

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

COLETTE M. WILBURN v. KATHY HOILAND (candidate for Montana House of Representatives, District 33)	COPP-2024-CFP-031 FINDING OF SUFFICIENT FACTS TO SUPPORT VIOLATIONS
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COMPLAINT

On June 28, 2024, Colette M. Wilburn of Glendive, MT, filed a Campaign Finance and Practices (CFP) complaint against Montana House of Representatives District 33 (HD 33) candidate, Kathy Hoiland. The complaint alleged that candidate Hoiland failed to timely file a C-5 campaign finance report and failed to disclose expenditures for campaign yard signs utilized by her HD 33 campaign.

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 Ms. Hoiland. Ms. Hoiland timely responded on July 9, 2024. The complaint and response are posted on COPP's website, politicalpractices.gov.

ISSUES

Requirements for timely filing of campaign finance reports, Montana Code Annotated (MCA) § 13-37-226 and proper reporting of contributions received and expenditures made by candidates, MCA § 13-35-229.

BACKGROUND

Montana election law requires candidates to file as such with COPP and to file periodic finance reports throughout their campaign in accordance with a statutorily mandated reporting calendar. MCA §§ 3-37-201, 226.

Kathryn Hoiland filed a C-1 Statement of Candidate with COPP on November 29, 2023, seeking election to the Montana House of Representatives as a representative for House District 33. Ms. Hoiland also formally filed as a Republican candidate for election to HD 33 with

Montana's Secretary of State on February 16, 2024. (COPP Records.)

On April 26, 2024, Ms. Hoiland posted a photo of a campaign yard sign in support of her candidacy on social media platform X, with a caption stating (in part), "The signs are here! It was a very busy afternoon getting as many up as we could." Additional posts referring to campaign signs followed on April 27 and April 28, 2024. *Id.*

Ms. Hoiland filed C-5 campaign finance reports with COPP on January 12, 2024, for the period of June 22 through December 31, 2023; March 25, 2024, for the reporting period of January 1 through March 15, 2024; April 20, 2024, for the reporting period of March 16 through April 15, 2024; and May 21, 2024, for the reporting period of April 16 through May 15, 2024. *Id.*

Following COPP's receipt of this complaint, Ms. Hoiland filed a C-5 periodic campaign finance report on July 2, 2024, covering May 16 through June 30, 2024. This report disclosed one campaign expenditure in the amount of \$2,752.00 to Element L. Designs, described as "Highway Signs, yard Signs, Shipping of Signs" with additional quantity information of "10 highway Signs, 250 Yard Signs." *Id.*

DISCUSSION

The complainant alleged that Ms. Hoiland failed to file a C-5 finance report for the period of May 16 through June 15, 2024, and additionally failed to report expenditures made for the purchase of the campaign signs referenced in Ms. Hoiland's posts on X (formerly Twitter).

I. **Ms. Hoiland did not timely file a campaign finance report in accordance with MCA § 13-37-226.**

Campaign finance report filing requirements are statutorily mandated and the filing date requirements are date certain. MCA § 13-37-226. In *Bradshaw v. Bahr*, the commissioner found a violation of Montana election law when a candidate filed an initial finance report only two days late, holding 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*. Candidates who participated in Montana's June 4, 2024, primary election were required to file campaign finance reports "quarterly, due on the 5th day following a calendar quarter" in 2023, and on "the 20th day of March, April, May, [and] June" of 2024. MCA § 13-37-226(1)(a), (b).

At the time COPP received this complaint, June 28, 2024, Ms. Hoiland had yet to file her C-5 campaign finance report due on June 20, 2024. Ms. Hoiland filed this report on July 2, 2024,

twelve days after the statutory deadline. Further, COPP review of this matter determined that candidate Hoiland: failed to file a quarterly report as required on or before October 5, 2023; filed the quarterly report due January 5, 2024 on January 12, seven days late; filed the monthly report due on or before March 20, 2024, on March 25, five days late; and filed the monthly report due on or before May 20, 2024, on May 21, one day late. (COPP Records.) Each is a clear violation of the timely filing requirements of MCA § 13-37-226.

