

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

In Re the Ethics Complaint of  MONTANA DEMOCRATIC PARTY  v.  LIEUTENANT GOVERNOR KRISTEN JURAS	Cause No. COPP-2022-ETH-012  DISMISSAL & SUMMARY DECISION FAVORING LIEUTENANT GOVERNOR KRISTEN JURAS  Pursuant to Montana Code Annotated Sections 2-2-136(1)(c) and 2-2-136(2)(a).
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JURISDICTION, AUTHORITY, AND ALLEGATION

Montana’s Code of Ethics applies to all public officers and employees. Mont. Const. Art. XIII, sec. 4; Montana Code Annotated (MCA) § 2-2-101, *et seq.* The Commissioner of Political Practices (commissioner or COPP), has jurisdiction to hear and decide ethics complaints filed against state officers, legislators, state employees, and county attorneys. MCA § 2-2-136.

Kristen Juras serves as Montana’s Lieutenant Governor. The Montana Code of Ethics defines a public employee as “any temporary or permanent employee of the state,” MCA § 2-2-102(7)(a). Public officers are defined pursuant to MCA § 2-2-102(9)(a), and all executive branch officers are included under MCA § 2-2-102(12). Ms. Juras is, therefore, a public employee of the state, and subject to the Montana Code of Ethics and enforcement jurisdiction of COPP. See also, MDP v. Martz, COPP September 25, 2002, and MDP v. Stapleton, COPP-2019-ETH-001, contrasted with Eaton v. McLaughlin, COPP-2023-ETH-007. See also Sheehy v. Montana COPP 2020 MT 37 (affirming MT Dist. Ct. decision to overturn Adams v. Board of Regents, COPP-2018-ETH-001).

The Montana Democratic Party (MDP) submitted a formal complaint to this office on December 15, 2022, alleging that Montana Lieutenant Governor Kristen Juras (Lt. Gov. Juras) violated the Montana Code of Ethics, by which this process is initiated. (COPP Records/MDP Complaint). MDP more specifically alleges that Lt. Gov. Juras violated the gift ban as contained in Montana Code Annotated (MCA) § 2-2-104(b) with respect to her Helena property rental.

INTRODUCTION - CORRESPONDENCE AND  
ADDITIONAL INFORMATION REQUESTS (MCA § 2-2-136(1)(b)):

On December 19, 2022, my immediate predecessor, Commissioner Mangan, acknowledged receipt of the MDP, complaint, and sent a copy of the MDP complaint to Lt. Gov. Juras. [COPP Records]. On December 20, 2022, Commissioner Mangan corresponded with MDP and Lt. Gov. Juras. He advised each of the parties regarding the process, particularly that the initial step involved determining whether the complaint states a potential violation of the code under MCA § 2-2-136(1)(c). The Montana Code of Ethics allows the commissioner to dismiss frivolous complaints, complaints that do not state a potential violation, and complaints that do not contain sufficient allegations to allow the commissioner to determine whether a potential violation even exists. MCA § 2-2-136(1)(c). Velazquez Campaign v. Galt (COPP 2004), Tschida v. Bullock and O’Leary, COPP-2016-ETH-005 at pp. 1-2, and Tschida II v. Bullock and O’Leary, COPP-2019-ETH-003 at p. 7. The burden is on the complainant to make these assertions and present cognizable claims. Stienbach v. DeTienne, COPP-2016-ETH-004 at p. 2, and Fraizer v. Charlton and Simonich, COPP-2002-ETH (both citing Montana Democratic Party v. Lt. Gov. Martz, COPP-2002 ETH). The threshold to meet this burden, as described by prior commissioners, is relatively low but previous commissioners have repeatedly used this provision to make initial determinations and dismiss complaints when the complaints fail to sufficiently

contain facts supporting a violation of the code. Id. and Tschida I (2016) at pp. 1, 3 and 4, Tschida II (2019) at p. 12.

In Fraizer, the commissioner, citing to Martz, dismissed the complaint after determining that the Ethics Code provisions require the complaint to prove a person subject of the complaint accepted what was offered knowing it was provided to influence them to depart from the faithful and impartial discharge of their public duties or as a reward for duties already taken. Fraizer at pp. 7 and 8. See also, Tschida I (2016) at p. 4.

The commissioner can also dismiss for lack of jurisdiction (MCA 2-2-136(1)(a)) or based upon time limitation periods Administrative Rules of Montana (ARM) 44.10.604(1)(b), established in reliance on MCA § 27-2-211(1)(a) and Vehr v. Piquette, 210 Mont. 386, 684 P.2d 476 (1984). See Tschida I (2016) p. 3 and 4, Tschida II (2019) at pp. 5 and 12, and Eaton (2023).

Complaints are also regularly dismissed because a commissioner uses the discretion provided in MCA § 2-2-136(1)(c) to make that determination. Tschida I (2016) at pp. 6-8, and Tschida II (2019) at pp. 7 and 8. Commissioners provide notices of dismissal and issue summary decisions without contested case hearings. Engelking v. Lemert, COPP-2017-ETH-003.

