

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

In Re the Ethics Complaint of <b>TIMOTHY ADAMS v. MONTANA BOARD OF REGENTS.</b>	Cause No. COPP-2018-ETH-001  <b>SUMMARY DECISION OF COMPLAINT WITHOUT INFORMAL CONTESTED CASE HEARING</b>
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On March 7, 2018, Mr. Timothy Adams of Bozeman, Montana, filed an ethics complaint with the Office of the Commissioner of Political Practices (COPP), posed as a complaint against the Montana Board of Regents, and against the individual Regents. That same day, the Commissioner notified Mr. Adams that his complaint had been lodged, and requested any further supplemental information that he would like to add to his complaint be provided by March 21, 2018. The Commissioner received no additional information or allegation from Mr. Adams beyond referral back to his complaint.

The Commissioner also notified the Montana Board of Regents on March 7, 2018, and requested additional information in order to make an initial determination if the Complaint stated a potential violation, Mont. Code Ann. § 2-2-136(1)(a). The Board responded by March 21, 2018. The Commissioner then sought additional information on March 22, which the Board responded to on March 29, 2018.

**I. SUBJECT MATTER JURISDICTION AND AUTHORITY**

The Commissioner of Political Practices has subject matter jurisdiction to hear and decide complaints filed under Montana's Code of Ethics against state officers, legislators, state employees and county attorneys, Mont. Code Ann. § 2-2-136(1)(a). Unless a complaint is dismissed as frivolous, or for failing to state a claim of a potential violation of the code, the Commissioner "shall hold an informal contested case hearing,"

Mont. Code Ann. § 2-2-136(1)(c). However, "[i]f the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint," *id.*

Having reviewed Mr. Adam's complaint and the responses from the Board of Regents, Commissioner Mangan determines from the facts presented and admitted in the record that no additional factual development is necessary pursuant to a prior decision of this office, *Fox v. Molnar* (Commr. Unsworth, Sept. 13, 2010).<sup>1</sup> Therefore the Commissioner issues the following summary decision without holding an informal contested case hearing on the complaint.

## **II. PERSONAL JURISDICTION**

The preliminary question at issue is whether a member of the Board of Regents is subject to Montana's Code of Ethics. While it might seem like a simple question to answer, it takes time to work through a Regent's status under the law.

The call for a Code of Ethics came out of the 1971-1972 Constitutional Convention, ratified by the people of Montana on June 6, 1972:

The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Mont. Const., Art. XIII, sec. 4. As instructed, the Legislature enacted the Code of Ethics, Mont. Code Ann. § 2-2-101, *et. seq.*

The Montana Board of Regents of Higher Education (BOR) is one half of Montana's State Board of Education provided for by the 1972 Constitution. The Board of Regents' duties and qualifications include:

(a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

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<sup>1</sup> COPP decision; affirmed by the Thirteenth Judicial District Court in [\*Molnar v. Fox, Cause No. DV-10-1718\*](#) (Feb. 6, 2012); affirmed by the Montana Supreme Court in [\*Molnar v. Fox, 2013 MT 132\*](#), 370 Mont. 238, 301 P.3d 824 (May 14, 2013).

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

Mont. Const., Art. X, sec. 9(2).

The State Board of Education is an Executive Branch state agency, Mont. Code Ann. § 2-15-1501. The Commissioner of Political Practices has jurisdiction over complaints of potential violations of the Code of Ethics for state officers, legislators and state employees, Mont. Code Ann. § 2-2-136. The Code of Ethics defines a “state agency” to include:

- (i) the state;
- (ii) the legislature and its committees;
- (iii) all executive departments, boards, commissions, committees, bureaus, and offices;
- (iv) the university system; and
- (v) all independent commissions and other establishments of the state government.

Mont Code Ann. § 2-2-102(10)(a). The definition specifically excludes the judicial branch, Mont. Code Ann. § 2-2-102(10)(b).

With this background in mind, the first issue in determining whether the Code of Ethics applies is determining if a Regent is a public officer or employee, subject to the COPP’s jurisdiction.

#### **A. Public Officer**

The Code of Ethics defines a “public officer” as “any state officer and any elected officer of a local government,” Mont. Code Ann. § 2-2-102(8)(a).

A “state officer” is further defined as “all elected officers and directors of the executive branch of state government as defined in 2-15-102,” Mont. Code Ann. § 2-2-102(11). A Regent is not elected, rather they are appointed by the Governor and confirmed by the Senate, Mont. Const., Art. X, sec. 9(2)(b). Turning to the definition of a director of the executive branch, “a department head specifically referred to as a director in this chapter and does not mean a commission, board, commissioner, or

constitutional officer,” Mont. Code Ann. § 2-15-102(6)(a). A Regent is a member of the Board of Regents and, thus, excluded as a director of the executive branch.

Therefore, a Regent is not a “public officer” under the plain meaning of the words in the Code of Ethics.

## **B. Public Employee**

The Code of Ethics defines a “public employee” as:

- (a) any temporary or permanent employee of the state;
- (b) any temporary or permanent employee of a local government;
- (c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and
- (d) a person under contract to the state.

Mont. Code Ann. § 2-2-102(7).

Regents do not receive an hourly wage or benefits from the state, rather they are entitled to reimbursement of per diem compensation and travel expenses incurred while performing the duties of the Board of Regents, Mont. Code Ann. §§ 2-18-501 through 503, 20-2-113 and BOR Policy 807.2. A Regent who is not a state or local employee, or under contract with the State, would not be a “public employee” under Mont. Code Ann. § 2-2-102(7)(a), (b), or (d).<sup>2</sup>

Which leaves us with the question of whether a Regent is a member of a quasi-judicial board or a board with rulemaking authority, Mont. Code Ann. § 2-2-102(7)(c).

### **1. Member of a Quasi-Judicial Board**

The Regents exercise “quasi-judicial functions”<sup>3</sup> in the course and scope of their work for the people of Montana. The Governor’s list of Boards, Councils and Committees defines BOR’s functions as quasi-judicial and constitutional.<sup>4</sup> Yet the Board of Regents is not expressly designated as a “quasi-judicial board” under Montana law.<sup>5</sup>

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<sup>2</sup> The Commissioner notes that Regent Lozar is employed by the State, but additionally serves on the Board of Regents, *see FOF 4 infra*, and is thus a “permanent employee of the state” within the meaning of Mont. Code Ann. § 2-2-102(7)(a).

<sup>3</sup> “Quasi-judicial function” is defined in law at Mont. Code Ann. § 2-15-102(10).

