

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Vick v. Dewey No. COPP 2019-CFP-007	DISMISSAL
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On October 24, 2019, Dempsey Howard Vick, II, a resident of Stevensville, MT, filed a campaign practices complaint against Brandon Dewey, the current Mayor of the Town of Stevensville. The complaint alleges that mayor Dewey improperly utilized public time and facilities to solicit support or opposition for candidates running in the Town of Stevensville’s municipal elections.

SUBSTANTIVE ISSUES ADDRESSED

Alleged use of public resources by an elected public officer serving in a variety of roles in local government.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Brandon Dewey currently serves as the Mayor for the Town of Stevensville, a position he was elected to in 2017. The Town of Stevensville is recognized as an Incorporated Town in the state of Montana, with a local municipal government that includes both the office of Mayor and an elected Town Council. (Commissioner’s Records.)

Finding of Fact No. 2: On November 6, 2019, Mayor Dewey provided to the COPP a response to this Complaint confirming the

Complaint's assertion that he had been provided additional compensation by the Town of Stevensville to fulfill additional administrative or employment duties. Specifically, Mayor Dewey wrote that:

On May 23, 2019 the Stevensville Town Council approved additional compensation of \$25.00 per hour for the Mayor. The compensation was for "administration during the finance officer and town clerk recruitment, hiring and onboarding". This compensation was in addition to the already established monthly compensation of \$833.33 for my position as Mayor, and compensated for an additional workload as the Mayor of Stevensville for 30 hours per week. The additional workload, as Mayor, was the result of multiple vacancies that existed within the executive staff...The additional mayoral compensation was terminated as of September 12, 2019. (Commissioner's Records.)

Finding of Fact No. 3: In a May 23, 2019 Stevensville Town Council meeting, a Motion was made to temporarily "increase the Mayor's compensation \$25 with the absence of the Finance Officer and Town Clerk for the recruitment, hiring and onboarding, not to exceed 30 hrs per week". While the original motion failed on a 2-1 vote, the Council re-voted and passed it upon reconsideration, 2 votes to 1. (Town of Stevensville Online Records.)

Finding of Fact No. 4: In his November 6 response, Mayor Dewey also confirmed the complaint's assertion that he had met with Mr. Vick prior to Stevensville's November 5, 2019 municipal General election, and that he additionally attended a separate meeting with two other individuals, whom he identified as Mr. Mason Buchanan and Mr. Trenis Hindle. "Contrary to the allegations submitted by Mr. Vick" Mayor Dewey wrote, "meetings with candidates or others were always sought out by those individuals, and at no time did I use a meeting in my office to support or dissuade someone from seeking appointment or running" for municipal office in the Town of Stevensville. (Commissioner's Records.)

Finding of Fact No. 5: Dempsey Vick filed a C-1A Statement of Candidate as a candidate for City Council in Stevensville with the COPP on June 18, 2018. On November 14, 2019, the COPP Investigator spoke with Mr. Vick via telephone to clarify certain statements made in the original complaint. During this call, Mr. Vick stated that he recalled having around two or three meetings with Mayor Dewey pertaining to open seats on the Stevensville Town Council. Mr. Vick made it clear that Mayor Dewey spent these meetings actively encouraging him to seek a Town Council seat, by

either running for election to an open seat or seeking appointment to a vacated seat. Mr. Vick stated that each meeting between himself and Mayor Dewey occurred in either late May or early June. (Commissioner's Records.)

Finding of Fact No. 6: Trenis Hindle filed a C-1A Statement of Candidate as a candidate for City Council in Stevensville with the COPP on September 10, 2019. On November 14, 2019, the COPP Investigator spoke with Mr. Hindle via telephone regarding this complaint. Mr. Hindle was able to confirm his attendance at a meeting in City Hall with Mayor Dewey regarding open Town Council positions with Mr. Mason Buchanan but that he, not Mayor Dewey, had requested the meeting. He went on to state that the meeting's primary purpose was to discuss the recently vacated Town Council seats and the process for filling them. Mr. Hindle stated that Mayor Dewey did not encourage or discourage either himself or Mr. Buchanan from seeking appointment to a vacant Town Council seat. While Mr. Hindle stated some discussion was had about the Town Council seat or seats up for election in Stevensville's municipal General election for 2019, the elections were not a primary talking point and Mayor Dewey did not encourage or discourage anyone from running as a candidate for election to the Town Council. Mr. Hindle estimated the meeting had taken place in mid to late July. (Commissioner's Records.)

Finding of Fact No. 7: Mason Buchanan did not run for election as a candidate to the Stevensville Town Council. On November 18, 2019, the COPP Investigator spoke briefly via telephone with Mr. Buchanan regarding this complaint. Mr. Buchanan confirmed that he was in attendance for the meeting with Mayor Dewey in the Mayor's office that Mr. Hindle had already confirmed (see FoF No. 3B), stating it occurred in late July or early August. Mr. Buchanan said that he, not Mayor Dewey, had requested and initiated the meeting. Mr. Buchanan said that he had been encouraged by outside individuals, not including Mayor Dewey, to seek appointment to one of the vacated Stevensville Town Council positions, so he asked Mayor Dewey to meet with him to discuss why the positions had been vacated, what the process was for filling them, and what exactly a job on the Town Council would entail. Mr. Buchanan stated that Mayor Dewey did not encourage or discourage him from seeking appointment to a vacated Town Council seat, nor were the Stevensville municipal elections or the idea of him running as a candidate for an elected Town Council position in Stevensville's municipal General election really even brought up. (Commissioner's Records.)

