

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Steinebach v. DeTienne	No. COPP 2016-ETH-004 Ethics Complaint Not Accepted For Filing But Rejected As Failing to State a Potential Violation Of Ethics Law
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Tyler Steinebach, a resident of Superior, Montana, lodged an ethics claim with the Commissioner of Political Practices posed as a complaint against James DeTienne, the supervisor of the EMS and Trauma Systems section of the Montana Department of Public Health and Human Services. The Complaint is not accepted for filing and is hereby rejected and returned to Mr. Steinebach. The reasons for the rejection are that the complaint does not state a potential violation of ethics law and lacks sufficient allegations. Either of these reasons are grounds for dismissal of an ethics complaint. (§ 2-2-136(1)(b), MCA).

Procedural History

An ethics complaint was lodged by Mr. Steinebach with the COPP on August 11, 2016. On August 16 and 17, 2016 the Commissioner asked each party to provide certain additional information, as allowed by § 2-2-136(1)(a), MCA. The Commissioner received a response from Mr. DeTienne on October

17, 2016. On November 24, 2016 Mr. Steinebach provided an additional document. Also in November of 2016 the Commissioner met with Summer Fellows (Whitehall Town Clerk/Treasurer) and a citizen who provided additional information in support of the Complaint.

The Commissioner used both the information in the Complaint and that additionally supplied by the parties to reach the Dismissal made in this Matter. In making this Dismissal the Commissioner notes that an ethics complainant has the initial responsibility to make factual allegations that could state a potential violation of the code of ethics. If a complainant states such allegations (and the complaint is therefore accepted for filing), each party then has the responsibility to develop the factual record before the Commissioner though the informal contested case proceedings in Title 2, chapter 4, part 6, of the Montana Code. (§ 2-2-136(1)(c), MCA.)

The Commissioner has a limited opportunity to seek information outside of the allegations of the lodged ethics complaint: “[t]he commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.” § 2-2-136(1)(a), MCA.¹ The Commissioner exercised that authority and requested additional information from the parties in this Matter.

¹ The Commissioner’s investigative authority regarding ethics complaints is limited in time in that it can be exercised only before a Decision to accept or reject an ethics complaint; but it is also limited in scope in that it can only make a request for information from the parties. These limitations are in sharp contrast to the broad investigative powers, including subpoena power, provided the Commissioner under Title 13, Chapter 37 of the Montana Code in regard to campaign finance complaints.

Introduction

This matter concerns provision of ambulance services for the portion of Jefferson County located in or around the town of Whitehall. Until late 2015 that ambulance service had been provided by an ambulance fleet (Whitehall Ambulance) staffed by volunteers organized as an adjunct to the town of Whitehall. The documents show that Whitehall Ambulance provided competent service that also generated funds for the Town of Whitehall.

Whitehall Ambulance, however, had a particular relationship to the town of Whitehall. The town of Whitehall spent no funds on Whitehall Ambulance. The ambulance fleet, including the materials and equipment used to provide emergency services by Whitehall Ambulance, were purchased through donations and grants. The personnel who staffed the Whitehall Ambulance service runs did so on a largely volunteer basis. The town of Whitehall, however, was the recipient of any net payments made for emergency services provided by Whitehall Ambulance.

Late in 2014 the volunteer leadership of the Whitehall Ambulance took steps to establish an expanded ambulance service provider entity, eventually establishing two non-profit entities, including the Jefferson Valley Emergency Medical Services and Rescue (JVEMS). By early 2016 all of the volunteer personnel of Whitehall Ambulance had transferred their certifications and services to the new JVEMS.

Thus, the town of Whitehall owned a fleet of ambulances but found itself without the personnel to operate or provide medical services. In response

Whitehall Ambulance began to recruit the new personnel necessary to begin to operate anew. The new JVEMS, however, had an ambulance fleet and personnel and it was licensed to provide services in the area formerly served by Whitehall Ambulance.

The Complaint focuses on the circumstances and people involved in this transfer of service personnel from Whitehall Ambulance to JVEMS and, in particular, on the actions of the state employee who was in charge of licensing of these entities.

Discussion

There are strongly held positions and opinions voiced by those involved in the competing ambulance services. Those positions and opinions focus on Mr. DeTienne as he was and is the state employee responsible for determining if either or both of the ambulance services were operating such that it can be licensed for operation.