Although the complaint does not reference any additional late reports, COPP is mandated to address and enforce all reporting requirements. MCA §§ 13-37-111, 123, *Montana Freedom Caucus v. Rep. Zephyr*, COPP-2023-CFP-010, 15. Therefore, sufficient evidence exists to show Ms. Hoiland violated MCA § 13-37-226 on five occasions.

II. Ms. Hoiland failed to properly report a debt incurred by her campaign for yard and highway signs.

Candidates, including Ms. Hoiland, are required to disclose the full amount of debts owed at the time the debt is incurred. *Ward v. Marceau*, COPP-2022-CFP-008, 4-12. Applicable Montana campaign finance law and rules clearly lay out how candidates are required to report debts owed. Specifically, 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. The related administrative rule, ARM 44.11.502(2), adds that “An 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.”

The provisions contained in these reporting disclosure statutes and rules are directly tied to the fundamental definition of expenditure as contained in MCA § 13-1-101(21). The definition of a campaign expenditure includes a loan, advance, promise, pledge, or anything of value made by a candidate to support or oppose a candidate. The Legislature’s use of terms such as pledge or promise, and loan or anything of value, supports COPP’s position that candidates make expenditures when they incur obligations to pay for activity supporting their campaign rather than when an invoice is received, or the campaign sends out a check. This has been the reporting requirement enforced by COPP for nearly 50 years.

In this matter, Ms. Hoiland necessarily agreed to purchase campaign yard signs at some time prior to April 26, 2024, the date candidate Hoiland physically obtained and began to post the signs. Despite this, candidate Hoiland did not disclose this transaction on any campaign

finance report filed with COPP prior to the conclusion of Montana’s primary election on June 4, 2024. Instead, Ms. Hoiland only disclosed the transaction on July 2, 2024, seemingly in direct response to this complaint. (COPP Records.)

In her response, Ms. Hoiland states, “I would like to clarify that my campaign had not yet paid for the signage and had not received an invoice until late May.” (Response, 1.) While COPP has no reason to doubt this assertion, as discussed above, reporting an obligation only upon receipt of an invoice is a clear violation of campaign finance reporting requirements.

Sufficient evidence exists to show Ms. Hoiland violated MCA §13-37-229(2)(a)(vi) by failing to report a debt during the reporting period in which it was incurred.

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*, COPP-2023-CFP-010, at 26.

Occasionally, commissioners (including myself) have excused isolated late filings when discovered in the course of an investigation. However, Ms. Hoiland’s late filings are anything but isolated and are in fact indicative of a pattern of noncompliance. While some matters can be corrected to minimize public harm, some violations are so egregious that harm cannot be avoided. This particularly occurs when candidates repeatedly fail to timely report, fail to timely disclose large contributions or expenditures, or fail to file prior to an election. “Timely reporting is essential to provide the public, press, and opposing candidates the opportunity to view and review a campaign's finances.” *Bradshaw*, 2. Consequently, I find Ms. Hoiland’s repeated violations of MCA § 13-37-226 justify prosecution.

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. *Id.* 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 Ms. Hoiland violated Montana election law. This Commissioner, having been charged to investigate and decide, hereby determines that Ms. Hoiland violated Montana election law and a civil action or penalty under MCA § 13-37-128 is justified in the following matters:

- Ms. Hoiland violated MCA § 13-37-226 by entirely failing to file her quarterly C-5 periodic campaign finance report due October 5, 2023.
- Ms. Hoiland violated MCA § 13-37-226 by failing to file her quarterly C-5 periodic campaign finance report due January 5, 2024, in a timely manner.
- Ms. Hoiland violated MCA § 13-37-226 by failing to file her quarterly C-5 periodic campaign finance report due March 20, 2024, in a timely manner.
- Ms. Hoiland violated MCA § 13-37-226 by failing to file her monthly C-5 periodic campaign finance report due May 20, 2024, in a timely manner.
- Ms. Hoiland violated MCA § 13-37-226 by failing to file her monthly C-5 periodic campaign finance report due June 20, 2024, in a timely manner.
- Ms. Hoiland violated MCA § 13-37- 229(2)(a)(vi) by failing to properly report a debt in the reporting period in which it was incurred.

Having determined that prosecution is justified, this matter will now be referred to the Dawson 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 Dawson County District Court.

Dated this 8th of August, 2024,



Chris J. Gallus
Commissioner of Political Practices
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