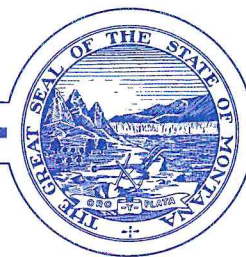


COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

CHRIS J. GALLUS
COMMISSIONER
TELEPHONE (406) 444-2942
FAX (406) 444-1643

1209 EIGHTH AVENUE
PO BOX 202401
HELENA, MONTANA 59620-2401
www.politicalpractices.mt.gov

June 8, 2023

What the Funk 406
Attn. Jasmine Taylor
PO Box 1751
Great Falls, MT 59403

Subject: Dismissal- What the Funk 406 v. Gist, COPP-2023-
CFP-007

Dear Jasmine,

On May 2, 2023, you filed the above-named Campaign Finance and Practices (CFP) complaint on behalf of What the Funk 406 against Steve Gist, current Montana House District 25 Representative. The complaint alleges violation by Rep. Gist of Montana's deceptive election practices under Mont. Code Ann. §13-35-207. On May 9, 2023, I wrote to both you and Representative Gist to explain the procedures with respect to this matter, and to specifically request Representative Gist provide a formal response to the complaint. I then reviewed Rep. Gist's response, applicable law, and prior COPP decisions. In my May 9 letter to you I indicated I would provide a basis for my decision if I determined a dismissal of the complaint was warranted. Since I am dismissing the complaint, the remainder of this correspondence provides you with the basis for this dismissal.

Steve Gist filed as a candidate for election to Montana's House of Representatives, District 25 in January 2022 with both Montana's Secretary of State's office and the COPP, in both cases listing his address as 339 1st St. N, Cascade, MT 59421. Candidate Gist won election to House District 25 in Montana's November 8, 2022 general election, currently serving in that position.

As requested, on May 18, 2023, Rep. Gist provided a formal response to this complaint to COPP via email message. The response included a copy of a Montana Voter Registration Application completed by Rep. Gist in December of 2019 listing his residential and mailing addresses as 339 1st St. N., Cascade, MT 59421. The response also included a document written by Rep. Gist indicating his intention to reside in Cascade County since late 2019/early 2020 because Cascade County is the place he has chosen to remain "when not called elsewhere for labor or other special or temporary purpose." Mont. Code Ann. 1-1-215(1). This is his choice despite the fact his wife resides elsewhere. COPP recognizes a candidate's right to state their intention of residence if there is any conflict between two locations. See *Wilsman v. Lund* (2016)

(citing *Motta v. Laslovich* (2009) and *Clark Advisory Opinion* (2016)); see, also, *Close v. McCrone* (2005).

Pursuant to applicable law, Represent Gist must also support his choice with objective evidence to establish residency. For example, an individual is presumed to reside with their family, but as Mont. Code Ann. § 13-1-112(7), and many COPP residency-related cases show, this is supporting evidence, and not a dispositive factor or element. To this point and others, Representative provided objective evidence of residency in Cascade, including:

- A December 2019 voter registration application completed by Rep. Gist, which provides a “Montana Residence Address” in Cascade and a Whitefish address under the “Previous Registration Information” section. At this point, Rep. Gist established his residency in Cascade County and relinquished his Whitefish, MT residency.
- A history of residing in Cascade County dating back to 1985, which was split for a period, but re-established in late 2019.
- A continued association with Cascade County and its citizens dating back to 1985.
- Ownership of three (3) pieces of property in Cascade that includes the personal residence located at 339 1st St. N. in Cascade dating back to 2008.

The response also indicates that Rep. Gist and his wife “do maintain different home addresses”- he in Cascade, she in Whitefish- and that she, not him, “does the majority of the travelling” between locations. It also indicates that Gist Enterprises, LLC, the wildland fire business owned and operated by Rep. Gist and his wife, operates “out of multiple locations”, including both Cascade and Whitefish, but that its main equipment shop is located in Cascade and that it runs equipment “primarily out of the Great Falls area”, in Cascade County.

Candidate residency, specifically pertaining to Montana’s deceptive election practices statute, has been considered by previous Commissioners. Particularly relevant to this matter are *Motta v. Laslovich* (2009) and *Luckey v. Brown* (2020). In each case, the allegation that a candidate had committed a deceptive election practice as defined under Mont. Code Ann. §13-35-207 was dismissed because the candidate qualified as a resident of the locality in which they had indicated residency on their Statement of Candidate filed with COPP. Each candidate supported expressed intent with objective evidence. Representative Gist has done the same.

The Montana Constitution, in Article V, section 4 establishes that a candidate for the legislature shall be a resident of the state for one year and the county for six months. Mont. Code Ann. § 13-1-112(1) provides that the residence of an individual is where the individual’s habitation is fixed and to which, whenever the individual is

absent, the individual has an intention of returning. The constitution, as implemented by this particular statute, establishes a natural right. Even where a statute is susceptible of two interpretations, one in favor of a natural right and the other against it, the former is adopted. Mont. Code Ann. § 1-2-104.

Consistent with *Laslovich* and *Brown*, Rep. Gist would be considered a resident of Cascade starting in December of 2019. Rep. Gist's response in this matter leaves no doubt that Cascade, not Whitefish, is the place he has chosen to remain "when not called elsewhere for labor or other special or temporary purpose" and that Cascade is the place to which he "returns in seasons of repose", Mont. Code Ann. §1-1-215(1). Rep. Gist has additionally taken actions showing that he has "gained" residence in Cascade, including registering to vote in Cascade County, and "lost" residency in Whitefish, Mont. Code Ann. §1-1-215(3). Representative Gist has chosen a residence, other than where his wife resides, which the laws of Montana (Mont. Code Ann. § 13-1-112(7)) clearly allow him to do. As provided above, this choice is supported by objective evidence that Representative Gist provided in his response. Rep. Gist's continued business and personal ties to Whitefish do not invalidate this chosen residence in Cascade.

Further, for me to make determine that Representative Gist violated Mont. Code Ann. 13-35-207, I must establish evidence that he acted purposely and knowingly because the statute references and is enforced pursuant to penalties provided within Title 45, chapter 7, part 2, which is part of Montana's criminal code. Your complaint does not provide any evidence to suggest that Rep. Gist acted purposely or knowingly in falsely swearing his residency as being in Cascade on the Statement of Candidate filed with COPP. In fact, I must conclude the opposite - Rep. Gist was in fact a resident of Cascade at the time he filed his Statement of Candidate with COPP on January 30, 2022, and truthfully certified this residency on the Statement of Candidate. Your complaint is hereby dismissed.

Each case, statute, and constitutional provision cited above, as well as Rep. Gist's formal response as provided to COPP, is available on our website, politicalpractices.mt.gov.

Regards,



Chris J. Gallus
Commissioner of Political Practices

Cc: Rep. Steve Gist, Montana House District 25