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**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

DEPARTMENT OF FISH, WILDLIFE  
AND PARKS,

Petitioner,

v.

TRAP FREE MONTANA PUBLIC  
LANDS,

Respondent.

Cause No. BDV-2016-1058

**ORDER ON  
PETITION FOR JUDICIAL  
REVIEW**

Before the Court is Petitioner Department of Fish, Wildlife and Parks' (FWP) petition for judicial review of the Office of the Commissioner of Political Practices' (COPP) decision COPP-2014-ETH-5, opposed by Respondent Trap Free Montana Public Lands (Trap Free). The petition is fully briefed and no party requested oral argument.

**BACKGROUND**

FWP acquired a trailer and displays of taxidermized furbearing animals sometime in the 1990s. The trailer is emblazoned with FWP's logo. For several

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1 years, the Montana Trappers' Association (MTA) used the trailer and displays in  
2 outreach and education efforts.

3 In 2014, Trap Free was advocating for citizen initiative I-169, which would  
4 have prohibited trapping of wildlife on public land. At the time of the alleged  
5 violations, I-169 had not yet qualified for the ballot and was in the signature  
6 gathering stage.

7 On May 31, 2014, MTA used the FWP displays at an event organized to  
8 oppose I-169. On June 14, 2014, MTA vice president Jason Maxwell and other  
9 MTA members set up a booth at the Hamilton farmers' market. The booth  
10 included both the furbearer displays and a banner reading, "Vote No on I-169."  
11 There are no findings of fact or evidence in the administrative record that FWP  
12 employees used or authorized MTA to use the displays to advocate against I-169.

13 On June 16 or 17, 2014, FWP furbearer coordinator Brian Giddings received  
14 complaints about MTA's use of FWP equipment to oppose I-169. On June 17,  
15 2014, Giddings informed FWP agency legal counsel Aimee Hawkaluk about the  
16 complaints. Hawkaluk advised Giddings that "he, or someone within the  
17 Department [FWP] should call the Montana Trappers Association to reinforce  
18 that all their activities related to the ballot initiative should be kept completely  
19 separate from the use of our trailer and other FWP materials."

20 That same day, FWP communications/educator division administrator Ron  
21 Aasheim informed FWP chief legal counsel Rebecca Dockter of the complaints  
22 and stated that MTA "should not be allowed to continue the use of the equipment  
23 in any way connected with their initiative advocacy." Aasheim emailed MTA  
24 president Toby Walrath, who responded on June 17, 2014, that combining the  
25

1 efforts of their education and outreach organizations was a poor decision and that  
2 “[t]his will not happen again.”

3 In July 2014, Trap Free filed a complaint with COPP against FWP alleging  
4 violations of the Ethics Code, specifically Mont. Code Ann. § 2-2-121(3), which  
5 provides that “a public officer or public employee may not use public time,  
6 facilities, equipment, supplies, personnel, or funds to solicit support for or  
7 opposition to ... the passage of a ballot issue.”

8 Both FWP and the hearing examiner’s decision state that FWP filed an  
9 answer to the complaint and objection with COPP on September 2, 2014, in  
10 which FWP sought dismissal of the complaint arguing no allegation was made  
11 that any FWP employee used public resources to oppose I-169. Inexplicably, this  
12 document was not entered into COPP’s docket of this case until October 24,  
13 2016, over two years after the document was filed.

14 On June 9, 2016, the Commissioner entered an acceptance of the complaint  
15 and appointed a hearing officer. In the acceptance, the Commissioner  
16 determined:

17 [T]he complaint alleges the following facts and issues  
18 supporting potential violations of the Code of Ethics:

19 A) Whether a Montana Fish Wildlife and Parks public  
20 employee or officer knew, or reasonably should have  
21 known that Jason Maxwell was a vice president of the  
22 Montana Trappers Association, a group who was actively  
23 advocating against passage of ballot initiatives I-167 and  
I-169 in 2013 and 2014.