<sup>4</sup> <http://svc.mt.gov/gov/boards/default.aspx>

<sup>5</sup> See e.g. Board of Milk Control, Mont. Code Ann. § 2-15-3105(4); Board of Environmental Review, Mont. Code Ann. § 2-15-3502(4); Board of Pardons and Parole, Mont. Code Ann. § 2-15-2305(7); Board of Personnel Appeals, Mont. Code Ann. § 2-15-1705(5), etc.

Nor are the Regents subject to the membership qualifications of a quasi-judicial board, Mont. Code Ann. § 2-15-124.

Further, the Board of Regents are exempted from the provisions of formal or informal contested case hearings under the provisions of the Montana Administrative Procedures Act (MAPA), Mont. Code Ann. § 2-4-102(2)(a)(iii). The Board has, however, promulgated its own complete procedure for handling appeals of issues under the jurisdiction of the Board, BOR Policy 203.5.2.<sup>6</sup> See e.g. *Billings v. State Bd. of Labor Appeals*, 204 Mont. 38, 45, 633 P.2d 1167 (1983).

While it is clear the Board of Regents exercises quasi-judicial functions, it is not expressly identified as a quasi-judicial board in statute. Without determining if BOR is a quasi-judicial board under the Code of Ethics, the Commissioner turns to examining whether a Regent is a “public employee” by virtue of being a member of a board with rulemaking authority.

## **2. Member of a Board with Rulemaking Authority**

The Board of Regents is expressly provided with rulemaking authority under statute, Mont. Code Ann. §§ 20-2-114 and 20-25-301(2) and (3). BOR points out that it is exempt from the rulemaking procedures of MAPA, Mont. Code Ann. § 2-4-102(2)(iii). Being exempt from a specific rulemaking process, however, is not the same as being deprived of rulemaking authority. Indeed, the Board readily admits that it engages in rulemaking for its processes. It is this determination—whether a Regent is considered a “public employee” as a member of a board with rulemaking authority—that the Board of Regents has asked the Commissioner to clarify in its response to this complaint.

In making this determination, the Commissioner looks to objective evidence of guidance provided to State Boards, Councils, and Commissions by the Governor. They are advised to carry out the obligations on their service to the benefit of the people of Montana, “Serving Montana – Appointee Handbook,” Gov. Bullock (Dec. 2016).<sup>7</sup> All appointed members of Boards, Councils and Commissions are instructed that they are “public officers...required to follow the state of Montana’s code of ethics and conduct,”

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<sup>6</sup> <http://mus.edu/borpol/bor200/203-5-2.pdf>

<sup>7</sup> [https://svc.mt.gov/gov/boards/docs/Appointee\\_Handbook.pdf](https://svc.mt.gov/gov/boards/docs/Appointee_Handbook.pdf)

and provided with examples of potential conflicts, gifts and use of public property, *id.* at 2.

The Commissioner hereby determines that a Regent is a public employee as a member of a board with rulemaking authority, and therefore subject to the Code of Ethics, Mont. Code Ann. § 2-2-102(7)(c).

This plain reading of the statute, harmonizes the Constitution's intent for a Code of Ethics to cover "all state and local officers and employees,"<sup>8</sup> with the obligations enacted by the Legislature in 1977, that:

[t]he holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator or public employee shall carry out the individual's duties for the benefit of the people of the state.

Mont. Code Ann. § 2-2-103(1).

As a Regent is a public employee, the Commissioner has personal jurisdiction to make a determination as to whether or not a potential violation of the Code of Ethics occurred as alleged in Mr. Adams' Complaint, Mont. Code Ann. §§ 2-2-103(4)(a)(i) and 2-2-136.

### **III. CONTENTIONS**

The Complaint alleges in general three potential violations of the Code of Ethics. First, that the individual members of the Board of Regents have violated the portion of the code prohibiting use of state resources for the public employee's personal enrichment (Mont. Code Ann. § 2-2-121(2)) by failing to properly disclose a conflict of interest and/or failing to recuse prior to taking official action, Mont. Code Ann. §§ 2-2-121(8) and 2-2-131.

The second allegation is that Regent Robert (Bob) Nystuen improperly supported a ballot issue committee called "Montanans for the 6Mill"<sup>9</sup> while participating in the University of Montana Bureau of Business and Economic Research's 43<sup>rd</sup> Annual

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<sup>8</sup> Mont. Const., Art. XIII, sec. 4 (emphasis added).

<sup>9</sup> Montanans for the 6Mill has registered and reported to the COPP as a ballot issue committee, supporting passage of the 6 Mill Levy on the ballot this November, *infra* FOF 11.

economic outlook seminar (BBER) tour of Montana this spring,<sup>10</sup> in violation of Mont. Code Ann. § 2-2-121(3).

Third, the complaint alleges that individual members of the Board of Regents have improperly used state resources to solicit support for the passage of the 6 Mill Levy ballot issue during the Regents May 2017 and November 2017 meetings, also in violation of Mont. Code Ann. § 2-2-121(3).

The Board contends in response that the Regents have properly disclosed personal business interests and have recused themselves from decisions of the Board when necessary. The Board also contends that Regent Nystuen's participation in the BBER's was for his own personal reasons and he was not authorized by or representing the Board in the tour. The Board also contends that Regent Nystuen is not required to shed his identity as a Regent when exercising his own personal political views.

Finally, the Board of Regents contends that it is unclear whether a Regent is a public employee under the Code of Ethics and defers to the Commissioner's determination on the matter. If subject to the Code of Ethics, the Board contends that part of their duty is to find resources for the Montana University System, and that some of their actions regarding the 6 Mill Levy were properly incidental to those duties. To the extent that any Regent's words or the Board's agenda violated the Code of Ethics, the Board asserts the mistake was unintentional and asks COPP for guidance on how to conduct themselves in the future.

#### **IV. JUDICIAL NOTICE**

The Board of Regents and Mr. Adams both request that the Commissioner take judicial notice of the Board of Regents archived meeting videos, minutes and agendas as evidence of what occurred in this matter. Their requests for judicial notice is granted, as the documents relate to adjudicative facts in sources whose accuracy cannot be reasonably be questioned, Mont. R. Evid. 201(b) and Mont. Code Ann. § 2-4-612.

The Commissioner also takes judicial notice of the adjudicative facts in resources hyperlinked herein, whose accuracy cannot reasonably be questioned, Mont. R. Evid. 201(b) and (c).

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<sup>10</sup> <http://flatheadbeacon.com/2018/02/05/economic-outlook-seminar-explore-future-higher-education-montana/>

## **V. FINDINGS OF FACT**

In order to apply the law to the contentions, the following Findings of Fact are necessary:

1. Fran M. Albrecht is the Chair of the Board of Regents and her current term expires on February 1, 2019.<sup>11</sup> Ms. Albrecht is the Executive Director of Providence Montana Health Foundation.

