

Commissioner of Political Practices
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COMMISSIONER OF
POLITICAL PRACTICES
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MAR 05 2018

Ethics

Complaint Form (10/17)

Person bringing complaint (Complainant):

Type or print in ink all information on this form except for verification signature

Complete Name

Timothy Adams

Complete Mailing Address

6104 E Shadow Dr

Bozeman, MT 59715

Phone Numbers:

Work

406-579-9880

Home

406-219-1441

Person or organization against whom complaint is brought (Respondent):

Complete Name

Montana Board of Regents

Complete Mailing Address

560 N. Park, P.O. Box 203201

Helena, MT 59620-3201

Phone Numbers:

Work

406-449-9124

Home

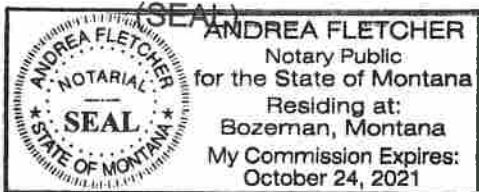
N/A

Please complete the second page of this form
and describe in detail the facts of the alleged violation.

Verification by oath or affirmation

State of Montana, County of Gallatin

I, Timothy Adams, being duly sworn, state that the information in this
Complaint is complete, true, and correct, to the best of my knowledge and belief.



Signature of Complainant

Subscribed and sworn to before me this 5th day of
March, 2018.

Notary Public

My Commission Expires: October 24, 2021

Statement of facts:

Describe in detail the alleged violation(s), including pertinent dates, and cite the statute or statutes you believe have been violated. Please attach copies of documentary evidence to support the facts alleged in your statement.

If the space provided below is insufficient, you may attach additional pages as necessary.

see attached.

Complaints must be:

- signed
- notarized
- delivered to the Commissioner in person or by mail.

Commissioner of Political Practices Jeff Mangan
1209 8th Ave
Helena, MT 59620-2401

March 5, 2018

Timothy Adams
6104 E Shadow Dr
Bozeman, MT 59715

Dear Commissioner Mangan,

I am writing to you to allege violations of state ethic's law by the Montana Board of Regents. I believe this has been done through banking involved Regents' non-disclosure of their business interests during votes of University financial activity, and using time, resources, personnel and position to directly coordinate state resources with a ballot issue committee.

Commissioner's Non-disclosure of Relationships to Corporate Banking Entities

According to M.C.A. 2-2-105 titled "Ethical requirements for public officers and public employees," (2) "a public officer ... may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly or substantially affected to its economic benefit by official action to be taken by the officer's agency." Additionally, (4) states "When a public employee who is a member of a ... board with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the conflict prior to participating in the official action."

Commissioner Robert Nystuen is a Market President for Glacier Bancorp, a financial institution that has banks across the state of Montana. (ie Big Sky Western Bank in Bozeman, First Security Bank in Missoula) As an employee and official with a banking enterprise (Commissioner William Johnstone is also in the banking industry as a President for D.A. Davidson) that has a history of offering and purchasing municipal and public bonds, I believe these officials to have failed in their duties to fully disclose their interests, holdings and compensation in businesses that directly benefit from the

borrowing power of the Montana University System. For example, Montana State University has built three dorms in the past 8 years financed with debt, as well as numerous renovations to facilities and buildings. In voting several times for what totals to be hundreds of millions of dollars in University borrowing, commissioners in the banking industry who work for entities like Glacier Bancorp are able to control the issuance of large scale amounts of public debt from which these corporate banking institutions make millions of dollars in profit. I can find no public documents in my research or requests where any Commissioner, including Nystuen, has disclosed or made known to the public their exact financial interests or their relationships to entities that profit from the issuance or purchase of public bonds. As a potential profiteer for himself and his companies that relies upon the financial solvency of public debt, Regents become financially liable if the University's finances are disturbed in any way, also giving them personal stakes in passage of ballot issues funding the Montana University System.

Commission's Direct Involvement in Ballot Issue Campaign/Collusion/Use of State Resources

In making further allegations I believe it is helpful to provide a short discussion of the specific statute that involves political activities by public officers and employees, as I am alleging these have been violated many times, in a wanton and egregious manner. I want to make special note that the below information is copied directly from a public notice for employees on the Commissioner of Higher Education's own website, so there is no chance these could not be known.

