

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

In Re the Ethics Complaint of BUSSE FOR MONTANA (via EMILY HARRIS) v. GOVERNOR GREG GIANFORTE	COPP-2024-ETH-011 DISMISSAL Failure to State a Potential Violation of the Ethics Code
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COMPLAINT

On September 27, 2024, Busse for Montana (BFM) filed an ethics complaint against Governor Greg Gianforte through BFM's agent Emily Harris. The complaint was hand delivered and timestamped by the Montana Commissioner of Political Practices (COPP) office at that time.

The filing of a complaint begins an initial review to determine whether the complaint meets legal requirements for filing a complaint. MCA § 2-2-136 and ARM 44.10.604. This review includes a determination whether the complaint meets basic requirements such as whether the complaint is notarized and within COPP's jurisdiction and authority. *Id.* Complaints that do not meet these basic requirements are simply returned to the complainant. In this matter the complaint met basic requirements so further review began to determine whether the complaint contained allegations of the Ethics Code and provided sufficient relevant supporting evidence. Complaints that do not allege violations or do not provide supporting facts are dismissed. Complaints can also be dismissed if the complaint is frivolous. MCA § 2-2-136(1)(c).

The complaint names the respondent as "'Greg" for Montana," the campaign name used by Greg Gianforte, Montana's Governor, in his gubernatorial campaign. As Montana's duly elected Governor, Governor Gianforte is a state officer subject to Montana's established Code of Ethics, Montana Code Annotated (MCA) §§ 2-2-101, 102(10)(a). Montana law provides jurisdiction to COPP to consider and potentially

including use and reuse by not only the general public and media, but also political opponents have access to and can and have used the photographs. COPP-2020-ETH-004 at 9.

In *Zolnikov v. O'Donnell*, the Commissioner similarly concluded:

Just as Commissioner Motl determined regarding the taking of photographs in a State facility accessible to all, the same sentiment is appropriate for those non-copyrighted images made available for public consumption by a State agency. In other words, to allow someone who is not a public employee or officer to use a publicly available non-copyrighted image for use in a campaign or other purpose, while at the same time forbidding a public employee or officer from the same use would lead to absurd results. COPP-2020-ETH-005 at 6.

The same conclusions apply in this matter. Like *Bullock*, the photograph relevant to this complaint was taken at an event the Governor attended in his official capacity, not specifically for use in or by any future political campaign. In speaking with COPP, the Governor's office confirmed that the photograph is not copyrighted, nor is its use prohibited by other interested parties. Similar to *Merwin* and *Zolnikov*, the relevant photograph is available in the public domain to other interested parties, including BFM, for use as they see fit. To find Governor Gianforte's re-election campaign is prohibited from using this photograph solely because of his status as Montana's Governor would certainly lead to "absurd results" and is not a defensible conclusion.

While I am dismissing this complaint because no violation of the Code of Ethics has been stated by the complainant, a commissioner can also dismiss complaints when the complaints are frivolous. A frivolous complaint lacks merit in law, fact, or both. Frivolous complaints are often unsupported asseverations targeted to harass or embarrass a person or a campaign. Such complaints tend to focus more on the opportunity for attention rather than seeking an actual resolution. While I appreciate that politics brings forth intense passions and I am sympathetic that selected language often expresses that passion, it serves no purpose with respect to how COPP must decide these matters.

In *Landsgaard v. Peterson and Wilks*, and *Pennington v. Bullock*, the Commissioner addressed the principles of frivolous complaints. COPP-2014-CFP-008, COPP-2013-CFP-012. *Pennington* specifically discusses how otherwise frivolous or absurd complaints are still addressed by COPP when there is some value based on current public debate and discourse related to the issue presented. These principles have also been applied to ethics complaints.

In *Tschida v. Bullock and O'Leary (Tschida II)*, the Commissioner holds that an ethics complaint is frivolous if it “is clearly insufficient on its face. . .and is presumably interposed for mere purposes of delay or to embarrass the opponent.” COPP-2019-ETH-003, at 7, quoting *Tschida I*, at 6. In *Tschida II*, the Commissioner further states that a complaint “must first be determined to be legally insufficient before evaluating whether it has an embarrassment purpose.” *Id.* at 7.

Here, while I conclude this complaint does not state a potential violation of the ethics code, I did find it appropriate for acceptance in accordance with MCA § 2-2-136 and ARM 44.10.604, and a response from Governor Gianforte’s office was necessary to reach a determination. Therefore, I cannot summarily determine the complaint was ‘insufficient on its face’ or the purpose of this complaint was to embarrass the Gianforte campaign. *Id.*

Consequently, this complaint is dismissed due to failure to state a potential violation rather than on frivolousness. However, further complaints related to using photographs widely available to the public that the State does not copyright will be quickly designated frivolous and returned to the complainant. This is a settled question.

DECISION REGARDING ASSESSMENT OF COSTS

In keeping with the Commissioner’s decision in *Pennington*, I find there was value provided to the public in addressing this matter, and therefore I will not assess costs against BFM. MCA § 2-2-136(2)(c), see also *Molnar v. Fox*, 2013 MT 132 (in comparison). Furthermore, this matter is resolved by an initial agency review

under MCA § 2-2-136(1)(b), so agency related costs were kept to a minimum. A hearings officer was not required, which is where the agency incurs unanticipated costs not covered within our regular budget.

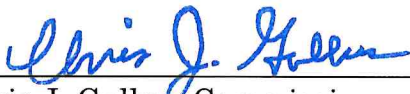
CONCLUSION & ORDER

Jurisdiction regarding this matter was accepted pursuant to MCA § 2-2-136(1)(a). The activity described is permitted under Montana's Code of Ethics as applied by prior Commissioners. Weighing all of the facts presented and applying the plain language of the law in accordance with rules of statutory construction, I am compelled to reach no other conclusion. Therefore, as herein determined, the BFM complaint is dismissed in its entirety.

NOTICE

This provides notice to the parties that this complaint dismissal is a final agency order, and either party can seek judicial review of my determinations under MCA § 2-4-701 et. seq. The parties are further noticed that the complaint, record established, and this decision are available for public inspection. MCA § 2-2-136(4).

ORDERED and submitted this 23rd day of October, 2024,



Chris J. Gallus, Commissioner
Montana Office of Political Practices
1209 Eighth Avenue
Helena, MT 59601

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was emailed and sent by First Class postage prepaid U.S. Mail or hand delivered to the parties as follows:

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DATED this 23rd day of October, 2024.



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