To make this initial determination Commissioner Mangan requested a specific response from Lt. Gov. Juras and provided an opportunity for both MDP and Lt. Gov. Juras to provide additional information. (COPP Records). The date set for the response, and to provide additional information, was January 17, 2023. Id. Lt. Gov. Juras provided a response and additional information on December 27, 2022. She included a response, the lease agreement, and an affidavit from Jeff Laszloffy of Montana Family Institute (MFI), the property owner. MDP provided no additional information. Commissioner Mangan also informed the parties that the

determination would be made by the next commissioner due to his expiring term, which was before the January 17, 2023, deadline.

As communicated to the parties on July 3, 2023, I was appointed Commissioner by Governor Gianforte on January 23, 2023, and confirmed by the Montana Senate in mid-February. Since that time, I communicated with the Montana State Bar and others regarding rules of conduct and professional responsibility and reviewed material provided. COPP also completed the legislative session and budgeting process. I reviewed numerous decisions of this office with respect to ethics complaints, since that is a key factor in making initial determinations involving ethics complaints. Regrettably, as already expressed to the parties, these events delayed this decision beyond the norm. Having reviewed the complaint and the response, as well as prior relevant decisions, I am now prepared to make the aforementioned initial determination.

#### General Statement Regarding Process

As discussed further herein, the commissioner can dismiss a complaint, hold an informal contested case hearing, or issue a summary decision. MCA § 2-2-136. Whether a complaint is dismissed, heard, or decided depends on jurisdiction, timeliness, and circumstances and content presented in the complaint, as well as additional information requested or provided to with commissioner. DeTienne at p. 2. The commissioner reviews the complaint file and applies the relevant law as to issues contained in the complaint. Id., and by analogy to substantially similar campaign finance authority. See, Marbut v. Dudik, COPP 2014-CFP-061 at p. 6.

The commissioner makes reference to other bodies of law such as court decisions relevant to the issues at hand, prior COPP decisions, and publicly available information, in addition to information obtained from the complaint and by request through MCA § 2-2-



136(1)(b). Pinocci v. Hagan, COPP 2014-CFP-021 at p. 7., In re Laslovich, COPP November 18, 2009 at p. 4.

The commissioner should first determine whether a complaint requires dismissal under MCA § 2-2-136(1)(a) or (c). Monforton v. Motl, COPP 2018-ETH-002 at pp. 2, 3 and 11. If a case cannot be dismissed, the commissioner then makes the subsequent determination whether there should be a contested case hearing or whether the commissioner can otherwise decide the matter under MCA § 2-2-136(2)(a). Cooper v. Johnson, COPP-2016-ETH-007, MDP v. Stapleton (2019), and Zolnikov v. O'Donnell, COPP-2020-ETH-005. If a complaint can be dismissed, but is also appropriate for summary decision, the commissioner should dismiss and decide the case because any resolution by the commissioner constitutes a final agency determination, which an aggrieved party may appeal in state district court. MCA § 2-2-136(4). Consequently, judicial efficiency, convenience of parties, and resource considerations, necessitate the commissioner fully decide issues associated with complaints in a complete and dispositive manner.

It should be noted that in reaching such decisions, whether under campaign finance or ethics laws, it is fundamental that the unambiguously expressed underlying purpose of the law be adhered to. Laslovich at p. 9. Foundationally, neither the commissioner, nor the legislature, possesses unfettered discretion to impose legal requirements that are not constitutionally grounded. The Montana Constitution encompasses the inalienable right to pursue life's basic necessities, which includes acquiring and possessing property, and seeking their safety, health and happiness in all lawful ways. Montana Constitution, Article II, section 3.

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DISMISSAL PURSUANT TO MCA § 2-2-136(1)(C)

Based on the complaint file, which includes the MDP complaint, the response, and the additional information provided, I can dismiss the MDP complaint pursuant to MCA § 2-2-136(1)(c).

Factually, MDP asserts supporting allegations in the complaint that a rental once owned by the Gianforte Family Charitable Trust (GFCT), and now owned by MFI, which is closely aligned with the Montana Family Foundation (MFF), creates a potential violation of the gift ban. (MDP Complaint). The sole allegation that MDP presents as being sufficient to support a potential violation and enable the commissioner to reach a determination is that all of MFI/MMF's bills passed by the legislature were signed into law. MDP also requested that this office review the lease arrangement, including for special benefits that amount to a gift or economic benefit, whether and where payments are made, whether the payments reflect the market-rate price, and any other benefits being provided pursuant to the arrangement that result in a gift or economic benefit. Id. The commissioner does not conduct investigations in the manner MDP expects. See Eaton (2023) and DeTienne at p. 2.

MDP's complaint correctly points out that the Montana Code of Ethics deals with situations where public officers accept gifts of substantial value or a substantial economic benefit tantamount to a gift that would tend to improperly influence a reasonable person in the person's position from the faithful and impartial discharge of the person's public duties, or that the person knows is primarily for the purpose of a reward for official action taken. MCA § 2-2-104(1)(b)(i)(ii).