(https://mus.edu/che/directives/PoliticalActivity_PublicEmployees_OfficialInterpretation.pdf)

M.C.A. 2-2-121 states, "public officers and employees may not use public time, facilities, equipment, supplies, personnel or funds to solicit support for or opposition to any political committee, the nomination or election of any personal to public office, or **PASSAGE OF A BALLOT ISSUE**. Violations may result in an administrative penalty of up to \$1000 or disciplinary action."

It is worth noting at this time there are specific individual exceptions to this rule, including discussion of the possible impact of a ballot measure (M.C.A. 2-2-121 3(b)(i)) and that public officers and employees may participate in political activities, but they may not explicitly endorse a side of a ballot issue, and they may not use state time, personnel, resources etc. for anything other than gauging a ballot issue's impact on their work.

It has become apparent to me that instead of treading carefully with a ballot issue that will impact them, the Montana University Board of Regents has fully endorsed this ballot issue and used its time and resources to organize, endorse, fundraise and provide state resources and time to the committee and those involved over a long period of time potentially from December 2016 until the present. For a clear example of this, examine the Board of Regents May 2017 meeting, which is available in entirety online. (<https://www.youtube.com/watch?v=Ti20ut7n2u8>)

From approximately the 29 minute mark to just past the 50 minute mark of this public video, Molly Bell, an employee of Montanans for Higher Education/Montanans for the 6 mill levy gives a presentation on her work on promotion of the passage of the levy, and interacts extensively with the Board during this time. For context, Molly Bell is an employee of Hilltop Public Solutions, a Washington D.C. based consulting firm with offices in Billings. (see attached appendix transcribing public meetings between the Board of Regents and Ms. Bell, an employee of Montanans for the 6 mill)

It should be noted that this presentation is not merely given during public comment period. Bell and her group endorsing the ballot issue are given the same time afforded normal business of the Board of Regents. Statute specifically prohibits using of state time and resources, yet a Board of Regents meeting that is staffed by public employees, using equipment and facilities paid for the public, with public officials who oversee \$500 million a year in state funds and are appointed by the Governor himself seem comfortable giving an employee of a ballot issue political committee exclusive time on their agenda, and Bell even uses “we” throughout the entire presentation and is never corrected, indicating that the Board themselves are in full agreement and participation with the actions and aims of the presenter. State resources are even used to host the slide deck used by the presenter. (<https://mus.edu/board/meetings/2017/May2017/6MillLevy.pdf>)

Next, I'd like to highlight some of the statements made by Bell and the Regents during this meeting to show the improper relationship that has been going on. All time stamps correspond to the above mentioned video title “Montana University System Board of Regents: May 2017 Day Two” hosted on the Office of the Commissioner of Higher Education’s public Youtube page. It is clear from both the meeting and the minutes that Bell is not appearing as a public citizen during the open comment period, and this is confirmed by the minutes of the meeting.

(<https://mus.edu/board/meetings/2017/Sept2017/MayBOR-Minutes.pdf>)

Here is a short list of reasons why I believe that state time is being used unethically, per statute:

- 1) Ms. Bell's invitation and presentation to the committee do not give the impression that she is either a public participant commenting before the board, or as is statutorily allowed, merely giving the impacts of the passing/failure of the ballot issue. The entire tone is warm, cooperative, and it appears that Regents even make suggestions to working with Board of Regents resources and staff cooperatively.
- 2) She is afforded time to encourage participation in the ballot issue campaign. Various Regents even scold and jab each other for their levels of participation in the ballot issue committee outside of the meeting and several conversations are referenced that appear to show involvement in direct support of doing everything possible for the passage of the 6 mill levy. Regents even ask questions such as "Is there anything else we can do?" "Maybe there's an organization that needs to get a presentation." "How much work do we have left to do?" "I think it is incumbent upon the folks on the committee AS WELL AS THE INFORMED GROUP HERE to really be out there and be champions of this." There are several more examples bolded in the attached appendix.
- 3) The discussion is in-depth enough it covers almost every aspect of the campaign. From discussions and pleas for fundraising to discussions of who will be targeted (including specific mentions of how to mobilize the students the Regents oversees via college credit and student government) to messaging that should be included to the launch schedule of the campaign to specific geographic areas that might need more ballot issue committee resources, etc., it is clear that the Regents have overstepped the bounds of merely discussing the impact of the passage/failure of the levy, as is legally allowed. These discussions using public time and resources appear to cover almost every conceivable aspect of running a campaign in full endorsement of its passage.
- 4) There are numerous examples of Regents appearing to attempt influence over stakeholders they have authority over. From mentions of Montana State President Cruzado arranging fundraisers, as well as her then counterpart Sheila Sterns doing the same at University of Montana, to specifically referencing the audience and people required to attend the public meetings, there are several examples of Regents making open pleas for donations to the campaign. Considering their influence as the top officials of a \$500 million Higher Education system, I can't understand why they would feel comfortable making direct pleas to their subordinates for participation to pass a political ballot issue. This behavior has extended to the news media where Regents have made direct pleas to students and staff to make donations and work on passage of the ballot issue.

