

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

In Re the Ethics Complaint of BUSSE FOR MONTANA (via EMILY HARRIS) v. GOVERNOR GREG GIANFORTE and JAKE EATON	COPP-2024-ETH-008 DISMISSAL Failure to State a Potential Violation of the Ethics Code, Insufficient Evidence and Frivolous
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On July 18, 2024, Busse for Montana (BFM) filed an ethics complaint against Governor Greg Gianforte through BFM's agent Emily Harris. The complaint was hand delivered and timestamped by the Montana Commissioner of Political Practices (COPP) office at that time.

The filing of a complaint begins an initial review to determine whether the complaint meets legal requirements for filing a complaint. MCA § 2-2-136 and 44.10.604, ARM. This review includes a determination whether the complaint meets basic requirements such as whether the complaint is notarized and within COPP's jurisdiction and authority. *Id.* Complaints that do not meet these basic requirements are simply returned to the complainant. In this matter the complaint met basic requirements so further review began to determine whether the complaint contained allegations of the Ethics Code and provided sufficient relevant supporting evidence. Complaints that do not allege violations or do not provide supporting facts are dismissed. Complaints can also be dismissed if the complaint is frivolous. MCA § 2-2-136(1)(c).

I am dismissing this complaint because the complaint fails to state a potential violation of Montana's Code of Ethics and the facts presented are insufficient to support any allegations asserted. MCA § 2-2-136(1)(c). The preliminary matters relevant to the submitted complaint are this:

The complaint names the respondent as Greg Gianforte, Montana's duly elected Governor. As Montana's duly elected Governor, Governor Gianforte is a state officer subject to Montana's established Code of Ethics, Montana Code Annotated (MCA) § § 2-2-101 and 102(10)(a). As Montana's chief executive officer, Governor Gianforte oversees many of Montana's agencies and operations. This includes the Montana Department of Revenue (DOR), which is run by a person Governor Gianforte appoints and the Montana Senate confirms. In July of 2024 the DOR sent out the postcard, the content of which is further described herein, and this postcard is the subject of the present complaint. In July of 2023 a similar event occurred. DOR also sent a postcard. And in July. For all intents and purposes these postcards are the same. Literally, only the year is changed from 2023 to 2024.

I am provided proper jurisdiction to consider and potentially enforce alleged violations of Montana's Ethics Code committed by state officers such as Governor Gianforte, MCA § 2-2-136(1). *MDP v. Juras*, COPP-2022-ETH-012.

Regarding my jurisdiction over the Code of Ethics, I am limited to considering only those alleged violations *specifically* outlined in a complaint, *Eaton v. McLaughlin*, COPP-2023-ETH-NAF-007. The burden is on the complainant to make assertions and present cognizable claims. *Stienbach v. DeTienne* (2016) at 2, and *Frazier v. Charlton and Simonich* (2002). I must therefore immediately reject the request to "look into these matters and provide certainty and closure to Montana voters".

A commissioner can also dismiss complaints when the complaints are frivolous. A frivolous complaint lacks merit in law, fact, or both. Frivolous complaints are often unsupported assertions targeted to harass or embarrass a person or a campaign. Such complaints tend to focus more on the opportunity for attention rather than seeking an actual resolution. While I appreciate that

politics brings forth intense passions and I am sympathetic that selected language often expresses that passion, it serves no purpose with respect to how COPP must decide these matters.

In *Landsgaard* and *Pennington* the commissioner addresses the principles of frivolous complaints. Even though these are campaign finance complaints, their discussion regarding frivolous complaints is instructive. *Landsgaard v. Peterson and Wilks*, COPP-2014-CFP-008 and *Pennington v. Bullock et al*, COPP-2013-CFP-012. Most cases COPP decides are presented as campaign finance complaints. *Landsgaard* addresses the nature and approach COPP takes with respect to frivolous complaints. *Pennington* discusses complaints addresses how otherwise frivolous or absurd complaints are still addressed by COPP when there is at least some value based on current public debate and discourse related to the issue presented.

COPP has also dismissed frivolousness in context of ethics complaints. The same notions and principles addressed in the cases above applied. *Tschida v. Bullock and O'Leary (Tschida II)*, COPP-2019-ETH-003 (citing *Tschida I*, 6), and *Montana Democratic Party v. Jacobsen*, COPP-2020-ETH-001.

