

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Complaints Against	)	<b>SUMMARY OF FACTS</b>
Montana Shooting Sports Association,	)	<b>AND</b>
Gary Marbut, National Rifle	)	<b>STATEMENT OF FINDINGS</b>
Association and Brian Judy.	)	

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**SUMMARY OF THE FACTS**

On April 17, 2009, Jim Smith filed a complaint against Montana Shooting Sports Association (hereafter "MSSA") and its president, Gary Marbut, along with the National Rifle Association (hereafter "NRA") and its employee/lobbyist, Brian Judy.

MSSA and Gary Marbut

Mr. Smith's complaint alleges MSSA and Marbut conducted lobbying activities during the 2009 legislative session but failed to register as a principal and lobbyist, respectively.

On May 22, 2009, Mr. Marbut responded to this agency with regard to Mr. Smith's complaint. Therein, Mr. Marbut indicated that although he had lobbied the 2009 legislature, he did not receive any compensation for doing so. Mr. Marbut argues he is excluded from the lobbyist registration requirements, pursuant to 5-7-112, MCA.

During its investigation, this agency was informed by Mr. Marbut that he paid all of his own expenses for travel and other lobbying activities and sent emails from his home computer. There is no evidence or allegations to suggest otherwise.

The MSSA was involved with lobbying the 2009 legislature. Neither Mr. Marbut nor anyone else on behalf of MSSA responded to the portion of Mr. Smith's complaint alleging:

As of April 15, 2009 the 80<sup>th</sup> Legislative Day the Montana Shooting Sports Association (MSSA) is not registered as a Principal with your office.

Mr. Smith's complaint against Mr. Marbut also specifically alleges Marbut lobbied for the National Rifle Association (hereafter "NRA"). Therein, Mr. Smith stated,

He [Marbut] has testified that the MSSA is affiliated with the National Rifle Association.

At a subcommittee meeting on HB 228 held March 27<sup>th</sup>, he sat in on very delicate negotiations over proposed amendments to the bill, and represented the position of the National Rifle Association as well that of the MSSA to the subcommittee working on the bill.

With regard to MSSA and Mr. Marbut, the NRA's response of May 26, 2009, denies MSSA and Mr. Marbut lobbied on behalf of the NRA during the 2009 legislative session. Therein, the NRA stated:

Mr. Marbut and the Montana Shooting Sports Association are neither officers, employees nor agents of the NRA, and NRA disclaims any responsibility for responding to the complaint against them.

A review of the March 27, 2009, subcommittee hearing on HB 228 revealed Mr. Marbut made the following statement relative to the NRA:

Mr. Chairman. I have discussed the gray bill with the NRA and I think we generally concur on a number of things that it is a good compromise. That the committee has done good work and we pretty much support everything we are seeing in the gray bill.

In response to this agency's inquiry, the NRA confirmed it hosted and paid for a reception on January 7, 2009, at the Colonial Inn, Helena, from 6:00 p.m. to 8:00 p.m. The purpose of the event was to provide an opportunity for members of the firearm rights community to meet and discuss upcoming issues with members of the legislature. All legislators were invited and 76 attended. The cost of the event was \$1,753.49 and paid for by NRA. Although NRA paid the costs of the event, NRA and MSSA cooperated in organizing the event. In addition to legislators, Mr. Marbut and a representative of the Montana Rifle and Pistol Association attended.

The NRA's report to this office regarding this reception contained de minimus entry errors. The expenditures were timely reported by the NRA, albeit in the wrong manner. This minor entry error was self reported and explained by the NRA. It does not warrant sanctions from this office. The focus of Smith's complaint was the allegation Marbut lobbied for the NRA. As the NRA paid for this event, and did not provide Marbut with any direct or indirect payment, the fact that Marbut attended and assisted with the coordination of this event does not violate any of the laws under the jurisdiction of this agency.

#### NRA and Brian Judy

Mr. Smith's April 17, 2009, complaint alleges that although the National Rifle Association was registered as a principal with the Office of the Commissioner of Political Practices during the 2009 legislative session, its lobbyist, Brian Judy, engaged in lobbying activities on behalf of the NRA during the same period while not registered as a lobbyist.