(https://www.bozemandailychronicle.com/news/montana_state_university/campaign-for-montana-colleges-gets-boost/article_77280b97-fddb-5053-91a3-04f51d7b26ef.html)

Overall, Ms. Bell and her advocacy work on the 6 mill levy ballot committee are framed as working hand in glove with the Board of Regents, including its staff and offices. The public time and resources afforded the meeting are dedicated to discussions of strategy, and mention conversations and work done outside the scope of the meeting where strategies of polling, voter targeting, messaging, fundraising, organizing etc. are conducted with members of the Board and Office of the Commissioner of Higher Education's personnel.

This interaction is clearly not isolated. In fact, Regent Nystuen has been in the news various times promoting the six mill levy ballot issue's passages, even traveling the state with BBER director Patrick Barkey, part of the University of Montana economics program. (I have been told anecdotally by friends in Kalispell that Regent Nystuen does indeed mention and advocate for the 6 mill levy during these BBER presentations, although they are not on video I can find. Here is a news mention of these events. <http://flatheadbeacon.com/2018/02/05/economic-outlook-seminar-explore-future-higher-education-montana/>) I suspect that some of the work directed by Regent Nystuen was done in direct support so that the ballot committee could have further messaging on the possible impacts. This is in line with the CLAIMS by Bell and others that failure to pass the levy would necessitate tuition increases. As members of the Board, all the Regents know that student tuition is only one piece of the puzzle that constitutes their budget, and other sources of revenue and expenditure could certainly be changed in lieu of tuition increases.

Lastly, I'm providing a transcription of the Board of Regents November 2017 meeting to further show the behavior of the Board regarding this issue. Although Ms. Bell is not present, Board time is again used to get updates on the campaign, and provide more encouragement for Board members and attendees to get involved in various capacities. I am providing this information to show this is an ongoing function of the Board over a long period of time, and that the coordination with Ms. Bell in May was not a one-time incident, but shows a pattern of long-term unethical behavior by those on the Board in using state resources, time and personnel to directly support passage of a ballot issue.

In a second Board of Regents meeting in Nov 2017, Regent Nystuen provides further updates of his work with the ballot issue committee to the Board. Video link:

(<https://www.youtube.com/watch?v=LisdeF9Nvdg>) remarks start around 1:54:00 with Commissioner Clayton Christian prefacing remarks by Regent Nystuen describing the Board's work with the 6 mill levy committee being supported by the BBER reports in spring 2018 around the state. (

Commissioner Christian 1:54:48 **"I'd like to ask Regent Nystuen to touch briefly on the 6 mill levy. He's been engaged with that and we'll follow that with a quick mention of some work we'll be doing that I think is kinda consistent with the 6 mill levy effort."** (Work referenced here is BBER presentations the following spring.)

Regent Nystuen 1:55:20 "It's my pleasure to just give you a quick update of what we're about these days with regards to the 6 mill levy."

Nystuen makes a general explanation of the levy.

Nystuen 1:56:48 **"It would be a disaster if that [levy] didn't pass again.** We've had a lot of earnest discussions about about legislative challenges, fiscal challenges and all that. We are at a very important crossroads as we head towards November 2018 for that vote to get behind and do this. **As not a state employee, I have an opportunity, as do you, the Regents, who are not state employees, to get behind this and push this effort to do this.** What I'd like to do is tell you that there is a team that has been assembled from the private sector that is really engaged in helping put together a plan as we move forward here. **We have Strategies 360 that has been engaged to raise the funds then to wage a successful campaign for the 6 mill. I have this morning a number of documents.** (Regent Nystuen displays flyers that explain/support the 6 mill produced by the ballot committee) We should probably hand these out just to give you a frame of reference for what we're about here with regards to the 6 mil campaign as we move forward here. (Nystuen hands promotional documents to his fellow Regents, violating M.C.A. 13-35-226) Here ya go, Paul."