This office is tasked with administering proceedings and making determinations regarding the Montana Code of Ethics, under MCA § 2-2-136. The Constitution of the State of

Montana pursuant to Article XIII, sec. 4 establishes that there shall be a code of ethics and directs the legislature to provide one. Such duties and directives being fulfilled, the legislature adopted the Montana Code of Ethics, MCA § 2-2-101, *et. seq.* (En. 1977). The Commissioner has had enforcement authority over state officers, state employees, and legislators (in certain instances), since 1995. See 1995 Mont. Laws Ch. 562, (SB 136). In 2001, jurisdiction over county attorneys was added. See 2001 Mont. Laws Ch. 122 § 4 (SB 205). The 2001 Montana Legislature also added the provision that allows the commissioner to issue summary decisions. Id.

A properly filed ethics complaint also takes into account whether there was a gift, and whether, as a result of the gift, the respondent acted in contradiction to their official duty or was otherwise receiving a reward. See Frazier (following Martz). See also, Tschida I (2016) and Tschida II (2019). Both the fact of the gift and whether the person against whom allegations are made acted in contravention of the statute with respect to a duty owed, is a requirement under the statute when the commissioner determines whether the complaint sufficiently alleges a violation and is supported by the allegations asserted within the filed complaint. Id.

While “factual matter” could be further defined or ascertained as to these issues through a hearing or summary decision, as noted above, the statute first directs the commissioner to make initial determinations under MCA § 2-2-136(1)(c). Under MCA § 2-2-136(1)(c) analysis, the complaining party must articulate a potential violation under the law and support it with the facts it chooses to provide. Commissioners can and have dismissed case under MCA § 2-2-136(1)(c); however, and they typically request a response and additional information under MCA § 2-2-136(1)(b). This was done in the present case. Here, the primary question that remains is whether

Lt. Gov. Juras acted in contradiction to the statute and her duties based upon the amount of rent she pays to maintain housing in Helena.

Following the procedural aspects of the code, as addressed in DeTienne, and referred to Tschida I (2016), Tschida II (2019), and other dismissal cases, my initial MCA § 2-2-136(1)(c) determination results are as follows:

MDP properly filed its complaint in accordance with the requirements of 44.10.604, ARM. The Lieutenant Governor is an individual covered by the code, which results in the commissioner having authority and jurisdiction. (MCA § 2-2-136(1)(a).) While there is a low threshold to determine whether a complaint states a potential violation of MCA § 2-2-136(1)(c), the complainant has the burden of asserting a factual basis sufficient to establish a potential violation. Tschida, and Tschida II (citing Fraizer and Martz). For there to be a potential violation, the facts asserted must show that there was a gift, and the gift influenced the alleged violator to act in contradiction to the ethical expectations of the code. Id.

The MDP complaint essentially involves one event or particular matter, even though it is ongoing in nature (i.e., the lease agreement originally entered into by Lt. Gov. Juras and the GFCT, which was later transferred to and renewed by MFI. The charge is that Lt. Gov. Juras violated MCA § 2-2-104 of the Montana Code of Ethics regarding unlawful gifts when entering into a less than market value rent for a property near the Montana State Capitol, where she works). The complaint only offers Zillow as a proper valuation for the particular property. These are unverifiable nonspecific general market analyses by an online service. As discussed herein, such a valuation is not dispositive in any event. The complaint also asserts that Lt. Gov. Juras may not even pay rent, but this is unsupported in the complaint, and properly addressed in the response. Lt. Gov. Juras does pay rent. (COPP Records/Response and Affidavit).

In support of their allegation, MDP charges that the success rate of MFF legislation being signed into law is proof that the statute is being violated. MDP asserts as charges that the Lieutenant Governor failed to faithfully and impartially fulfill her duties as a result of receiving the alleged gift because too many MFF bills were passed by the legislature and then signed into law. This asserted allegation has no basis to support such a charge because, simply put, the Lieutenant Governor is not the Governor. She does not determine how often MFF legislation ultimately succeeds into law. The allegations are insufficient to show that the Lieutenant Governor departed from duties to which she is assigned. Looking at the Lieutenant Governor's duties bolsters this conclusion.

The Lieutenant Governor is an elected officer of the executive branch of the State of Montana. Article VI. sec. 1. The Lieutenant Governor performs only those duties provided by law and duties delegated by the governor, but such duties cannot include powers specifically vested in the governor by the constitution. Article VI. sec. 2, and MCA § 2-15-302. A specific power granted to the governor is the power to sign, amend, or veto each bill passed by the legislature. Article VI. sec. 10. This power cannot be delegated. At no point during the current administration has the office of governor become vacant. Article VI. sec. 6. In fact, only once, during a state of emergency while the governor was briefly out of the country, has the Lieutenant Governor issued an executive order. This particular executive order had nothing whatsoever to do with the MFI or MFF. There existed an emergency situation and the executive order principally affected travel and motor carriers, of which neither MFI or MFF have any specialized interest whatsoever. State of Montana, Officer of the Governor, Executive Order No. 4-2022.