I will not dismiss this entire complaint based on frivolousness because COPP has received communications regard the issue presented and it is beneficial to the public discourse that I address it. However, further complaints related to this matter will be quickly designated frivolous and returned to the complainant. I will rely on cases provided herein to do so.

This complaint is now decided as follows:

CONTENTIONS

The BFM complaint alleges that “Governor Greg Gianforte is sending government-funded postcards” to households across Montana. BFM contends these are political “mailpieces” that “conspicuously and illegally benefit the

Governor's campaign—at taxpayer expense. BFM alleges this violated MCA § 2-2-121(3)(a) because the mailer, which BFM includes as evidence, uses taxpayer-funds “to support the Governor’s campaign, and serve no public or government purpose whatsoever.” BFM further asserts that because the Governor’s campaign manager, Jake Eaton, owns a printing business named Ultra Graphics, LLC, another independent violation of MCA §§ 2-2-121 and (3)(a) results. The postcard BFM includes is sent by the Montana Department of Revenue as indicated by the return address, logo, and website. The postcard presented by BFM reads as follows:

“Dear Montana Taxpayer,

Governor Greg Gianforte signed into law a property tax rebate that provides eligible Montana homeowners with up to \$675 this year. You can request your property tax rebate starting August 15, 2024. We will send you more information in the coming weeks. Visit getmyrebate.mt.gov for more information.

Montana Department of Revenue”.

The postcard is titled “Property Tax Relief”. Reiterates that eligible Montana homeowners can get up to \$675, provides a second reference to the application date, and more predominantly provides the website address, which takes you directly to Montana DOR where further explicit information regarding the rebate program is provided. The program is described along with its specific eligibility requirements. It contains access to no less than twenty-four frequently asked questions. It does not mention the Governor.

The BFM complaint then describes the political nature of the language used and additional supposition with respect to political liabilities and potential motivations. BFM then, once again, asserts its own opinion that “[t]hese political postcards serve no official purpose; literally, there is no government-adjacent action that a recipient can take after receiving the postcard for another month.” (emphasis theirs). BFM maintains this is further proof that

the postcard is political because they are designed to support the Governor's campaign using taxpayer funds. BFM asserts that MCA § 2-2-121(3)(a) prohibits the use of such funds in this manner. Finally, BFM anticipates what the Governor's response might be—"simply alerting taxpayers to some future government action"—and expressed its own opinion that this does not save the postcard from a political designation. There are additional positions, hyperboles, and questions posed that BFM can best answer on its own.

BFM's contentions with respect to Mr. Eaton are frivolous.

BFM then launches into what can only be described as a targeted attack against Mr. Eaton and his printing company that I will now dismiss as being frivolous. Not only is the claim targeted, it is baseless. The Governor's required D-1 Business Disclosure Statement list no business or other affiliation with Mr. Eaton or any of Mr. Eaton's companies. Further, Mr. Eaton or one of his companies did not print the DOR postcard BFM presented.

Although, I did not request a response from the potential respondents while I initially evaluated this complaint, I did provide them a copy of the filed complaint, which I am required to do promptly. 44.10.604, ARM. In the course of acknowledging receipt of the copy of the complaint, Mr. Eaton did verify that neither he nor any of his companies printed the postcard in question. Being familiar with the Montana printing industry, Mr. Eaton was able to further provide that the permit number used on the postcard belongs to Alphagraphics of Helena, MT, which is not an Eaton owned or affiliated company.

In this particular complaint, BFM was able to demonstrate its ability to ascertain numerous facts regarding Mr. Eaton's work, clients, contract amounts and other information. However, BFM did not verify the single most salient fact related to its complaint, which BFM could easily ascertain on its own. BFM should have ascertained it in context of the complaint as it is BFM's

responsibility to establish such facts rather than relying on COPP investigative authority to do this for them. *Steinebach v. DeTienne*, COPP-2016-ETH-004. Therefore, this claim fails as both a factually unsupported claim, which is also frivolous. *Id.*

Consequently, the remaining, and now irrelevant facts pertaining to Mr. Eaton, contained in BFM's complaint, are inconsequential and do not require recitation here. This leaves one matter, which can also be dismissed because BFM's claims are not supported by the evidence it provides. This matter is addressed as follows:

First, what BFM purports as controlling law with respect to this matter, MCA § 2-2-121(2) is now contained in MCA § 2-2-122. If BFM did mean to address MCA § 2-2-121(2), that claim fails. The rules of conduct addressed by MCA § 2-2-121 unequivocally relate to a public officer's or public employee's conduct relating to "private business purposes", that they engaged in a substantial financial transaction for their private business purposes with someone they inspect or supervise in the course of official duties, or that they assisted any person for a fee or contingency fee in obtaining a contract, claim, license, or other economic benefit. MCA § 2-2-121(a)-(e). The relevant terms are contained in MCA § 2-2-102. "Business" means a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business whether or not operated for profit. "Official act" means a vote decision or recommendation, approval, or disapproval, or other action, including inaction, involving the use of discretionary authority. *Id.* (1) and (5).

To make MCA § 2-2-121(2) operative to the matter at hand I would need to either omit the word "business" or insert the words "or personal" or "campaign" following "business". Obviously, I can do neither of these things. MCA § 1-2-101. As for the remaining provisions there is no evidence presented by BFM that the Governor received a fee or contingency fee related to the

postcard, and there is no evidence presented that the Governor acted in his official capacity to affect an economic benefit to anyone whatsoever. This makes MCA § 2-2-122 the more specific and operative provision relating to the requested enforcement.

Second, and also with respect to MCA § 2-2-121, BFM asserts subsection (3)(a) as a violation. This provision does not apply to the present situation. This provision prohibits a candidate from using or permitting the use of state funds “for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate’s name, picture, or voice”. The provision goes on and describes an emergency exception that does not apply. What does apply are the plain words contained in the statute, “in a newspaper, on radio, or on television”. This precludes application of the statute to the situation BFM presents.

Again, I would need to insert words or meanings to the statute that does not presently exist. The statute does not address postcards, mailings, notices, or even other communications. In 2012, Deputy Commissioner Goetz dismissed a claim involving a public service announcement lodged against Governor Schweitzer. *Montana Republican Party v. Schweitzer*, COPP-2008-ETH (Final Order 03/01/2012). While Deputy Commissioner Goetz primarily addresses “state funds” he also includes rules of strict statutory construction that relate to how this provision must be narrowly applied. In short, the statute requires an interpretation from the perspective of a reasonable person rather than merely what the Legislature may or may not have intended. Even if BFM could support its view of the statute in the manner that it has, the Governor can adopt a narrow view, as I have done here. This means the statute is susceptible to at least two interpretations and the narrow interpretation must prevail. *Id.*

As I have indicated, based upon the facts asserted by BFM in their complaint, it is more likely than not that they meant to present their claims

pursuant to MCA § 2-2-122. While I am not required to address these claims because they were not presented as such, I elect to do so because it is an efficient use of COPP resources and it fully resolves the matter, which is also of benefit to the parties in this matter. This also addresses the BFM complaint in the most favorable light available.

Montana's Code of Ethics, specifically MCA § 2-2-122, does prohibit public officers from using or permitting the use of "public time, facilities, equipment, state letterhead, 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". However, I cannot conclude that the mailer referenced in the lodged complaint constitutes solicitation of support or opposition for any candidate in violation of the Code of Ethics. While not directly defined in the Code, the term "support or oppose" is provided a formal definition in Montana election law, specifically MCA § 13-1-101(54), a definition that has been applied in prior Ethics decisions. The specific definition, in full, reads:

(54) "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.

In this matter, the mailer does not use any express words such as "vote", "support", or "elect" to call for the nomination or election of any individual candidate. While the mailer does clearly and obviously refer to Governor Gianforte,

it does so only in his official capacity as Governor and does not contain any reference to his current candidacy for re-election. Similarly, the mailer is not “susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election”. *Federal Election Comin. v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 470 (2007), see also *Cooper v. Johnson*, COPP-2016-ETH-007. In fact, the most reasonable interpretation of this mailer is to take it at face-value as a reminder of and source of information about property tax rebates being made available to eligible Montana homeowners by the Montana Department of Revenue.