Nystuen 1:57:53 "In a nutshell **what we're about here is to raise the funds to get a successful passage of this and so on. I do want to do a shoutout to President Cruzado who had us here for her Homecoming. We were able to make a presentation to a number of alumni and her team. President Stearns had us at the Griz brunch last Saturday to talk about it and President Cruzado has us again here Saturday to do this.** What I'm calling folks invested that are on campuses and so forth look for an opportunity for us to come visit with you, your team, your alumni, your stakeholders of your campuses to come and spread the word. We need you, we need to be able to talk to students and anybody we can in an effort to get this going. So, **there is opportunities for people to donate to this campaign, we certainly need the endorsements, we've got some pretty exciting news coming around the corner with regard to this effort."**

(Two months after this meeting Regent Nystuen and MEA-MFT union President Eric Feaver announced a \$500,000 donation to the ballot committee, along with a commitment to raise \$1 million more, totaling \$1.5 million in planned spending by the ballot committee.)

Nystuen 1:58:52 “This is all-in for Higher Education in the state of Montana. **I’ve got business cards up here if you’d like to know more about this, feel free to come see me during the break or anytime. Email of course on the website.** Let us know how we can help you help us get the word out about Higher Ed.

Regent Chair Fran Albrecht 1:59:25 “**I just want to thank you and commend you for all the time and resources you’ve invested to this effort. It’s critically important and I really appreciate your efforts. Thank you.**”

Commissioner Christian 1:59:34 “Thank you Madame chair, **I would also like to give thanks to Regent Nystuen for really digging into this effort.**”

Thank you for your time and service,



Timothy Adams

APPENDIX A – Board of Regents May 2017 Day Two Meeting 29 min to 50 min Molly Bell Presentation
Available online at <https://www.youtube.com/watch?v=Ti2Out7n2u8>

Bell 34:50 “Without voter approval, we will see perhaps a 17-18 % tuition increase for students, so it’s really important **we get the word out about the 6 mill levy.**”

Bell 35:03 “Our plans is to engage early, like we’re doing now.”

Bell 35:15 (Bell shows slides detail campaign plans to Board) “We want to build familiarity with this. Make sure that they understand why this is important.”

Bell 35:49 “We are doing other asks and endorsements so **if you have ideas on that please send them my way. How you can help? We are going to be needing help with this. I would love to have your advice, your support. It would be great if you got in touch with me to get more involved in the campaign.**”

Bell 36:16 (Bell highlights the ballot issue committee paid for website and her contact information so the

Commissioners and those viewing the meeting can get involved in the campaign.)

Regent Johnstone 36:29 "First of all, **thank you**. This is a very important topic, but a suggestion I guess. I **think that you should have these materials** (passed out at meeting), **particular with respect to the financial information reviewed by Tyler to make sure that the information in here is correct.** (Tyler Trevor is the Deputy Commissioner for Budget and Planning and Chief of Staff for the Commissioner of Higher Education. The MUS.edu website lists him as having a staff of 11 more employees.) Bell then says "Ok."

Bell 36:55 "Is there anything in particular?"

Johnstone "I just suggest that you have him go through it and make sure information is correct."

Regent Sheehy 37:11 "Some of us are serving on the steering committee, some of us more actively than others. (It appears Sheehy is either jabbing or scolding her fellow Regents here that may not be in the steering committee) **Is there anything else that we can do as Regents to support this effort?"**

Bell 37:22 "I think that is you all have any feedback on who we need to be talking to in your communities, organizations that we need to be working with. You all are out and about in your respective communities... **maybe there's an organization that needs to get a presentation or maybe there's an individual you know that would like to get more involved in the campaign** and so we are really looking for strong community advocates."

Sheehy 38:07 (In referencing the campaign) "**How much work we have left to do?"**

Bell at 38:15 talks about polling specific and work done by the Ballot Issue Political Committee to gauge public support. Bell is not shy in relaying election strategies to the Board.

Bell 38:38 "We need to get the word out and make people realize that is not a new tax. We need to emphasize the fact that it will not only help students but drive economic growth in Montana."

Regent Nystuen 38:58 "I too serve on the 6 mill committee with Martha and Paul."

Regent Nystuen goes on to talk about the "trend lines" for the approval rates of the levy. He indicates it has been going down over time.