2. Chase Greenfield is the Student Regent, his term expires on June 30, 2018. Mr. Greenfield is a student in his Senior year at the University of Montana, majoring in English and Philosophy.<sup>12</sup>

3. William (Bill) A. Johnstone was a Regent at the time this complaint was filed; he stepped down in March of 2018 after serving as a Regent for four years. Mr. Johnstone is an attorney and a former chairman and CEO of D.A. Davidson, a financial services holding company based in Montana.

4. Casey Lozar is a Regent whose term expires February 1, 2025. Mr. Lozar is employed by the State of Montana as the Bureau Chief of the Business Development Bureau for the Montana Department of Commerce.

5. Robert A. Nystuen is the Vice Chair of the Board of Regents and his current term expires on February 1, 2022. Mr. Nystuen is the Market President of Glacier Bank based in Kalispell, Montana.

6. Martha Sheehy is a Regent and her current term expires February 1, 2021. Ms. Sheehy is an attorney based out of Billings, Montana.

7. Paul Tuss is a Regent and his current term expires February 1, 2020. Mr. Tuss is the Executive Director of Bear Paw Development Corporation based in Havre, Montana.

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<sup>11</sup> <https://mus.edu/board/BORmembers.asp>

<sup>12</sup> [https://www.bozemandailychronicle.com/news/montana\\_state\\_university/governor-to-fill-two-openings-on-montana-board-of-regents/article\\_921ccd67-37fb-5725-8853-e5fb586e27a2.html](https://www.bozemandailychronicle.com/news/montana_state_university/governor-to-fill-two-openings-on-montana-board-of-regents/article_921ccd67-37fb-5725-8853-e5fb586e27a2.html)

8. Clayton Christian employed by the Board of Regents and the State of Montana as the Commissioner of Higher Education.<sup>13</sup> As the Commissioner, Mr. Christian serves as the secretary to the Board of Regents.<sup>14</sup>

9. Tyler Trevor is employed by the Office of the Commissioner of Higher Education (OCHE) as the Deputy Commissioner for Budget & Planning & Chief of Staff. Mr. Trevor, as a part of his duties, maintains the factual and statistical data for OCHE, and has responded to numerous inquiries regarding the impact of the 6 Mill Levy to members of the public. Mr. Trevor did briefly provide a response to Ms. Bell regarding the accuracy of her presentation at the May 2017 BOR meeting.

10. The Governor and the Superintendent of Public Instruction are also “ex officio non-voting” members of the Board of Regents.<sup>15</sup>

11. On March 8, 2017, Senate Bill 85 “Submitting a 6-mill levy for support of the Montana University System to voters” was enacted by the 2017 Legislature. This legislative referendum will appear on the November 2018 ballot as LR-128, referred to herein as simply the 6 Mill Levy.

12. On March 10, 2017, “Montanans for Higher Education” filed a Statement of Organization with COPP, forming a ballot issue committee in support of the 6 Mill Levy for the November 2018 ballot.

13. On May 8, 2017, Molly Bell, then the deputy treasurer for Montanans for Higher Education, contacted an employee at OCHE and the Board of Regents, seeking the ability to make a presentation at an upcoming Board of Regents meeting. Commissioner Christian approved the request, and her presentation was placed on the May 2017 Board of Regents Meeting Agenda. Agendas, minutes and videos of all the Board’s meetings at issue in this decision are available publicly on the Montana University System’s website.<sup>16</sup>

14. On May 26, 2017, the Board of Regents held a meeting in Great Falls. The portion of the meeting discussed here can be viewed at <https://www.youtube.com/>

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<sup>13</sup> <http://politicalpractices.mt.gov/Portals/144/5campaignfinance/VivHammillD1BusinessDisclosureAdvisoryOpinion.pdf>

<sup>14</sup> Mont. Code Ann. § 20-2-111(2).

<sup>15</sup> Mont. Const., Art. X, sec. 9(2)(b).

<sup>16</sup> <https://mus.edu/board/meetings/agendas-and-minutes.asp>

watch?v=Ti2out7n2u8&feature=youtu.be, running from the 30:05 mark through the 49:54 mark, for a total of just under 20 minutes. The unofficial transcription of the relevant portion of this meeting is set out in Exhibit A, at 2-5, and is adopted and incorporated in this Finding as if set out in full herein.

15. On November 13, 2017, Montanans for Higher Education filed an amended Statement of Organization with COPP, changing the committee's name to "Montanans for the 6 Mill."

16. On November 16, 2017, the Board of Regents held a meeting in Bozeman. The portion of the meeting discussed here can be viewed at https://www.youtube.com/watch?v=LisdeF9Nvdg&feature=youtu.be, running for five minutes from the 1:54:45 mark through the 1:59:44 mark. The unofficial transcription of this discussion is also set out in Exhibit A, at 6-7, and is adopted and incorporated in this Finding as if set out in full herein.

17. From January 23 through March 14, 2018, in a series of 10 events around the State, Regent Nystuen was the keynote speaker at the University of Montana Bureau of Business and Economic Research's 43<sup>rd</sup> Annual economic outlook seminar (BBER) tour of Montana.<sup>17</sup> The BBER economic outlook seminar billed Mr. Nystuen this way,

Robert Nystuen is vice chair of the Montana University Board of Regents and has been a community banker for 40 years. Since 2004, he has been market president of Glacier Bank. He has been associated with the board of trustees of Flathead Valley Community College since 2002 and served as board chair for eight years. In 2015, he was appointed by Governor Steve Bullock to the board of regents, which is responsible for the Montana University System.

## **VI. DISCUSSION & ANALYSIS**

The Montana Legislature adopted the Code of Ethics for Montana state and local officers and employees and legislators "prohibiting conflict between public duty and private interest," Mont. Const., Art. XIII, sec. 4.

The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees... [who] shall carry out the individual's duties for the benefit of the people of the state.

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<sup>17</sup> <http://www.economicoutlookseminar.com/>

Mont. Code Ann. § 2-2-103(1). "A public officer ... or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided ... for abuse of the public's trust," *id.*, at (2).<sup>18</sup>

#### **A. Prohibition on Use of State Resources for Personal Gain**

Mr. Adams contends that Regent Nystuen and Regent Johnstone have failed to disclose their personal interests, holdings and compensation from businesses that directly benefit from the Board of Regent's issuance of public bonds or engaging the borrowing power of the University System.

On this point, Mont. Code Ann. § 2-2-105 provides in relevant part:

(2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

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(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.