24 B) Whether Montana Fish Wildlife and Parks public  
25 employee or officer knew or reasonably should have  
known that providing temporary possession of state



1 equipment to a private individual or group could lead to  
2 use of state equipment for advocacy purposes, Mont.  
3 Code Ann § 2-2-121(3).

4 C) Whether a Montana Fish Wildlife and Parks public  
5 employee or officer took appropriate steps to prevent the  
6 use of “public time, facilities, equipment, supplies,  
7 personnel or funds” for ballot issue advocacy purposes,  
8 Mont Code Ann. § 2-2-121(3).

9 On October 21, 2016, a full-day evidentiary hearing was held before a  
10 hearing officer. On the same day, the hearing officer issued an order for  
11 additional legal briefing on FWP’s combined September 2, 2014 answer and  
12 objection, which stated:

13 When researching FWP’s objection to the  
14 Commissioner’s legal standard, the Hearing Examiner  
15 found Mont. Code Ann. § 87-1-204, which addresses  
16 FWP employee political activity. There has been at least  
17 one case interpreting the statute, *Montana Shooting  
18 Sports [sic] Association, Inc. v. Mont. Dept. of Fish,  
19 Wildlife and Parks*, 2008 MT 190, 344 Mont. 1, 185 P.3d  
20 1003.

21 The order requested briefing on “how the Hearings Examiner should  
22 harmonize and give effect to the provisions of Mont. Code Ann. §§ 87-1-204,  
23 2-2-121, and 13-35-226(4), all of which relate to public employee activity.”

24 FWP’s brief argued that COPP misunderstood its objection, clarifying that  
25 FWP has never challenged which statute was applied but rather that the statute  
was rewritten in the form of COPP’s restated “issues.” FWP further argued that  
post-hearing notice of possible violations under different statutes would violate  
defendants’ due process rights. Trap Free argued that all of the statutes should be

1 applied because the legislature intended for those statutes to limit political  
2 activity of state employees.

3 On November 22, 2016, the hearing examiner's decision provided that "[t]he  
4 Commissioner overruled that objection by issuing his Acceptance of Complaint  
5 and Appointment of Hearings Examiner on June 9, 2016." However, the June 9,  
6 2016 acceptance neither considers the substantive arguments in FWP's response  
7 nor even mentions that FWP requested dismissal.

8 On November 22, 2016, COPP issued both the hearing officer's proposed  
9 order and the Commissioner's final agency decision adopting the hearing  
10 officer's order.

11 The decision contains numerous findings of fact, and five  
12 conclusions of law:

13 1. "Public officers and employees have a duty to take  
14 reasonable steps to prevent the private use of public time,  
15 property and resources for political advocacy purposes as  
16 provided by Mont. Code Ann. § [2-2-121(3)]."<sup>1</sup>

17 2. "State agencies must provide and maintain a  
18 written current contractual agreement and policy  
19 regulating the private use of state property in order to  
20 comply with the Code of Ethics, Mont. Code Ann. § [2-  
21 2-121(3)]."<sup>2</sup>

22 3. "FWP knew that Jason Maxwell was a vice  
23 president of Montana Trapper's Association, a group  
24 actively advocating against passage of ballot initiatives I-  
25 167 and I-169 in 2013 and 2014."

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<sup>1</sup> COPP presumably intended to cite Mont. Code Ann. § 2-2-121(3), and not Mont. Code Ann. § 2-2-136(3) which concerns the process of enforcement and contains no prohibitions at issue in this case.

<sup>2</sup> See footnote 1.

1 4. “FWP employees or officers knew or reasonably  
2 should have known that providing temporary possession  
3 of state equipment to a private individual or group could  
4 lead to use of state equipment for advocacy purposes.”

5 5. “FWP employees or officers did not take  
6 appropriate steps to prevent the private use of ‘public  
7 time, facilities, equipment, supplies, personnel or funds’  
8 for ballot issue advocacy purposes, Mont. Code Ann. § 2-  
9 2-121(3).”

