

1 HOUSE BILL NO. 23

2 INTRODUCED BY B. BENNETT

3 BY REQUEST OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ETHICS VIOLATION LAWS FOR THE OFFICE OF THE
6 COMMISSIONER OF POLITICAL PRACTICES; ~~PROHIBITING THE COMMISSIONER FROM ENGAGING IN~~
7 ~~PRIVATE BUSINESS DURING THE OFFICE HOURS OF THE COMMISSIONER~~; PROVIDING FOR THE
8 RESOLUTION OF CHARGES OF ETHICS VIOLATIONS BY THE COMMISSIONER OF POLITICAL
9 PRACTICES; AND AMENDING SECTIONS 2-2-136, ~~13-37-108~~, AND 13-37-111, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 2-2-136, MCA, is amended to read:

14 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint**
15 **involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state
16 employee may file a complaint with the commissioner of political practices. The commissioner does not have
17 jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The
18 commissioner also has jurisdiction over complaints against a county attorney that are referred by a local
19 government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to
20 2-2-144(6). If a complaint is filed against the commissioner or another individual employed in the office of the
21 commissioner, the complaint must be resolved in the manner provided for in 13-37-111(5). The commissioner
22 may request additional information from the complainant or the person who is the subject of the complaint to
23 make an initial determination of whether the complaint states a potential violation of this part.

24 (b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of
25 this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint
26 states a potential violation of this part. If the issues presented in a complaint have been addressed and decided
27 in a prior decision and the commissioner determines that no additional factual development is necessary, the
28 commissioner may issue a summary decision without holding an informal contested case hearing on the
29 complaint.

30 (c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a

1 potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint
2 as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record
3 established before the commissioner.

4 (2) (a) Except as provided in subsection (2)(b), if the commissioner determines that a violation of this
5 part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than
6 \$1,000.

7 (b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner may
8 impose an administrative penalty of not less than \$500 or more than \$10,000.

9 (c) If the violation was committed by a state employee, the commissioner may also recommend that the
10 employing state agency discipline the employee. The employing entity of a state employee may take disciplinary
11 action against an employee for a violation of this part, regardless of whether the commissioner makes a
12 recommendation for discipline. The commissioner may assess the costs of the proceeding against the person
13 bringing the charges if the commissioner determines that a violation did not occur or against the officer or
14 employee if the commissioner determines that a violation did occur.

15 (3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of
16 this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

17 (4) Except for records made public in the course of a hearing held under subsection (1) and records that
18 are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the
19 commissioner in connection with an investigation or complaint are confidential documents and are not open for
20 public inspection. The complainant and the person who is the subject of the complaint shall maintain the
21 confidentiality of the complaint and any related documents released to the parties by the commissioner until the
22 commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing,
23 the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and
24 any related documents must be open for public inspection. The commissioner's decision issued after a hearing
25 is a public record open to inspection.

26 (5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm
27 that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects
28 and status of the case.

29 (6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."
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1 ~~Section 2.~~ Section 13-37-108, MCA, is amended to read:

2 ~~"13-37-108. Commissioner of political practices -- restrictions.~~ During the commissioner's term of
3 office, the commissioner may not knowingly, as defined in 45-2-101:

4 ~~(1) hold another position of public trust or engage in any other occupation or business if the position of~~
5 ~~public trust or the other occupation or business interferes with or is inconsistent with the commissioner executing~~
6 ~~the duties of the commissioner's office;~~

7 ~~(2) engage in any other occupation or business during the business hours of the commissioner's office~~
8 ~~unless the commissioner is in a leave status from the office;~~

9 ~~(2)(3) participate in any political activity or in a political campaign;~~

10 ~~(3)(4) make a contribution to a candidate or political committee or for or against a ballot issue or engage~~
11 ~~in any activity that is primarily intended to support or oppose a candidate, political committee, or ballot issue;~~