The complaint did not specify a specific vote or issue on which Mr. Adams believed that Regent Nystuen or Regent Johnstone failed to recuse from or what interest should have been disclosed prior to voting but was not. When the Commissioner asked Mr. Adams to provide additional information, he only referred back to the allegations of the Complaint. The Board of Regents asserts that the Regents have properly disclosed and recused when necessary. The Board also asserts that without a specific vote to reference, they are without notice as to what potential conflict exists. Further, the law allows Regents to vote once the disclosure has been made, Mont. Code Ann. § 2-2-105(4).

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<sup>18</sup> It is important to note that the Board of Regents adopted its own Code of Expectations in 2003, both Mr. Adams and the Board referred to it in their responses. <https://mus.edu/board/CodeOfExpectations.pdf>.

The Commissioner hereby dismisses this portion of the complaint as a frivolous and as an insufficiently supported allegation of a potential violation of the Code of Ethics pursuant to Mont. Code Ann. § 2-2-136(1)(b).

### **B. Support for Ballot Issue on Personal Time**

Mr. Adams contends that Regent Nystuen's participation in the BBER economic outlook seminar tour was in violation of the Code of Ethics for allegedly using public resources to solicit support for a political committee, Mont. Code Ann. § 2-2-121(3), (FOF 17).

The Code of Ethics prohibits public employees from using

(a) ... public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this [section], "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office .... With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This [section] is not intended to restrict the right of a public officer or public employee to express personal political views.

Mont Code Ann. § 2-2-121(3). (*See also* Exhibit A, at 1.)

The Board of Regents asserts that Regent Nystuen did not participate in the BBER tour in his capacity as a Regent. Rather, Mr. Nystuen participated as an

individual and was not required to shed his identity as a member of the Board of Regents while exercising his right to express his personal political views on his own personal time.

As a public employee, Regent Nystuen has a right to express his own personal political views, Mont. Code Ann. § 2-2-121(3)(c). Nothing in the facts evince that Regent Nystuen was reimbursed for his expenses or time on the BBER tour by the State of Montana. Rather the facts demonstrate that he participated as an individual. (FOF 17.) The Commissioner hereby determines that Mr. Nystuen's participation in the BBER tour, and any advocacy for the 6 Mill Levy issue during those appearances, were an allowable expression by a public employee of his own political opinions, on his own time, and therefore dismisses this alleged violation of the Code of Ethics.

As to the issue regarding Regent Nystuen's use of his "Regent" title while introducing himself on the BBER tour, the Commissioner agrees with the Board. It has long been established that public employees and officers have the right to use their title, so long as public resources are not used in creating or disseminating the opinion, *see* 51 Op. Att'y Gen. No. 1 (2005). "The presumption is that free speech rights are protected and only the very specific restrictions in Mont. Code Ann. § 2-2-121 can be invoked to limit a public officer's or public employee's right to political speech," *id.* The Commissioner hereby dismisses this alleged violation of the Code of Ethics.

### **C. Ballot Issue Presentation Using State Resources**

The Commissioner dismisses Mr. Adams's contention that the Board acted improperly or violated the Code of Ethics by hearing Ms. Bell's presentation<sup>19</sup> at the May 2017 meeting as a part of the agenda rather than during public comment, Mont. Code Ann. § 2-2-121(3)(a)(i)-(ii). Regents have a duty to determine the impact of the passage or failure of the 6 Mill Levy on the budget for the University System, Mont. Code Ann. § 20-25-301. A presentation regarding the passage or failure of the 6 Mill Levy is information-gathering by the Regents; that the information is provided by outside entities, or that it may supplement the Board's understanding of the issue with a new way of looking at the budget for the University System does not change the public nature

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<sup>19</sup> Representing the ballot issue committee Montanan's for Higher Education, n.k.a. Montanans for the 6 Mill, *supra* FOF nos. 12, 13, 15.

of the function being performed by the Board. As a public body, the Board of Regents have provided a procedure for outside entities to request time on the agenda for discussing such important issues facing the University System.<sup>20</sup>

Ms. Bell followed the Board's policy for requesting time to appear on the agenda to discuss the determination of her ballot issue committee regarding how the University System's budget would be impacted by 6 Mill Levy (FOF 12). The Commissioner of Higher Education approved the request as it was within the scope of the duties of the Board of Regents, and the item was placed on the public agenda (FOF 13). There is no indication in the Commissioner's record that a similar request from a group opposing the 6 Mill Levy which was denied or heard elsewhere on an agenda.

When a public body meets to discuss issues about how the passage or failure of a ballot issue will impact state government operations, these discussions are "properly incidental" to the work of the body as a whole, Mont. Code Ann. § 2-2-121(3)(b)(i). Vetting, or discussing ideas and solutions to an issue is central to our participation rights as citizens, and to a public body's determination of the best course forward. Participation in and listening to divergent viewpoints on our "marketplace of ideas" helps to improve governmental functions rather than diminish the outcomes by operating in a vacuum. The Commissioner hereby determines that the presentation, and its inclusion on the agenda, were properly incidental to the duties and functions of the Board of Regents, and therefore dismisses this alleged violation of the Code of Ethics.

#### **D. Information Provided to the Public on Impact of Ballot Issue**

Mr. Adams contends that Regent Johnstone improperly used state resources by referring Ms. Hill to ask Tyler Trevor to review the facts and figures in her May 2017 presentation (FOF 14; Ex. A, at 2). The Board of Regents states that Mr. Trevor works for OCHE and is part of the team responsible for determining the impact of the passage or failure of the 6 Mill Levy on the operations of the University System and regularly provides information to members of the public and the Board (FOF 9).

Following Ms. Bell's presentation, Mr. Trevor briefly addressed one inaccuracy in her PowerPoints. "Specifically, he volunteered that instead of where she had 'OR a 17-

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<sup>20</sup> <http://mus.edu/board/meetings/AgendaHandbook.pdf>

18% increase in student tuition’ it would be more accurate to state: ‘OR a 17-18% increase in in-state student tuition.” (FOF 9). The Board of Regents asserts that providing this information to a member of the public is “properly incidental” to Mr. Trevor’s work for OCHE and thus allowed by the Code of Ethics.

The Commissioner agrees with the Board of Regents that Mr. Trevor’s conduct was permissible under Mont. Code Ann. § 2-2-121(3)(a)(ii) and (3)(b)(i). One of the proper functions of state government, and conduct expressly *authorized* by the Code of Ethics, is to determine the impact of legislation on the governmental body, *id.* The information prepared by the agency or board affected by the legislation is usually provided by the governmental body to the individuals voting on the matter. A ballot issue is direct legislation by the people of Montana through their ballots. Information, facts and figures provided to the public and electorate about the impact of the 6 Mill Levy on the University System is an appropriate and necessary function of government. The Commissioner hereby determines that the factual information provided by Mr. Trevor to Ms. Hill was properly incidental to the duties and functions of the Board of Regents, and therefore dismisses this alleged violation of the Code of Ethics.