10 The adopted hearing officer’s decision found “FWP as an agency”  
11 responsible for violating the “issues” outlined in the Commissioner’s acceptance  
12 letter.

### 13 ANALYSIS

14 FWP argues COPP erred by (1) ignoring the plain language of the statute,  
15 (2) imposing a new, non-statutory duty, and (3) finding a violation without  
16 supporting evidence. Trap Free counters that COPP correctly interpreted the  
17 statute and applied it reasonably.

18 Montana Code Annotated § 2-4-704 governs the standard for petitions for  
19 judicial review of final agency decisions:

20 The court may not substitute its judgment for that of the  
21 agency as to the weight of the evidence on questions of  
22 fact. The court may affirm the decision of the agency or  
23 remand the case for further proceedings. The court may  
24 reverse or modify the decision if substantial rights of the  
25 appellant have been prejudiced because:

(a) the administrative findings, inferences,  
conclusions, or decisions are:

- 1 (i) in violation of constitutional or statutory  
2 provisions;  
3 (ii) in excess of the statutory authority of the  
4 agency;  
5 (iii) made upon unlawful procedure;  
6 (iv) affected by other error of law;  
7 (v) clearly erroneous in view of the reliable,  
8 probative, and substantial evidence on the whole record;  
9 (vi) arbitrary or capricious or characterized  
10 by abuse of discretion or clearly unwarranted exercise of  
11 discretion; or  
12 (b) findings of fact, upon issues essential to the  
13 decision, were not made although requested.

14 Mont. Code Ann. § 2-4-704.

15 “[A]n agency’s findings of fact are subject to a ‘clearly erroneous’ standard  
16 while an agency’s conclusions of law are subject to the broader ‘correct  
17 interpretation’ standard.” *United Grain Corp. v. Dep’t of Revenue*, 248 Mont.  
18 297, 300, 811 P.2d 555, 557 (1991).

19 **1. Ethics Statue — Mont. Code Ann. § 2-2-121(3)**

20 FWP argues COPP ignored the plain language of Montana Code Annotated  
21 § 2-2-121(3), which prohibits political use by a state employee. Trap Free  
22 counters that “COPP’s interpretation of Section 2-2-121(3), MCA, is correct  
23 because it further the legislative scheme in Title 2, chapter 2, MCA, and Article  
24 XIII, section 4, of the Montana Constitution.”  
25

1 The statute in question states “a **public officer or public employee may not**  
2 **use** public time, facilities, equipment, supplies, personnel, or funds to solicit  
3 support for or opposition to ... the passage of a ballot issue...” Mont. Code  
4 Ann. § 2-2-121(3) (2013) (emphasis added).

5 The standard from COPP’s acceptance, applied unquestioningly by the  
6 hearing officer follows:

7 A) Whether a Montana Fish Wildlife and Parks public  
8 employee or officer **knew, or reasonably should have**  
9 **known** that Jason Maxwell was a vice president of the  
10 Montana Trappers Association, a group who was actively  
11 advocating against passage of ballot initiatives I-167 and  
12 I-169 in 2013 and 2014.

13 B) Whether Montana Fish Wildlife and Parks public  
14 employee or officer **knew or reasonably should have**  
15 **known** that providing temporary possession of state  
16 equipment to a private individual or group could lead to  
17 use of state equipment for advocacy purposes, Mont.  
18 Code Ann. § 2-2-121(3).

19 C) Whether a Montana Fish Wildlife and Parks public  
20 employee or officer **took appropriate steps to prevent**  
21 **the use** of “public time, facilities, equipment, supplies,  
22 personnel or funds” for ballot issue advocacy purposes,  
23 Mont. Code Ann. § 2-2-121(3).

24 (emphasis added)

25 “In the construction of a statute, the office of the judge is simply to ascertain  
and declare what is in terms or in substance contained therein, not to insert what  
has been omitted or to omit what has been inserted.” Mont. Code Ann. § 1-2-  
101. “It is not [a court’s] prerogative to read into a statute what is not there.”



