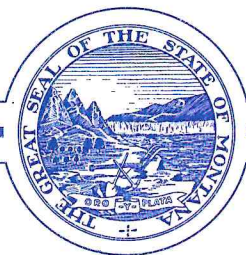


COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

CHRIS J. GALLUS
COMMISSIONER
TELEPHONE (406) 444-2942
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April 11, 2024

James Whitaker
4020 5th Ave. S.
Great Falls, MT 59405

Subject: Complaint received April 2, 2024; *Hermiller v. Whitaker*,
COPP-2024-CFP-007

James,

The enclosed complaint alleges a violation of Montana election law under Title 13, Chapter 37 of the Montana Code Annotated (MCA), enforcement of which falls under my jurisdiction as Commissioner of Political Practices (COPP). The complaint also conforms to the requirements of 44.11.106 ARM, the administrative rule regarding election complaints. For those reasons, I have accepted it for further consideration. While the complaint is presented on an Ethics complaint form, because the alleged violation falls under Montana election law I am considering it a Campaign Finance and Practices (CFP) complaint.

Pursuant to MCA §13-37-132, I formally request a written response from you addressing the specific issues identified in this complaint.

Please provide your response by 5:00 PM on Friday, April 19, 2024. Any response you provide is a public record that COPP posts on our website, per MCA §13-37-132.

I will review any additional materials relevant to this complaint for any deficiencies pursuant to 44.11.106 ARM, law, and prior relevant COPP rulings, and reserve the right to dismiss the complaint upon this initial inquiry. If this occurs, I will notify you and provide a basis for the dismissal. Alternatively, as noted above, I may determine that a formal investigation is warranted. This generally involves a more extensive and time-consuming process, during which you may contact us for a status update.

If an investigation is conducted, a decision will be issued which includes a summary of facts and determines if those facts are sufficient or insufficient to support a violation. This decision will also determine if prosecution is justified. Upon completion of this investigation a copy of the decision will be sent to you and posted on COPP's website.

If I determine prosecution is justified, this matter will be referred to the county attorney in the county where the violations occurred. The county attorney will then determine whether they will prosecute the matter or refer it back to me. If returned to me, I will either prosecute the matter in district court or negotiate a settlement pursuant to MCA § 13-37-128. Penalties, if any, are imposed based upon MCA § 13-37-128.

This office is now conducting a legal review, and records currently in your possession are subject to a pending investigation. While I do not anticipate that you would intentionally destroy any relevant records, due to the severity of the penalty I feel compelled to provide you with the relevant statute in this regard. See, Attached MCA § 45-7-207 (Tampering with or fabricating physical evidence).

Montana law authorizes the Commissioner to inspect records, accounts, and books held by a candidate or political committee, administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers and records that are relevant or material for the purpose of conducting an investigation. MCA § 13-37-111.

To facilitate such an investigation, please take immediate steps to retain all such records, and begin collecting and preparing records for review. This includes documents, including computer communications (e.g. email), in your possession or the possession of any of your agents, representatives, or assigns. Communications with attorneys should be retained as these records might need to be produced if attorney/client privilege is not involved. As indicated, your preservation of all such documents is essential and required pursuant to this request and subject to penalties provided in MCA § 45-7-207.

I appreciate your time and consideration of this important matter.

Regards,



Chris J. Gallus
Commissioner of Political Practices

Montana Code Annotated 2023

TITLE 45. CRIMES

CHAPTER 7. OFFENSES AGAINST PUBLIC ADMINISTRATION

Part 2. Perjury and Other Falsification in Official Matters

Tampering With Or Fabricating Physical Evidence

45-7-207. Tampering with or fabricating physical evidence. (1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, the person:

(a) alters, destroys, conceals, or removes any record, document, or thing with purpose to impair its verity or availability in the proceeding or investigation; or

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in the proceeding or investigation.

(2) A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

History: En. 94-7-208 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-208; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1684, Ch. 56, L. 2009.