Finding of Fact No. 8: On November 13, 2019, the COPP Investigator spoke via telephone with Mayor Dewey to clarify certain statements from his November 6 response. During this conversation, Mayor Dewey again confirmed meeting in his office with Mr. Vick sometime in mid to late July, but once again stressed that Mr. Vick was the party who sought out this singular meeting, and that it was held simply to answer questions Mr. Vick had about the vacant Town Council positions. Mayor Dewey stated that he did not encourage or discourage Mr. Vick from running for election to a Town Council position in Stevensville's 2019 municipal General election. Mayor Dewey also confirmed meeting in his office with Mr. Buchanan and Mr. Hindle, saying the meeting was held so that he could answer questions for them about the vacated council seats—specifically the requirements for taking office, the time commitment required to hold office, and other related inquiries regarded to filling them. He again stated that he did not encourage or discourage either individual from running for election to the Town Council in Stevensville's municipal General election.

As part of this November 13 discussion, Mayor Dewey also clarified that the additional compensation of \$25 per hour he received from the Town between the dates of May 23 and September 12 was provided because he was needed to cover for the Finance Officer and Town Clerk duties. Both the Town Finance Officer and Town Clerk positions were vacant at this time, so Mayor Dewey claimed he handled many of their administrative duties such as running payroll or processing claims. These duties, he stated, were simply added to his responsibilities as Mayor during this time period, and neither himself nor the Town Council (who approved the temporary additional compensation) considered Mr. Dewey's handling of the Finance Officer or Town Clerk responsibilities as a separate employment function from his role as Mayor. Both positions were later filled by outside hires, not Mr. Dewey. (Commissioner's Records.)

Finding of Fact No. 9: The Town of Stevensville held its Municipal General Election on November 5, 2019. (Commissioner's Records.)

DISCUSSION

In the complaint, Dempsey Vick alleges that Mayor Dewey improperly utilized public time and resources to support and/or oppose candidates for election in the Town of Stevensville's 2019 municipal elections. Specifically, Mr.

Vick alleges Mayor Dewey violated Mont. Code Ann. §13-35-226(4), which states that:

A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to perform activities properly incidental to another activity required or authorized by law or to express personal political views.

The complaint contends Mayor Dewey was working in a capacity of both Mayor of the Town of Stevensville as well as being additionally compensated to perform a number of other administrative tasks on behalf of the town. Before attempting to make any determinations as to whether Mayor Dewey's alleged activity constituted "support for or opposition to... the nomination or election of any person to public office" in the Town of Stevensville, it must first be decided if Mayor Dewey qualifies as a public employee as mentioned in this statute.

The term public employee is defined by Montana's Code of Ethics, §2-2-102(7), MCA, as:

"Public employee" means:

- (a) any temporary or permanent employee of the state;
- (b) any temporary or permanent employee of a local government;
- (c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and
- (d) a person under contract to the state.

Under statute, a public employee is separate from a public officer, a term provided its own definition under §2-2-102(9)(a), MCA:

(a) "Public officer" includes any state officer and any elected officer of a local government.

Currently, Mr. Dewey serves as the Mayor of the Town of Stevensville. It is important to note that Mayor Dewey was elected to his role as Mayor in the Town of Stevensville in 2017 (FOF No. 1). It is also important to note that the

Town of Stevensville’s municipal governmental structure, including but not limited to the office of Mayor and the Town Council, would constitute a local government (FOF No. 1) as defined under Mont. Code Ann. §2-2-102(4).¹ Being an “elected officer of a local government”, Mayor Dewey would exclusively be defined as a public officer when performing any duties or responsibilities included within his official Mayoral capacity.

When responding to the COPP in this matter, Mayor Dewey contends that the Town Council awarded him additional compensation of \$25.00 per hour between the dates of May 23 and September 12, 2019 in exchange for fulfilling the duties of the Finance Officer and Town Clerk positions. Because both positions were vacant at the time, the Town Council voted to provide him with additional compensation beyond his standard Mayoral pay so that he would handle those duties while the positions were vacant (FOF No. 3). Mayor Dewey does not consider the assumption of the Finance Officer and Town Clerk duties as separate employment functions from his duties as Mayor.

The additional compensation was not provided to Mayor Dewey as a result of his being distinctly hired, appointed, or confirmed to the Finance Officer and/or Town Clerk positions by the Town Council in a separate, disconnected capacity from his office as Mayor. Rather, the Town Council took action specifically to “increase the Mayor’s compensation” (FOF No. 3). Mayor Dewey cannot be classified as a public employee because he was still operating in his official capacity as Mayor, an elected local government position, while performing the Finance Officer and Town Clerk duties.