#### **E. Public Resources During May and November BOR Meetings**

The larger portion of Mr. Adams’s complaint contends that the Board of Regents’ discussions about the 6 Mill Levy that occurred at the May 27, 2017 and November 16, 2017 were an improper use of public resources to solicit support for a ballot issue or ballot issue committee, Mont. Code Ann § 2-2-121(3), (FOF nos. 14 and 16). The Board of Regents contended in response that the Regents are not public employees, and therefore not subject to the Code of Ethics; but, it deferred to the determination of the Commissioner. The Commissioner has already concluded, *supra* at II.b.2, that the Regents in fact are public employees by virtue of being members of a board with rulemaking authority, and thus subject to the Code of Ethics.

The Commissioner turns to the Board of Regent’s next contentions. The Board contended that the Regents are volunteers, who have a duty to the people of Montana to find resources to adequately fund the Montana University System, and that they do not personally benefit from the ballot issue. Rather, there are a few Regents who have joined the Montanans for 6 Mill steering committee, volunteering their time and experience in support of the issue. The Board accepts responsibility if any of their

actions violated the Code of Ethics and requests guidance from the Commissioner for the future. Finally, if the Code of Ethics applies “and if any words on [the Regent’s] part or on the Board of Regents agenda violates these provisions, the mistake was truly unintentional and certainly de minimis.”

In order to aid in this discussion and to provide guidance to the Board, the Commissioner prepared an unofficial transcript of the meetings, which has been adopted in the findings of fact herein (FOF 14 and 16). Having reviewed the records available on the Board of Regents website, and prepared transcripts identifying when the Code of Ethics was violated, the portion at issue for the May 27, 2017 meeting ran a total of just under 20 minutes, and that the November 26, 2017 meeting portion ran for a total of 5 minutes.

The first page of the transcript is a “color key.” Identifying the words of the statute which authorize use of state resources on ballot issues that are properly incidental to the operations of government are **green**. The words of the statue in **yellow** are those which should be examined to see if they are permitted or prohibited. The words in the statute which prohibit an activity are in **red** and refer to support for the ballot issue, or the ballot issue committee. The Commissioner hereby determines that the language identified by color in the transcript as permitted, cautionary, and prohibited use of Montana’s public resources by the Board of Regents pursuant to the reasoning which follows.

### **1. Support or Oppose**

Whether a discussion impermissibly traipses in solicitation of support for or opposition to a ballot issue or candidate is dependent on looking at the language used. The Montana Code of Ethics does not provide a specific definition of the phrase "support for or opposition to," so it is reasonable for the Commissioner to look to other definitions in statute to clarify its meaning, Mont. Code Ann. § 1-2-107.

One possible definition of “support or oppose” can be found in the Disclose Act, passed by the 2015 Montana Legislature, which defined the terms in the campaign finance reporting and disclosure realm. There, “support or oppose,” including any variations of the term, means:

- (a) using express words, including but not limited to “vote”, “oppose”, “support”, “elect”, “defeat”, or “reject”, that call for the nomination, election, or

defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

Mont. Code Ann. § 13-1-101(49)(2017).

Give the completeness of the definition, and the extensive legal jurisprudence behind it, the Commissioner determines it is appropriate to rely on the Disclose Act's definition of "support or oppose" when interpreting the similar terms in the Code of Ethics, Mont. Code Ann. § 2-2-121(3).

## **2. Properly Incidental to the Impact of the Levy**

In general, the Commissioner determines that the language identified in green in the transcript is properly incidental activity of a governmental body in discussing and determining the impact of the ballot issue on the funding available for the Montana University System, Mont. Code Ann. § 2-2-121(3)(a)(i)-(ii) and (b)(i). The Commissioner therefore dismisses any alleged violation of the Code of Ethics for these portions of the meeting denoted in green on Exhibit A.

## **3. *De Minimis* Expression of Personal Political Views**

At the May 2017 Board of Regents meeting, Regents Sheehy, Nystuen, Tuss and Lozar all participated in either identifying themselves as members of the Montanans for the 6 Mill steering committee or briefly supported the actions of the ballot issue committee while using "public time, facilities, [and] equipment," Mont. Code Ann. § 2-2-121(3)(a),(FOF 14). For the following discussions, the Commissioner determines the public resources used at the board meeting as the conference room, recording devices and time on the agenda.

At the Board's November 2017 meeting, Regents Nystuen and Albrecht either participated in briefly expressing support for the ballot issue, or support for the actions of the ballot issue committee while using "public time, facilities, [and] equipment," Mont. Code Ann. § 2-2-121(3)(a),(FOF 16).

To the extent the brief words uttered by the Regents involved public time, facilities and equipment, the Commissioner determines that incidentally identifying yourself as a part of an organization is permissible personal political expression afforded to public employees under Mont. Code Ann. § 2-2-121(3)(c). This incidental identification is a natural extension of the logic found in the Attorney General's 2005 Opinion, 51 Op. Att'y Gen. No. 1, where it was determined that public employee is not required to shed all associations with their official position, including a uniform or title, while expressing personal political beliefs. For example, a county sheriff could wear his uniform to campaign for political issues or candidates, and write letters to the editor signed with his official title.

Now, 13 years later, public meetings are recorded and preserved for prosperity, giving the people much more detailed insight into every single word uttered in the course of a meeting. o so closely parse the words of a public employee or officer, and to hold them to such a high standard would necessarily drive down the desire to serve the people of Montana through the holding of public office or employment in the modern era.<sup>21</sup> To the extent that public resources were briefly used to violate the Code of Ethics in expressing support for the ballot issue or a ballot committee, the Commissioner hereby dismisses the allegations as a *de minimis* impact on the use of state resources for the words identified in yellow in the attached transcripts of the May 2017 and November 2017 Board of Regents' meetings.

#### **4. Prohibited Use of Public Resources in Support of a Ballot Issue or a Ballot Issue Committee**

At the Board of Regents' May 2017 meeting, Regents Sheehy, Nystuen, Tuss, Lozar and Johnstone all participated soliciting support for the 6 Mill Levy, or the ballot issue committee while using "public time, facilities, [and] equipment", Mont. Code Ann. § 2-2-121(3)(a) and (FOF 14). For the following discussion, the Commissioner determines the public resources used at the board meeting as the conference room,

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<sup>21</sup> Legislators have an exception in the Code of Ethics for undefined "legislative acts" which are most likely tied to speech and debate immunity during legislative committee and floor sessions, Mont. Const., Art. V, sec. 8. Perhaps the legislature should consider the prudence of amending the statute to provide for a speech and debate exception for public employees and officials while participating in quasi-legislative functions and discussion.

recording devices and time on the agenda. The passages which violate the Code of Ethics have been identified in red, Exhibit A at pages 2-5.