Consequently, the MDP complaint can be dismissed pursuant to MCA § 2-2-136(1)(c), because the complaint does not contain sufficient allegations to allow the commissioner to

determine there was a potential violation of the ethics code. The complaint must establish that there was a gift and there was a duty. Here, the complaint establishes the potential for a gift, but relies upon a duty that the Lieutenant Governor clearly does not, and cannot possess, to establish the potential violation. This information can be gleaned, on its face, merely based upon the contents of the submitted complaint. The response, additional information requested, prior decisions of the commissioner's office, and publicly available information such as executive orders, statutes, and other information, which the commissioner is free and obligated to consider, only serve to validate this finding that the content of the complaint is facially deficient and cannot support a violation.

As previously indicated, Lt. Gov. Juras, responded to the COPP request for a response and provided additional information on December 27, 2022, which included a December 22, 2022, affidavit from Mr. Jeff Laszloffy, as President of the MFI. An email sent by Lt. Gov. Juras indicates she provided a copy of her response and the affidavit to the MDP by U.S. mail that same day. The response indicates her position that the December 15, 2022, MDP complaint is "false, unsubstantiated, scurrilous, and politically motivated." For security reasons, she requested that all public-facing records containing residential addresses be redacted. The commissioner honored, and continues to honor this request, in allowing such redactions from all publicly facing correspondence, material, and exhibits associated with the complaint.

As indicated in the response, the Lieutenant Governor initially entered into a written lease agreement with the GFCT to rent the premises that is the subject of this complaint. A true and correct copy of the lease was attached to the response and provided to the commissioner. The commissioner reviewed the lease agreement. The lease agreement was originally entered into on

November 9, 2020, for a continuous term covering November 9, 2020, through November 30, 2021. Rent in the amount of \$1,125.00 was to be provided monthly.

As asserted in the response and submitted to the commissioner pursuant to MCA § 1-6-105, under penalty of perjury, the lease was entered into through arms-length negotiations. Though neither party to the negotiation and transaction was, or is, a licensed appraiser or someone familiar with Helena real estate, the Lieutenant Governor asserted her belief that the rent reflected a "fair market rental value." That is, it was fair and suited her purposes. This position with respect to the value is later validated in the Laszloffy affidavit, which was included as part of the response. Whatever the basis for the belief, the parties to the agreement were satisfied in the negotiations and subsequently signed the lease agreement. The Lieutenant Governor also provided sworn information that she paid the rent in November of 2020 and that she has continued to pay monthly rent continuously through the present date. This is validated through communication with the GFCT, her own representations, and in the affidavit provided by Mr. Laszloffy. By sworn testimony, submitted under perjury, the issue of whether the Lieutenant Governor pays rent is resolved to the satisfaction of the commissioner.

In December of 2020 the MFI acquired the property from the GFCT, acknowledged that it was subject to the aforementioned lease, and kept the rent amount as agreed upon by the Lieutenant Governor and the GFCT. The MFI did modify conditions with respect to the lease whereby the Lieutenant Governor would be responsible for electric and gas utilities that were previously the responsibility of the landlord GFCT, pursuant to the written terms of the original agreement. The Lieutenant Governor agreed to additional modification even though the amount of rent was not reduced. The Lieutenant Governor agreed to other modifications in November 2022, whereby she assumed the responsibility for snow removal without a reduction in rent. The

lease agreement was renewed, and the rent was adjusted to reflect inflationary changes starting in November 2020. The new rental amount was mutually agreed to by the parties and increased the amount of rent from \$1,125 to \$1,250, which began January 1, 2023. Though he is not an appraiser or real estate agent himself, it is worthy to note that Mr. Laszloffy has personal experience with respect to a comparable rental amount in the area because, as his affidavit asserts, the MFI owns and currently rents an even larger home in the same neighborhood. The rental amount for this larger home was \$1,200.

Based upon the facts asserted the MDP complaint does not establish the occurrence of a gift. The commissioner established a solid working definition of a “gift” in Martz, and numerous cases cite to Martz to dismiss complaints under MCA 2-2-136(1)(c). Similarly, Martz is referenced at this point in my dismissal decision merely to establish the proper definition for a gift. Further, the asserted facts do not establish that the gift, if made, resulted in the Lieutenant Governor failing to impartially perform her official duties. In fact, with respect to the supposed beneficiary (MFI or MFF), the Lieutenant Governor had no particular duties to discharge. Bills, in whatever number, and at whatever percentage, are signed by the Governor, not the Lieutenant Governor. Although decided on the in context of the ban on use of state resources (MCA § 2-2-121), the Montana Supreme Court’s opinion in MT FWP v. Trap Free Montana Public Lands, 2018 MT 120 (overturning Trap Free v. MT FWP 2014-ETH-005), stands for the proposition that I cannot attribute the allegations upon the Lt. Gov, and as such a potential violation cannot be supported.

