40 days before the regular school election day at which the person is to be a candidate.” MCA § 20-3-305 (2)(a). Here, Ms. Armstrong filed with the Lewis & Clark County election office on March 8, 2024.

A person also becomes a candidate under Montana Election law by soliciting or receiving and retaining contributions, making expenditures, or consenting for another party to do so on their behalf. MCA § 13-1-101(8)(b). There is no evidence that any such activity occurred prior to, or after, March 8, 2024, the date on which Ms. Armstrong filed. Therefore, Ms. Armstrong became a candidate on that date.

Under Montana election law, all candidates are required to file a certification with COPP

and appoint a treasurer within 5 days of becoming a candidate. MCA § 13-37-201. Therefore, Ms. Armstrong was required to register with COPP on or before March 13, 2024. By failing to do so, Ms. Armstrong violated MCA § 13-37-201.

Names not to appear on the ballot

As a consequence of the above failure to comply with Montana election law, the complainant specifically requests Ms. Armstrong “not be allowed onto the Helena School Board Ballot this year.” This is an action COPP is authorized to take under most circumstances. Specifically, MCA § 13-37-126(1)(a) holds: “The name of a candidate may not appear on the official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as required by. . .this chapter.” Prior to each election, COPP notifies election administrators if all candidates expected to appear on the ballot are in compliance with COPP filing requirements. If a candidate is not in compliance, the election administrator is obligated not to print the candidates name on the ballot. MCA § 13-37-126.

However, in the circumstances presented here, no actual school election was held in order to fill school board vacancies on May 7, 2024, as originally scheduled. COPP records. Only one candidate, per position, filed with the Lewis & Clark County Elections Office. Consequently, each of those candidates were elected by acclamation pursuant to MCA § 13-37-126. As there was no election, there was no “official ballot” on which Ms. Armstrong’s name appeared. Therefore, despite Ms. Armstrong’s delinquent filing, preventing her name from appearing on the ballot is not an action COPP has the ability to take.

Withholding certificates of nomination or election

Following an election, COPP additionally certifies to election administrators that candidates for public office have filed all required statements and reports. If they fail to do so, MCA § 13-37-127(1) provides:

A certificate of election may not be granted to any candidate until the candidate or the candidate's treasurer has filed the reports and statements that must be filed pursuant to the provisions of this chapter. A candidate for an elective office may not assume the powers and duties of that office until the candidate has received a certificate of election as provided by law.

All elected officials, including those elected by acclamation, are required to file all required statements and reports before they are eligible to receive their certificate of election and exercise the powers and duties of the office. *Id.*

Generally, a candidate for school board is required to file a C-1A Statement of Candidate and periodic C-5 finance reports with COPP. Alternatively, a candidate may indicate on their C-1A Statement of Candidate that their campaign will cumulatively spend and receive less than \$500, thereby relieving the campaign of the duty to file periodic finance reports with COPP. Admin. R. MT. (ARM) 44.11.304 (2023).

Janet Armstrong filed a C-1A Statement of Candidate on April 10, 2024, and indicated that her campaign would spend and receive less than \$500.00. No evidence has been provided that would cause COPP to question Ms. Armstrong's compliance with this provision. Therefore, in accordance with ARM 44.11.304, Ms. Armstrong is exempted from any requirement that she file periodic C-5 campaign finance reports.

Although not timely filed, Ms. Armstrong's April 10, 2024, C-1A filing satisfies her legal requirement to register as a candidate under MCA § 13-37-201. As her campaign did not receive contributions or make expenditures totaling \$500 or more, no additional filings are required. Consequently, Ms. Armstrong is able to receive a certification of election and assume all duties of a Helena School District Trustee.

Election by acclamation

In the submitted complaint, the complainant states "The newspaper has printed this Trustee [Ms. Armstrong] as winning by acclamation, however there is no designation in the law to make that possible." This is simply incorrect. MCA § 20-3-313 states:

(1) If the number of candidates filing for vacant positions or filing a declaration of intent to be write in candidate under **20-3-305(2)(b)** is equal to or less than the number of positions to be elected, the trustees may cancel the election. (3) If a trustee election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position. . .and shall issue a certificate of election to the candidate."

