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COMMISSIONER OF
POLITICAL PRACTICES

2012 JUN 29 A 9 05

**BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
STATE OF MONTANA**

ED BERRY,
Complainant

vs
DAVE GALLIK,
Respondent

**PROPOSED ORDER
GRANTING SUMMARY**

Pending before me are Respondent's Motion for Summary Judgment and Complainant's Rule 56(f) affidavit. For the reasons set forth below, Respondent's motion is should be granted.

Edwin Berry's complaint alleges that Dave Gallik, while serving as Commissioner of Political Practices, served as Treasurer of the Democratic Legislative Alumni Association ("DLAA"), a political committee making contributions in favor of Democratic legislative candidates. Gallik has moved for summary judgment and has provided an affidavit showing that prior to his appointment

as Commissioner on May 23, 2011, he terminated his position with DLAA and closed its bank account.

Berry countered by filing an affidavit under Mont. R. Civ. P. 56(f) seeking a stay in consideration of Gallik's motion to allow Berry to conduct discovery as to the DLAA's bank account. The affidavit acknowledges that if the bank records corroborate Gallik's affidavit, the information as to the account "may well be dispositive" of his complaint. Rule 56(f) Affidavit, ¶ 4. Gallik filed a reply brief accompanied by a copy of bank documents showing that the DLAA account was closed as of May 20, 2011, a week before Gallik's appointment as Commissioner.

Summary judgment should be granted when the affidavits and any other evidentiary materials before the tribunal show that there are no genuine issues as to any material facts and that the moving party is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c)(3). In appropriate cases summary judgment may be used to dispose of contested cases in which there are no material factual issues. In re Peila, 249 Mont. 272, 815 P.2d 139 144-45 (1991).

This is such a case. Gallik has filed a sworn statement that he ceased all activities on behalf of DLAA prior to May 23, 2011, the date on which he was appointed Commissioner. He has submitted documents, the authenticity of which has not been challenged, showing that he stepped down as Treasurer of the DLAA and closed its bank account prior to his appointment as Commissioner. Berry's Rule 56(f) Affidavit acknowledges that these documents are "likely dispositive." I find that the qualifier is unnecessary. With reference to the claim that Gallik continued to act on behalf of DLAA after becoming Commissioner, an uncontested showing that Gallik had stepped down from his role with the DLAA, closed its bank account, and ceased to act its behalf ~~is~~ dispositive. Period.

A request for additional time to conduct discovery under Rule 56(f) is not well-taken when it is apparent that the claimant cannot recover. This is such as case. Berry has acknowledged that his claim stands or falls on the DLAA bank records, which Gallik has provided. Further discovery will not be of assistance to Berry in proving his complaint on this point.¹


¹ Berry has sought disclosure of documents pertaining to Gallik's conduct after he became Commissioner. I am unaware if any such documents have been produced; no such documents are

I therefore recommend that the following order be entered:

IT IS HEREBY ORDERED:

1. Complainant's request for additional time for discovery is **OVERRULED.**
2. Because there are no genuine issues of material fact and **Respondent Dave Gallik is entitled to judgment as a matter of law, Gallik's Motion for Summary Judgment is GRANTED.**
3. Berry's present complaint is **DISMISSED.**

DATED this 26th day of June, 2012.



CHRIS D. TWEETEN
Hearing Examiner

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 26th day of June, 2012, by US mail, first-class postage paid, to the following:

before me in this proceeding. If Berry discovers facts showing any violations by Gallik after his appointment, Berry remains free to use such facts as the basis of a future complaint.

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