The Complaint alleges that Mr. DeTienne took inspection and licensing actions that favored JVEMS over Whitehall Ambulance. These actions allegedly constituted ethical violations, according to the Complaint, because they benefited a co-employee who was active in JVEMS.²

Setting aside the review of the necessity and timing of any inspection or license action, the ethics of DeTienne's actions are measured by reference to Montana's Code of Ethics governing the conduct of state employees. First, a

² An ethics complaint, however, must be directed to the employee's own conflict and cannot be based on the assumption of another employee's conflict. *See infra*, notes 5 through 9.

state employee acts unethically if he or she accepts a gift related to an action taken.³ A review of all documents submitted fails to show an allegation of or fact suggesting that a gift occurred. There is no basis for an ethics violation in this Complaint based on acceptance of a gift.

Second, a state employee acts unethically if he or she engages in official action that personally benefits the employee.⁴ There are, however, no allegations or facts suggesting that Mr. DeTienne had a business or economic interest in any ambulance service provider that he was regulating. Likewise, there are no allegations or facts suggesting his actions caused a competing business detriment.⁵

Third, a state employee acts unethically if he or she used public resources for private gain.⁶ Such allegations are not present here; in particular, there are no allegations or facts suggesting that Mr. DeTienne was paid a fee in compensation for action taken.⁷

The Commissioner notes that prior Decisions have determined that there is a “low” threshold in determining whether or not a complaint states a “potential [ethics] violation” under § 2-2-136(1)(b), MCA. *Democratic Party v. Martz*,

³ A Montana public employee may not accept a gift “that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties”. § 2-2-104(1)(b)(i) and (ii), MCA.

⁴ A Montana public employee “may not acquire an interest in any business or undertaking that the ...employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the ...employee’s agency.” § 2-2-105(2), MCA.

⁵ A Montana public employee “may not perform an official act directly or indirectly affecting a business or other undertaking to its economic detriment when the ...employee has a substantial personal interest in a competing firm or undertaking.” § 2-2-105(5), MCA.

⁶ A Montana public employee may not “use public time, facilities, equipment, supplies, personnel, or funds for theemployee’s private business purposes.” § 2-2-121(2)(a), MCA.

⁷ A Montana public employee may not “assist any person for a fee or other compensation in obtaining a ...license...from any agency.” § 2-2-121(2)(d), MCA.

September 2, 2002 (Commissioner Vaughey). A lodged ethics complaint may be subject to dismissal and rejected for filing if the “charges [are] so insufficiently supported by allegation as to not state even a ‘potential’ violation.” *Id.* As explained herein, this “insufficiently supported” standard is met here, resulting in the Dismissal of this Complaint for the reasons set out above. There are no facts or allegations establishing a suggestion that Mr. DeTienne acted in way that he potentially breached the Code of Ethics applying to state employees. The Complaint is Dismissed.

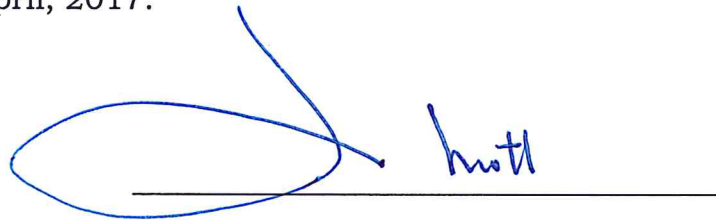
In making this Dismissal, the Commissioner notes that Mr. DeTienne does not control the disagreement between the competing groups of people. On one hand the largely volunteer nature of these ambulance service providers creates a natural community of people with like interests; this community existed whether the service providers were organized as Whitehall Ambulance or JVEMS. On the other hand, the town of Whitehall understandably wishes to continue to receive the benefits from Whitehall Ambulance, even though the community of people that made Whitehall Ambulance work have moved on. Mr. Detienne can do nothing other than what he has done, which is to administer licensing rules impartially, even when it results in the licensing of competing ambulance services.

This Dismissal Lifts Confidentiality

Ethics complaints made against a “state officer, legislator or state employee” are initially lodged with the Commissioner of Political Practices, § 2-

2-136(1)(a), MCA. Any such ethics complaint is deemed confidential when lodged with the COPP, § 2-2-136(4), MCA.⁸ A dismissal is a “decision” lifting the confidentiality by § 2-2-136(4), MCA. *Tschida v. Bullock*, COPP-2016-ETH-005.

DATED this 5th day of April, 2017.



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⁸ These complaints are first listed on the COPP homepage website by initials and complaint number. The complaint at issue in this Matter was listed as “*S v. T*, COPP-2016-ETH-004 – Lodged, as of yet neither accepted or rejected (9/11/2016).” Upon release of this Dismissal the Complaint will be relisted in the name of the parties.