BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES
STATE OF MONTANA

In the Matter of the Complaint of the Montana Democratic Party Against Judy Martz	)))	FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND

On August 30, 2001, the Montana Democratic Party (hereafter referred to as "the Complainant") filed a complaint alleging that Governor Judy Martz (hereafter referred to as "the Respondent") violated certain provisions of the Montana Code of Ethics (hereafter referred to as "the Code" or "the Code of Ethics"), Montana Code Annotated (MCA) §§ 2-2-101, et seq. The Complaint concerns the purchase by the Respondent and her husband of real estate (hereafter referred to as "the property" or "the land") immediately adjacent to their home in Silver Bow, Montana, from Atlantic Richfield Corporation (hereafter referred to as "ARCO").[1] The Respondent and her husband jointly own the property. For simplicity, in this Decision the property will be referred to as belonging to the Respondent.

The Code of Ethics proscribes ethical standards for Montana "public officers." The Respondent currently is Governor of the State of Montana and previously was the Lieutenant Governor. She was elected to both positions. The conduct at issue occurred after the Respondent was elected Lieutenant Governor but before taking office and, thereafter, while she was Lieutenant Governor.

[1] While the record does not indicate the exact status of ARCO, it is fair to say that it is a business enterprise that has a significant presence in Butte and, most importantly for this case, is engaged in an ongoing environmental cleanup of properties in the Butte-Silver Bow area.

II. JURISDICTION

The Montana Commissioner of Political Practices has jurisdiction over alleged violations of the Code of Ethics by public officials. MCA § 2-2-136(1)(a).

III. THE COMPLAINT

The Complaint is divided into two events: (1) the Respondent's 1995 acquisition of an agreement to purchase land from ARCO upon its acquisition of the land from Montana Tech of The University of Montana; and (2) the Respondent's ultimate purchase of the land in 1999. The Complaint alleges that these two events constituted several violations of the Code of Ethics.

A. Section 104 Receipt of a Gift.

The Complaint charges the Respondent violated Section 104 of the Code of Ethics (concerning the receipt of an unlawful gift) when: (1) in 1995 she received ARCO's commitment to sell her 80 acres of land for $300 an acre (the commitment removed the property from the market for a period of more than four years and/or the property was to be sold for less than fair market value);[2] and (2) in 1999 she ultimately

[2] Regarding the acquisition of an option the Complaint generally alleges:

(1) After being elected Lieutenant Governor but before taking office, the Respondent entered into an agreement with ARCO for 80 acres of land at a prescribed price once ARCO gained title to the land. At this time the Respondent was a "public officer" as defined by the Code (public officer includes any "state officer" and "state officer" includes all "elected officers" of the executive branch of the state. MCA §§ 2-2-102(8) and 2-2-102(1)).

(2) The option was an interest in real property as used and defined in MCA § 2-2-102(5) and Administrative Rules of Montana (ARM) § 44.10.621(4) and was not for land to be made a part of her "primary residence."

(3) The Respondent did not give consideration for the "option" and, thus, was in violation of MCA § 2-2-104(1)(b) of the Code which prohibits public officers from accepting a gift or substantial economic benefit tantamount to a gift.

purchased the land for $300 an acre, a price that was less than its fair market value.[3]

B. Section 105 Interest In an Undertaking.

The Complaint also charges the Respondent violated Section 105(2) of the Code of Ethics that prohibits public officers from acquiring "an interest in any business or undertaking that the officer . . . has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken . . ." The Complainant asserts that the purchase agreement and the ultimate purchase of the property constituted an interest in an "undertaking" that the Respondent had reason to believe may be directly and substantially economically benefited by her official action, particularly her decisions regarding the cleanup of the adherent Superfund site. It is undisputed that the purchased property is adherent to a Superfund site that ARCO is in the process of cleaning up, and, as Governor of the State of Montana, the Respondent has significant decision-making authority regarding the cleanup of that site.[4]

C. Section 106 Failure to Disclose.

The Complaint asserts that the Respondent failed to report her interest (the option to purchase and the ultimate purchase) in the property in question to the Commissioner of Political Practices as required by Section 106 of the Code. Section 106 required the Respondent, as an elected official, to file a disclosure statement listing

[3] Regarding the purchase of the land, the Complaint generally alleges: In 1995, after being elected Lieutenant Governor (but before taking office), the Respondent entered into a purchase option agreement with ARCO to purchase 80 acres of land to follow ARCO's acquisition of the land from Montana Tech. In 1997 when the Respondent was Lieutenant Governor, ARCO purchased the land in question, and, in 1999 when the Respondent was Lieutenant Governor and a candidate for the office of Governor, ARCO sold the land to her. The sale price was substantially less than the price ARCO paid for the property. Because the sale price was less than the amount paid, there was an unlawful gift to the Respondent in violation of § 2-2-104 of the Code.

[4] The Complaint generally alleges that the purchase agreement and the ultimate purchase of the land violated § 2-2-105 of the Code, since the value of the land is likely to be affected substantially by Respondent's official actions, particularly her decisions with regard to Superfund status for adjacent properties.

all real property owned by the Respondent, other than a personal residence. MCA § 2-2-106 and ARM § 44.10.621(4).[5]

D. Criminal Violations.

The Complaint asserts that the Respondent's action violated Montana criminal law,[6] and the Commissioner of Political Practices had an obligation under the Code of Ethics to refer the matter for criminal prosecution.

IV. DETERMINATION OF THE MATTER TO THIS POINT

Determination of "Potential Violation"

After review of the Complaint, it was determined that the Complaint presented a "potential violation" of the Code of Ethics. The case was set for hearing, and a hearing officer was appointed.

On December 21, 2001, the Respondent filed a motion to dismiss. The Complainant timely responded, and the Respondent timely replied. On February 19, 2002, a Decision and Order was issued, granting in part and denying in

[5] The Complaint generally alleges that the failure of the Respondent to report this interest in real property was a violation of MCA § 2-2-106 and ARM § 44.10.621(4) (elected officials are required to file a disclosure statement listing each business in which the individual holds an interest and all real property, other than a personal residence).

[6] The Complaint generally alleges that acceptance of the option and the ultimate purchase of the land violated Montana law, MCA § 45-7-104.

part the Respondent's motion.[7] In that Decision the Complaint allegations regarding violations of Montana criminal law were dismissed, concluding that the Code of Ethics provided no jurisdiction regarding the referral of criminal matters under the facts of this case; however, the Decision concluded that the remaining Complaint allegations should be sent for hearing regarding: (1) an unlawful gift; (2) an unlawful undertaking; and (3) a failure to disclose.

