

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

In Re the Ethics Complaint of TSCHIDA v. BULLOCK and O'LEARY <i>(Tschida II)</i>	Cause No. COPP-2019-ETH-003 SUMMARY DECISION Ethics Complaint Not Accepted for Filing Dismissed for Failing to State a Potential Violation of the Code of Ethics and as Frivolous
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On July 23, 2019, Brad Tschida, a sitting Montana legislator (House District 97) and a resident of Missoula, Montana, faxed through his attorney's office to the Commissioner of Political Practices (COPP) an ethics complaint against Steve Bullock (a Montana state officer) and Meg O'Leary (a former Montana public officer).

As explained below, the complaint is not accepted for filing and is hereby dismissed and returned to Mr. Tschida. The reasons for the dismissal are that the complaint is time-barred, does not state a violation of the Code of Ethics, and is frivolous and therefore grounds exist for immediate dismissal of the complaint by the Commissioner, Mont. Code Ann. § 2-2-136(1)(b).

JURISDICTION AND AUTHORITY

The Commissioner of Political Practices has 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.

Mr. Bullock is an elected official and serves as the Governor of State of Montana. The Code of Ethics defines a public officer to include "any state officer," Mont. Code Ann. § 2-2-102(8)(a). A state officer "includes all elected officers and directors of the

executive branch of state government," Mont. Code Ann. § 2-2-102(11). The Governor is an officer of the executive branch of Montana State government (Mont. Const. Art. VI, sec. 1). Governor Bullock therefore is a public officer of the state and subject to the Montana Code of Ethics.

Ms. O'Leary, at the time of the alleged violations, was the Director of the Department of Commerce for the State of Montana. The Department of Commerce is an executive branch agency, Mont. Code Ann. Title 2, Chapter 15, part 18. A director of an executive branch of state government is defined in the Code of Ethics as a "state officer," Mont. Code Ann. § 2-2-102(11). The term state officer is incorporated in the definition of a "public officer," *id.*, § 2-2-101(8)(a). Ms. O'Leary was a public officer and subject to the Montana Code of Ethics at the time of the alleged violations.

PROCEDURAL HISTORY

On the late afternoon of July 23, 2019, the COPP received by fax a copy of an Ethics Complaint from Rep. Tschida alleging ethics violations by Gov. Bullock and Ms. O'Leary in September 2016. The Commissioner informed Rep. Tschida's counsel, Matthew Monforton, that the complaint was in lodged status at least until the original complaint was received by COPP. The Commissioner gave notice of the complaint to the respondents, Admin. R. Mont. 44.10.610. On July 25, 2019, the Commissioner received a one-page letter from the Governor's office asserting that the complaint was untimely and should be summarily dismissed.

On July 26, 2019 the Commissioner forwarded the Governor's response to Rep. Tschida's counsel. That same day, COPP received a mailed photocopy of the complaint from Mr. Monforton, Mont. Admin R. 44.10.607(1)(e). The Commissioner contacted Mr. Monforton and again requested that the original notarized complaint be sent to COPP.

On or around July 22 or 23, Rep. Tschida provided the ethics complaint to Mr. Monforton who in turn publicized¹ the existence of the complaint which has not yet provided to the Commissioner's office. The Commissioner determined that because the complaint was being publicized before it was received by COPP and formally filed, the

¹ On July 23 at 1:56 pm Rep. Tschida's complaint was posted on Mr. Monforton's Facebook page, and at 2 pm on Mr. Monforton's Twitter page with the hashtags #mtpol and #mtnews. The COPP received the fax from Mr. Monforton's law office at 3:06 pm.

Commissioner would make the complaint available to members of the public upon request or inquiry.

Even as of the date of this Decision, COPP has not received the original notarized complaint from either Mr. Monforton or Rep. Tschida. Because Rep. Tschida caused the complaint to be publicized, the Commissioner decided to move forward to determine the veracity of the allegations despite the fact that the original document has never been received by COPP.

BACKGROUND

The allegations of Rep. Tschida's current ethics complaint (provisionally lodged on July 23, 2019) concern the handling of a prior ethics complaint (filed in late-September 2016) involving these same parties. *Tschida v. Bullock & O'Leary*, COPP 2016-ETH-005 (Nov. 21, 2016) (herein, *Tschida I*).² Some of the surrounding events during that time are also relevant to the analysis here.