At the November 2017 Board meeting, Regent Nystuen participated soliciting support for the 6 Mill Levy, or the ballot issue committee while using “public time, facilities, [and] equipment,” Mont. Code Ann. § 2-2-121(3)(a) and (FOF 16, at 6-7). The passages which violate the Code of Ethics have been identified in red, Exhibit A at pages 6-7.

It is clear that the Regents were aware of the Code of Ethics both in May and November 2017. The Regents appear to have incorrectly believed that they were not “public employees” subject to the Code of Ethics, and that they had a right to express their support for and to solicit support for a ballot issue while using state resources, *supra* at II.b.2 and Ex. A, at 4-6. While engaging in permissible, fact-gathering inquiry as to the impact of the 6 Mill Levy on the University System, at times the Regents slipped into impermissible use of state resources. The Regents’ slips included both support for the passage of the ballot issue, and for supporting the ballot issue committee itself. While the Commissioner agrees that these actions were either unintentional or misinformed, they cannot be dismissed as a *de minimis* impact on the Code of Ethics.

The Commissioner hereby determines that, for the portions of the transcript identified in red on Exhibit A, there has been a violation of the prohibition on use of state resources “to solicit support for...[a] political committee....[and] the passage of a ballot issue,” Mont. Code Ann. § 2-2-121(3)(a).

Next the Commissioner examines state resources used by the Board of Regents including “public time, facilities, equipment, supplies, personnel or funds,” *id.* When serving as a Regent the individuals are not paid public employees, as discussed above, *supra* at II, nor is there evidence of any other public personnel or state funds used to support the ballot issue or the ballot issue committee, and the Commissioner dismisses those allegations.

On the other hand, there is the use of the university property, meeting space, cameras and resources to record the meeting; all facilities and equipment of the State of Montana. Properly excluded from this determination, however, are the *other* public employees or staff who recorded and distributed the agenda, and who took minutes, as well as the web space used to post the meeting to remain available to the public.

The Commissioner determines that state facilities and equipment were misued in the Board of Regents May 2017 meeting and November 2017 meeting as set out in red on Exhibit A. Because this is a matter of first impression as applied to the Board of Regents, a fine of \$750 is appropriate for each category at each meeting for a total of \$3,000, *accord Fox v. Molnar (Sept. 13, 2010), supra* n. 1, at 29.

Having determined that a violation of the Code of Ethics occurred, and by setting out an administrative penalty as explained above, the Commissioner next determines whether the COPP should assess the costs of the proceeding against the Board of Regents, Mont. Code Ann. § 2-2-136(2)(c). The Commissioner determines that Mr. Adams expenses were limited to drafting and filing the Complaint. The Commissioner did incur expenses, but through use of in-house counsel and a summary decision without a hearing, the Commissioner determines that costs will not be assessed against the Board of Regents for this determination.

## **VII. CONCLUSIONS OF LAW**

Based on the foregoing discussion and analysis, the Commissioner makes the following conclusions of law:

1. The frivolous and insufficiently plead allegations that Regent Nystuen and Regent Johnstone improperly used state resources for personal gain, Mont. Code Ann. §2-2-105, are dismissed.
2. The allegation that Regent Nystuen, while participating in the BBER tour of Montana, improperly used his title as Regent or public time in violation of Mont. Code Ann. § 2-2-121(3)(c) is dismissed as without foundation.
3. Hearing, as part of the Board's agenda, the presentation by Ms. Bell at the May 2017 Board meeting was "properly incidental" to the duties of the Board of Regents, Mont. Code Ann. § 2-2-121(3)(a)(ii), and does not constitute a violation of the Code of Ethics.
4. The information provided to the public by Mr. Trevor on the impact of the ballot issue is "properly incidental" to his job with the Commissioner of Higher Education, Mont. Code Ann. § 2-2-121(3)(a)(ii), and does not constitute a violation of the Code of Ethics.
5. The Board of Regents engaged in some discussion at the May and November 2017 board meetings which was "properly incidental" to the discussion of the

impact of the 6 Mill Levy on the Montana University System, Mont. Code Ann. § 2-2-121(3)(a)(ii), and does not constitute a violation of the Code of Ethics.

6. Some Regents expressed their individual political views during the May and November 2017 board meetings, which is dismissed as allowable personal expression with *de minimis* impact on the use of state resources, Mont. Code An. § 2-2-121(3)(c) and (3)(a).

7. Both state facilities and state equipment were improperly used at the May and November 2017 Board of Regents' meetings to solicit support for a ballot issue or a ballot issue committee in violation of Mont. Code Ann. § 2-2-121(3)(a).

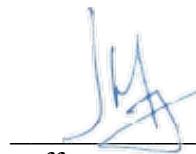
8. On the matter of whether to assess costs of resolving this matter to either party, Mont. Code Ann. § 2-2-136(2)(c), the Commissioner was able to substantially reduce the costs which might have been otherwise assessed through the use of in-house counsel. State employee time and resources were used in resolving this matter. Further, the matter was amenable to a summary determination, Mont. Code Ann. § 2-2-136(1)(b). The Commissioner hereby declines to assess the costs of the proceeding against either party. If this matter is returned for a full hearing, the Commissioner reserves the right to amend this determination.

#### **NOTICE**

The parties are hereby notified, pursuant to Mont. Code Ann. § 2-2-136(3), that this dismissal is a final agency order, and either party may seek judicial review of the Commissioner's determination pursuant to Montana Code Annotated, Title 2, Chapter 4, part 7.

The parties are further informed that, having now issued a decision on this matter, the Complaint, record established, and Decision are available for public inspection, Mont. Code Ann. § 2-2-136(4).

ORDERED this 25<sup>th</sup> day of April, 2018.



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Jeffrey Mangan  
Commissioner of Political Practices  
P.O. Box 202401  
Helena, MT 59620-2401

## **CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing to be emailed and send by first class US mail to:

Timothy Adams  
6104 E. Shadow Dr.  
Bozeman, MT 59715

The Montana Board of Regents  
Attn: Viv Hammill, Chief Legal Counsel  
560 N. Park  
P.O. Box 203201  
Helena, MT 59620-3201

DATED this 25<sup>th</sup> day of April, 2018.

Jaine MacNaughton

## **Color Key**

The Montana Code provides that public employees **are prohibited from using:**

(a) **public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:**

(i) **authorized by law; or**

(ii) **properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.**

(b) As used in this [section], "properly incidental to another activity required or authorized by law" **does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office ... With respect to ballot issues, properly incidental activities are restricted to:**

(i) **the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;**

(ii) **in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.**

(c) **This [section] is not intended to restrict the right of a public officer or public employee to express personal political views.**

Mont Code Ann. § 2-2-121(3).

