



COMMISSIONER OF
POLITICAL PRACTICES

STATE OF MONTANA

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October 18, 2022

Dr. Al Olszewski
P.O. Box 8891
Kalispell, MT 597904

Re: *Olszewski v. Gustafson*, COPP-2022-ETH-NAF-008

Dear Mr. Olszewski:

I write in response to the above-referenced complaint lodged with the Office of the Commissioner of Political Practices (COPP) on October 17, 2022. The complaint is returned because it fails to state a potential violation of the Code of Ethics under the Commissioner's jurisdiction, Mont. Code Ann. § 2-2-136(1)(c).

The terms used in the Code of Ethics are specifically limited by the introductory language of "[a]s used in this part, the following definitions apply:", Mont. Code Ann. § 2-2-102. It provides that a "public officer includes any state officer and any elected officer of a local government", *id.* (9)(a). A "state officer includes all elected officers and directors of the executive branch of state government as defined in 2-15-102", *id.* § (12)(emphasis added). A judicial officer is a member of the judicial branch of state government and therefore is excluded from the definition of a "public officer". The Code of Ethics also specifically excludes the judicial branch from the definition of a "state agency", *id.* (11)(b). The COPP must read the Code as a whole, and give meaning to all definitions, *Mont. Shooting Sports Assoc. v. State*, 2008 MT 190, ¶ 11.

Although Judge Gustafson is a 'public officer' under the Montana Recall Act, Mont. Code Ann. § 2-16-603(1), the Code of Ethics provides for a narrower definition of public official that applies to ethical obligations and potential violations. Given the express and plain language of the Code of Ethics, and Order issued by District Judge Rienne McElyea of Gallatin County in the matter of *Monforton v McMahan*, Cause No. DV-22-626B on September 16, 2022, the Commissioner hereby rejects the complaint. As a courtesy, a copy of Judge McElyea's Order is attached.

In general, members of the judicial branch are subject to their own code of ethics ([IN THE SUPREME COURT OF THE STATE OF MONTANA \(mt.gov\)](#)), and complaints are handled by the Judicial Standards Commission ([Judicial Standards Commission \(mt.gov\)](#)).

NOTICE: The Commissioner provides notice to the parties that the summary dismissal is a final agency order, and either party may seek judicial review of the Commissioner's determination pursuant to Montana Code Annotated, Title 2, Chapter 4, Part 7. Mont Code Ann. § 2-2-136(3). The parties are further informed that the Complaint and Dismissal are available for public inspection, Mont. Code Ann. § 2-2-136(4).

Ordered this 18th day of October, 2022.



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