Prior to the resolution of the first ethics complaint, on October 24, 2016, Senator Brown and Senator Keenan emailed a letter to "Montana Legislators" requesting that the current and potential legislators join their call to establish a special legislative committee to investigate state employee allegations of confidential settlements and payments by state agencies (Exhibit 1). On November 2, 2016, Rep. Tschida sent a letter responding to Sens. Brown and Keenan, adding his request that the proposed special committee also investigate the use of agency legal counsel by state officials and public employees to respond to an ethics complaint filed with COPP against state officials or employees (Exhibit 2).

Attached to Rep. Tschida's November 2, 2016, letter was a copy of his 2016 first amended ethics complaint, which had been lodged with COPP against Mr. Bullock and Ms. O'Leary. At the time of Rep. Tschida's letter to legislators, Montana law required that a complainant maintain the confidentiality of an ethics complaint on file with the COPP, Mont. Code Ann. § 2-2-136(4) (2015). Since that time Montana's statutory requirement regarding the confidentiality of ethics complaints, both for elected officials

² The decision and associated records are available from the following link: <http://politicalpractices.mt.gov/Portals/144/2recentdecisions/TschidavBullockDecision.pdf>.

and public employees, has been overturned by the Courts.³ Thus, though the confidentiality statute has not yet been amended, it is now unenforceable. Ultimately, on November 21, 2016, the 2016 complaint was not accepted for filing and was dismissed as frivolous and failing to state a potential violation of the Code of Ethics. *Tschida I*, at 1.

Rep. Tschida's current complaint alleges that Gov. Bullock and Ms. O'Leary misused public personnel to respond to the 2016 ethics complaint. This 2019 complaint alleges that by using state attorneys to respond to that prior complaint, Gov. Bullock and Ms. O'Leary "intended to solicit support for Bullock's reelection in November 2016."

ANALYSIS and DISCUSSION

Ethics complaints against current and former state officers and employees may be filed with COPP, Mont. Code Ann. § 2-2-136(1)(a). Montana law requires that the verified complaint be received either by mail or hand delivery, Mont. Admin. R. 44.10.604(1)(a) and 44.10.607(1)(e). A fax or a copy of the original does not meet the requirements of the statute. Such complaints must be filed with the Commissioner "within two years of the alleged violation of the code," Mont. Admin R. 44.10.604(1)(b). These procedures have been in effect for over 23 years.

Despite never formally filing the complaint, and despite the fact that the allegations therein are obviously time barred, neither Rep. Tschida nor Mr. Monforton have voluntarily withdrawn the complaint. Thus, the Commissioner must expend state resources to make a determination on the matter.

1. The Complaint is Time Barred By A Statute of Limitations

The Montana Code of Ethics has a two-year time limit within which to file a complaint alleging violations of the Code by a public official, Mont. Admin. R. 44.10.604(1)(b) and Mont. Code Ann. § 27-2-211(1)(a).⁴ The complaint against Gov. Bullock and Ms. O'Leary allege actions undertaken in September 2016. The time limit to bring a complaint on those actions expired in September 2018, over 10 months ago.

³ As to elected officials: *Tschida v. Mangan*, 293 F. Supp. 3d 1217 (D. Mont. Dec 15, 2017). As to all other public officers and employees: *Tschida v. Motl*, 924 F.3d 1297 (9th Cir. May 29, 2019).

⁴ See e.g. *Vehrs v. Moses*, 220 Mont. 473, 716 P.2d 207, 209 (1986).

Ignorance of the law, such as a statute of limitation, is not a justification for failing to adhere to it. *In re Petition of Gray*, 908 P.2d 1352 (Mont. 1995). In any event, Rep. Tschida has been on notice of this two-year limitations period since at least November 21, 2016 when *Tschida I*, at 2-3, was partially dismissed against the very same individuals for the very same reason. The law also does not favor those who do not act in a timely manner, “[t]he law helps the vigilant before those who sleep on their rights,” Mont. Code Ann. § 1-3-218. As noted above, Rep. Tschida has also been on notice since at least November 2, 2016, of the actions he currently alleges constitute ethics violations and has had in his possession the evidence he claims support his allegations when he provided it to other legislators in his letter of that date (Exhibit 2).