**Montana University System Board of Regents - May 2017 Day Two**

<https://www.youtube.com/watch?v=Ti20ut7n2u8>

Regent Tuss reconvenes the meeting at the 29:23 mark

Regent Tuss proceeds to the 1<sup>st</sup> item on the agenda, an update on the 6-mill levy. Introduces Molly Bell as a presenter. Molly Bell, Montanan's for Higher Education.

Molly Bell Presentation – see Minutes, page 16

<https://mus.edu/board/meetings/2017/May2017/6MillLevy.pdf>

Following presentation, Regent Tuss opens to questions at the 36:26 mark:

Regent Johnstone: “First of all, thank you. This is a very important topic, but a suggestion I guess. I think that you should have these materials, particular with respect to the financial information reviewed by Tyler to make sure that the information in here is correct.”

Ms. Bell: “Ok.”

Ms. Bell: “Was there anything specifically, that?”

Regent Johnstone: “I just suggest that you have him go through it and look at it and make sure information is correct.”

Regent Tuss: “Thank you Regent Johnstone. Additional questions or comments from members of the Board? Regent Sheehy”.

Regent Sheehy: “Some of us are serving on the committee, some of us more actively than others. I’ve been unable to come to most of your meeting so far, but is there anything else that we can do as Regents to support this effort?”

Ms. Bell: “I think that if you all have any feedback on who we need to be talking to in your communities, organizations that we need to be working with. You all are out and about in your respective communities, and so you know your communities well, and maybe there’s an organization that needs to get a presentation or maybe there’s an individual you know that would like to get more involved in the campaign and so we are really looking for strong community advocates.”

Regent Sheehy: “As you start the effort, do you have any impressions as to how informed the electorate is, how much work we have left to do?”

Ms. Bell: “Yes, so, we, this is something that comes up every ten years and so people forget about it. And they forget they voted on it and we actually fielded an initial poll and the polling results came back that if this were on the ballot right now only 48% of voters would approve this. So we need to get the word out and make people realize that it is not a new tax, an existing tax and we need to emphasize the fact that it will not only help students but drive economic growth in Montana.”

Regent Tuss: “Regent Nystuen”.

Regent Nystuen: “Thank you, Mr. Chair. I too serve on the 6-mill committee with Martha and Paul. But it’s interesting the trend lines about the approval rates for the passage of this were on a perfect

projectory for a 50-50 vote here whether it's this cycle or the following one. It's just an absolute perfect downward slide as far as the approval rates here in the state of Montana. The 6-mill has provided us information for which counties in the state typically do not support the 6-mill, and several of them can be rural, rural populations and so forth. I think it's incumbent upon the folks on the committee, as well as the informed group here in the audience to really be out there and be champions of this. You might think that it's a long way off, it's a year and a half off before we as voters vote on this but now is the time to build a strong, solid foundation for this and never take it for granted. You all connect with people in chambers of commerce, rotary clubs, community groups. We have to get the word out to them. What organization isn't looking for a good presentation from time to time? We can customize this so start asking early for an opportunity to do this. We'll be looking for financial support of this. We have of course a track record of the last 50 years of organizations that have historically funded this, including labor industries, labor unions and so forth; they've been a solid partner in this."

"So, what we really need to do is get financial support, advocacy and a groundswell to continue to support this. I'd love to see this trendline reversed from a downward slope as far as passage rates to actually turn it back up here. There have been many communities that have been supportive of local K-12, I think about the Bozeman community that recently went on record and said support our school district with a 125 million dollar vote. That was an amazing vote, 2-1 passage, and others around the state here too. But at some point in time is there a concern about voter fatigue for supporting education in this endeavor here. And so what I'd like to think is that our voters would say we're going to continue, not build a new tax into our tax bill we receive each November, but in essence what we are about here is to really create a sustained, almost 20 million dollar funding source for the Montana University System. We can't take it for granted. We have to get behind it and support it. Never have any of you hesitated to call me, call Molly, call Martha, call Paul and the other 20 people who are on this task force. Thank you, Mr. Chair".

Regent Tuss: "Thank you Regent Nystuen. And along those lines, Molly, if members of this board or people in the audience or people listening to this effort. If they wanted to get more involved in this, if their organization wanted to endorse this, if they wanted to contribute even financially, I'm assuming they could get ahold of you, correct?"

Ms. Bell: "Yes. Yes. You can either email me at the 'info@' or if you go to our website there is also a contact form that you can fill out. So feel free to come up after the presentation and we would love to have all the support that we could get".

Regent Tuss: "I know that Regent Nystuen and I are serving on the steering committee for this and I'm so pleased that we're starting this early for a lot of reasons that Regent Nystuen had mentioned. Regent Nystuen".

Regent Nystuen: "Thank you. As a follow up, Mr. Chair, you know I hail from a county, Flathead county, that we support our community college through our own mills as to support; as do Miles and Dawson. Historically, Flathead county, FCC and so forth that don't directly receive those dollars for their particular education, higher education unit have supported that, the 6 Mill. Because it's a conduit for the students of FCC, Dawson, and Miles to transfer the other colleges and universities here in the State. So I'd like to continue to be an advocate even if those dollars don't land in Kalispell, Miles City, or Glendive that we continue to never take them for granted as well. The other thing is, I would

encourage, we're going to try to get more information out. This is a ballot initiative, it is important we all understand what roles and responsibilities as potentially as, as you are an employee of the University system, what you can do, can't do, so forth as well as if you are making financial contributions as a citizen as well as probably more so as a business. Bill and I were just talking, will our organizations participate in writing some checks to fund this, and that is typically the thing. But, this is a political ballot initiative so Molly and her team will be a resource to make sure we fill out the right forms, the political reporting forms. So, and so forth. I think that's the job of the group to help make that an easy thing so that a check can be written, and we can go on record as being an advocate for this. That's just a quick heads up in that area. Thank you".

Regent Tuss: "Thank you. Regent Lozar".

Regent Lozar: "Thank you, Mr. Chair, and thank you Molly for taking on this effort. Just knowing that the 40,000 students are directly or indirectly the beneficiaries of the levy, what are your intentions on engaging them throughout this process, knowing that there's 40,000 students and that many of them, the traditional age students, this will be their first ballot to cast a vote on? I think you've got a body that you can really take advantage of and really inform and sort of bring them into the fold. So, I'd be curious to hear sort of what you're doing with that particular target market."