On June 17, and 18, 2002, an administrative hearing was held on the Complaint allegations that survived the motion to dismiss. At the hearing, both parties presented evidence and testimony and agreed to file post-hearing briefs. Post-hearing and response briefs were received from the parties and the case is now ready for decision.

V. FINDINGS OF FACT

A. The 80 Acre Purchase from ARCO.

The permanent address of the Respondent and her husband is a house, located on a multi-acre tract of land near the Rocker interchange of Interstates 15 and 90, close to Butte, Montana. This property and the surrounding property are arid and slightly hilly

[7] The Code provides "[t]he commissioner may dismiss a complaint that is frivolous, does not state a potential violation . . ., or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation . . ." MCA § 2-2-136(1)(b). The determination that a complaint presents a "potential violation" (MCA § 2-2-136(c)) is relatively low. The standard is merely to assure that frivolous charges, factual allegations not potentially prohibited or regulated by the Code, or charges so insufficiently supported by allegation as to not state even a "potential" violation are not pursued. A person or entity filing a complaint is not required to fully support the allegations to avoid having his complaint dismissed. The Code does provide that if there is doubt as to the potential merits of the complaint, additional information may be requested from the complainant or the person who is the subject of the complaint. MCA § 2-2-136(1)(a). Except for a situation not applicable here, once a determination is made that a complaint states a "potential" violation, a contested case hearing is held in accordance with the Montana Administrative Procedure Act, and a final decision is based on the record of that hearing. MCA § 2-2-136(1)(c). In this case, it was determined there was sufficient information to determine that "a potential violation" occurred, and the case was set for hearing. The Findings are supported by the Complaint allegations, the material appended to the Complaint, and the records of the office of the Commissioner of Political Practices concerning the content of the Respondent's filings.

and, in part, covered with low arid growing vegetation, including sagebrush. The Respondent and her husband have resided at this address since the 1970s/early 1980s.

The Respondent and her husband had a long-time interest in purchasing property adjacent to their residential holdings that for many years was owned by their neighbor, Thomas "Cush" Helehan, a former miner. The Respondent and her husband had no plans to develop the adjacent property, if acquired, except possibly the construction of a home or two for their adult children.

After Mr. Helehan's death in 1995, the Respondent learned that the land was bequeathed to Montana Tech. In the spring of 1995, the Respondent reinitiated her efforts to purchase the property. She made an inquiry of the Helehan estate's personal representative, Koelhler Stout, through an intermediary, Haley Beaudry. At some point she learned that the beneficiary of the bequest, Montana Tech, intended to transfer the property to ARCO.

The Respondent then sought out Sandy Stash, a vice-president with ARCO.[8] The Respondent recalled three conversations with Stash about the property. At the time of the first discussions, ARCO had not purchased the property from Montana Tech. The Respondent told Stash that if ARCO became the eventual owner of the "Helehan" property, she had an interest in acquiring a portion of the property. Ms. Stash was a member of the Montana Tech Foundation. She was aware that Helehan had left the property to Montana Tech and that Montana Tech had no desire to retain the property but, rather, wanted to sell the property and convert the sales proceeds into funds for

[8] Ms. Stash did not testify at the hearing; however, she was deposed April 4, 2002 at the offices of her counsel in Butte, Montana. At the time of the hearing, she was in Budapest, Hungary; and excerpts of her deposition testimony are accepted pursuant to Rule 804(b)(1), Mont. R. Evid., and the stipulation of each counsel.

scholarships. Ms. Stash also knew that ARCO wanted the “Helehan” property because of its ongoing cleanup efforts in the surrounding area.

Stash told the Respondent that ARCO would be willing to sell a portion of the land it was hoping to acquire from Montana Tech. In either the first or second conversation with Stash, the Respondent asked about a price and was given a figure of $300 per acre. The Respondent accepted the $300 figure but never inquired of Stash how this price had been determined. There is no evidence that either ARCO or Stash asked the Respondent for anything additional in return for purchase of the property. The terms or concepts of “option” and “right of first refusal” were not used.

Ms. Stash testified that she determined the $300 per acre purchase price based on other Company real estate transactions in the area. She testified that the sales prices for these other transactions were in the range of $100 to $150 per acre for one property to around $260 per acre for another. Based on these transactions, Ms. Stash quoted the $300 per acre price to the Respondent.

At sometime subsequent to this oral agreement, the Respondent was concerned that Stash might be transferred from the Butte area and requested of Ms. Stash that their understanding be memorialized in writing. Stash provided a letter dated December 11, 1996 to the Respondent in which she informed the Respondent that ARCO was ‘’currently finalizing a transaction which will secure” all of the Helehan property (about 218 acres) and that it would sell about 80 of those acres to the Respondent at $300 per acre. The letter also informed that the Company expected to be able to sell the land the following year (1997) and that “[a]ppropriate restrictive covenants to allow and consist

(sic) with environmental cleanup will be placed on portions of the land."

ARCO came into actual ownership of the property in July of 1997. ARCO paid more than $70,000 for the property in July of 1997. It conveyed adjoining property to the State of Montana as part of its remediation efforts and received a credit of $500 to $1,250 per acre.

The Respondent and her husband did not actually purchase the property they wanted—approximately 80 acres—until more than two years later, in September 1999.[9] In the fall of 1999, ARCO prepared a 21-page quitclaim deed memorializing the sale. The deed contained a number of covenants and restrictions severely limiting the Respondent's use of the property.[10] ARCO gave a copy of the proposed deed to the Respondent, and she took it to an attorney, principally for a review of the covenants and restrictions. The attorney recommended that the Respondent not purchase the property

[9] As to the reason for the "delay," Stash testified that the company did not want to proceed with the transaction until it had resolved some ongoing environmental litigation with the State of Montana, and that, during the settlement discussions in that matter, the then Attorney General was apprised of the fact that ARCO was to sell a portion of the Helehan property to the Respondent, and he raised no concerns.

