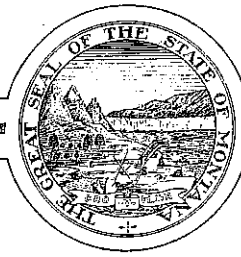


COMMISSIONER OF
POLITICAL PRACTICES



COPY



STATE OF MONTANA

DAVID B. GALLIK
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August 10, 2011

Mr. George Sullivan
P. O. Box 478
Trego, MT 59934

Subject: Complaint received July 25, 2011; Sullivan vs. Schweitzer, et al.

Dear Mr. Sullivan:

I have carefully reviewed your complaint alleging that Governor Brian Schweitzer violated the Montana Code of Ethics. You have specifically alleged violations of following provisions of the Montana Code Annotated: 2-2-103, 2-2-105, 2-2-131, 2-2-136, and 2-2-144. You have also referenced allegations of misconduct by attorneys and members of the judiciary. Complaints regarding attorneys may be sent to the Office of Disciplinary Counsel, phone number 406-442-1648. Complaints regarding judges may be sent to the Judicial Standards Commission – the phone number is 406-444-2608. My review of your complaint leads me to a determination that it does not state a potential violation of the Code of Ethics and must be dismissed.

You allege Governor Schweitzer and others have failed to provide you with a satisfactory response to your inquiries regarding your Veterans Administration benefits. The allegations of your complaint are insufficient to state a claim of violation of any of the statutes you cite.

Your allegations are insufficient to show that Governor Schweitzer's response to your inquiry regarding Veteran's Administration benefits was a departure from the Governor's public duty. This office has addressed allegations of a violation of Section 2-2-103, MCA, in the past. See *In the Matter of the Complaint of L. David Frasier Against Barb Charlton and Mark Simonich*, (May 2005):

Montana Code Annotated § 2-2-103(1) is a broad statement of general principles but it does not contain specific rules defining prohibited conduct that would constitute a violation of the general "public trust" and "benefit of the people" statements. Montana Code Annotated § 2-2-104, 105, 111, 112, 121 and 131 contain the specific rules describing conduct that violates the Code of Ethics. Each of these sections, unlike 2-2-101(1), begins with the language declaring that the

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particular Code of Ethics statute is either a "rule of conduct" or that violations of the particular Code section constitute a breach of a public official's or public employee's "public duty" or "public trust" obligations.

Section 2-2-103(2) provides that a public employee or public official is liable to the people of Montana and subject to the Code's penalties "provided in **this part** for abuse of the public's trust" (emphasis in original). The reference to "this part" rather than "this section" supports the interpretation in the preceding paragraph and is consistent with the legislative history of the Code of Ethics. Moreover, subsection (2) of the statute provides: This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of which must be avoided.

Like subsection (2), subsection (3) of the statute clearly reflects the legislature's intent that other statutes in Title 2, chapter 2, part 1 must be examined to identify the specific standards and ethical principles that govern the conduct of state officers and employees.

Therefore, your complaint of the Governor's violation of Section 2-2-103, MCA, is dismissed. With respect to the other statutes you allege were violated,

- § 2-2-105, MCA, shall also be dismissed as it is inapplicable. You do not allege the Governor did any of the disallowed conduct set forth in that statute.
- Likewise, your allegation of violation of § 2-2-131, MCA, shall be dismissed as it does not allege the Governor participated in the award of a permit, contract, or license, which was in conflict with his private interest.
- § 2-2-144, MCA, is a procedural statute for allegations of complaints against a local government officer or local government employee. Your complaint is against the Governor; thus, the statute is not applicable.
- § 2-2-136, MCA, is also a procedural statute. It sets forth the process for filing of an ethics complaint with this agency. For that reason, this statute too, is inapplicable. It is, however, the statutory basis for the dismissal of your complaint.

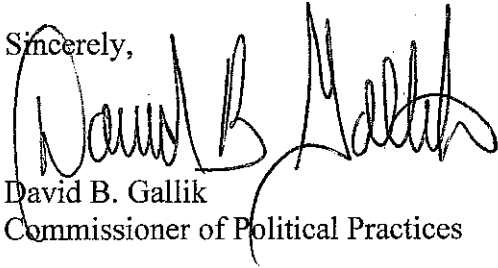
Section 2-2-136(1)(b), MCA, in relevant part, states:

The commissioner may dismiss a complaint that 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.

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The allegations in your complaint do not state sufficient facts to conclude that a potential violation of the Montana Code of Ethics may have occurred. Based on the preceding, I must respectfully dismiss your complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "David B. Gallik". The signature is written in a cursive style with a large initial "D" and "G".

David B. Gallik
Commissioner of Political Practices