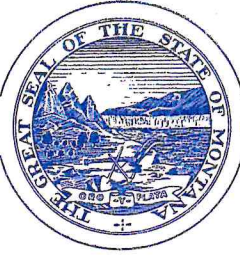


COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

CHRIS J. GALLUS
COMMISSIONER
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August 4, 2023

National Association of Realtors Fund
Attn: John Pierpoint and Jon Waclawski
500 New Jersey Ave NW
Washington DC 20001
Via email: jwaclawski@realtors.org

Subject: Complaint received July 27, 2023; Pearson v. National Association of Realtors Fund et al, COPP-2023-CFP-011

Dear John and Jon;

The enclosed complaint alleges a violation of Montana election law under Title 13, Chapter 37 of the Montana Code Annotated (hereafter, referred to as MCA), enforcement of which falls under my jurisdiction as Commissioner of Political Practices. The complaint also conforms to the requirements of 44.11.106 ARM, the administrative rule regarding election complaints. For those reasons, I have accepted it for further consideration.

Pursuant to MCA §13-37-132, I formally request a written response from you addressing the specific issues identified in this complaint. As part of this response, I request you review the complaint and respond to matters that pertain to you.

Please provide your response by 5:00 PM on Monday August 14, 2023. The response you provide is a public record that COPP posts on our website, per MCA §13-37-132.

I will review any additional materials relevant to this complaint for any deficiencies pursuant to 44.11.106 ARM, law, and prior relevant COPP rulings, and reserve the right to dismiss the complaint upon this initial inquiry. If this occurs, I will notify you and provide a basis for the dismissal. Alternatively, upon this further review, I may determine that a formal investigation is warranted. If an investigation is conducted, a summary of facts and statement of findings will be prepared, and a copy will be sent to you. This generally forms the basis as to whether the matter is going to be pursued further, which then involves referring the matter to the local county attorney.

This letter initiates the legal process established by this office and Montana law to determine whether the allegations in the complaint are valid. Consequently, at this point, all parties have a duty to maintain all records currently in your possession should my initial review result in an investigation.

While I do not anticipate that you would intentionally destroy any relevant records, due to the severity of the penalty I feel compelled to provide you with the relevant statute in this regard. See, Attached MCA §45-7-207 (Tampering with or fabricating physical evidence). Accordingly, MCA §13-37-111 authorizes the Commissioner to inspect records, accounts, and books held by a candidate or political committee, administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers and records that are relevant or material for the purpose of conducting an investigation.

To facilitate such an investigation, please take immediate steps to retain all such records, and begin collecting and preparing records for review. This includes documents, including computer communications (e.g. email), in your possession or the possession of any of your agents, representatives, or assigns. Communications with attorneys should be retained even these records might need to be produced if attorney/client privilege is not involved. As indicated, your preservation of all such documents is essential and required pursuant to this request and subject to penalties provided in MCA §45-7-207.

I do want to disclose to you and the other parties that I previously provided legal advice to a person named in the complaint. The issues involved in that prior representation are unrelated and not substantially or reasonably related to issues contained in the current complaint. Representation involved compliance with ARM 44.11.305 (Nonresident and Federally Filing Committees), and review of proposed disclaimers for compliance with MCA § 13-35-225.

Due to this prior representation, I reviewed MCA § 13-37-111 with respect to recusal. I also reviewed prior decisions COPP decisions and a Montana Supreme Court opinion with respect to recusal and discretionary authority. See Ponte v. Gallik, COPP 2014-CFP-009, Greenwood v. MSWD, COPP-2014-CFP-063, Maxwell v. York, COPP 2015-CFP-019, and Tschida v. Bullock and O'Leary, COPP-2016-ETH-005, as well as the Montana Supreme Court's opinion in Powell v. Motl, OP-14-0711.

Based upon my review, I note that previous commissioners rely upon unnecessary delay and costs to a small agency, like COPP, to establish a preference to resolve complaints within the agency without relying on the need for appointing outside counsel. Applying discretion in MCA 13-37-111(3) and Powell, and relying on Maxwell, I concur with the conclusion that appearance of impropriety must meet a "very high bar." This bar has not been met. There is no actual conflict of interest because the issues are not similar, there is no present relationship, and the prior representation ended. In fact, the private practices client no longer follows the original advice provided in 2012. Consequently, mandatory or discretionary recusal is not required, and I have already made my decision not to recuse.

I appreciate your time and consideration of this important matter.

Regards,



Chris J. Gallus

Commissioner of Political Practices