Furthermore, neither the 2017 nor 2019 Legislatures took any action to “inform” the Commissioner’s interpretation, set forth in *Tschida I*, of the two-year statute of limitations under the Code of Ethics, *Lohmeier v. State*, 2008 MT 307, ¶28, 346 Mont. 23, 192 P.3d 1137. Therefore, COPP’s interpretation and application of the limitations period can be presumed to be correct. The Commissioner cannot entertain a complaint alleging conduct which occurred more than two years prior to the date the complaint is received by COPP, and that complaint should be dismissed. *Tschida I*, at 3-4 (discussing Admin. R. Mont. 44.10.604(1)(b)).

The 2019 Complaint concerns entirely conduct which occurred in 2016 and is therefore dismissed as untimely under the two-year statute of limitations, Admin. R. Mont. 44.10.604(1)(b). The obviousness of this defect in his complaint and Rep. Tschida’s specific knowledge of this rule also supports dismissing this Complaint as frivolous, Mont. Code Ann. § 2-2-136(1)(b). *See also infra*, at §3.

2. The Complaint Fails to Allege a Potential Violation of the Code of Ethics

A. The Complaint Fails to Plead a Legal Basis for a Violation

All counts in Rep. Tschida’s 2016 complaint alleged that a “gift” was received in violation of the Code. *Tschida I*, at 5. In response to the previous complaint, Bullock and O’Leary asserted an “official capacity” exception, because each was on official state business at the time of the alleged violations. *Id.* In other words, the agency defended its employee’s actions that were taken in the course and scope of their “office or

employment,” Mont. Code Ann. § 2-9-305(2). The dismissal set out in *Tschida I* was a final quasi-judicial agency determination and was not appealed to district court.

Agencies have an obligation to defend public officers and employees when noncriminal actions are filed against them regarding the “conduct of the employee committed while acting within the course and scope of the employee’s office or employment,” Mont. Code Ann. § 2-9-305(2). The general rule is that, unless the agency (or a judge) determines the conduct was *outside* the course and scope, the state is required to either provide or pay for an attorney to represent the employee, Mont. Code Ann. § 2-9-305(7). *See e.g. State v. Berdahl*, 2017 MT 26, 386 Mont. 281, 389 P.3d 254. Rep. Tschida has not provided the Commissioner with any contrary authority which supports his position.

The Legislature did not respond, in either its 2017 or 2019 sessions, to Rep. Tschida’s request to pass a law providing that in responding to ethics complaints, state officials and employees are required to do so on their own or through the use of private attorneys. (Exhibit 2).

Absent Legislative action, and with a current law stating that agencies have a duty to provide a defense to their officials and employees in noncriminal actions regarding their conduct at work, the Commissioner does not find that this Complaint states a potential violation of the Code of Ethics in the fact that an ethics complaint was defended by a respondent’s agency counsel and asserted that the official or employee actions were taken in the course and scope of their employment.

The Commissioner therefore dismisses this Complaint of the Code of Ethics as legally unsupported and not stating a potential violation of the Code, Mont. Code Ann. § 2-2-136(1)(b).

B. The Complaint Fails to Plead a Factual Basis for a Violation

The current complaint also fails to provide factual support for the allegation that the use of public employee time to respond to ethics complaints by asserting course-and-scope or an official capacity defense was prohibited by the Code of Ethics because the response was “intended to solicit support for Bullock’s reelection in November 2016.”

In 2016, ethics complaints were confidential proceedings. *See* Mont. Code Ann. § 2-2-136(4) (2015); *see also supra*, at n. 2. Until Rep. Tschida revealed the existence of

the confidential complaint in November of 2016, the public did not know of the responses provided by the state agency attorneys on behalf of Bullock and O’Leary. If the public did not know of the complaint or the government’s responses at the time they were made (in late-September 2016), it is illogical to conclude that the responses were a *solicitation* of support for Bullock’s reelection.

