



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE BRAD TSCHIDA
HOUSE DISTRICT 98

HELENA ADDRESS:
CAPITOL BUILDING
PO BOX 200400
HELENA, MONTANA 59620-0400
PHONE: (406) 444-4800
CELL PHONE: (406) 546-4349
EMAIL: Rep.Brad.Tschida@mt.gov

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 Motl’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 Motl’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,



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.

**EXHIBITS TO LETTER FROM
REP. BRAD TSCHIDA
TO
SEN. DEE BROWN & SEN. BOB KEENAN**

1 Matthew G. Monforton
2 Monforton Law Offices
3 32 Kelly Court
4 Bozeman, Montana 59718
5 Telephone: (406) 570-2949
6 Facsimile: (406) 551-6919
7 E-mail: matthewmonforton@yahoo.com

8 Attorney for Complainant Brad Tschida

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10 **BEFORE THE COMMISSIONER OF POLITICAL PRACTICES**

11 BRAD TSCHIDA,)
12 Complainant,) Case No. COPP-2016-ETH-005
13 vs.)
14 STEVE BULLOCK and MEG O'LEARY,) **AMENDED COMPLAINT**
15 Respondents.)
16)

17 **I. JURISDICTION**

18 1. The Commissioner of Political Practices has jurisdiction over this matter
19 pursuant to Mont. Code Ann. §§ 2-2-104 & 2-2-136(1)(a).

20 **II. PARTIES**

21 2. Complainant Brad Tschida is a resident of Missoula County, Montana, and a
22 member of the Montana House of Representatives.

23 3. Respondent Steve Bullock is a resident of Lewis & Clark County, Montana,
24 and has been at all times pertinent to this matter the Governor of Montana.

25 4. Respondent Meg O'Leary is a resident of Lewis & Clark County, Montana,
26 and has been at all times pertinent to this matter the Director of the Montana
27 Department of Commerce.
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1 **III. STATEMENT OF FACTS**

2 5. Sometime before August 5, 2014, Respondent Bullock received an invitation
3 from University of Montana President Royce Engstrom and Mary Engstrom for “you
4 and a guest to join them in the President’s Box to watch Sir Paul McCartney as he
5 performs his ‘Out There’ concert.”

6 6. President Engstrom was appointed by Montana’s Board of Regents of Higher
7 Education.

8 7. The Board’s members are, in turn, appointed by the Governor.

9 8. Private parties paid for the McCartney tickets received by Respondent
10 Bullock.

11 9. The fair market value of a ticket for the McCartney concert with seating in
12 the President’s Box far exceeds \$50.

13 10. On August 5, 2014, Respondent Bullock utilized an aircraft owned,
14 operated, and maintained by the State of Montana to attend the McCartney concert.

15 11. Respondent O’Leary joined Respondent Bullock on the flight.

16 12. Respondent Bullock gave Respondent O’Leary one of the McCartney
17 tickets.

18 13. Respondent O’Leary’s state-funded travel to Missoula was not necessitated
19 by official state business.

20 14. In December 2014, Respondent Bullock was elected chair of the
21 Democratic Governors Association (DGA) for 2015.

22 15. On or about March 31, 2015, Respondent Bullock caused the DGA to make
23 an expenditure on behalf of Respondent O’Leary in the amount of \$1,927.00.

24 16. These monies were used for travel and lodging expenses incurred by
25 Respondent O’Leary.

26 17. Respondent O’Leary’s travel was not necessitated by official state business.
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COUNT 1
ACCEPTANCE OF ILLEGAL GIFT
(Tickets to McCartney Concert)

9 18. All previous paragraphs are incorporated by reference.

10 19. Section 2-2-104(1)(b)(i) of the Montana Code Annotated prohibits public
11 officers from accepting a gift of substantial value or a substantial economic benefit
12 tantamount to a gift that would tend improperly to influence a reasonable person in the
13 person's position to depart from the faithful and impartial discharge of the person's
14 public duties.

15 20. Royce Engstrom and other, unidentified persons offered Respondent
16 Bullock tickets for him and a guest to the McCartney concert with seating in the
17 President's Box.

18 21. The fair market value of these tickets exceeded \$50.

19 22. Respondent Bullock accepted the tickets and provided one to Respondent
20 O'Leary.

21 23. The tickets had substantial value and would tend to influence a reasonable
22 person in the position of Respondent Bullock and Respondent O'Leary to depart from
23 the faithful and impartial discharge of their public duties.

24 24. Respondents therefore violated § 2-2-104(1)(b)(i), MCA, when they
25 accepted the McCartney tickets.

