

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Reid v. Bullock No. COPP 2012- LOB-001	<u>Dismissal of Complaint</u>
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On September 5, 2012, Bozeman, Montana, resident Catherine Reid filed a complaint with the COPP against Steve Bullock, a resident of Helena, Montana. The complaint alleged Mr. Bullock, in his role as the Attorney General of the State of Montana, violated Montana laws governing the disclosure of lobbying activity.

**SUBSTANTIVE ISSUES ADDRESSED**

The substantive area of law addressed by this decision is that of appropriate disclosure of lobbying activity by a state official.

**DISCUSSION**

Montana has enacted laws governing the conduct of those who seek to influence (“lobby”) the Montana legislature. See 5-7-102(11) MCA for a definition of lobbying. In 2012 Attorney General Bullock operated as the elected agency head of the Department of Justice. The Attorney General “acting in an official governmental capacity” is exempt from lobbying reporting

See 5-7-102(11)(b) MCA. However, with exceptions as to certain functions, agencies of state government, including the Department of Justice “are principals subject to [lobbying] requirements...” 44-12-105 ARM. Among the lobbying requirements is that of preparing and filing lobbying reports “list[ing] each official action on which the principal or the principal’s agents exerted a major effort to support, oppose, or modify, together with a statement of the principal’s position for or against this action.” §5-7-208(5)(d) MCA

The complainant claims a failure of the Department of Justice to meet the lobbying report filing requirements of §5-7-208(5)(d) MCA in regard to lobbying activity at the 2011 session of the Montana legislature. The complainant attached documents showing that Department of Justice staff members appeared in opposition or support of a number of bills at the 2011 session.

The Commissioner’s investigator (and the Commissioner) first examined the reports filed by principals for lobbying activities at the 2011 session. The Commissioner hereby determines that the Department of Justice filed as a principal and, further, that it filed the 5 lobbying reports (an initial, 2 monthly, a post-session and a closing report) required of principals with reportable lobbying activity at the 2011 session.<sup>1</sup>

Given that the Department of Justice properly filed its 2011 lobbying reports the issue is narrowed to whether or not the legislative items identified by the documents accompanying the Reid complaint are listed on the 2011

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<sup>1</sup> The Department of Justice lobbying reports can be accessed for viewing on the COPP homepage website. The access portal is the “search for lobbyist or principal” icon on the “featured on-line services” menu bar on the left side of the COPP homepage.

lobbying reports filed by the Department of Justice. To that end, the Commissioner's investigator reviewed the documents accompanying the complaint and determined that the complainant identified 48 legislative items (41 bills and 7 bill drafting requests) for which the complaint alleges a staff member of the Department of Justice appeared in opposition or support.<sup>2</sup> In turn, the investigator's review of the 5 lobbying reports filed by the Department of Justice for the 2011 determined that the lobbying reports failed to list 15 of the 48 legislative bills identified by the complaint. The attorney general's review determined that 7 bills identified by the documents attached to the complaint were not listed on the Department of Justice lobbying reports.

Thus, this Decision distills to whether or not the Department of Justice violated §5-7-208(5)(d) MCA when it did not list 7 to 15 bills on its 2011 lobbying reports. Under §5-7-208(5)(d) MCA the Department of Justice must list each such bill on which it "exerted a major effort to support, oppose or modify...". In turn, "major effort" means that the Department of Justice "engage[d] in direct communication [with a legislator] on two or more occasions..." 44.12.102(6) ARM.

The Attorney General's review of its lobbying activity on the 7 bills it agrees were not listed in its lobbying reports determined that the bills were lobbied a single time by the committee testimony of a single staff member. Accordingly, the Attorney General argues that this lobbying was not a 'major effort'

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<sup>2</sup> The attorney general's review of the complaint also identified 48 legislative items, calling all 48 bills. The Commissioner's investigator and the Attorney General, however, identified different bills as covered by the documents, thereby placing 56 legislative items in discussion.

triggering reporting requirements under §5-7-208(5)(d) MCA. The additional 8 bills listed by Commissioner's investigator include testimony by Attorney General Bullock (who is exempt from lobbying reporting under §5-7-102(11)(b)). When the Bullock testimony is removed there is only one bill (HB 250) that the Commissioner's investigator determined to have two communications, therefore triggering reporting.

The Commissioner accepts the Department of Justice single contact position as to 14 of the 15 bills discussed above. That is, there is no evidence to show 2 or more communications on the 14 bills and therefore there is no requirement of reporting for the bills as the same are not a "major effort" requiring reporting under §5-7-208(5)(d) MCA . The 15<sup>th</sup> bill, HB 250, does have two identifiable communication points and it is therefore a bill that should have, but was not, included in the lobbying report filed by the Department of Justice.

Having reduced the universe of error to one bill, the Commissioner determines that the Department of Justice's failure to report is excused on the basis of *de minimis*. *De minimis* is an established concept of law meaning that "the law does not care for, or take notice of, very small or trifling matters." Black's Law Dictionary 4<sup>th</sup> Edition. There is an extensive discussion of the application of the *de minimis* principle in *Strizich v. Loney*, COPP 2014-CFP-034.

The Commissioner notes that there is a particular reason for application of the *de minimis* principle in this Matter. The COPP's lobbying related

regulation, to date, consists of registering and providing licenses to lobbyists and posting lobbying reports for public review. There is no history of regular COPP interpretation, by Decisions or Advisory Opinions, of lobbying related disclosure and reporting laws as there is with campaign practice laws.

Within the established scope of registration and filing the Commissioner notes that a review of lobbying reports filed by other Montana state agencies for the 2011 session shows reporting of comparable content and scope to that filed by the Department of Justice. Further, the Commissioner has determined, in this Decision, that the Department of Justice properly filed its 2011 lobbying reports. Still further, the Commissioner takes administrative notice, from review of surveys conducted by Montana Common Cause and others, that Montana lobbyists and principals employ widely varying approaches as to reporting specific actions as lobbying.<sup>3</sup> The COPP has yet to weigh in and resolve this issue. Accordingly, the COPP will first address and establish common issues applying to all principals and lobbyists (as in the measure of reporting and disclosure obligations) before it finds a violation based on the particular and technical issue of single bill reporting raised by this Complaint. With this discussion in mind, the Commissioner applies a particular use of the *de minimis* principle in this Decision.

## **DECISION**

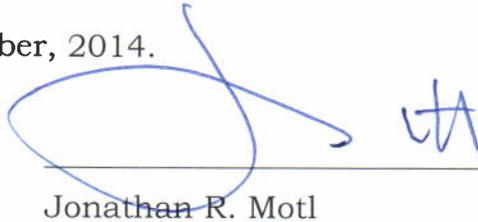
This Commissioner, having duly considered the matters raised in the

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<sup>3</sup> Some principals report only person-to-person contact with a legislator as lobbying while other principals also report the cost of lobbyist time at the Capital building and time spend in grassroots mobilization.

Complaint, and having completed his review and investigation, hereby holds and determines, under the above stated reasoning, that there is a general lack of sufficient facts to show an overall lobbying act violation by the Department of Justice. The Commissioner applies *de minimis* to dismiss the singular reporting act violation as to HB 250. The Commissioner hereby dismisses this complaint in its entirety.

DATED this 25<sup>th</sup> day of September, 2014.



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