[10] The deed from ARCO to the Respondent includes a number of covenants and restrictions. ARCO reserved to itself all water rights, with the exception of underground water. The real estate was divided into two tracts, A and B, for purposes of outlining the various restrictions and covenants. Tract A is subject to ARCO's right to use for various environmental remediation purposes. The Respondent is obliged to undertake various actions with respect to those goals and must bear the expense. Industrial, commercial, residential, and agricultural development on the tract is prohibited; the area is limited to "open space purposes and/or recreational use" associated with a Greenway Belt. Tract B contains similar covenants and restrictions, except that residential and/or agricultural use is permitted under certain conditions. In addition, the Respondent has agreed to indemnify and hold ARCO harmless from a series of acts and events associated with not only the original condition of the land but also remediation efforts that may be undertaken in coming years. In the event the Respondent conveys the land to others, the covenants run with the land and will burden any buyer. Stash testified that the covenants and restrictions were "onerous." She explained that the Respondent has assumed obligations with respect to operations and maintenance for the cleanup of the property. The covenants grant unrestricted access to the property by ARCO and the State of Montana for remediation work. She also explained that ARCO initially did not want any residential development on the property acquired by the Respondent, but the company relented in part when the Respondent agreed to grant full indemnity.

because the restrictions rendered the property "worthless." Despite this assessment, the Respondent and her husband proceeded with the transaction.

At about the same time that the Respondent purchased the property from ARCO, she and her husband purchased approximately 25 acres adjoining their existing property from an individual named Yuhasz. The Respondent paid $20,000, or about $800 per acre for this property. (See Buy-Sell Agreement s/ 5-6-99 by Harry Martz and Summit Valley Title Co. Buyer's Statement s/ 7-16-99 by Harry Martz and Judy Martz.)

The Respondent acknowledged that at some future time a portion of the acquired property might be subdivided for residential use for their adult children. She stated that she and her husband have no intention of selling the property to a third party.

B. The Appraised Value of the 80 Acres Acquired from ARCO.

Neither the Respondent nor ARCO obtained an appraisal of the market value of the subject property prior to its sale and transfer; however, since this complaint filing[11] both parties obtained appraisals through retained experts.

Kraig Kosena, retained by the Complainant, is a State of Montana certified general appraiser and is a member of a national organization, the Appraisal Institute. His office is in Missoula where he is in the business of appraising real estate. His

[11] Some testimony was elicited on another appraisal, the so-called "Knipe Appraisal" commissioned by the Lee Newspaper chain (the report is erroneously referred to as the "Connipe" appraisal in the transcripts). A copy of the report was identified as Exhibit 8 during the hearing. Respondent's counsel objected to testimony concerning the report, principally on hearsay grounds—the authors of the appraisal were not present to testify. The hearing examiner overruled the objection but took account of the fact that the report likely was not offered for the truth of the matters set forth in it. Kosena later testified that the report "meant nothing" to [him] in terms of whether it gave him more comfort concerning his own conclusions. In view of that testimony and the fact that Exhibit 8 was never admitted into evidence, the report is not considered in this Decision. To the extent it would be relied upon for the truth of any matter therein asserted, it would be hearsay; and additionally, because Mr. Kosena did not rely upon it, it has no value in this proceeding.

business is regional, including the Butte area. After being retained, Mr. Kosena traveled to Butte and appraised the subject property. He estimated the market value at the time of purchase (September, 1999) at $37,000, or approximately $13,000 more than the purchase price.

Mr. Kosena used what is known as a "sales comparison approach" to value the subject property. This method uses a study of "comparable sales" of properties. The properties Mr. Kosena used in his analysis are within a few miles of the subject property. None are subject to the same restrictive covenants and restrictions, and there is no indication whether they are environmentally impacted. Mr. Kosena acknowledged that covenants and restrictions on the purchased property have a negative impact on the value of the property, but he did not see the covenants and restrictions imposed by ARCO as having the same negative impact as did the Respondent's appraiser. He testified that his analysis did not carry with it any environmental concerns; and he acknowledged that such concerns, if true, would have a negative impact on value.

The Respondent retained Butte realtor/appraiser Jack McLeod to perform an appraisal of the property. Mr. McLeod has been involved in real estate and appraisal work in the Butte area for over 40 years. Like Kosena, he is a State of Montana certified general appraiser; and he also used a "sales comparison approach" in valuing the ARCO property. The comparable sales data he used differed in part from that used by Kosena. He estimated a market value of the subject property at the time of sale at $14,700, or roughly $9,000 less than the purchase price.

Mr. McLeod chose his comparables based on his long-time familiarity with the

property in question and the Butte real estate market. In selecting comparables, Mr. McLeod acknowledged, as did Mr. Kosena, there were no perfect examples, but that he was able to select several properties and factor in adjustments to develop a valuation. McLeod's analysis assumes that the property the Respondent purchased from ARCO is impaired, both in terms of the restrictions imposed by the seller and environmental contaminates. As to contamination, he testified that the property is close to an old chemical plant previously owned by Stauffer Chemical, that the general area was subject to environmental monitoring many years ago, and there was evidence of contamination of the soils. He stated that such contamination impacts the actual value of the property both in fact and in the perception of a potential buyer.

Both appraisers looked at the Yuhasz property that the Respondent purchased for $20,000 from Dolores Yuhasz in July, 1999. This property included a number of improvements, including a ten foot wide mobile home with a framed addition, electrical power, septic systems, outbuildings, and other improvements. The Respondent currently is allowing the resident of the home to remain on the property for a base rental of $125 per month. The family in the house has three small children, and the Respondent did not want to compel the family to move while the children were still at home. The Respondent testified that she did not consider this property as comparable to the property she purchased from ARCO because of the improvements. The ARCO property contained no improvements.

Mr. Kosena used the Yuhasz property as a comparable sale in his analysis; McLeod did not. McLeod testified that he did not consider it because of the

improvements.

C. The Section 106 Disclosures.

The Respondent filed D-1 Business Disclosure Statements in 1996 with the office of the Commissioner of Political Practices when she was a candidate for Lieutenant Governor and in 2000 during her campaign for Governor. The 1996 D-1 statement provides a section for identification of real property "[o]ther than a personal residence" in which the filer has an interest. In that section the Respondent listed "none." The 2000 D-1 provides a similar section. At the time she completed the 2000 D-1, the Respondent was living in Helena while discharging her duties as Lieutenant Governor. She listed the Helena residence as real property in which she had an interest.

The property she purchased from ARCO is not identified in either disclosure. At the time the Respondent prepared the first disclosure statement, neither she nor ARCO owned the property she ultimately purchased. ARCO purchased the property in 1997, and the transfer to the Respondent occurred in September, 1999, prior to the time she completed the second D-1 disclosure statement. The Respondent testified that, from her perspective, the property purchased from ARCO is indirectly reflected in the 2000 D-1 since that property was then legally a part of her Silver Bow residence and, therefore, was incorporated into her principal residence address there.