1 *Bates v. Neva*, 2014 MT 336, ¶ 13, 377 Mont. 350, 339 P.3d 1265. “[A] court  
2 may not create an ambiguity where none exists, [or] ignor[e] clear and  
3 unambiguous language to accomplish a ‘good purpose.’” *Heggem v. Capitol*  
4 *Indem. Corp.*, 2007 MT 74, ¶ 22, 336 Mont. 429, 154 P.3d 1189.

5 COPP’s departure from the plain language of the statute is clear,  
6 conspicuous, and brazen. The statute prohibits use by a state employee (“public  
7 employee may not use ...”). COPP’s standard requires only that the public  
8 employee knew or should have known about future use by a third party. The  
9 statute is concerned with a state employees actions (“use”). COPP’s standard  
10 applies liability for a mental state (“knew or reasonably should have known”) and  
11 failure to prevent use by third parties (“took appropriate steps to prevent the  
12 use”).

13 COPP ignored the plain language of the statute. COPP inserted into statute  
14 that which was omitted by the legislature: liability for failure to prevent use.  
15 COPP also omitted from statute that which inserted by the legislature: requiring  
16 actual use by a state employee and not a third party.

17 A review of the statute confirms this conclusion, because “[t]he expression  
18 of one thing in a statute implies the exclusion of another.” *Bresnan Communs.,*  
19 *LLC v. State Dep’t of Revenue*, 2013 MT 357, ¶ 41, 373 Mont. 29, 315 P.3d 921.  
20 Subsection 4 of the statute states that the more specific group of candidates and  
21 state officers “may not use or permit the use” of state resources. Subsection 6,  
22 which applies to the broader group of public officers and employees, states that  
23 they “may not engage in any activity” related to extra-governmental  
24 organizations while performing job duties. Within the same statute the  
25 legislature applied different scopes of prohibition on different individuals and

1 activities. In subsection 3 at issue here, the legislature did not apply a prohibition  
2 on permitting use, failing to prevent use, or failing to foresee improper use by a  
3 third party. Trap Free’s own quote from the Ethics Code’s statement of purpose  
4 alludes to these purposeful distinctions:

5           This code recognizes distinctions between legislators,  
6           other officers and employees of state government, and  
7           officers and employees of local government and  
8           prescribes some standards of conduct common to all  
9           categories and some standards of conduct adapted to each  
10          category. The provisions of this part recognize that some  
11          actions are conflicts per se between public duty and  
12          private interest while other actions may or may not pose  
13          such conflicts depending upon the surrounding  
14          circumstances.

15 Mont. Code Ann. § 2-2-101 (2013).

16           The plain language of the statute, not legislative intent or harmonization, is  
17           the paramount consideration in statutory interpretation. That language, from  
18           which COPP had no reason to deviate, does not prohibit allowing use, causing  
19           use, or failing to prevent use. It prohibits use by state employees.

20           An adjudicative body’s interpretive charge is not to refashion statutes in  
21           service of a divined legislative intent. The legislature’s intent is “crystallized in  
22           the statute’s plain language.” *Bates v. Neva*, 2014 MT 336, ¶ 13, 377 Mont. 350,  
23           339 P.3d 1265. COPP ignored that plain language.

24           “‘Law’ is a solemn expression of the will of the supreme power of the state.”  
25           Mont. Code Ann. § 1-1-101 (2013). “The will of the supreme power is expressed  
          by: (1) the constitution; (2) statutes.” Mont. Code Ann. § 1-1-102 (2013).

1 “The power of the government of this state is divided into three distinct  
2 branches—legislative, executive, and judicial. No person or persons charged  
3 with the exercise of power properly belonging to one branch shall exercise any  
4 power properly belonging to either of the others, except as in this constitution  
5 expressly directed or permitted.” Mont. Const. Art. III, § 1. “The legislative  
6 power is vested in a legislature...” Mont. Code Ann. Art V, § 1.