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COUNT 2
OFFER AND ACCEPTANCE OF ILLEGAL GIFT

(Flight to McCartney Concert on State-Owned Aircraft in August 2014)

25 25. All previous paragraphs are incorporated by reference.

26 26. Respondent Bullock gave to Respondent O'Leary a gift in August 2014 of a
27 state-paid flight to Missoula to attend the McCartney concert with him.

28 27. The state-paid flight to Missoula had substantial value.

1 28. The state-paid flight to Missoula was a gift that would tend to improperly
2 influence a reasonable Commerce Director to depart from the faithful and impartial
3 discharge of her duties.

4 29. Respondent O'Leary therefore violated § 2-2-104(1)(b)(i), MCA, when she
5 accepted Respondent Bullock's gift of a state-paid flight to Missoula and Respondent
6 Bullock violated § 2-2-104(1)(b)(i), MCA, by offering it to her.

7
8 **COUNT 3**
9 **OFFER AND ACCEPTANCE OF ILLEGAL GIFT**
(Travel & Lodging Provided by the DGA in 2015)

10 30. All previous paragraphs are incorporated by reference.

11 31. Respondent Bullock caused the DGA to pay for travel and lodging expenses
12 incurred by Respondent O'Leary.

13 32. The DGA's payment of travel and lodging expenses incurred by
14 Respondent O'Leary had substantial value.

15 33. The payment constituted a gift that would tend to improperly influence a
16 reasonable Commerce Director to depart from the faithful and impartial discharge of
17 her duties.

18 34. Director O'Leary therefore violated § 2-2-104(1)(b)(i), MCA, when she
19 accepted the gift and Governor Bullock violated § 2-2-104(1)(b)(i), MCA, by causing
20 the DGA to offer it to her.

21 **RELIEF REQUESTED**

22 Complainant Brad Tschida hereby requests that a contested hearing be held in
23 accordance with § 2-2-136(1)(c), MCA, and that fines be imposed against Respondent
24 Bullock and Respondent O'Leary in accordance with § 2-2-136(2)(c), MCA.

25 DATED: September 20, 2016

26 Respectfully submitted,

27 
Matthew G. Monforton
28 Attorney for Complainant

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

JONATHAN R. MOTL
COMMISSIONER
TELEPHONE (406) 444-2942
FAX (406) 444-1643

1205 EIGHTH AVENUE
PO BOX 202401
HELENA, MONTANA 59620-2401
www.politicalpractices.mt.gov

September 23, 2016

Andy Huff
Legal Counsel to
Steve Bullock
Governor, State of Montana
State Capitol Rm 204
Helena, MT 59620

Hand-Delivered

RE: Ethics Complaint - COPP-2016-ETH-005 (Confidential)

Tschida v. Bullock & O'Leary (T. v. B on COPP website)
Complaint is in lodged status; Not yet accepted as filed.

Dear Mr. Huff:

I acknowledge your phone request of today asking that Respondents be allowed until 5:00 PM, Wednesday, September 28, 2016 to provide their written response to the above referenced amended ethics complaint. That request was orally granted and that grant is memorialized by this letter. The same extension of time to provide supplemental documents or information is hereby extended to the Complainant. The Complainant's notice of this extension is through this letter.

Please feel free to call (same courtesy extended to Complainant) if you have any questions or concerns about the matters addressed in this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "JRM", written over a large, loopy blue scribble.

Jonathan R Motl
Commissioner of Political Practices

C

Complainant through Matthew Monforton, attorney at law

October 3, 2016

Dear Fellow Montanans:

In the next two days (October 3rd and 4th) the COPP will accept filing of and post the October 1st and 35th day (October 4) campaign finance reports. The next reports will be due the 12th day pre-election (October 27) and November 1, 2016.

Campaign finance reports are the means by which the press and members of the public can track and comment on the amount of money (and sources of money) received and spent by Montana candidates for public office and by Montana's ballot issue committees. To that end the staff of this Office work hard in guiding the filing and posting of reports, first as data in the CERS system and then as a PDF information report in File Net. The ease (and speed) of public access to the campaign finance data and information depends on the ability of the COPP staff to manage this flow of data and information. Thank you Karen, Noah, Scott, Elyssa and Kym for your able, and increasingly swift, efforts to achieve transparency in this campaign finance information.

On the enforcement side we are current with 2016 complaint Decisions and we intend to keep current right up to the last week before the November 8 election. We will hold Decisions on complaints filed in that last week until after the election because there is not enough time for the parties to react if we make a decision during that last week.

We continue to receive letters and phone calls from Montanans who have concerns about a particular mailing, phone call or campaign contact. We are here to respond to those concerns, so please feel free to contact us.

Sincerely,

Jonathan Motl
Commissioner

EXHIBIT C