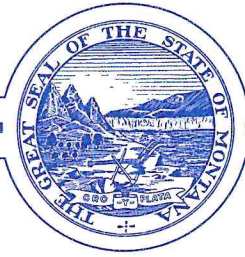


COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

CHRIS J. GALLUS
COMMISSIONER
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July 13, 2023

Jake Eaton
PO Box 81274
Billings, MT 59108

Subject: Eaton v. McLaughlin, COPP-2023-ETH-NAF-007

Dear Jake:

I acknowledge the above-named ethics complaint, lodged with this office on July 3, 2023. A plain reading of the statutes governing my authority to process your complaint shows that I do not have such jurisdiction, for the reasons outlined below. See Mont. Code Ann. (MCA) § 2-2-136(1)(a).

First, in your complaint you write that “a thorough investigation into Ms. McLaughlin’s activities will reveal even more evidence of her violations”. Please note that the Commissioner is not authorized by law to investigate Ethics complaints. Instead, once the Commissioner receives a formal Ethics complaint, he or she must follow the statutory procedure established by MCA § 2-2-136. As noted in *Steinebach v. DeTienne*, COPP-2016-ETH-004, I can only request the complainant and person who is a subject of the complaint to provide additional information or request a response, MCA § 2-2-136(1)(b). Following this established statutory procedure, I am limited to considering only the alleged violation/s specifically outlined in your complaint.

For your future reference, please note that while I am responding in some detail to this complaint, I am not required to do so because my initial review shows that the relevant statute of limitations for enforcing any potential violations of the Code of Ethics in this matter has expired. It would be frivolous to proceed on that basis alone, MCA § 2-2-136(2)(c). While MCA § 2-2-136 does not specifically or directly provide such a timeframe, subsection (5) does hold that the Commissioner “may adopt rules to carry out the responsibilities and duties assigned by this part”.¹ To that end, COPP adopted Administrative Rules of Montana (ARM) 44.10.604(1)(b), requiring that Ethics

¹ While “The commissioner of political practices is not required or authorized to enforce this section”, I do note that Montana’s Code of Ethics provides a statute of limitations of two (2) years for lawsuits alleging unlawful retaliation or threatened retaliation against an individual who alleges waste, fraud, or abuse, Mont. Code Ann. § 2-2-145(5).

complaints “be filed within two years of the date of the alleged violation”, with a complaint considered filed “on the date it is received by the commissioner”. In this case, the evidentiary material included with your complaint details email communications sent or received between the dates of March 17, 2021 and March 26, 2021, dates that do not file within a two year period of your July 3, 2023 filing. Prior Commissioners have consistently dismissed alleged violations of Montana’s Code of Ethics occurring more than two years prior to the filing of a complaint as time barred by this statute of limitations- see *Tschida v. Bullock and O’Leary (Tschida I)*, COPP-2016-ETH-005, *Tschida v. Bullock and O’Leary (Tschida II)*, COPP-2019-ETH-003, and *Merwin v. Bullock*, COPP-2020-ETH-004. As Commissioner I cannot “entertain a complaint alleging conduct which has occurred more than two years prior to the date the complaint is received by COPP”, *Tschida II*, at p. 5.

As indicated, and despite the statute of limitations deficiency, I do find it worthwhile to address certain matters contained in the complaint. The complaint generally alleges violations of the Montana Code of Ethics, MCA § 2-2-101 et seq., committed by Beth McLaughlin, Court Administrator for the Montana Supreme Court. As such, Ms. McLaughlin is an employee of the judicial branch. While these may potentially serve as claims that you can properly allege and pursue if you so choose if the judicial branch has their own internal process, the Office of the Commissioner of Political Practices is not the proper jurisdiction or venue to do so. This dismisses your complaint for lack of jurisdiction pursuant to MCA § 2-2-136(1)(a).

As Commissioner, my enforcement authority over Montana’s Code of Ethics rests squarely within MCA § 2-2-136 when complaints alleging violation are received. A complaint must allege a violation by a “state officer, legislator, or state employee”, Id (1)(a). In limited instances I have jurisdiction to consider complaints alleging a violation by a county attorney. See also MCA § 2-2-144, generally, and more specifically subsections (5) and (6).

In March of 2021, Court Administrator McLaughlin was not a “state officer” or “legislator”. Court Administrator McLaughlin was (and is currently) an employee of the judicial branch of government, serving under State Supreme Court Chief Justice Mike McGrath.² The definition provided for the term “state agency” under Montana’s Code of Ethics specifically states that “this term does not include the judicial branch”, MCA § 2-2-102(1)(b). In other words, this means that when considering Montana’s Code of Ethics, I cannot legally classify employees of the judicial branch state employees, as that branch of government is specifically and intentionally not identified as a state agency. See also *Sheehy v. Commissioner of Political Practices*, 399 Mont. 26 (2020).

As neither a state officer, legislator, or state employee at the time of the alleged violations, I would not be provided enforcement authority of Montana’s Code of Ethics over Court Administrator McLaughlin. As noted above, my enforcement authority is limited specifically to state officers, legislators, and state employees, which does not include officers or employees of the judicial branch of government. Consequently, this dismisses your complaint pursuant to MCA § 2-2-136(1)(a) and (c). I do not need to make further inquiry of the named parties and I do not need to proceed further to

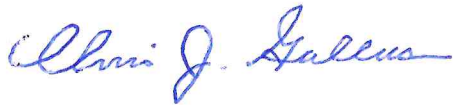
² <https://leg.mt.gov/lfd/appropriation-subcommittee-section-d/agency-judicial-branch/>

apply MCA § 2-2-136(2).

Of note, the 2023 Montana Legislature did pass 2023 MT Laws Ch. No. 440 (SB 252), sponsored by Sen. Greg Hertz, which specifically adds employees of the judicial branch of government to the definition of “public employees” subject to Montana’s Code of Ethics, and provides enforcement for alleged violations committed by officers or employees of the judicial branch to the Commissioner so long as a judicial act is not involved in the complaint. Senate Bill 252 was signed into law by Governor Gianforte and will take effect on October 1, 2023. As noted above, until SB 252’s October 1 effective date, I must conclude that employees of the judicial branch do not fall under my enforcement authority as far as Montana’s Code of Ethics is concerned. While future cases filed after October 1, 2023 may require additional analysis, this complaint does not based solely on the statute of limitations issues as previously addressed and MCA § 2-2-136(1)(a).

I did want to provide some analysis with respect to your allegations, but, again, the asserted facts in your case clearly indicate this complaint does not allege any specific violations of Montana’s Code of Ethics under my jurisdiction. Consequently, I am returning it to you.

Regards,

A handwritten signature in blue ink that reads "Chris J. Gallus". The signature is fluid and cursive, with the first name "Chris" and last name "Gallus" clearly legible.

Chris J. Gallus
Commissioner of Political Practices

Cc: Beth McLaughlin, Court Administrator, Montana Supreme Court
Mike McGrath, Chief Justice, Montana Supreme Court