VI. CONCLUSIONS OF LAW

Defining Statutory Language and Applying Fact to Law

The Code of Ethics prohibits regulated persons from accepting a gift of substantial value or a substantial economic benefit tantamount to a gift that: (1) would

tend improperly to influence a reasonable person, in that position, to depart from the faithful and impartial discharge of the person's public duties; or (2) where the recipient knows, or a reasonable person in that position should know, that the benefit bestowed is a reward for official action taken. MCA § 2-2-104(1)(b). The Code provides that a "public officer," is a regulated person, and defines a "public officer" as "any state officer . . ." [MCA § 2-2-102(8)], and that a "state officer" includes any "elected officers . . . of the executive branch of state government . . ." MCA § 2-2-102(9).

In the Decision on the Respondent's motion to dismiss, it was determined that the Respondent was, for the purposes of the Code of Ethics, a regulated person at the time in 1995 when she entered into the agreement with ARCO to purchase the land in question and, thereafter, in 1999 when she ultimately purchased the land. At all times critical she was an "elected officer" of the executive branch of state government.

A. <u>An Unlawful Receipt of a Gift.</u>

To constitute a violation of Section 104 regarding the unlawful receipt of a gift, the Complainant must prove[12] that (1) the Respondent received from ARCO a "gift" or an economic benefit tantamount to a gift of "substantial value," and (2) that the gift or economic benefit tantamount to a gift would tend improperly to influence a reasonable Lieutenant Governor to depart from the faithful and impartial discharge of her duties, or that the Respondent knew, or a reasonable Lieutenant Governor should know, that the benefit bestowed was a reward for official action taken.

The first element required proof that ARCO made a gift and that the gift was received by the Respondent. This element focuses primarily on the conduct of the

[12] The Complainant has the burden of proof of establishing its complaint allegations pursuant to the normal burden of proof in a civil case: upon the preponderance of the evidence.

alleged grantor, ARCO: did it make a gift? The second element focuses on the Respondent, or a reasonable person in the Respondent's position. It requires proof that the gift would improperly influence or was a reward for action taken.

To determine whether ARCO made a "gift" requires defining "gift" as it is used in the Code.

1. Defining a Gift.

A regulated gift or economic benefit tantamount to a gift must have a "substantial value." The Code defines the term "substantial value" as $50 or more for an individual. MCA § 2-2-102(3)(a).[13]

The Code does not define the term "gift." An issue here is whether the Respondent received a "gift" or a "benefit tantamount to a gift." The Complainant alleges that the Respondent did not pay fair market value for the property she acquired from ARCO; thus, ARCO bestowed a gift or benefit in the amount of the difference between what she paid for the property and the value of the property. Alternatively, the Respondent alleges that there was no gift or benefit bestowed by ARCO, that she paid the asking price, and that neither she nor ARCO considered the transaction to involve a gift or a benefit tantamount to a gift. To resolve this issue requires defining the statutory term "gift."

In construing the meaning of a statutory term, the intent of the legislature is

[13] Certain items such as food consumed at a community event, an item not used within 30 days delivered to a charity, and an inconsequential award are excluded from the definition. MCA § 2-2-102(3)(b).

controlling.[14] A definition that is consistent with legislative intent is one that is consistent with the purpose of the statute and, where the statute does not address some technical or specialized activity, a definition that conforms to normal usage. To determine the purpose of the Code of Ethics requires an exploration of the statute and its basis.

The 1972 Constitution mandates adoption by the legislature of a Code of Ethics.[15] Unfortunately the transcripts of the debate on that provision of the Constitution shed no light on the issues raised in this proceeding.[16] In accordance with the constitutional mandate, the Montana Legislature has, on several occasions since 1973, attempted to adopt a workable Code. The original ethics law passed in 1977 has been amended several times. The statute invoked by the Complainant here has been the subject of several amendments.

The legislature's statement of purpose for the Code of Ethics is helpful.[17] The purpose of the Code is to prohibit "conflict between public duty and private interest."[18] The Code also instructs that it is to install public trust in public officials and employees and states that "public office or employment is a public trust, created by the confidence the electorate reposes in the integrity of public officers, legislators, and public employees . . ." and these public persons are to carry out their duties "for the benefit of the people of the state." MCA § 2-2-103(1).

---

[14] MCA § 1-2-102; State v. Hubbard, 200 Mont. 106, 110, 649 P2d 1331 (1982).

[15] 1972 Mont. Const., Art. XIII, sec. 4.

[16] Vol. IV, Verbatim Transcript of Convention Proceedings, pp. 793-796.

[17] MCA § 2-2-101.

[18] Id.

In enacting a Code of Ethics that regulates the potential conflict between public duty and private interest, the legislature sought to assure "integrity," "public trust," and the "confidence" of the electorate; and, to that end, the Code directs that public officials and employees work for "the benefit of the people of the state," not their own private interests. In prohibiting public officials and employees from accepting "gifts" that may improperly influence or reward, the legislature intended that the term "gift" be broadly defined to prohibit improper public influence. The legislature sought to assure that gift giving in its broadest sense as a means of buying public "influence" be prohibited.

To assure that the Code not be a vehicle for unnecessary state intrusion into accepted, non-influence buying gift giving, e.g., birthdays, holidays, anniversaries, etc., it provided that token gifts—those with a value of less than $50—be exempt. But what remains clear is that the legislature sought to regulate all types of gratuities, limiting the reach of the Code only as to the amount of the gratuity and not the type; however, determining that the definition of "gift" is to be broadly constituted does not provide a workable definition of what constitutes a gift.

The ordinary and usual meaning of "gift" is something voluntarily transferred by one to another without compensation.[19] Certainly a transfer of a benefit from one person to another, where the recipient produces nothing in return, is a gift; however, the common usage of the term and a meaning consistent with legislative intent is that a gift may also include a transfer where something is given in return, but that the item given in return, or the value of that item, is not sufficient compensation to account for the value

[19] See, e.g., Webster's New Collegiate Dictionary, at 485 (1976); Black's Law Dictionary, 4th Edition (A voluntary conveyance of land, or transfer of goods, from one person to another, made gratuitously, and not upon any consideration of blood or money).

of the item received.[20] Indeed, the Montana Supreme Court has determined that a gift results when something is irrevocably and completely transferred without "full" or "adequate" value received in exchange. *Estate of Perini,* 279 Mont. 85, 926 P 2d 741 (1996).