7 COPP ignored the most important part of the statute, the words, in favor of  
8 its own extra-legislative “issues.” In doing so, COPP has broached the most  
9 fundamental of American and Montana constitutional principles: the separation  
10 of powers. By substituting its words for those of the legislature, COPP has  
11 improperly exercised legislative power constitutionally reserved to the Montana  
12 Legislature. It is the role of neither COPP nor this Court to promulgate new laws  
13 through interpretative legerdemain.

14 COPP’s substitution of its own legal standard for that of the statute  
15 prejudiced the substantial rights of FWP because the final decision is in violation  
16 of constitutional provisions, in excess of the statutory authority of COPP,  
17 arbitrary, and capricious.

## 18 **2. Contract Requirement**

19 Conclusion of law 2 of reads: “State agencies must provide and maintain a  
20 written current contractual agreement and policy regulating the private use of  
21 state property in order to comply with the Code of Ethics, Mont. Code Ann.  
22 § 2-2-136.”

23 FWP argues that COPP improperly exceeded its authority and abused its  
24 discretion by imposing “a new, non-statutory standard of conduct for public  
25 employees requiring a contract for all third-party use of state equipment or face a

1 *per se* violation of the state ethics code.” Trap Free makes no effort to defend  
2 COPP’s contract requirement, but simply recites COPP’s conclusion that a  
3 contract is required.

4 The Court finds no support in statute or administrative rules for COPP’s  
5 contract requirement. Instead, the hearing officer synthesized such a requirement  
6 by analogy from an Attorney General opinion: 46 Op. Atty. Gen. Mont. No. 10.  
7 There, a county attorney inquired about the legality of informal arrangements  
8 allowing part-time county attorneys to use county-provided office space for both  
9 official duties and the private practice of law. Under the statute, part-time county  
10 attorneys are allowed to engage in private practice in addition to their official  
11 duties, but use of an official office for private practice would violate the ethics  
12 code. However, if the parties enter a lease for some fraction of the space, the  
13 attorney can engage in private practice without using public property. The  
14 decision’s conclusion that a written agreement is required relies on Mont. Code  
15 Ann. § 7-8-2112, which mandates that counties must “execute a written  
16 agreement” for the loan or lease of county property. 46 Op. Atty. Gen. Mont.  
17 No. 10., § 2. Indeed, the legislature’s decision to apply this contract requirement  
18 to county but not state agencies and employees runs against the conclusion  
19 reached by COPP. *Bresnan Communs., LLC v. State Dep’t of Revenue*, 2013 MT  
20 357, ¶ 41, 373 Mont. 29, 315 P.3d 921 (“The expression of one thing in a statute  
21 implies the exclusion of another.”).

22 COPP’s conclusion that a contract was required “in order to comply with the  
23 Code of Ethics” is supported neither in Montana’s legislatively enacted Code of  
24 Ethics, nor in 46 Op. Atty Gen. Mont. No. 10, which is in any event is entirely  
25 inapplicable to this case.



1           Moreover, COPP conjured up this contract requirement not only for this  
2 case, but also purports to require it for all state agencies. However, COPP is not  
3 authorized to promulgate new duties under the Ethics Code. “The power of the  
4 government of this state is divided into three distinct branches—legislative,  
5 executive, and judicial. No person or persons charged with the exercise of power  
6 properly belonging to one branch shall exercise any power properly belonging to  
7 either of the others, except as in this constitution expressly directed or  
8 permitted.” Mont. Const. Art. III, § 1. “The legislative power is vested in a  
9 legislature....” Mont. Const. Art. V, § 1.