Nystuen 39:37 "**The 6 mill has provided us information for which counties in the state typically do not support the 6 mill. I think it's incumbent upon the folks on the committee as well as the informed group here in the audience to really be out there and be champions of this.**"

Nystuen 39:57 "You might think that it's a long ways off ... before we vote on this but now is the time to build a solid foundation for this. You all connect with people in Chambers of Commerce, Rotary Clubs, community groups. **We have to get the word out to them.** What organization isn't looking for a good presentation from time to time? We can customize this so start asking early for an opportunity to do

this. We'll be looking for financial support of this. We have a track record of the past 50 years of organizations that have funded this, including labor industries, labor unions and so forth have been a solid partner in this." (see attached news article "Campaign for Montana colleges get \$500,000 boost" where Nystuen joins public sector union leader Eric Feaver in promoting the 6 mill levy, even going so far as to encourage students and employees to "get their checkbooks out". Also note Regents' use of "we" in describing activities. There is no distinguishing between the Regents as private citizen advocates and Regents, and Board time is used as the forum for these advocacy statements.)

Nystuen 40:47 **"What we really need to do is get financial support, advocacy and a groundswell to continue to support this."**

Nystuen 41:20 "But at some point in time is there a concern about voter fatigue for supporting education in this endeavor here and so what I'd like to think is voters will say we will continue, not build a new tax into our tax bill we receive each November.... **We have to get behind it and support it. Never have any of you hesitate to call me, call Molly, call Martha, call Paul and the other people who are on this task force."**

Regent Tuss 42:05 "Along those lines, Molly, **if members of this board or people in the audience or people listening to this effort. If they wanted to get more involved in this, if they're organization wanted to endorse this, if they wanted to contribute even financially I'm assuming they could get ahead of you, right?"**

Bell 42:25 "Yes. Yes." (Bell again gives contact information for ballot issue committee and again invites participation in the ballot issue committee's work)

Tuss 42:45 "I know that Regent Nystuen and I are serving on the steering committee for this and I'm so pleased that we're starting this early for a lot of reasons Regent Nystuen had mentioned."

Nystuen 43:55 (Here Regent Nystuen attempts to parse exactly what members can and cannot participate in by statute. This indicates they are aware they are already treading on dangerous ground and have possibly received advice. If this is true then they're continued use of public time, resources, staff etc. to coordinate with the ballot issue committee becomes even more egregious on its face.)

Nystuen 44:15 **"Bill and I were just talking about how our organizations would write checks to fund this** and that is typically the thing. But, this is a political ballot issue initiative so Molly and her team will be a resource to make sure we fill out the right forms, the political reporting forms. **I think that's the job of the group. To help make that an easy thing so a check can be written and we can go on record as being an advocate of this.** A quick heads in that area. "

Regent Lozar 44:51 "Thank you Molly for taking on this effort. **Just knowing that the 40,000 students**

are directly or indirectly the beneficiaries of the levy, what are your intentions on engaging them throughout this process? Does knowing that there's 40,000 students and that many of them, the traditional age students, many of them this will be their first ballot to cast a vote on... **I think you've got a body that you can really take advantage of** and really inform and bring them into the fold. So I'd be curious to hear what you're doing with that, **your target market.**"

Bell 45:38 **"We've been working with the student governments to brainstorm ideas on how to engage them.** We obviously beyond asking students to become canvassers and asking them for their vote, and registering students to vote.. **I'm exploring trying to perhaps get college credit for some of the students to help with the campaign.**" (Bell goes on to explain strategies of using students to support the ballot issue committee.)

Bell 46:28 in reference to students "I'm going to be relying on them a lot for social media and spreading the word that way too."

Johnstone 46:36 **"Molly, can you describe the launch schedule for the campaign?** Give us a sense of when it's going to formally launch and what the process will be?"

Bell 46:50 (Bell goes on to describe ballot committee campaign launch plans and strategy to the Board, including fundraising parties with the Governor. She also gives long term plans of the campaign to the Board.)

Johnstone 47:52 "What sort of marketing/voter surveys have you done to understand what questions, what issues will be out there **so we can better understand how to respond?**"

Bell 48:04 (Bell describes purchasing polling space/information to gauge initial support for ballot issue committee to the Board.)

Nystuen 48:52 **"One other thing that campuses can do is President Cruzado at Montana State University and the 6 mill group has already touched and been to your Alumni Foundation board meetings.** That is certainly a venue that we'd encourage again. I think with administrators you have to walk the line here, as far as advocating for this, and Commissioner Christian can walk you through those, but certainly alumni type gatherings, board meetings, and things like that, we'd love to have that audience."

Tuss 49:38 "Molly thank you for being here. This is obviously an important topic to us, and we I can't imagine that we won't all be really engaged in this over the next couple of years and I'm very glad that we're starting this conversation early with the citizens of Montana so thank you for being here."