All of the asserted and relevant allegations made in the formal complaint have been carefully reviewed and considered. The response by the Lt. Governor and the affidavit included



were also reviewed and considered along with prior COPP decisions dismissing complaints under the provisions provided for in MCA § 2-2-136(1)(c).

Accordingly, the MDP v. Lt. Gov. Juras (December 15, 2022) complaint is dismissed under MCA § 2-2-136(1)(c) because it does not state a potential violation of the Montana Ethics Code, and it does not contain sufficient allegations to enable me to determine a potential violation of the code.

SUMMARY DECISION IN FAVOR OF LT. GOV. JURAS AND AGAINST MDP  
MCA § 2-2-136(2)(a)

Based on my review of the case file, and weighing all material provided, requested and received, and in addition to the MCA § 2-2-136(1)(c) dismissal (above), I also determine that the issues presented in the MDP complaint have been addressed and decided in prior decisions, and that, as to this particular matter, no additional factual development is necessary. Consequently, MCA § 2-2-136(2)(a) permits me to issue a summary decision, finding in favor of Lt. Gov. Juras - that she did not violate the Montana Code of Ethics with respect to her Helena property transaction (lease agreement).

As previously alluded to, the commissioner can decide cases without a contested case hearing, if the issues presented in the complaint have been addressed and decided in a prior decision, and I determine that no additional factual evidence is necessary. MCA § 2-2-136(2)(a). See Stapleton at pp. 2 and 3, Zolnikov (citing Stapleton, Cooper, and relying on Fox v. Molnar, COPP (2010)). This permits the commissioner to avoid costly contested case proceedings when pertinent issues have already been decided. This is a necessary and obviously beneficial purpose of the provision. It helps the commissioner in terms of dedicating time and resources, but it also benefits the parties to a complaint because the commissioner can assess the cost of the

proceeding against the non-prevailing party. MCA § 2-2-136(3)(d). Although previous commissioners tended to typically avoid assessing costs, significant costs have been assessed against non-prevailing parties. The signal example is Fox v. Molnar 2010 COPP ETH, where then PSC Commissioner Molnar was assessed costs for the hearing examiner and court reporter in the amount of \$14,945. COPP costs to the agency were not assessed, and the complainant's request that she be granted her attorney fees was denied. The amount and the denial were later affirmed in district court. Molnar v. Fox, Cause No. DV 10-1718 (Mont. 13<sup>th</sup> Jud. Dist. Ct., February 6, 2012) (affirmed Molnar v. Fox, 2013 MT 132).

This commissioner is aware of the expensive nature of such hearings, and like Commissioner Unsworth in Molnar, I will assess such costs as a matter of course. I am presently determining if I must assess COPP related costs even though the wording of the statute appears to make assessing such costs permissive. There is at least one Attorney General Opinion (AG Op. Vol. 39 Op. 32), which relies upon Durland v. Prickett, 98 Mont. 399, 39 P.2d 652 (1935) and Bascom v. Carpenter, 126 Mont. 129, 136, 246 P.2d 223 (1952) that stand for the proposition that the permissive "may" becomes "must" whenever the rights of the public are involved. The citizens of Montana certainly have an interest in how the powers of the commissioner's office are exercised. Taxpayers have an interest in how our money is spent. Accordingly, when MCA § 2-2-136(2)(a) can be properly utilized to avoid these costs, it will be.

By incorporation and reference to the above cited statutes, rules, cases, decisions, response, and additional information requested and provided, and mindfulness as respect to cost, I determine that no additional information is necessary, and I can rely on the Martz decision to fully decide and conclude this matter because Martz addressed and decided the issues pertinent to resolving the December 15, 2022, MDP complaint.

Prior to 2001 the commissioner could only dismiss complaints as described above (frivolous, failure to state a potential violation, and those that did not contain sufficient allegations). If the commissioner could not dismiss a complaint based upon what is now MCA § 2-2-136(1)(c), the commissioner was required to hold a contested case hearing pertaining to the matter before making the final agency decision. The 2001 changes to the law inserted a specific provision that allowed the commissioner to make summary decisions without a contested case hearing if the issues presented in the complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual evidence is necessary. The 2019 Montana Legislature retained this provision, though it was moved within MCA § 2-2-136, and, as a result was slightly reworded. 2019 Mont. Laws Ch. 156 (SB 150). This provision now exists within MCA § 2-2-136(2)(a).