“An ethics complainant has the initial responsibility to file a complaint that states factual allegations that could state a potential violation” of the Code. *Tschida I*, at 2. Rep. Tschida’s current complaint, however, does not allege how a confidential response solicits public support for a candidate. It was Rep. Tschida who prematurely released the information about the 2016 complaint to the public, *Tschida I*, at 7, which could have either solicited support for or opposition to Bullock’s reelection, not the public employees who were participating in a confidential agency proceeding. While the threshold for stating a potential violation of the code is a low one, conclusory allegations are insufficient. *Democratic Party v. Martz*, Sept. 2, 2002 (Commissioner Vaughey); *Tschida I*, at 4-5. Here, there is no factual allegation that Governor Bullock or Ms. O’Leary directed an agency employee to solicit support for Governor Bullock’s campaign by responding to an ethics complaint against the performance of their official duties.

The Commissioner, therefore, dismisses this Complaint for the further reason that it fails to allege sufficient facts to support a potential violation of the Code of Ethics, Mont. Code Ann. § 2-2-136(1)(b).

3. The Complaint is Also Dismissed as Frivolous

In addition to dismissal for failure to state a potential violation, Montana law provides that the Commissioner may also dismiss a complaint if it is found to be frivolous. Mont. Code Ann. § 2-2-136(1)(b). One measure of the frivolity of an ethics complaint is “if it: ‘is clearly insufficient on its face ... and is presumably interposed for mere purposes of delay or to embarrass the opponent.’” *Tschida I*, at 6 (quoting Black’s Law Dictionary, Revised 4th Edition). “The Complaint must first be determined to be legally insufficient” before evaluating whether it has an embarrassment purpose. *Id.*, at 6, n.12.

Here, the allegation of the current complaint were clearly legally insufficient on their face, for the reasons set out in this Dismissal setout above and thus the Commissioner turns to the question of embarrassment. The Commissioner first notes

that the issues raised by the Complaint are over two years old *and* Rep. Tschida has known about them for that entire period. In other words, Rep. Tschida could have filed his complaint with COPP at the time he learned of the issue in late-September 2016. “[U]nnecessarily late filing of [a] complaint is a factor indicating an attempt to embarrass the target of the Complaint.” *Tschida I*, at 6-7.

Second, the Commissioner notes that the failure to ever provide the original, signed and notarized complaint to COPP has caused a delay in the resolution of this matter. Meanwhile, Mr. Monforton has distributed copies of Rep. Tschida’s Complaint publicly. The Commissioner thus notes that, third, such distribution had the effect of misleading the public, giving the impression that an official agency action was pending against the Governor and a former employee when the complainant knew the complaint was merely provisionally lodged. Refusing to comply with the long-standing filing requirements applicable to ethics complaints, thus delaying resolution of the allegations, while at the same time publicizing the complaint are further factors indicating an embarrassment purpose.

Each of the foregoing factors demonstrate an intent embarrass the targets of the complaint. These factors, combined with the legal insufficiency of the allegations, lead the Commissioner to further determine that the Complaint is frivolous and, therefore, dismissed as such, Mont. Code Ann. § 2-2-136(1)(b).

4. There Is No Legal Basis for an Order to Reimburse

Rep. Tschida’s complaint asks the Commissioner to impose not only an administrative penalty provided for under the Code of Ethics, but that the Commissioner also “issue an order to reimburse the people of Montana based upon the respondents’ illegal use of state resources to advance their political interests.”

Although not expressly remedial in nature, the Commissioner has authority to impose limited administrative penalties, Mont. Code Ann. § 2-2-136(2)(a) and (b). The Commissioner also has the ability to assess the costs of the proceeding before COPP against the officer or employee “if the Commissioner determines a violation did occur,” Mont. Code Ann. § 2-2-136(2)(c).

There is no legal basis under which the Commissioner can assess in a subsequent proceeding the costs of the former proceeding and Rep. Tschida has not provided any support for his position. Even if such authority did exist, there is no factual basis for

doing so here. In *Tschida I*, it was determined that a violation of the Code of Ethics did not occur and the costs of the 2016 proceeding were not assessed against either party. Furthermore, the alleged violations in the current complaint are untimely, and are so insufficiently alleged and supported that they do not state a potential violation of the Code. *Supra*, at §§1-3. Thus there is no authority for imposing any administrative penalty on the respondents.

This request to “reimburse the people” is summarily dismissed as without basis in law, Mont. Code Ann. § 2-2-136(1)(b), (2)(c).