In the world of politics and the purchase of political influence, it is recognized that persons seeking to gain influence may not only give expecting nothing in return except influence but may also transfer an item of value for an extremely discounted price, i.e., air fare, hotel rooms, works of art, entertainment, etc. The fact that the recipient pays something does not result in the conclusion that there was no gift. Whether there was a gift and the value of the gift may be evidenced by the difference between the value received from the grantor and the value given in exchange.

Accordingly, it is determined that the legislature intended the term "gift" be broadly construed, that it include all types of gratuities, and may be evidenced when value given by the recipient is less than the value received; however, evidence that the value the recipient gave is less than the value the recipient received does not necessarily prove that a gift was made.

2. Proving the Alleged Grantor Made a Gift.

There is incorporated in the American culture the notion of the "good deal" or the "art of the deal." A seller believes she has received "the better of the deal" when the amount received in exchange exceeds the norm or expectation. Likewise, a buyer may

[20] For example, a parent may transfer an item, e.g., a car, computer, bike, etc., to a son or daughter, and the son or daughter may give something in return (i.e., small amount of money). But where the value transferred by the parent exceeds the value received in exchange, that difference in value may evidence a gift from the parent to the child.

"get the better of the deal" if the amount paid is less than the norm or expectation. Getting the "better of the deal" may occur because one party to the deal is more skilled in "'the art of the deal" or because there is ignorance on the part of the seller or buyer regarding the real value of the item in question. Skill in making the deal may certainly influence the ultimate price paid, but the other factor, "ignorance," may have as great, or greater, influence.

If one or both parties are ignorant as to the normal value of an item, the amount paid and or received will not be consistent with that norm. The fact is that purchasers and sellers do not always have equal information as to the "normal" value, (e.g,. car dealers versus car buyers), and often one or both may have little or no information, or inaccurate, incomplete, non-current information, (e.g., heirs liquidating estate property in a "garage" type sale). Consequently, after the sale, it may not be appropriate to conclude that a purchaser received a "gift" merely because the full "normal" price was not paid. The fact that the "normal", "usual," or "appraised" price was not paid is evidence that a "gift" was made but does not necessarily prove the making of a "gift."

The Montana Supreme Court has said that proving that a "gift" has occurred requires three elements: (1) the grantor had "donative intent;" (2) the grantor voluntarily delivered the item; and (3) that the item was accepted by the grantee. *Albinger v. Harris,* 310 Mont. 27, 48 P.3d 711, 718 (2002). In the instant case, there is no dispute that ARCO voluntarily delivered the purchase option and ultimately a deed for the 80 acres to the Respondent and that the Respondent accepted these items. The only issue is whether ARCO intended a gift. Evidence to establish intent may be direct or

circumstantial.

Regarding the allegation of a partial gift, if there is direct evidence that the grantor intended a gift, the analysis need go no further. Thus, evidence that the seller indicated that the full price was not charged and the difference was a gratuity, establishes that a partial gift was made. Similarly, direct evidence that the buyer believes that the item purchased was in part a gift may establish a partial gift.[21]

The problem with attempting to prove with direct evidence that a gift was made is that such evidence often will not be present. Direct evidence that the grantor/seller intended a partial gift or the donor knew that such a gift was made seldom will be discovered. Those who improperly seek to influence public officials or employees know that such gifts are unlawful as do the officials and employees themselves. Consequently, proof of a "gift" will most often have to be established by circumstantial evidence.

In the absence of direct evidence, proving with circumstantial evidence that an alleged grantor/seller made a partial gift usually will require the moving party to demonstrate that the grantor/seller had a "motive" for making a gift and that the motive was acted upon. The inference drawn is that motive plus conduct is circumstantial evidence of intent.

Thus, in a circumstantial evidence case, the starting place in attempting to prove a gift was made is evidence that the grantor/seller had a motive to make a gift. If an

[21] Because the Ethics Code regulates the activities of gift recipients, not donors, direct evidence that the recipient believed a gift was made, may be probative of the fact that the grantor communicated donor intent. Indeed, under the Code, if a recipient public official or employee believes that he received a gift, the inference of unlawful conduct—political influence or reward for past conduct—that underlies the regulation of such gifts is present and, accordingly, may be probative of a "gift."

alleged grantor/seller had no motive for gift giving and the buyer pays substantial value for the item purchased, it is difficult to infer that there was a partial gift, even if the purchase price is less than the appraised value. In a normal sale between two individuals, one of whom is a Montana public official or employee,[22] the fact that the sale was below the appraised value probably would not result in the conclusion that there was a gift. The assumption is that people generally do not make gifts unless they have a motive for doing so. The normal inference from the fact that the buyer paid less than appraised value would be that he got a good deal, not that he received a partial gift. Alternatively, if there is a motive for making a gift and the purchaser paid less than full value, it is much easier to infer that the seller intended a partial gift.

Merely because a seller has a motive for making a gift does not compel a conclusion that a gift was made, even if the sales price was less than full value. Mere motive does not equate to intended conduct. Other factors may have resulted in the low sales price rather than the conclusion that the seller had donor intent, e.g., ignorance of the real value, determining a sales price on factors—previous sales—that don't reflect current value, desire for a quick sale, etc.

3. ARCO's Motive.

The evidence supports the conclusion that ARCO may have had benefactory motive.

ARCO and its predecessors in interest have played and continue to play a significant role in the development of Montana public policy. The evidence demonstrates that ARCO currently is involved with the State of Montana regarding a

[22] A person regulated under the Code of Ethics.

Superfund site adjacent to the subject property. Montana public officials and employees must be particularly vigilant in dealing with those who are motivated to influence public policy. This is particularly true where the job duties of public officials or employees are such that they may provide the assistance sought.

Here the Complainant argues that because ARCO is involved with the State on the Superfund cleanup and because the Respondent, as Governor, has significant authority over the direction of this cleanup, there is evidence that ARCO sold the land to the Respondent at less than its actual value. While ARCO may otherwise have been motivated to influence the Respondent, at the time of the negotiation and ultimate sale of the land to her—she had just been elected Lieutenant Governor when the price was set and was Lieutenant Governor when the sale was made—she had no legal authority over the cleanup. The authority rested with the individual then Governor. While ARCO may have been motivated to make a gift to the Respondent, that motivation would have had to come from other than the allegation that, at the time of the alleged gift, the Respondent had any authority over the Superfund cleanup. There is no evidence that ARCO was motivated to make a gift to the Respondent solely because of her status as Lieutenant Governor; however, because ARCO has ongoing dealings with the State of Montana, it may be inferred that ARCO may have been motivated to make a gift to the Respondent.