12 ~~(4)(5) attend an event that is held for the purpose of raising funds for or against a candidate, political~~
13 ~~committee, or ballot issue;~~

14 ~~(5)(6) participate in a matter pertaining to the commissioner's office that:~~

15 ~~(a) is a conflict of interest or results in the appearance of a conflict of interest between public duty and~~
16 ~~private interest pursuant to Title 2, chapter 2; or~~

17 ~~(b) involves a relative of the commissioner."~~

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19 **Section 2.** Section 13-37-111, MCA, is amended to read:

20 **"13-37-111. Investigative powers and duties -- recusal.** (1) Except as provided in 13-35-240 and this
21 section, the commissioner is responsible for investigating all of the alleged violations of the election laws
22 contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for
23 enforcing these election laws.

24 (2) The commissioner may:

25 (a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and
26 shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant
27 to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any
28 individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this
29 title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

30 (b) inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35

1 of this title or this chapter that are held by any political committee or candidate, as long as the inspection is made
2 during reasonable office hours; and

3 (c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and
4 require the production of any books, papers, correspondence, memoranda, bank account statements of a political
5 committee or candidate, or other records that are relevant or material for the purpose of conducting any
6 investigation pursuant to the provisions of chapter 35 of this title or this chapter.

7 (3) If the commissioner determines that considering a matter would give rise to the appearance of
8 impropriety or a conflict of interest, the commissioner is recused from participating in the matter.

9 (4) The commissioner is recused from participating in any decision in which the commissioner is accused
10 of violating 13-37-108 or any other ethical standard.

11 (5) (a) If a campaign finance or ethics complaint is filed in the office of the commissioner against the
12 commissioner, a supervisor within the commissioner's office shall within 10 business days forward the complaint
13 to the attorney general, who shall within 45 days appoint a deputy in the case of a finance complaint or a deputy
14 and a hearing officer in the case of an ethics complaint to make a determination in the matter of the complaint.
15 The attorney general shall, to the extent practicable, ensure that there is no conflict of interest in the appointment
16 of the deputy or hearing officer or in the provision of any legal advice to the office of the commissioner.

17 (b) A deputy appointed pursuant to this subsection must, in addition to complying with the requirements
18 of subsection (6)(b), be an attorney licensed to practice law in Montana who is engaged in the private practice
19 of law and who has liability insurance applicable to the purposes for which the deputy is appointed.

20 (c) If a complaint is filed against the commissioner, another employee in the office of the commissioner
21 may not provide the commissioner with any information or documents concerning a complaint against the
22 commissioner beyond that information or those documents normally provided to persons in matters before the
23 commissioner.

24 ~~(4)(6)~~ (a) If the commissioner is recused pursuant to this section, the commissioner shall, except as
25 provided in subsection (5), appoint a deputy, subject to subsection ~~(4)(b)~~ (6)(b).

26 (b) The deputy:

27 (i) may not be an employee of the office of the commissioner;

28 (ii) must have the same qualifications as specified for the commissioner in 13-37-107;

29 (iii) with respect to only the specific matter from which the commissioner is recused, has the same
30 authority, duties, and responsibilities as the commissioner would have absent the recusal; and

1 (iv) may not exercise any powers of the office that are not specifically related to the matter for which the
2 deputy is appointed.

3 ~~(5)(7) (a) The~~ Except as provided in subsection (7)(b), the appointment of the deputy is effectuated by
4 a contract between the commissioner and the deputy. ~~The contract~~ A contract executed pursuant to this
5 subsection (7) must specify the deputy's term of appointment, which must be temporary, the matter assigned to
6 the deputy, the date on which the matter assigned must be concluded by the deputy, and any other items relevant
7 to the deputy's appointment, powers, or duties.

8 (b) If a deputy is appointed pursuant to subsection (5), the appointment of the deputy is effectuated by
9 a contract between the supervisor who forwarded the complaint to the attorney general and the deputy or the
10 deputy and the hearing officer, but the contract is construed to be with the office of the commissioner."

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