My jurisdiction over Montana election law is confined to MCA Title 13, chapters, 35 and 37. Therefore, COPP does not have the authority to address whether the school board election was properly cancelled or if Ms. Armstrong was properly elected by acclamation. Nevertheless,

the assertion by the complainant that such a provision does not exist in Montana law is undeniably false.

SUMMARY

The above analysis shows that Ms. Armstrong violated MCA § 13-37-201 by not registering with COPP within five (5) days of becoming a candidate. However, the complainants request that she be kept off the ballot is an impossibility due to the lack of any official ballot. Furthermore, Ms. Armstrong fulfilled all filing requirements necessary to receive a certificate of election and assume the duties of a school board trustee.

ENFORCEMENT

MCA § 13-37-124(1) requires that I refer a matter to the appropriate county attorney when I find sufficient evidence “to justify a civil or criminal prosecution.” The county attorney may then choose to prosecute the matter or refer it back to me for appropriate civil or criminal action.

While I do not have discretion to pursue a civil action without first referring the matter to the affected county attorney, I do have discretion to determine if enforcement action and therefore referral to the county attorney is justified. *Montana Freedom Caucus v. Rep. Zephyr*, COPP-2023-CFP-010, 23, *Doty v Montana Commissioner of Political Practices*, 2007 MT 341, 340 Mont. 276, 173 P.3d 700.

Dismissal of complaints as frivolous

Here, it is relevant to note, as the incumbent, Ms. Armstrong has previously run for office and therefore should be fully aware of the requirements. Nevertheless, in the situation at hand, pursuit of a civil action comes at an economic cost to Montana voters while doing little to increase compliance and transparency for Montana voters.

For exactly those reasons, Montana provides by rule the requirements for filing a complaint and a non-exhaustive list of reasons a commissioner may choose to dismiss a campaign practices violation in ARM 44.11.106. Specifically, the rule states: “No investigation shall be required and a complaint may be dismissed if the complaint is frivolous on its face.” ARM 44.11.106(4).

In an effort to improve the ability of COPP to process complaints in an economic and equitable fashion, the Commissioner in *Landsgaard v. Peterson*, enumerated four indicia of frivolous complaints, and states “future complaints identified as frivolous will be dismissed summarily with minimal discussion.” COPP-2014-CFP-008, 4. Here, although I accepted this complaint for further consideration, it easily falls within COPP’s definition of a frivolous complaint.

Landsgaard specifically identifies a complaint “directed to a corrected campaign practice” as frivolous. *Id.* 11. Here, Ms. Armstrong filed with COPP on May 10, 2024, two days before this complaint was filed. “The policy of Montana does not favor “got you” complaints. Instead, where it is possible to do so, Montana law favors correcting campaign errors.” *Id.* 12. There is little value in filing a complaint following this correction, particularly when there is no election in which voters may have been deprived of information.

Dismissal of complaints as de minimis

In *Landsgaard* the commissioner also includes de minimis complaints as ones which “specifically on a complaint-by-complaint basis,” may be dismissed as frivolous. “De minimis violations are not favored.” 13.

Montana election law defines de minimis as “an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.” MCA § 13-1-101(11).

The applicable administrative rule provides several factors that a commissioner may consider in determining if a specific act is de minimis, including “the extent to which a particular campaign practice violation deprives the public of disclosure.” ARM 44.11.603(d)

Again, where there is no ballot put before the voters and no opponent that is entitled to disclosure, the harm to Montana voters is de minimis, if any exists at all.

CONCLUSION

The evidence provided indicates Ms. Armstrong violated MCA § 13-37-201 by not registering as a candidate with COPP in a timely manner. However, for the reasons outlined
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above, this complaint is dismissed. I find that prosecution is not justified, and this decision will not be referred to the county attorney to consider further action.

DATED this 3rd day of July, 2024.



Chris J. Gallus
Commissioner of Political Practices
Of the State of Montana
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