The NRA, through its Assistant General Counsel, Matthew H. Bower, acknowledged Brian Judy

worked as a lobbyist for NRA during the 2009 legislative session. NRA believed Brian Judy had been properly registered as a lobbyist. However, after the Smith complaint was filed, the NRA discovered that Mr. Judy's lobbyist registration had not been completed nor had it been filed with this agency. NRA acknowledged a violation of the requirement to have its lobbyists registered and noted it corrected the registration issue immediately after being notified of the situation.

Brian Judy was an employee of NRA prior to the 2009 legislative session, and continues to be employed by NRA. NRA acknowledged an obligation to arrange renewal of Mr. Judy's registration as a lobbyist for the 2009-2010 term, and acknowledged its failure to meet that obligation. Even though Mr. Judy was not licensed as a lobbyist in 2009, NRA's lobbying reports disclosed information related to his lobbying activities and identified him as a lobbyist for NRA.

## STATEMENT OF FINDINGS

### Gary Marbut

Mr. Smith's complaint against MSSA and Gary Marbut alleges failure to register with this agency as a principal and lobbyist, respectively.

As it relates to the allegations against Marbut in Smith's complaint, "Lobbying" is defined at 5-7-102(11)(a), Mont. Code Ann., as follows:

- (11) (a) "Lobbying" means:
- (i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators; and
  - (ii) the practice of promoting or opposing official action of any public official or the legislature.

Pursuant to this definition, Mr. Marbut's activities during the 2009 legislature meet the statutory definition of "lobbying" as he admittedly was promoting the introduction or enactment of legislation before the legislature and was promoting official action of the 2009 legislature.

However, there is no evidence to show that Mr. Marbut met the definition of being a "lobbyist" during the 2009 legislature, as he received no payment for his lobbying. The term "Lobbyist" is defined at § 5-7-102(12), Mont. Code Ann., as follows:

- (12) (a) "Lobbyist" means a person who engages in the practice of lobbying.
- (b) Lobbyist does not include:
- (i) an individual acting solely on the individual's own behalf;
  - (ii) an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official or the legislature on behalf of the lobbyist's principal; or
  - (iii) an individual who receives payments from one or more persons that total less than the amount specified under 5-7-112 in a calendar year.

Mr. Marbut falls within the exclusion of § 5-7-102(12)(b)(iii), Mont. Code Ann., as he did not receive payments from one or more persons for his lobbying efforts before the 2009 legislature. As Mr. Marbut did not receive the threshold amount of payments set forth in § 5-7-112, Mont. Code Ann. in a calendar year to trigger registration of a lobbyist with this agency, he does not meet the statutory definition of a “lobbyist.”

In accordance with § 5-7-112, Mont. Code Ann., the rule implementing this financial trigger is Admin. R. Mont. § 44.12.204, which identifies the threshold amount for 2009 as follows:

(1) Pursuant to the operation specified in 5-7-112, MCA, the adjusted payment threshold for calendar year 2009 was \$2,400.

Mr. Marbut did not receive any payments for his lobbying activities and, therefore, was not required to report under this provision of State law. Admin. R. Mont. § 44.12.20 provides:

(1) Principals shall report payments to influence official action, including payments to a lobbyist or an individual to lobby or to support or assist a lobbying activity, for each expense category in 5-8-208 (5) (a) , MCA.

(2) If a principal provides at the principal's expense office space, utilities, supplies, and equipment to a lobbyist or an individual to lobby or to support or assist a lobbying activity, the principal shall report the cost of providing such office space, utilities, supplies, and equipment as follows:

(a) If the actual cost of providing office space, utilities, supplies, and equipment can be determined and the actual cost is less than \$5,000 for a reporting period, then actual cost may be reported. In the alternative, a principal may report that office space, utilities, supplies, and equipment were provided to a lobbyist or an individual engaged in lobbying activities during the reporting period and the cost of providing such office space, utilities, supplies, and equipment was:

(i) \$1,000 or less for the reporting period; or

(ii) more than \$1,000 but less than \$5,000 for the reporting period.

(b) If the cost of providing office space, utilities, supplies, and equipment to a lobbyist or an individual engaged in lobbying activities during a reporting period is \$5,000 or more, then the actual cost must be determined and provided.