5. Rep. Tschida’s Liability for Costs of This Proceeding

In addition to assessing costs against a respondent when a violation is found, when a violation is *not* found, the Commissioner is also able to assess the costs of the proceeding “against the person bringing the charges ...,” Mont. Code Ann. § 2-2-136(2)(c). To the knowledge of the undersigned Commissioner, no dismissal decision has yet assessed costs against an ethics complainant pursuant to this statute.

This Complaint presents the first time the Commissioner has seriously considered invoking the foregoing provision of the Code of Ethics. First, Rep. Tschida and his counsel ignored specific requests to officially file the original signed complaint with COPP. Second, Rep. Tschida was on notice of the two-year statute of limitations under the Code, *supra*, §1. Third, perhaps realizing this fatal defect, Rep. Tschida has ignored specific requests to officially file the original complaint; however at the same time his counsel, Mr. Monforton has worked to publicize his client’s ethics complaint despite its obvious defects. These actions left the Commissioner in a position of having to make a formal determination on the Complaint engaging the scarce resources of the COPP to resolve the matter. Having undertaken that formal analysis of this Complaint, the Commissioner has determined that not only was Rep. Tschida’s complaint time-barred as a procedural matter, it failed to allege a violation of the law even if the merits were to be considered.

The foregoing facts of this complaint would undoubtedly support an assessment of costs against Rep. Tschida for his untimely, unsupported and frivolous complaint. I exercise my discretion, however, and determine that COPP will not assess the costs of this proceeding against Rep. Tschida, Mont. Code Ann. § 2-2-136(2)(c). In matters of first impression, COPP has a long tradition of using its decisions, including dismissals

and sufficiency findings, as a roadmap for future complaints and to give notice to the public of the standards applicable to a given situation. Future complaints finding no violation of the Code of Ethics and where for example, the Commissioner finds similarly serious defects in pleading and handling of a complaint, or frivolous basis for filing may be subject to an assessment of costs against the person bringing the charge.

CONCLUSIONS OF LAW

1. A complaint “must ... be filed within two years of the date of the alleged violation of the code,” Mont. Admin R. 44.10.604(1)(b). A time-barred complaint is subject to dismissal. *Tschida I*, at 4.

2. As set forth *supra*, at §1, the present complaint is untimely and time-barred by the statute of limitations, Mont. Admin R. 44.10.604(1)(b).

3. The Commissioner may also dismiss a complaint that is “frivolous, does not state a potential violation of [the Code of Ethics], or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of [the Code,]” Mont. Code Ann. § 2-2-136(1)(b).

4. As set forth *supra*, at §§2-3, the complaint additionally fails a facial pleading review both as a legal and a factual matter, and does not state a potential violation of the Code of Ethics, Mont. Code Ann. § 2-2-136(1)(b).

5. As set forth *supra*, at §4, the complaint is further determined to be frivolous, Mont. Code Ann. § 2-2-136(1)(b).

6. The Commissioner has discretion to assess the costs of an ethics proceeding “against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur,” Mont. Code Ann. § 2-2-136(2)(c).

7. There is no legal basis in the Code of Ethics for an order requiring a respondent to reimburse the costs of an ethics proceeding when no violation of the Code was found, nor is there any legal basis for an order to reimburse the costs of a prior (2016) ethics proceeding in a subsequent proceeding on a new complaint (2019), Mont. Code Ann. § 2-2-136(2)(c).

8. The Commissioner exercises his discretion and does not assess the costs of this proceeding against Rep. Tschida, Mont. Code Ann. § 2-2-136(2)(c).

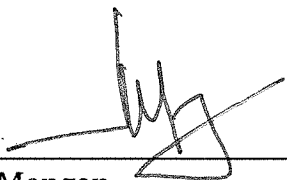
ORDER

1. Jurisdiction is ACCEPTED for this ethics complaint, pursuant to the provisions of Mont. Code Ann. § 2-2-136(1)(a).
2. The lodged complaint is DISMISSED as untimely, as without basis in law for failing to state a potential violation of the code of ethics, and as frivolous, Mont. Code Ann. § 2-2-136(1)(b).

NOTICE

The Commissioner provides notice to the parties that this summary dismissal decision 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. Mont. Code Ann. § 2-2-136(3). The parties are further informed that the Complaint, record established, and Decision are available for public inspection. Mont. Code Ann. § 2-2-136(4).