Ironically enough, Martz also involved issues involving gifts, substantial economic benefits amounting to gifts, whether official duties were implicated, and it involved the office of Lieutenant Governor with respect to property valuations resulting in gifts. The decision specifically relied upon MCA § 2-2-104 in applying MCA § 2-2-136 authorities of the commissioner. The Martz decision did involve a contested case hearing following the commissioner's determination that a potential violation was asserted, but the complaint was filed on August 30, 2001, before the newly adopted provision became effective. (Mont. Law Ch. 122 (SB 205)). As a case in point, Martz was ultimately decided in September of 2002 following an informal but lengthy and expensive process. In Martz, MDP alleged that a property transaction between Martz and Atlantic Richfield Company (ARCO) resulted in an illegal gift violating provisions of the ethics code MCA § 2-2-104. Ultimately, the case was dispositive of the

following issues in exonerating former Lieutenant Governor Martz who had by then assumed the office of Governor. Namely, the following issues were decided upon and resolved:

- Whether a state official (the Lt. Governor) received a gift.
- How gifts are determined pursuant to the Montana Code of Ethics.
- Elements to determine gifts when property and values are an issue presented.
- Conduct and intent of the grantor.
- How actual duties of the state officer are factored in to determine whether a violation occurred.

The property in question was an 80-acre parcel, which Lieutenant Governor Martz purchased for \$300 per acre from ARCO. Martz at p. 2. The MDP charged that this was undervalued or less than its fair market value. At the hearing MDP bolstered its claims with respect to value through the use of a qualified appraiser. The appraiser retained by MDP used comparative sales in the area to conclude that the property was, indeed, significantly undervalued for purposes of the sale. Martz at p. 9. Not unexpectedly, then-Lieutenant Governor Martz had her own qualified appraiser who, based upon other factors, concluded that the property was overvalued. Id.

Evidence established at the hearing, and discussed in the commissioner's decision, shows how each conclusion was plausible depending upon the comparative property used (improved versus unimproved) to reach the conclusion, and whether it was appropriate to consider environmental impacts and restrictive environmental-related covenants. The MDP appraiser was able to conclude that Martz paid \$13,000 less than what the property was worth, while the Martz appraiser was able to conclude Martz actually overpaid by \$9,000. Id. This is important to note here in the present case, because the MDP asserts in the current matters that an appraisal should be conducted regarding the market value of the property being rented by Lt. Gov. Juras. This

current request, like in Martz, ignores the fact competing appraisals can and do vary significantly, and it ignores the actual basis upon which Martz was ultimately decided.

It was factually important in Martz that the parties to the property transaction were not appraisers or real estate professionals. Martz pp. 18-20. Each of the parties negotiated in good faith and at arm's length to arrive at a payment amount that each of them considered fair and reasonable. Martz at pp. 7-9 and pp. 17-20. ARCO determined its \$300 per acre purchase price based upon other company real estate transactions in the area, some of which were, in fact, lower than \$300 per acre. Martz at p. 7. Martz accepted this amount as fair. She maintained this position and ultimately purchased the property even after her attorney advised her of his assessment that the property was "worthless" due to the environmental covenants ARCO insisted upon. Martz at p. 9. The fact that ARCO paid a significant amount more to acquire the property was inconsequential to the commissioner's ultimate determination. The fact that ARCO received tax credits, and the fact that Martz purchased other property near the time of the sale, which both reflected higher per-acre amounts, was also inconsequential to the decision.

In reaching the decision in Martz, the commissioner applied facts to law and held that to constitute a violation of MCA § 2-2-104, the complainant must prove that (1) the respondent received a gift from ARCO or an economic benefit tantamount to a gift, and (2) that the gift or economic benefit tantamount to a gift would tend to improperly influence the Lieutenant Governor, or a reasonable person in her position, to depart from the faithful and impartial discharge of her duties, or that she knew or should know that the benefit bestowed was a reward for official action taken. Martz at pp. 13-14. As the commissioner wrote in her decision:

The first element required proof that ARCO made a gift and that the gift was received by the Respondent. This element primarily focuses on the conduct of the alleged grantor, ARCO: did it make a gift? The second element focuses on the Respondent, or a

reasonable person in the Respondent's position. It requires proof that the gift would improperly influence [the Respondent] or was a reward for action taken [by the Respondent]. *Id.*

As is the case in the present matter, MDP maintained that not paying the market price establishes that a gift was bestowed. Lt. Gov. Martz, as does Lt. Gov. Juras, alternatively argues that no gift was bestowed by another because she paid the asking price and that neither party to the arms-length negotiations considered the transaction involved a gift or economic benefit tantamount to a gift. *Martz* at p. 14. To resolve the dispute the commissioner in *Martz* established a reasonable definition as to the meaning of the term gift as contained in the statute, and used the purpose of the statute because it was "helpful" to the analysis. *Martz* at pp. 14-17.