(c) If the cost of providing office space, utilities, supplies, and equipment to a lobbyist or an individual engaged in lobbying activities is reported as provided in (2) (a) (i) or (ii) , the principal must make a good faith determination of such expenses and retain all calculations and records relied on as provided in ARM 44.12.202. If the actual cost of providing office space, utilities, supplies, and equipment can be determined but is not reported as provided in (2) (a) (i) and (ii) , the actual cost determination must be retained as a record under ARM 44.12.202.

(3) Nothing in this rule requires a principal to report the cost of office space, utilities, supplies, and equipment for a lobbyist or an individual engaged in lobbying activities if the lobbyist or the individual engaged in lobbying activities is responsible for paying the cost of the office space, supplies, equipment, and utilities out of the amount paid to the lobbyist or individual engaged in lobbying activities. If, however, the lobbyist or the individual engaged

in lobbying activities is reimbursed by the principal for any office space, supplies, support personnel, equipment, or utility costs incurred as part of a lobbying activity, the amount of such reimbursement must be reported.

Because Mr. Marbut used his personal computer for email communication, was not provided an office or computer, nor paid for his efforts, he was not a "lobbyist" as defined by statute and, therefore, not required to report under this Rule.

There is insufficient evidence to conclude that Mr. Marbut lobbied the 2009 legislature on behalf of the NRA as his principal. Clearly, both the NRA and Gary Marbut representing MSSA worked to influence legislation during 2009 related to gun bills. However, Mr. Marbut received no payments or reimbursements from either entity therefore, no violation exists.

### MSSA

Similar to the above analysis for Mr. Marbut, MSSA is not required to register with this agency because it does not meet the definition of a "principal", pursuant to 5-7-102(15), Mont. Code Ann., which states:

(15) "Principal" means a person who employs a lobbyist or a person required to report pursuant to 5-7-208.

As MSSA did not provide any payments or reimbursements to Mr. Marbut for his lobbying activities, MSSA did not trigger the reporting requirements of 5-7-208(1), Mont. Code Ann., which states, in pertinent part:

A principal is subject to the reporting requirements of this section only if the principal makes total payments for the purpose of lobbying that exceed the amount specified under 5-7-112 during a calendar year.

### Brian Judy

Both the NRA and Mr. Judy admit that Mr. Judy met the above referenced statutory definitions of "Lobbying" and "Lobbyist" during the 2009 legislative session. Likewise, both the NRA and Mr. Judy admit that Mr. Judy was required to register as a lobbyist for the 2009 legislative session and failed to do so.

Even though Mr. Judy was an employee of NRA and believed NRA would handle his lobbyist registration, he had an obligation under § 5-7-103, Mont. Code Ann., to ensure the registration is completed, timely.

Mr. Judy's failure to register with this agency as a lobbyist is a violation of Section 5-7-301(1), Mont. Code Ann., which provides:

"(1) An individual may not practice as a lobbyist unless that individual has been licensed under 5-7-103 and listed on the docket as employed in respect to all the matters that the

individual is promoting or opposing.”

### NRA

As a result of the NRA’s authorization and payment of its employee and lobbyist, Mr. Judy, to lobby the 2009 legislature, without Mr. Judy first having been licensed with the Office of the Commissioner of Political Practices, the NRA violated Section 5-7-301(1), Mont. Code Ann., which provides:

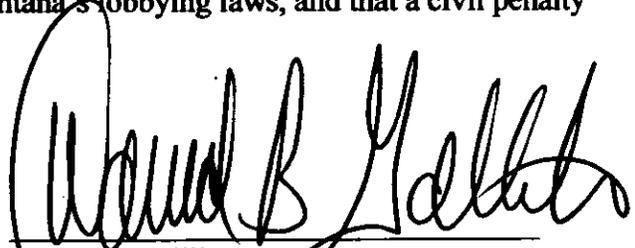
(2) A principal may not directly or indirectly authorize or permit any lobbyist employed by that principal to practice lobbying until the lobbyist is licensed and the names of the lobbyist and the principal are entered on the docket.

### CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is insufficient evidence to conclude that MSSA or Gary Marbut violated Montana lobbying laws.

Based on the preceding Summary of Facts and Statement of Findings there is evidence to conclude that the NRA and Brian Judy violated Montana’s lobbying laws, and that a civil penalty action under § 5-7-305, MCA, is warranted.

Dated this 5<sup>th</sup> day of July, 2011.



David B. Gallik  
Commissioner of Political Practices