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COMMISSIONER OF
POLITICAL PRACTICES

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES

STATE OF MONTANA

In Re: Ethics Complaint of TRAP FREE MONTANA PUBLIC LANDS v. MONTANA FISH, WILDLIFE, AND PARKS.	CAUSE NO. COPP-2014-ETH-005 FINAL AGENCY DECISION
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The Commissioner hereby issues this Final Agency Decision.

I. Status of Matter

This Matter has duly proceeded through the process required by law, including a full day evidentiary hearing conducted in Helena, Montana on October 21, 2016 before Hearing Officer Jaime MacNaughton. The Commissioner was also present throughout the evidentiary hearing, having thereby “heard” the case.

The Commissioner serves as the agency head in making this Decision. §13-37-102, MCA. Having heard this Matter the Commissioner may act as the Agency and, without the necessity of further proceedings, adopt the proposal for decision of the Hearing Officer as the Final Agency Decision. § 2-4-621((3), MCA. The Commissioner does so, below.

II. Comments

Before taking final action the Commissioner comments as follows. First, the Commissioner notes that Fish Wildlife and Parks (FWP) is a Montana state agency of significant size. Its budget, largely drawn from state and federal special revenue accounts, is in excess of \$75,000,000 per year. It hires the equivalent of over 700 full time state employees.

Second, the Commissioner observed that the FWP employees appearing at the October 21, 2016 ethics hearing presented as exceptionally loyal and proud employees of an effective agency of state government. This Decision, while critical of one aspect of FWP activity, proposes a remedial solution that, when adopted, should serve to limit the possibility of comparable issues in the future.

Third, the Commissioner calls attention to what the hearing officer described as a “trust” relationship between FWP and the Montana Trappers Association (MTA). Such a trust relationship makes overall sense, given FWP’s acknowledged development of constituent relationships with organized groups interested in a fish, wildlife, parks or other recreational resource for which FWP serves as steward.

Lastly, the Commissioner notes that ballot issue activity, like that described in the hearing officer’s findings, creates a particularly sensitive area of concern for FWP because of the resources (both time and equipment) normally shared between FWP and a constituency group (MTA) that has decided to oppose the ballot issue. Without a policy that creates a clear

firewall between FWP and MTA for the time period of initiative activity it seems inevitable that the close relationship (see hearing officer's findings) would allow public resources to flow from FWP to MTA in support of its anti-initiative activity. Indeed, that is exactly what happened.

In a broad sense, this Decision illustrates an agency version of the type of connected or "coordinated" campaign activity that leads to campaign practice violations in candidate campaigns. The best practices of Montana's 2016 candidate campaigns have involved generation of firewall policies by the campaigns of candidates or political committees that help ensure that campaign activity of one political committee is independent and not coordinated with a candidate campaign. A state agency, once an initiative emerges that could affect agency operation, is best advised to develop a comparable firewall policy isolating its staff and resources from any entity, even a constituency entity, involved in supporting or opposing the initiative effort.

III. Final Order

Pursuant to § 2-4-621(3), MCA, the Commissioner hereby adopts the hearing officer's Proposal for Decision as this Agency's Final Decision. The procedural consequences and timelines are recited in the Proposal for Decision and those are incorporated and adopted by reference.

IV. This Decision Lifts Confidentiality

Ethics complaints made against a "state officer, legislator or state employee" are lodged with the commissioner of political practices, § 2-2-

136(1)(a), MCA. Any such an ethics complaint is deemed confidential when lodged with the COPP, § 2-2-136(4), MCA.¹

This Matter presented as an unusual ethics complaint because it was accepted for filing. Instead, most lodged ethics complaints have concerned the conduct of local officials, conduct that falls outside of the jurisdiction of the Commissioner. Consequently, nearly all lodged ethics complaints, are “rejected” (not accepted for filing) on the basis that the Commissioner lacks jurisdiction to decide the Complaint.²

By another ethics Decision³ made yesterday (November 21, 2016) the Commissioner addressed application of the confidentiality provisions of § 2-2-136(4), MCA, stating that confidentiality applies “until the commissioner issues a decision.” (*Id.*) The decision necessary to lift confidentiality was defined as the decision to reject a lodged ethics complaint or accept the complaint for filing, thereby triggering the informal hearing process.⁴ The Decision to accept the ethics complaint in this Matter was made on June 6, 2016 and confidentiality was therefore lifted as of that date.

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¹ These complaints are first listed on the COPP homepage website by initials and complaint number. The complaint at issue in this Matter was listed as “T v. M, COPP-2014-ETH-005–Accepted-Confidential (7/11/14).” Upon release of this Decision the Complaint will be relisted in the name of the parties and the Complaint and this Decision will be posted for viewing on the COPP homepage.

² Given the narrow jurisdictional and substantive focus of ethics law, nearly all lodged ethics complaints are rejected for filing: 2014 (eight lodged, one accepted for filing); 2015 (eight lodged, 0 accepted); 2016 (five lodged, 0 accepted). Campaign practice complaints, in contrast are almost always accepted for filing. In 2014, for example, 95 campaign practice complaints were lodged with 81 of those accepted for filing.

³ *Tschida v. Bullock*, COPP 2016-ETH-005.

⁴ In practice, a dismissal or an acceptance of a complaint is made at a single point in time.

The Commissioner notes that, while the Complaint would immediately become available for public inspection, the records and documents produced during the ethics process would be subject to a pre-production privacy review as defined by COPP Office Management Policy No. 2.2.

DATED this 22nd day of November, 2016.



Jonathan Motl
Commissioner of Political Practices
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing to be emailed to:

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DATED this 22nd day of November, 2016.