ORDERED this 19th day of August, 2019.



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

Montana State Senate



SENATOR DEE L. BROWN
SENATE DISTRICT 2

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The Big Sky Country

COMMITTEES:
STATE ADMINISTRATION - CHAIR
ETHICS - VICE CHAIR
BUSINESS & LABOR
LEGISLATIVE AUDIT
HIGHWAYS & TRANSPORTATION
COMMITTEE ON COMMITTEES

October 24, 2016

Montana Legislators
Box 200500
Helena, MT 59620-0500

Re: Investigation into Whistleblowers & Retaliation

Dear Legislators,

Several serious allegations have surfaced in recent months accusing this administration of retaliation and payouts in confidential settlements. Are you as concerned as we are that employees get a fair hearing and that taxpayer money is spent wisely?

We are writing to ask you to join us in calling for a special legislative committee to investigate state employee allegations recently reported in the news including confidential settlements of about a million dollars since 2013.

As legislators we believe we should at least address the following allegations:

***Former internal agency auditors discouraged from investigating fraudulent payments - *Helena Independent Record* on 9/11/16**

***Seven long-tenured DPHHS employees fired after raising red flags about agency activity - *Helena Independent Record* on 9/11/16**

***DPHHS agency auditors bullied by state officials after speaking up about potentially fraudulent payments made to undocumented welfare recipients - *Helena Independent Record* on 9/11/16**

***Employees stripped of responsibilities, isolated from colleagues and eventually forced into retirement after refusing to perform fraudulent behavior - *Helena Independent Record* on 9/11/16**

***Officials accusing employees of insubordination as a means of getting rid of those who speak out - *Helena Independent Record* on 9/11/16**



***Auditors discouraged or prevented from fully investigating transactions, sometimes through bullying - *Helena Independent Record* on 9/11/16**

***Investigate the nature of confidential settlement payments made to former state employees since January of 2013, as well as allegations that some of the settlements were the result of wrongful termination complaints brought against the state - *Bozeman Daily Chronicle* on 10/13/16**

Our constituents depend on us to 'guard the henhouse'. State employees depend on us to ensure their fair treatment with competent leadership. Will you join us in asking legislative leadership to jointly appoint an investigative committee of legislators during next month's caucus to look at these serious issues?

We cannot sit idly by and hear or read of retaliation, bullying or wrongly used tax money without asking some questions. Thanks for your thoughtfulness in this matter. See you in November.

Sincerely,

Handwritten signatures of Dee Brown and Bob Keenan in black ink. The signature of Dee Brown is above the signature of Bob Keenan.

**Senator Dee Brown
Senator Bob Keenan**



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE BRAD TSCHIDA
HOUSE DISTRICT 16

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COMMITTEES
APPROPRIATIONS

November 2, 2016

Re: *Additional Acts of Misconduct by Governor Bullock For Investigation by the Select Committee*

Dear Senator Brown and Senator Keenan:

This letter is a response to the letter dated October 24, 2016 that you distributed to me and other members of the Legislature. Thank you for initiating a debate among members of the Legislature as to the appropriateness of convening a special committee to investigate allegations of taxpayer monies being used to cover up misconduct by the Bullock Administration as well as retaliation against state employees. I fully support your efforts and join in the call for a special committee.

I am also advising you and other members of the Legislature of evidence of additional malfeasance perpetrated by Gov. Bullock, as well as illegal efforts by Jonathan Motl, the Commissioner of Political Practices, to cover up this malfeasance. This evidence is germane to the special committee's investigation. A description of this evidence is provided below.

I. **Governor Bullock Has Misappropriated Taxpayer Resources by Using a State-Paid Attorney To Defend Him in a Personal Ethics Matter**

I filed an ethics complaint against Gov. Bullock and Commerce Director Meg O'Leary on September 21, 2016. (**Exhibit A**). The complaint arises from their illegal use of state funds and acceptance of illegal gifts for purposes of facilitating their personal relationship.

On September 23, 2016, Commissioner Motl sent a letter to Andrew Huff, a state-paid attorney, allowing an extension to September 28, 2016, for Gov. Bullock to respond to the ethics complaint. (**Exhibit B**). A state-paid attorney representing Gov. Bullock against an ethics complaint filed against him in his personal capacity, even for purposes of obtaining an extension of a deadline, constitutes yet another illegal use by Bullock of



taxpayer resources. There is no provision under Montana law permitting Bullock or any other government official to mount a taxpayer-financed defense in response to an ethics complaint.