4. ARCO's Intent.

Merely because ARCO may have been motivated to make a gift, there is no direct evidence that ARCO intended that its sale of the land to the Respondent was a

partial gift, nor is there direct evidence that the Respondent believed that the sale involved a gift from ARCO. Indeed, the direct evidence would support the conclusion that ARCO did not intend or make a gift.

Sandy Stash, the ARCO employee who quoted the Respondent the $300 per acre price, stated that she determined the $300 figure in the fall of 1995 based on other Company real estate sales of similar property during that time period. That evidence is not rebutted. Given the fact that ARCO was selling similar properties for an amount approximating what it sold the 80 acres to the Respondent supports the conclusion that it did not intend a partial gift to the Respondent. A reasonable inference is that ARCO, not in the business of selling property, was selling unwanted property for what it thought the property was worth.

The Complainant challenges this inference. The Complainant offered uncontradicted evidence that when ARCO purchased the larger Helehan property from Montana Tech, a portion of which it had already contracted to sell to the Respondent, it paid Montana Tech more per acre for the property than the per acre price it agreed to sell the land to the Respondent. The Complainant also presented uncontradicted evidence that ARCO received State of Montana remediation credit from $500 to $1,250 per acre for land adjacent to the property sold to the Respondent for $300 per acre; however, these transactions are not comparable to the ARCO sale to the Respondent.

Ms. Stash stated that ARCO paid Montana Tech a premium for the larger Helehan property because the money was to be used by Montana Tech for scholarships. Additionally, the land ARCO received from Montana Tech was needed by

ARCO for its remediation efforts, and the land did not come heavily encumbered with covenants and restrictions; however, when 80 acres of that land was sold to the Respondent it was heavily encumbered. The encumbrances ARCO placed on the land it sold the Respondent allowed ARCO the full use of the land for remediation purposes. ARCO was able to retain those aspects of the land that it needed and sell the Respondent the remaining aspects that were not needed. The encumbered land the Respondent received from ARCO was not worth as much as the unencumbered land ARCO purchased from Montana Tech.

The fact that the State of Montana credited ARCO more per acre for land than ARCO received for similar land sold to the Respondent is not determinative. First, the Respondent was quoted the $300 price in 1995, and the State did not determine its per acre valuation until substantially later. Second, there is no evidence regarding how the State valued the property for the purpose of determining remediation credits. Absent this information, the value the State placed on the property for remediation credits is not an appropriate benchmark in establishing a price for the 80 acres sold by ARCO to the Respondent.

Next the Complainant sought to prove that the ARCO purchase/sale was, in part, a gift by offering its own appraisal of the property. The Complainant's expert is certainly well qualified and neutral. His business is located in Missoula, and he had no previous relationship with either the Complainant or the Respondent. His valuation of the property was thorough, complete, and developed under The Uniform Standards of Professional Appraisal Practice (hereafter referred to as "USPAP"). He valued the

subject property at the time of the purchase at $37,000, or roughly $13,000 more than the purchase price; that is, approximately $162 an acre more than the purchase price.

The Respondent's expert is a long-time Butte realtor/appraiser. He is qualified, and his valuation was also thorough, complete, and developed under USPAP. He valued the property at $14,700, or about $9,000 less than the purchase price He is intimately knowledgeable about the property in question, had been involved in many real estate transactions in the immediate area, and was also quite knowledgeable of the potential contaminates that might be located on the property. Because of his long-standing presence in the Butte community, he is well acquainted with the Respondent and her family and has transacted business with them. Thus, irrespective of USPAP standards, he might be subject to a charge of being biased in favor of the Respondent; however, even if biased, which is not believed to be the case, his testimony raised several considerations that legitimately address the appraised value of the 80 acres ARCO sold to the Respondent.

In large part the difference between the valuation of the two experts was: (1) that the Complainant's expert included the Yuhasz property as a sales comparable, whereas the Respondent's expert did not; (2) whether the covenants and restrictions that ARCO placed on the 80 acres it sold the Respondent significantly reduced the value of that property; and (3) whether the value of the 80 acre tract was reduced because of preexisting environmental conditions.

The inclusion of the Yuhasz property sale by the Complainant's expert significantly increased his appraised value of the 80 acres in question, whereas, the

exclusion of this property by the Respondent's expert significantly reduced the value of the 80 acres. While the Yuhasz property may properly be used in the appraisal of the 80 acres, several factors must be considered.

The Yuhasz property was more valuable than the 80 acres the Respondent purchased from ARCO.[23] The Yuhasz property had a number of improvements: concrete work, a ten foot wide mobile home with frame addition, a well with submersible pump, sewage disposal, stock water piping, a horse training corral, security lighting, two storage buildings, and apparent weed management. The value of these improvements must be subtracted from the price paid for the property to determine the value of the land if it is to be compared with the unimproved 80 acres the Respondent purchased from ARCO. While the experts differed as to the value of these improvements, the improvements had value; and a fair conclusion is that the seller of the Yuhasz property determined the sales price based on the fact that the property was improved land, a residential rental, and not bare land.

Another difference between the two properties is that the Yuhasz property legally may be subdivided into small tracts; and the 80 acre tract the Respondent purchased from ARCO is much more limited regarding subdivision. Additionally, the Yuhasz property had none of the covenants and restrictions that encumbered the ARCO sale property.

[23] The Respondent's expert testified that because of the improvements on the Yuhasz property, and because it was not subject to severely restrictive covenants, it was worth more than the ARCO purchase property. While, the Complainant's expert testified that the improvements on the Yuhasz property were of "arguable contributory value," and he did not agree with Respondent's expert regarding the severity of covenants and restrictions on the ARCO purchased property, he acknowledged that the improvements were of value, and the restrictive covenants on the ARCO property affected the comparability of the two properties.

Yet another factor that may well have played a role in the higher price of the Yuhasz property is that adjacent landowners often are willing to pay more than market value.[24] Thus, in paying the asking price for the Yuhasz property, the Respondent may have paid more than its fair market value. She certainly paid for an improved property even though for her purposes she would have preferred bare land.