According to *Martz*, the purpose of the statute, as contained in MCA § 2-2-101, is to "prohibit conflict between public duty and private interest." The code exists to instill public trust in state officials and employees, which creates confidence that these state officials and employees will carry out their respective duties for the benefit of the public, rather than themselves. MCA § 2-2-103(1), and *Martz* at p. 15. By prohibiting the acceptance of "gifts" the legislature established that it was improper to influence or reward public officials, and the term "gift" is to be broadly defined. *Martz* at p. 16. While true, and seemingly the definition MDP prefers to be strictly applied in this present matter, the commissioner in *Martz* determined that such a broad approach was unworkable. *Id.* As decided in *Martz*, a gift results when something is voluntarily transferred by one to another without compensation or when the compensation is less than the value of the item provided. In *Martz*, the commissioner cited to and relied upon *Estate of Perini*, 279 Mont. 85, 926 P2d 741 (1996), wherein the Montana Supreme Court held that a gift results when something is irrevocably and completely transferred without "full" or

“adequate” value received in exchange. Yet in Martz, as is the case here, this did not definitively end the analysis because the ethics code still requires additional application of established rules.

For example, the commissioner in Martz discussed the notions of American culture in what she referred to as the “good deal” or “the better of the deal.” Both parties are satisfied with the transaction because they lack actual knowledge or because other factors come into play that influence their decision. Martz at pp. 17-20. As the commissioner concluded in Martz, “[i]t may not be appropriate to conclude that a purchaser received a ‘gift’ merely because the full ‘normal’ price was not paid. The fact that the ‘normal’, ‘usual’, or ‘appraised’ price was not paid is evidence that a ‘gift’ was made but does not necessarily prove the making of a ‘gift’.” Citing Albinger v. Harris, 310 Mont. 27, 48 P.3d 711, 718 (2002), the commissioner in Martz acknowledged that the grantor must have “donative intent” among other factors. Consequently, in Martz, the only issue for the commissioner was whether ARCO intended a gift.

The commissioner determined that evidence to establish intent may be direct or circumstantial. Martz at p. 19. If evidence establishes that the seller reduced the price in exchange for a gratuity or influence or if evidence establishes that the buyer believes that the item was gratuitously provided or substantially reduced, a gift or partial gift results. Martz at p. 19. The commissioner acknowledged that such direct evidence will seldom be discovered, but held that circumstantial evidence, which is properly established by motive, could support a finding that a gift was made. Id.

Consequently, continued analysis is necessary here to determine whether there was a “circumstantial gift” based on the assertions within the current MDP complaint.

Continuing to follow Martz, the starting place to establish circumstantial evidence to prove a gift begins with evidence showing that the grantor had motive to make a gift. In Martz

the grantor was ARCO. Here the grantor is the property owner/landlord, MFI. If an alleged grantor had no motive for giving the receiver a substantial reduction in rent it is difficult to infer that there was a partial gift, even where the payment is less than an appraised value. See Martz at p. 20. "In a normal sale between two individuals the fact that the sale was below an appraised value probably would not result in the conclusion that there was a gift." Id. The assumption is that people do not make gifts without a motive, but the normal inference from the fact a buyer paid less than appraised or regular value, whether by comparison or not, is that the buyer got a good deal, not that they received a gift or partial gift. Id. If there is motive and the buyer paid less than full value, it is easier to infer an intended gift on the part of the seller. But still, the mere existence of motivation does not necessarily compel a conclusion that a gift was, in fact, made. Martz at p. 20. "Mere motive does not equate to intended conduct." Id.

In Martz, the commissioner determined that ARCO "may have had benefactory intent." Id. But the assertions made by MDP were based on the fact that ARCO's interest with the state involved Superfund cleanup obligations. The Governor, not the Lieutenant Governor, possessed all powers and duties with respect to Superfund matters. The Governor never transferred Superfund responsibilities and duties to the Lieutenant Governor. That is certainly the case presently before me. Circumstances are ironically and uniquely similar. In fact, in the present instance, unlike aspects of Superfund perhaps, the Governor is constitutionally precluded from transferring duties involving whether bills are signed, modified, or vetoed. See Constitution of the State of Montana, Article VI sec. 2 together with Article VI sec. 10.

A reasonable inference, based upon the facts presently before me, is that the GFCT, who is not in the business of selling or renting property, rented the property for what they thought it was worth. This inference is later and quickly confirmed MFI and Mr. Laszloffy. Mr. Laszloffy is



also not in the real estate business, but, like Stash in the Martz ARCO transaction, he did have knowledge of actual comparisons with respect to rentals in the exact neighborhood because he was already renting an even larger home there to another tenant for a substantially similar monthly amount. If anything, it was the Lieutenant Governor who was, in fact, aggrieved because she assumed additional responsibilities (snow removal) and cost (utilities), which were once being provided under the original terms of the lease agreement while the monthly rental payment remained unchanged. If MFI was motivated to curry favor with the Lieutenant Governor, it was going about it in a particularly odd way by renegotiating an existing lease with less favorable terms from the perspective of the Lieutenant Governor. There is no gift.

Even assuming that the property transaction involved a gift it cannot then be asserted, and there is no evidence to support a conclusion, that a gift improperly influenced the Lieutenant Governor with respect to how her duties were to be fulfilled. There is no evidence, whether direct or circumstantial, that any reasonable person in the Lieutenant Governor's position would be influenced to depart from the faithful and impartial discharge of their duties on account of the property transaction. "The Code of Ethics does not make unlawful the receipt of a "gift" unless the gift buys improper influence or is a reward for prior official acts." Martz at p. 27.