Mont. Code Ann. §7-5-4102, must also be referenced to determine that Mayor Dewey cannot be classified as a public employee. The statute states that (emphasis added):

7-5-4102. Powers and duties of mayor related to administration and executive function. (1) The mayor may:

¹ (4) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

- (a) communicate to the council, at the beginning of each session and more often if considered necessary, a statement of the affairs of the city or town, with recommendations that the mayor considers proper;
- (b) recommend to the council measures connected with the public health, cleanliness, and ornament of the city or town and the improvement of the government and finances that the mayor considers expedient;
- (c) call special meetings of the council;
- (d) cause to be presented, once in 3 months, a full statement of the financial condition of the city or town;
- (e) bid for the city or town on any property sold at a tax or judicial sale whenever the city or town is an interested party;
- (f) procure and have in the mayor's custody the seal of the city or town;
- (g) take and administer oaths;
- (h) **perform other duties that may be prescribed by law or by resolution or ordinance of the council.**

(2) The mayor is the presiding officer of the council and shall sign the journals of the council and all warrants on the city treasury and decide all ties by vote. The mayor has no other vote.

This is echoed by the Stevensville Municipal Code, §2-24(16), which states that the Mayor shall “perform such other duties as may be prescribed by law or by resolution or ordinance of the council”.² In this case, the Stevensville Town Council voted 2 to 1 to pass a motion approving additional compensation to Mayor Dewey so that he would temporarily absorb the Finance Officer and Town Clerk duties in his role as Mayor (FOF No. 3). Under both Mont. Code Ann. §7-5-4102(1)(h), and the Stevensville Municipal Code, Mayor Dewey would have continued to operate only in his capacity as Mayor when fulfilling the Town Clerk or Finance Officer duties because those positions were formally prescribed to

2

https://library.municode.com/mt/stevensville/codes/code_of_ordinances?nodeId=COOR_CH2_AD_ARTIIMA

him by the Town Council as an addition to his Mayoral duties. Mayor Dewey existed only as a public officer, not a public employee.

In a related matter presented to his office, Ravalli County Attorney Bill Fulbright independently concluded that mayor Dewey's acceptance of additional compensation in the amount of \$25.00 per hour to handle the functions of the Finance Officer and Town Clerk did not constitute multiple public employment. While Mayor Dewey received "a temporary increase in the Mayor's compensation", Mr. Fullbright continued that "it did not create a situation in which he [Mayor Dewey] was receiving 'salaries from two separate public employment positions'".³ In other words, in the determination of the Ravalli County Attorney, Mayor Dewey held only one formal role in the Town of Stevensville's municipal government, the office of Mayor, despite also handling the Finance Officer and Town Clerk duties.

Based on a review of all the evidence provided and an analysis of relevant statutes and definitions, it becomes clear that Mayor Dewey would be classified only as a public officer, not as a public employee. The tenants of Mont. Code Ann. §13-35-226(4) do not apply to public officers; as the statute clearly states, it exists as a limitation for public employees only. As Mayor Dewey cannot be classified as a public employee, his alleged actions were not bound by the statute referenced by the complainant in this matter.

Despite not being covered under the provisions of Mont. Code Ann. §13-35-226(4), public officers like Mayor Dewey are prohibited from utilizing public time, facilities, or other public resources to "solicit support for or opposition to...the nomination or election of any person to public office", §2-2-121(3), MCA. However, jurisdiction over alleged violations of this statute by local government officials such as Mayor Dewey is clearly delineated to the County Attorney of the county where the local government is located, §2-2-144, MCA. Because Mayor Dewey currently serves as a public officer of a local government located in Ravalli

³ <https://bitterrootstar.com/2019/11/stevi-candidates-ethics-complaint-against-mayor-found-to-be-invalid/>

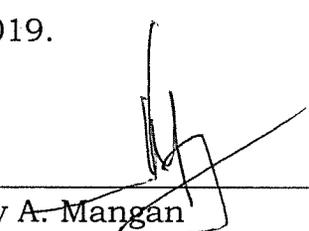
County, Ravalli County Attorney would have jurisdiction over complaints of this nature made against Mayor Dewey. The COPP does not have jurisdiction or oversight in any situation where a local public officer is alleged to have utilized public time, facilities, or other public resources to “solicit support or opposition to...the nomination or election of any person to public office”. Montana’s Code of Ethics clearly and obviously provides that responsibility to the County Attorney.

As Mayor Dewey cannot be classified as a public employee, the complainant’s specific allegation that he violated Mont. Code Ann. §13-35-226(4), must be dismissed. Similarly, because jurisdiction in determining whether Mayor Dewey has violated Mont. Code Ann. §2-2-121(3) falls with the Ravalli County Attorney and not the COPP, this complaint must be dismissed in its entirety.

DECISION

The Commissioner hereby dismisses the complaint.

DATED this 2nd day of December 2019.



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