The final potential distinction between the Yuhasz property and the 80 acres ARCO sold to the Respondent is the environmental condition of the ARCO sale property. The Respondent's expert witness concluded that, based on his long-time knowledge of that particular property, it was adversely impacted by airborne particulate from the adjacent, now closed, Stauffer Chemical plant. When challenged as to the scientific basis for his conclusion he cited some early studies. Whether the property is environmentally impacted was not established at the hearing, but the conclusion of the Respondent's expert that the perception in the Butte community is that the ground is contaminated and is a factor that would legitimately reduce the value of the 80 acre tract when compared with the Yuhasz tract and other properties.

If one is to build the foregoing considerations into the appraisal, the Yuhasz property may be compared with the ARCO 80 acre sale. The effect of building these considerations into the appraisal is that the value differential between the two properties is not as great as the Complainant's expert testified.

---

[24] The Complainant's own expert testified that purchasers of adjoining property often pay a premium for that property. That the Respondent may have paid a somewhat higher than market price for the Yuhasz property is confirmed by her testimony. The Respondent testified that she paid the asking price for the Yuhasz property because she and her husband had long wanted to increase the size of their residential property, the Yuhasz property was adjacent to their property, and it was up for sale. The best explanation regarding the Yuhasz property was that the Respondent paid more for the Yuhasz property than for the ARCO property and that, in both instances, she paid the asking price.

Even assuming that the sale price was less than the appraised value, the evidence does not support finding that in 1995, when ARCO agreed to sell the 80 for $300, it intended to make a partial gift or was bestowing a benefit tantamount to a gift; however, assuming that ARCO intended a gift, to find a violation of the Code the Complainant must establish the final element.

B. A Gift That Would Influence or Reward.

Assuming that the ARCO purchase involved a "gift," there is no evidence to support a finding that the gift would, in the language of the Code, tend to improperly influence a reasonable person in the Respondent's position to depart from the faithful and impartial discharge of her public duties, or that the Respondent knew, or that a reasonable person in her position would know, that the "gift" was for rewarding her for official action taken.

The Code of Ethics does not make unlawful the receipt of a "gift" unless the gift buys improper influence or is a reward for prior official acts. In 1995, at the time the sales price was determined, the Respondent had just been elected Lieutenant Governor and had not yet even taken office. Certainly the quoted sales price was not a reward for past official acts. The Respondent had not held elected office until being elected Lieutenant Governor. Regarding the purchase of future political influence, the Complainant notes that currently, as Governor, the Respondent has considerable authority regarding the ARCO Superfund cleanup; however, in 1995 when ARCO quoted its sales price for the 80 acres, the Respondent had nothing to do with the Superfund cleanup. Her duties as Lieutenant Governor did not include this

responsibility. One may speculate that an entity like ARCO would seek support from any number of public officials and that the quoted sales price was established to accomplish this purpose; however, the determination of unlawful conduct is to be based on evidence, or at least reasonable inferences based on evidence. In this case, the evidence does not support the conclusion that, even if ARCO made a partial gift to the Respondent, it bought any improper influence with the Respondent, or that, under the circumstances, its conduct would tend to improperly influence a reasonable Lieutenant Governor. [25]

Accordingly, there is no Section 104 violation.

C. Section 105 Acquisition of an interest in a Business or Undertaking.

The Complainant alleges that the Respondent violated MCA § 2-2-105 (2) that provides that a public officer "may not acquire an interest in any business or undertaking that the officer . . . has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's . . . agency."

First, assuming that the purchase was a "business or undertaking,"[26] the evidence does not support the conclusion that the Respondent's decision to purchase

[25] The Complainant argues that the Respondent attempted to hide the ARCO transaction, and that is evidence that she recognized that the transaction was a gift that, if disclosed, would result in the perception of influence buying. The evidence does not support such a conclusion. Indeed, the only evidence that supports the Complainant's position is that when the Respondent was asked by the press to provide the purchase document regarding her purchase of the 80 acres from ARCO, she delivered the document with the sales price removed. The Respondent testified that she did so, not to hide the transaction, but because she did not think that the price she paid for the property was any business of the press. She also testified that she recognized that, if the press wanted to know the sales price, it could acquire that information from others.

[26] This Code section applies to an acquisition of an interest in any "business or undertaking." While this term must be broadly construed to fulfill the purpose of the Code of Ethics, real estate that adjoins a public official's residence that is purchased to fulfill a long term desire to expanding that

the land, or the purchase itself, was an "undertaking" from which she would benefit based upon some official action she might take. At the time she agreed to make the purchase, she had just been elected Lieutenant Governor, and at the time she made the purchase she was Lieutenant Governor. There is absolutely no evidence that at the time the Respondent agreed to purchase the property, or at the time of her ultimate purchase, she had "reason to believe" the property would be "directly and substantially" economically benefited by any action she might take as Lieutenant Governor.

The Respondent and her husband had for years sought to purchase the property because it was adjacent to their personal residence. For years this was not possible, because the original owner refused to sell. The fact that this property became part of ARCO's holdings was coincidental. The Respondent approached ARCO regarding her interest in the land only after it appeared that ARCO would acquire the property.

The Complainant argues that the Respondent, currently as Governor, has substantial authority over the Superfund cleanup, and the cleanup may directly and substantially affect the 80 acres she purchased in 1999 from ARCO. First, the Code prohibits acquisition of interests when, at the time of the acquisition, the public official has "reason to believe" that the acquisition may be benefited by official action. The Code places the time to assess a potential conflict of interest as the time of the acquisition; thus, the acquisition that the Respondent made while Lieutenant Governor may not be assessed under her current status as Governor. Second, even if this section of the Code is currently applicable, the Complainant's argument is

---

residence, and purchased solely for that purpose (no intent or desire for resale), does not qualify as a "business or undertaking."

speculative. For the Complainant to sustain its argument, it must demonstrate that the events it asserts, while not a certainty, are at least reasonably foreseeable. Smith v. Superior Court[27] ("An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur . . . a mere possibility . . . is not reasonably foreseeable.") The evidence does not support the conclusion that it is reasonably foreseeable that the Respondent will make any decisions regarding the Superfund cleanup that will directly and substantially benefit the 80 acres that she purchased from ARCO.

Consequently, the evidence does not support finding a Section 105 violation.

D Alleged Violations of Section 106 Disclosure.