Even though Commissioner Vaughey decided Martz over twenty years ago, the laws and rules have not substantively changed, and her decision is cited by nearly every commissioner in one form or another. Her decision is, in fact, foundational in a great many respects, especially where gifts are at issue in complaints submitted to COPP. Her decision is certainly relevant here in the present case because it is precisely on point not just with respect to the law, but also with respect to all, or nearly all, of the relevant facts. Weighing the evidence here, it is clear that I should use Martz, which addressed and decided the relevant issues here.

Accordingly, pursuant to MCA § 2-2-136(2)(a), and applying the discretionary powers appropriate under Powell v. Motl, OP 14-0711, I issue this summary decision in favor of Lt. Gov. Juras and against MDP.

### CONCLUSION

Although helpful in concluding this matter, the response, affidavit, lease agreement and other materials provided or referenced, are unnecessary because the complaint can be dismissed on its face pursuant to MCA § 2-2-136(1)(c). There is simply no allegation in the complaint which would allow me to conclude even a potential violation exists. Attempting to attribute powers the Lt. Gov. does not and cannot have to support the complaint is fatal to the complaint itself. There is no direct evidence of an intended gift, or unintended gift, and there is no motivation to make a circumstantial gift because the Lt. Governor has no duties associated with the matters that MDP now alleges as proof to support a violation of the ethics code. It is baseless to assert facts with respect to a duty she cannot perform. The assertion cannot be imputed upon her. The allegations offered to support the complaint are not salient or germane to the issue at hand. Putting matters in context, based upon the supporting allegations contained in the complaint, if influencing someone to get their legislation signed into law was indeed MFI's motivation, it should give the GFCT the house back. Absent an articulable reasonable motivation there is no gift, even a circumstantial one.

The complaint cannot survive a MCA § 2-2-136(1)(c) dismissal analysis, and a summary decision under MCA § 2-2-136(2)(a) in favor of Lt. Governor Juras is warranted.

After weighing all of the necessary and available evidence, I find that the MDP complaint does not support the allegations that the Lieutenant Governor violated the Montana Code of Ethics, and relying on the decision in Martz, issued September 25, 2002, as well as MCA § 2-2-

104, and applying the authorities granted the commissioner in MCA § 2-2-136, I issue this as a final agency decision in the form of a dismissal and summary decision, and accordingly dismiss the MDP complaint pursuant to MCA § 2-2-136(1)(c) and rule by summary decision under MCA § 2-2-136(2)(a) that Lt. Gov. Juras, as herein described, did not violate the Montana Code of Ethics with respect to her Helena rental agreement. The commissioner is afforded discretion in exercising the authority of the office. Powell v. Motl.

Therefore, it is the final determination of this agency that the MDP complaint is dismissed and a summary decision in favor of the Lt. Governor, Kristen Juras is so entered.

#### COSTS

MCA § 2-2-136(3)(d) provides that the commissioner may assess costs of the proceedings against the person bringing the charges if the commissioner determines that a violation did not occur. I determined that a violation did not occur. However, because of the historically demonstrated reluctance to exercise this discretion, even in action held frivolous, egregiously baseless and unfounded, or even false, I will not suddenly and unfairly change course. Though, as previously indicated above, I consider it fair warning that I intend to further review AG Opinions and Montana Supreme Court cases to determine how and when this discretion regarding fee collection is regularly exercised. If a rule is necessary to better define and properly determine how this provision is exercised, I intend to adopt such a rule and apply it to all future cases. Finally, the law is clear in this respect. If costs of proceeding include hearings examiners, court reporters, and other costs not typically incurred by this agency as part of normal operations, I can and will assess those costs. These did not occur in the present case, no costs are ordered.

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## FINAL AGENCY ORDER

Final Agency Order, MDP v. Lt. Gov. Juris is:

- 1) Dismissed pursuant to MCA § 2-2-136(1)(c);
- 2) Summary decision in favor of Lt. Gov. Juris and against MDP is necessary under MCA § 2-2-136(2)(a); and
- 3) No costs are assessed under MCA § 2-2-136(3)(d).

## NOTICE

The Commissioner provides notice to the parties that this Summary Decision is a final agency order, and either party may seek judicial review of the Commissioner's determination pursuant to MCA, Title 2, Chapter 4, part 7., and MCA § 2-2-136(4). The parties are further notified that the Complaint, record established, and this decision are available for public inspection. MCA § 2-2-136(3)(c).

ORDERED this 19<sup>th</sup> day of July, 2023.



CHRIS J. GALLUS, Commissioner  
Montana Office of Political Practices

## CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing to be mailed and sent by first class U. S. Mail to:

Montana Democratic Party  
303 N. Ewing  
Helena, MT 59601

Lieutenant Governor Kristen Juras  
(Redacted for Privacy)



CHRIS J. GALLUS, Commissioner  
Montana Office of Political Practices