10           “The Office of the Commissioner of Political Practices is an administrative  
11 agency.” *Molnar v. Fox*, 2013 MT 132, ¶ 1, 370 Mont. 238, 301 P.3d 824.  
12 “Administrative agencies may only exercise the powers conferred upon them by  
13 the Legislature.” *Core-Mark Int’l, Inc. v. Mont. Bd. of Livestock*, 2014 MT 197,  
14 ¶ 45, 376 Mont. 25, 329 P.3d 1278. Although “the commissioner may adopt  
15 rules to carry out the responsibilities and duties assigned by this part,” Mont.  
16 Code Ann. § 2-2-136(6), no such rulemaking has occurred here, and  
17 promulgation of such rules is subject to the strict requirements of the Montana  
18 Administrative Procedures Act, including notice and comment, Mont. Code Ann.  
19 §§ 2-4-301 to -412 (2013).

20           Trap Free notes that “COPP is the state’s gatekeeper when it comes to  
21 **administering** the State Ethics laws...” (emphasis added). COPP is not tasked  
22 with **writing** those laws, which it did here.

23           COPP’s substitution of its own legal standard for that of the statute is in  
24 violation of constitutional or statutory provisions, in excess of the statutory  
25

1 authority of the agency, arbitrary, capricious, an abuse of discretion, and  
2 prejudices the substantial rights of FWP.

### 3 **3. Evidence**

4 FWP argues the decision was clearly erroneous because the no evidence  
5 showed that FWP used the materials to advocate against I-169. Trap Free  
6 counters that FWP's failure "caused public resources to be used for political  
7 advocacy." The passive construction of this contention is telling, and serves but  
8 one purpose, to obscure who actually did the using: MTA.

9 As noted above in section 1, the correct legal standard is in statute: "a public  
10 officer or public employee may not use public time, facilities, equipment,  
11 supplies, personnel, or funds to solicit support for or opposition to ... the passage  
12 of a ballot issue." Mont. Code Ann. § 2-2-121(3) (2013). The statute does not  
13 prohibit causing use, allowing use, or failing to prevent use. It prohibits use.

14 COPP's decision contains no finding of fact that any FWP employee or  
15 officer ever used public time, facilities, equipment, supplies, personnel, or funds  
16 to support or oppose I-169. On the other hand, COPP's decision makes  
17 abundantly clear who actually used public resources, sometimes to oppose I-169:  
18 MTA. (Findings of Fact 3, 5, 7, 9, 10, 12, 17, 39, 42, 43, 44, 45, 46, 48, 50, 51,  
19 52, 54, 59, 61, 66, 71).

20 There can be no violation of Mont. Code Ann. § 2-2-121(3) where there is  
21 no finding that a public officer or public employee used public resources to  
22 oppose I-169.

23 COPP's conclusion that FWP violated Mont. Code Ann. § 2-2-121(3)  
24 was clearly erroneous in view of the reliable, probative, and substantial evidence  
25

1 on the whole record and FWP’s substantial rights have been prejudiced by this  
2 error.

3 **4. Due Process**

4 Finally, the Court is troubled by due process irregularities in this case. FWP  
5 alleges and the Court agrees that COPP erred by ignoring the plain language of  
6 the statute in favor of the Commissioner’s three “issues” in the acceptance.

7 According to both the hearing officer’s decision and FWP’s briefing, FWP filed  
8 an objection to the complaint on September 2, 2014, seeking dismissal of the case  
9 because no allegation was made that improper political use of the material was  
10 done by any FWP public employee, but rather by members of MTA.

11 That objection was absent from COPP’s administrative record for two years.  
12 This is troubling; even informal proceedings under the Montana Administrative  
13 Procedures Act require that the record include “any objections and rulings on the  
14 objections.” Mont. Code Ann. § 2-4-604(2)(c).

15 The hearing officer’s decision begins its “Discussion of Statutes” section  
16 addressing FWP’s argument:

17 FWP argues that harmonizing the statutes is not  
18 necessary because it was not provided with notice of the  
19 need to harmonize statutes. FWP first raised an objection  
20 to the Complaint filed in this matter, stating that under  
21 the statute it was not a FWP employee who used the  
22 equipment, and therefore the complaint should be  
23 dismissed on September 2, 2014. The Commissioner  
24 overruled that objection by issuing his Acceptance of  
25 Complaint and Appointment of Hearing Examiner on  
June 9, 2016.