The Respondent filed D-1 Business Disclosure Statements in 1996 when she was a candidate for Lieutenant Governor and in 2000 during her campaign for Governor. The D-1 statement filed in 1996 contains a section for identification of real property "[o]ther than a personal residence" in which the filer has an interest. The Respondent listed "none" in that section. Her D-1 form filed in 2000 contains a similar section. At the time, she was living in Helena while discharging her duties as Lieutenant Governor. She listed the Helena residence as real property in which she had an interest. The property the Respondent ultimately purchased from ARCO is not specifically identified in either disclosure. In 1996, at the time the Respondent prepared the first disclosure statement, neither she nor ARCO owned the property. Although ARCO became the owner in 1997 and the transfer to the Respondent occurred in September, 1999, prior to the time she completed the second D-1 disclosure, she

[27] 36 Cal. Rptr. 2d 897, 31 Cal. App. 4th 205 (1994)

testified that, from her perspective, the ARCO purchase is indirectly reflected in the D-1 from 2000, since the ARCO property was then legally adjoined to her Silver Bow residence and was, therefore, part of her principal residence address. Moreover, she did not attempt to hide the fact of the purchase.

MCA § 2-2-106(1)(a) provides that each elected official or department director must file a "business disclosure statement" with the office of the Commissioner of Political Practices prior to December 15 of each even-numbered year. Subdivision (b) of that statute makes the same requirement of a candidate for a statewide office. Subsection (2) of the statute defines the requirements of the disclosure statement, including all real property in which the individual holds an interest, "*other than a personal residence.*" (emphasis added.) Real property "may be described by general description."

Requirements of business disclosure have been further defined in rules. Prior to 1997, the relevant regulation was ARM § 44.12.109, which provided for disclosure of certain financial information. The regulation references the statutory provisions of the "lobbyist disclosure initiative" passed by voters in 1980.[28] The regulation requires disclosure of "business interests," defined as interests in a business, firm, corporation or other business or professional entity, the current market value of which is $1,000 or more.[29] The regulation also requires disclosure of " 'property held in anticipation of profit,' including an ownership interest in real property", so long as the current market

[28] MCA §§ 5-7-102 and 5-7-213.

[29] ARM § 44.12.109(1) (1986).

value of the interest is $1,000 or more.[30] Included within the definition is any option to purchase real estate.[31] The regulation goes on to provide that it is not necessary for the disclosing party to list a personal residence.[32] There is no requirement of any valuation for property; however, the disclosing party must identify affected property and the nature of the interest sufficiently so as to not require oral testimony.[33]

The regulation was substantially modified after July 11, 1996, and is now codified at ARM § 44.10.621. The new regulation deletes references to "property held in anticipation of profit" and references the need to disclose real property if the market value exceeds $1,000; however, it is still not necessary under the regulation to disclose ownership of a personal residence.[34] Likewise, there is no requirement for valuation of property that must be disclosed, although, again, the disclosing party is required to identify affected property sufficiently.[35]

The Respondent's 1996 and 2000 disclosure statements are not in violation of either the relevant statutes or regulations in effect.[36]

---

[30] ARM § 44.12.109(3) (1986).

[31] Id.

[32] Id.

[33] Id.

[34] ARM § 44.10.621(4).

[35] ARM § 44.621(4)(b).

[36] The Respondent acknowledged that she did not file a D-1 in 1998. This well may have occurred because the office of the Commissioner of Political Practices failed to send to her the necessary form in 1998, and the office did not follow up with her about the failure to file the form. Complainant has not asserted relief for a *per se* failure to file in 1998; however, nothing in the record indicates that the Respondent intended not to comply with the disclosure requirement. It can be assumed that, even if she did file the disclosure statement, she would not have stated anything differently than that which she reported in 1996.

In 1996, state law and regulation required her to file a disclosure statement. The only real property she was required to disclose by statute was real property other than her personal residence in which she had an interest. At the time she filed her disclosure, she did not have what would be termed a legal interest in the ARCO property; for that matter, neither did ARCO. She certainly would not dispute that she wanted to purchase that property if it came into ARCO's possession; but to a fair reader of the disclosure form D-1 in 1996, or at least one charged with knowledge of the existence of the related statute and regulation, there is nothing in the form or the law that would lead one to believe that they had to disclose the possible future purchase of property that was not even in the future seller's legal possession. Additionally, the Respondent's motive was to purchase real property adjacent to her residence to add to her residence. The transaction was not for business or commercial gain but purely for personal reasons.

Likewise, the Respondent did not submit an improper disclosure in 2000. The statutory requirement to file a disclosure remained the same. The statute and regulation require disclosure of real property other than a residence. In the mind of the Respondent, consistent with her stated purposes, the property acquired from ARCO was intended to become, and by March 2000 had become, a part of her residential holding—nothing more. A fair reading of the 2000 D-1, or at least to one charged with knowledge of the existence of the related statute and regulation, there is nothing in the form or the law that would lead one to believe that a filer had to disclose an addition to their personal residence.

Accordingly, there is no violation of Section 106.

VII. CONCLUSION

The evidence does not support the Complainant's allegations that the Respondent violated the Montana Code of Ethics. Accordingly, the Complaint is dismissed.

MCA § 2-2-136(2) provides that the costs of an ethics complaint proceeding may be assessed against the person bringing the charges if it is determined that a violation did not occur. Such a provision is necessary to deter a citizen from making a frivolous complaint, but it should not be used to deter citizens from making complaints in good faith. This complaint provided a useful opportunity for further clarification of the Code of Ethics. The costs of the proceeding, therefore, will not be assessed against the Complainant.

Dated this ____ day of September, 2002.

_____
Linda L. Vaughey
Commissioner of Political Practices

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of September, 2002, the foregoing Decision of the Commissioner was served on the parties hereto, addressed to the parties as follows:

Hand Delivered
The Honorable Judy Martz
Governor, State of Montana
Capitol Building
Helena, Montana 59620

U.S. Mail, Postage Prepaid
William O. Bronson, PLLC
104 Second Street South, Suite 101
Galleria Building
Great Falls, Montana 59401

Hand Delivered
Montana Democratic Party
Attention: Brad Martin, Executive Director
303 North Ewing
Helena, Montana 59601

Hand Delivered
Peter Michael Meloy
Meloy Law Firm
The Bluestone
80 South Warren
Helena, Montana 59601

_____
Dulcy L. Hubbert
Program Supervisor
Commissioner of Political Practices