The reason for this is obvious. If a government official is found to have violated the ethics provisions cited in the complaint, the State is not liable for the fine. Rather, the public official must pay the fine out of his or her own pocket. § 2-2-136(2)(b), MCA. Accordingly, a public official is not entitled to a taxpayer-financed defense, which is why other officials have retained private counsel when defending against such complaints. See, e.g., *Fox v. Molnar Decision* (9/13/10).
<<http://www.politicalpractices.mt.gov/content/2recentdecisions/FoxvMolnarDecision>>.

Governor Bullock's taxpayer-financed defense in response to an ethics complaint filed against him in his personal capacity constitutes yet another illegal use of state resources.

II. Commissioner Motl Has Violated Montana Law By Covering Up Bullock's Misconduct

My ethics complaint against Gov. Bullock is governed by § 2-2-136(1)(b) and (c), MCA. Section 2-2-136(1)(c) requires Commissioner Motl to hold an informal contested case hearing unless one of the exceptions in § 2-2-136(1)(b), MCA, applied. Those exceptions apply if (1) the complaint is "frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part" or (2) the subject matter of the complaint has been addressed in a prior decision. *Id.*

In other words, the law does not permit Commissioner Motl to look beyond the four corners of a complaint in determining whether or not to set the matter for a contested hearing. If the complaint sufficiently states an ethics violation on its face, the Commissioner must commence contested proceedings.

Commissioner Motl would not have asked the Governor for a response to my complaint if it was either frivolous or duplicative. Thus, the exceptions described in § 2-2-136(1)(b), MCA, do not apply to this matter. Commissioner Motl was therefore required to begin contested proceedings in late September.

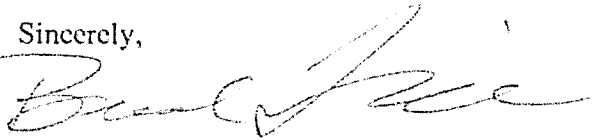
Rather than complying with the law, however, Commissioner Motl placed my complaint in "lodged status" and stated that it is "[n]ot yet accepted as filed." (Exhibit B). There is no provision under Montana law for placing an ethics complaint in "lodged status." Yet Motl has kept my complaint in "lodged status" for six weeks in an obvious attempt to bury Bullock's misconduct until after Election Day. My complaint is a short and plain statement of allegations supporting potential violations of Title 2, Chapter 2, Part 1 of the Montana Code Annotated. It should have taken Commissioner Motl less than 30 minutes to review it for legal sufficiency. Commissioner Motl's delay is all the

more suspicious in light of his boast on October 3, 2016, that he was "current with 2016 complaint Decisions." (Exhibit C). He obviously has had the time to review it.

Compounding Commissioner Mott's misconduct is his insistence in his letters to me that my complaint remains confidential until he gets around to making a decision. In light of Commissioner Mott's violation of Montana law in attempting to conceal the ethics complaint against Gov. Bullock, I am invoking my right as a legislator under the Speech and Debate Clause contained in Article V, § 8 of the Montana Constitution¹ in order to provide the attached exhibits to you and other legislators for purposes of determining whether the select committee should investigate Bullock's illegal use of taxpayer resources to (1) facilitate his personal relationship with Director O'Leary and (2) defend against an ethics complaint filed against him in his personal capacity.

Please do not hesitate to contact me if you or any other legislator has any questions about this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Tschida", written in a cursive style.

Representative Brad Tschida

Attachments

¹ The Speech and Debate Clause of the Montana Constitution obviously trumps the confidentiality provision in § 2-2-136(4), MCA, particularly in a case such as this where a commissioner has blatantly abused the confidentiality provision by burying an ethics complaint for political gain.

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:

Brad Tschida
10825 Mullan Rd.
Missoula, MT 59808

Steve Bullock
State Capitol, Room 204
Helena, MT 59601

Matthew Monforton
32 Kelly Court
Bozeman, MT 59718

Meg O'Leary
301 S. Park Ave
Helena, MT 59620

DATED this 19th day of August, 2019.