The Hearing Examiner does not have the ability to  
change the Commissioner’s standard, but does have the

1 ability to recommend a statutory interpretation and legal  
2 determination to the Commissioner.

3 However, the Commissioner's acceptance letter does not address FWP's  
4 objection or even mention that an objection was filed. Moreover, the hearing  
5 officer does not cite a single statute or administrative regulation which would  
6 justify ignoring the brazen substitution of the Commissioner's fabricated "issues"  
7 for the plain language of the statute. The hearing officer is effectively stating that  
8 she has a duty not to interpret the statute itself, but rather to interpret three new  
9 duties the Commissioner invented in violation of Montana's constitutional  
10 separation of powers.

11 But the Commissioner's acceptance letter which the hearing officer's  
12 decision purports "overruled [FWP's] objection" contains no analysis of the  
13 objection or even an acknowledgement that this objection occurred.

14 Odder still, the final recommendation in the hearing officer's order states  
15 that "FWP's objections to harmonizing statutes regarding the same subject matter  
16 are DENIED."

17 In summation, FWP timely filed an answer to the complaint seeking  
18 dismissal, arguing the same points on which they prevail in the petition before  
19 this Court. COPP failed to enter this filing in the record, and two years later  
20 accepted the complaint, ignored FWP's objection, and improperly rewrote Mont.  
21 Code Ann. § 2-2-121(3). The hearing officer then ignored the statute as well,  
22 claiming that the Commissioner's acceptance had overruled FWP's objection,  
23 even though that acceptance not only does not address the substance of the  
24 objection but does not even mention that an objection was made. The hearing  
25 officer then affirmatively denied the objection that the hearing officer said (in the



1 same document) had already been denied by the Commissioner who had not even  
2 acknowledged the existence of the objection. FWP's answer and objection  
3 finally appears in the record on October 24, 2016, more than two years after it  
4 was filed.

5 This is not due process.

6 \*

7 COPP's decision contains five conclusions of law, none of which withstand  
8 even modest scrutiny. Conclusions 3 and 4 are patently findings of fact, not  
9 conclusions of law, in that they concern the question of whether individuals knew  
10 or should have known various facts, which is irrelevant anyway. Conclusions 1,  
11 2, and 5 replace the language of the statute with COPP's improper rewriting of  
12 the statutory standard.

13 FWP's substantial rights were prejudiced by COPP's decision which was in  
14 violation of constitutional provisions; in excess of the statutory authority of  
15 COPP; clearly erroneous in view of the reliable, probative, and substantial  
16 evidence on the whole record; arbitrary; capricious; and an abuse of discretion.

17 COPP's numerous errors and significant overstepping of its constitutionally  
18 circumscribed power is all the more troubling given that COPP never addressed  
19 and appears to have lost from the administrative record for two years the answer  
20 and objection FWP filed arguing precisely the rationale under which this Court  
21 reverses COPP's decision.


22 Parties deserve government agencies cognizant of their constitutional limits,  
23 adherence to the law as written, substantive rulings on their objections, and a  
24 reliable record. COPP failed on all counts.  
25

**ORDER**

1  
2 1. The Department of Fish, Wildlife, and Park’s petition for judicial  
3 review is **GRANTED**.

4 2. The Commissioner of Political Practices’ final order is **REVERSED**.

5 DATED this 26<sup>th</sup> day of August, 2017.

6  
7  
8   
9 MICHAEL F. McMAHON  
District Court Judge

10  
11 C: Zach Zipfel, Agency Legal Counsel, PO Box 200701, Helena, MT 59620  
12 Brian Miller, Esq., 401 North Last Chance Gulch, Helena, MT 59601

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