

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

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November 17, 2014

Viv Hammill
Montana University System
2500 Broadway
Helena, MT 59620-3201

COPP-2014-AO-017

Re: Commissioner of Higher Education
D-1 Business Disclosure

Dear Ms. Hammill:

I write in response to your email dated November 14, 2014 asking for an advisory opinion on the issue set out below. This letter constitutes that advisory opinion.

Issue Posed

Montana's ethics laws require certain individuals to file a Business Disclosure Statement (Form D-1) with the Commissioner of Political Practices on a periodic basis or when running for elected office.

The issue posed is whether or not the Commissioner of Higher Education is required to file a Business Disclosure statement (Form D-1) with the Commissioner of Political Practices.

ADVISORY OPINION

From the Commissioner's perspective, the answer to your question is NO.

The Commissioner of Higher Education (COHE) is appointed by the Board of Regents for the Montana University System, Mont. Code Ann. § 2-15-1506. In turn, the Board of Regents is one of Montana's Boards of Education provided for in the Constitution, Art. X, Sec. 9. According to the information you provided, the COHE is hired by the Board of Regents for a set contractual term.

- “(1) (a) Prior to December 15 of each even-numbered year, each state officer or holdover senator shall file with the commissioner of political practices a business disclosure statement on a form provided by the commissioner...
- (b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner of political practices on a form provided by the commissioner.
- (c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office...”

Mont. Code Ann. § 2-2-106, emphasis added.

Since the Commissioner of Higher Education is not a holdover senator or a candidate for statewide office, the question is whether or not the COHE is a state officer who is required to file the business disclosure under Mont. Code Ann. § 2-2-106(1)(a). The ethics code defines a state officer as “all elected officers and directors of the executive branch of state government as defined in 2-15-102”, Mont. Code Ann. § 2-2-102(11). The COHE is not an elected position, so in order for the COHE to have to file a business disclosure with the COPP, the position would have to fall within the definition of a “director” of an executive branch of Montana.

“‘Director’ means a department head specifically referred to as a director in this chapter and does not mean a commission, board, commissioner, or constitutional officer....”

Mont. Code Ann. 2-15-102(6)(a) (emphasis added).

Chapter 15 of Montana Code Annotated lists various Executive Branch Officers and Agencies. In general, the Officers are elected (Governor, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and Superintendent of Public Instruction) and the agencies have appointed Directors (Administration, Military Affairs, Revenue, Education, etc.). The elected officials and appointed directors are subject to the business disclosure reporting requirements with the COPP, Mont. Code Ann. § 2-2-106. The position of the Commissioner of Higher Education is not a director of an executive branch of state government, and therefore is not subject to the disclosure requirements that the COPP has jurisdiction over.

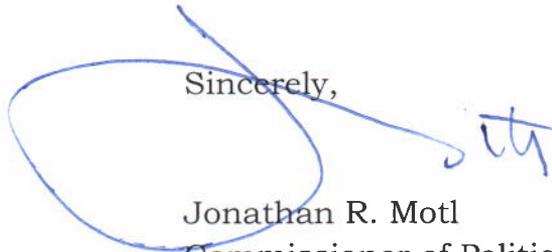
With the above guidance in mind, it is important to discuss the powers of other groups. You noted that Commissioner Christian filed a D-1 disclosure in 2012 because of a D-1 requirement for filing was found in a Montana University System internal office HR Handbook. Montana law, as set out

above, does not require that the Commissioner of Higher Education file the disclosure, but internal procedures or rules of the University System may require an employee to comply with the disclosure requirements. For example, on March 25, 2014, the Montana Supreme Court adopted a new Rule in the Judicial Code of Conduct, requiring that candidates for and current Montana Supreme Court Justices comply with the business disclosure provisions of Mont. Code Ann. § 2-2-106, *see* Order AF-08-02-03¹.

LIMITATIONS ON ADVISORY OPINION

This letter is an advisory opinion based on the specific written facts and questions as presented above. This advisory opinion may be superseded, amended, or overruled by subsequent opinions or decisions of the Commissioner of Political Practices or changes in applicable statutes or rules. This advisory opinion is not a waiver of any power or authority the Commissioner of Political Practices has to investigate and prosecute alleged violations of the Montana laws and rules over which the Commissioner has jurisdiction, including alleged violations involving all or some of the matters discussed above.

Sincerely,



Jonathan R. Motl

Commissioner of Political Practices

¹ Available online at <http://supremecourtdocket.mt.gov/view/AF%2008-0203%20Rule%20Change%20--%20Order?id={27189E09-1C68-48DC-AB29-39D9E75B757E}>