Ms. Bell: "Yeah, so we've been working with the student governments to kinda brainstorm ideas on how to engage them. We obviously, besides having, asking students to become canvassers and asking them for their vote too, and registering students to vote. I'm exploring trying to perhaps get college credit for some of the students to help with the campaign. I think it would be a really interesting thing for a polisci major, for example, to learn more about a campaign, and I think that the students hopefully will be a very good resource when it comes to social media as well, and helping to generate content for social media, and you know they are very social media savvy and so I'm going to be hopefully relying on them a lot for social media and spreading the word that way too."

Regent Tuss: "Regent Johnstone".

Regent Johnstone: "Thank you Chair, Molly. Can you describe the launch schedule for the campaign? Give us a little bit of the sense of when it's going to formally launch and what the process will be?"

Ms. Bell: "So we are kinda doing a soft launch right now. We've been doing coffees and one-on-one outreach more, and recruiting steering committee members, racking up endorsements. We've been doing house parties, we just had a house party in Billings actually, well it was at the Highlands Club so it's not necessarily a house, but we had a Billings, had about 50 Billings community leaders come and the Governor gave a presentation about the 6 Mill levy there, and we're planning to do these across the state, we have a few lined up for this summer. And as we get closer to November of 2018 we are going to be doing some more public events. We just want to make sure that we're building that infrastructure first before we really start launching our more public media events and we also want to make sure we are a little bit closer to the campaign cycles so that it is fresh in people's mind".

Regent Johnstone: "Can I just, and maybe you covered this, and I just missed it, and if I did I apologize. What sort of marketing surveys, voter surveys have you done to kinda understand what questions, what issues will be out there. So we can better understand how to respond?"

Ms. Bell: "So as I mentioned, we did do, we bought a question on an existing poll because we're a little bit cash strapped right now and it's cheaper to buy a question than to launch an entire poll, and we asked the question just how people would see it on the ballot. At the recommendation of the pollster we did this just to kinda get an initial read of if someone were to vote on this today, what would they vote. And we came back at about 48% support. So, we haven't fielded entire poll yet, we're still waiting to raise the funds for that, but once we do we will be doing some polling and surveying."

Regent Tuss: "Regent Nystuen".

Regent Nystuen: "Sorry, don't mean to keep buzzing in here. But one other thing that campuses can do is, President Cruzado at Montana State University the 6-mill group has already touched and been to your Alumni and Foundation board meetings. That is certainly a venue that we'd really encourage again. I think with administrators you have to walk the line here, as far as advocating for this, and Commissioner Christian can walk you through those, but certainly alumni and foundation type gatherings, meeting, board meetings, and things like that, we'd love to have that audience once or twice between now and next November '18. Okay, thank you."

Regent Tuss: "Thank you, Regent Nystuen. Additional comments or questions from members of the Board. If not, Molly thank you for being here. This is obviously an important topic to us, and we, I can't imagine that we won't all be really engaged in this over the next couple of years and I'm very glad that we're starting this conversation early with the citizens of Montana. So thank you for being here."

Ms. Bell: "Thank you for having me".

49:54 Next Item on Agenda

**Montana University System Board of Regents - November 2017**

<https://www.youtube.com/watch?v=LisdeF9Nvdg>

Agenda beginning at 1:54:45

Commissioner Clayton Christian: "Madame Chair, if I could, I'd like to ask Regent Nystuen to touch briefly on the 6-mill levy. He's been engaged with that and we'll follow that with a quick mention of some work we'll be doing that I think is kinda consistent with the 6-mill levy effort, separate and apart through BBER presentations this spring, early spring, winter, something like that. January. Regent Nystuen".

Regent Nystuen: "Thank you, Mr. Commissioner. Madam Chair, the two words I picked up were quick and brief, OK. That's it. It's my pleasure today to just give you a very quick overview of what we're about these days with regards to the 6-mill levy. When you look at our entire budget for the system it's about 1.6 billion dollars a year. Allow me to round numbers here, but the true cost of education, the students in classroom piece, is about a half a billion, 500 million dollars a year. 300 of that comes from students' fees and tuition, 60%, and 40%, 200 million dollars, comes from the State of Montana, state appropriations. The cornerstone of that, or the foundation, did I get that right President Sterns, foundation or cornerstone of that 200 million comes from a tax on all property owners at the rate of 6 mills that accounts for 200, excuse me 20 million of the 200 million that comes for state appropriations for higher ed. So it's 10 percent, it's a big number. In 1948 it was decided, the legislature decided, every ten years the State of Montana voters had an opportunity to revisit that to continue this levy. And so as we look at our calendars to November 2018, we will all have an opportunity to go thumbs up, thumbs down for supporting the 6 Mill levy. You can imagine the impact it will have, it does have to us right now as part of our funding, and it would be a disaster if that didn't pass again. We've had a lot of earnest discussions about legislative challenges, fiscal challenges and all that. **We are at a very important crossroads now as we head towards November 2018 for that vote to get behind and do this.** As not a state employee, I have an opportunity, as would you, the Regents, who are not state employees, to get behind this and push this effort to do this. **What I'd like to do is to tell you that there is a team that has been assembled from the private sector that is really engaged in helping put together a plan as we move forward here.** We have Strategies 360 that has been engaged to raise the funds, then to wage a successful campaign for the 6 mills. I have this morning a number of documents. We should probably hand these out, just to give you a frame of reference for what we're about here with regards to the 6-mill campaign as we move forward here. Here you go, Paul."

Regent Nystuen cont: "**In a nutshell, what we're about here is to raise the funds to get a successful passage of this and so on. I do want to do a shout-out to President Cruzado that had us here for her Homecoming. We were able to make a presentation to a number of alumni and her team. President Stearns had us at the Griz brunch last Saturday to talk about it and President Cruzado has us again here Saturday to do this.** What I'm calling for is folks invested that are on campuses and so forth look for an opportunity for us to come visit with you, your team, your alumni, your stakeholders of your campuses, to come and spread the word. We need you, we need to be able to talk to students and anybody we can in an effort to get this going. So, there is opportunities for people to donate to this campaign, we

certainly need the endorsements, we've got some pretty exciting news coming around the corner with regard to this effort. This is not a Bobcat-Griz, Rs versus Ds initiative, this is all-in for Higher Education in the state of Montana. I've got business cards up here if you'd like to know more about this, feel free to come see me during the break or anytime. Email of course on the website. Let us know how we can help you help us get the word out about Higher Ed, so. Was that quick and brief? Clay."

Commissioner Christian: "Thank you, sir".

Regent Albrecht: "I just want to commend you and thank you for your investment of time and resources you've given to this effort. It's critically important and I really appreciate your efforts. Thank you."

Commissioner Christian: "Thank you, Madame chair. I would also like to give thanks to Regent Nystuen for really digging into this effort."

1:59:44 next item on Agenda