To be a violation of MCA § 2-2-122 the mailer would at a minimum have to solicit support for Governor Gianforte’s re-election campaign, which is not an interpretation that can be established or defended here. This has been the approach taken by COPP in numerous cases over an extended period of time. COPP uses the definition for support or oppose and many cases have reached similar conclusions. *Davison v. Brown*, *Tschida I and II v. Bullock*, *Essmann v. McCulloch* and *MDP v. Jacobsen*. Other COPP decisions have used the definition and reached the conclusion that the public official did violate the Ethics Code by using public resources to support or oppose the nomination or election of themselves or others. *Cooper v. Johnson*, *MT Democratic Party v. Stapleton*, COPP-2019-ETH-001, and *Merwin v. Cooney*, COPP-2020-ETH-007. The point here is that the statute has purpose and effect, but it cannot be used in such away as to impede the performance of duties public officers were elected to perform. *Davison v. Brown*, COPP-2004-ETH-06/02/04, 20-22, *Essmann v. McCulloch*, COPP-2014-CFP-056, 4, 7-8 and see complaints *Molnar* and *Fasbender v. Toole* (2010). BFM proposes such a determination. I do not concur. The facts are insufficient to support such a conclusion. The matter in this regard is accordingly dismissed.

I must also disagree with the assertion that “these political postcards serve no official purpose”. Indeed, each mailer very obviously serves an official purpose-reminding eligible Montana property owners of property tax rebates that may be

available to them, as well as providing information about how and when to apply. These property tax rebates are the result of the 2023 Montana Legislature's passage and Governor Gianforte's signing of MT Laws. Chapter No. 772 (HB 587). While an individual recipient of the mailer may not have supported HB 587 or otherwise disagrees with the resultant property tax rebates its passage made available, this personal opposition or disagreement does not invalidate HB 587's passage or the directly related official purpose these mailers serve.

MT Laws. Chapter No. 47 (HB 222), legislation directly related to HB 587 also passed by the 2023 Montana Legislature and approved by Governor Gianforte, included specific language that DOR "shall mail a notice to potential claimants" of the property tax rebate made available via HB 587 "by June 30, 2023 for tax year 2022 and by June 30, 2024 for tax year 2023" (emphasis added) (see HB 222, Section 2, (3)). In other words, while BFM is ascribing purely political motivations held by Governor Gianforte, in sending the postcard in question DOR was in fact undertaking an action specifically required of it.

As to the assertion that the mailer was potentially contracted with Ultra Graphics LLC, the lodged complaint provides no assertable facts or evidence detailing how this represents a violation of Montana's Code of Ethics committed by Governor Gianforte. As noted above, the burden is on the complainant to make assertions and present cognizable claims, not on COPP to investigate unsubstantiated claims.

DECISION REGARDING ASSESMENT OF COSTS

Since there was some public value derived in addressing this matter, I will not assess costs against BFM. MCA § 2-2-136(2)(c). see also *Molnar v. Fox*, 2013 MT 132 (in comparison). Furthermore, this matter is resolved by an initial agency review under MCA § 2-2-136(1)(b), so agency related costs were kept to a minimum. A hearings officer was not required, which is where the agency incurs unanticipated costs not covered within our regular budget.

CONCLUSION & ORDER

Jurisdiction regarding this matter was accepted pursuant to MCA § 2-2-136(1)(a). The matters pertaining to Mr. Eaton and Governor Gianforte based on a contract, which did not exist, are dismissed as frivolous. The remaining issues regarding Governor Gianforte are not legal claims and were not supported by any of the facts offered as such by BFM. The activity described is permitted as an official duty and Governor Gianforte did not use or permit the use of government resources or funds to support his campaign or election. Weighing all of the facts presented and applying the plain language of the law in accordance with rules of statutory construction, I am compelled to reach no other conclusion. Therefore, as herein determined, the BFM complainant is dismissed in its entirety as either frivolous or unsupported.

NOTICE

This provides notice to the parties that this complaint dismissal is a final agency order, and either party can seek judicial review of my determinations under MCA § 2-4-701 et. seq. The parties are further noticed that the complaint, record established, and this decision are available for public inspection. MCA § 2-2-136(4).

ORDERED and submitted this 24th day of July, 2024



Chris J. Gallus, Commissioner
Montana Office of Political Practices
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CERIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was emailed and sent by First Class postage prepaid U.S. Mail or hand delivered to the parties as follows:

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DATED this 24 day of July, 2024

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(email only).