

1 SENATE BILL NO. 338

2 INTRODUCED BY R. ARTHUN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING RESTRICTIONS FOR STATE OFFICERS WITH
5 REGARD TO PUBLIC SERVICE ANNOUNCEMENTS; PROVIDING A PENALTY; PROVIDING THAT PUBLIC
6 SERVICE ANNOUNCEMENTS MAY BE FUNDED ONLY BY A SPECIFIC APPROPRIATION; PROVIDING FOR
7 REPORTING ON THE EXPENDITURE OF STATE FUNDS FOR PUBLIC SERVICE ANNOUNCEMENTS; AND
8 AMENDING SECTIONS 2-2-121 AND 2-2-136, MCA."

9

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

11

12 **Section 1.** Section 2-2-121, MCA, is amended to read:

13 **"2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of any
14 act enumerated in subsection (2) is proof that the actor has breached a public duty.

15 (2) A public officer or a public employee may not:

16 (a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the
17 officer's or employee's private business purposes;

18 (b) engage in a substantial financial transaction for the officer's or employee's private business purposes
19 with a person whom the officer or employee inspects or supervises in the course of official duties;

20 (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other
21 economic benefit from the officer's or employee's agency;

22 (d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic
23 benefit from any agency;

24 (e) perform an official act directly and substantially affecting to its economic benefit a business or other
25 undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel,
26 consultant, representative, or agent; or

27 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a
28 person whom the officer or employee regulates in the course of official duties without first giving written
29 notification to the officer's or employee's supervisor and department director.

30 (3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public

1 time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political
 2 committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the
 3 use is:

4 (i) authorized by law; or

5 (ii) properly incidental to another activity required or authorized by law, such as the function of an elected
 6 public officer, the officer's staff, or the legislative staff in the normal course of duties.

7 (b) As used in this subsection (3), "properly incidental to another activity required or authorized by law"
 8 does not include any activities related to solicitation of support for or opposition to the nomination or election of
 9 a person to public office or political committees organized to support or oppose a candidate or candidates for
 10 public office. With respect to ballot issues, properly incidental activities are restricted to:

11 (i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the
 12 impact of passage or failure of a ballot issue on state or local government operations;

13 (ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of
 14 law governing public meetings of the local board of trustees, including the resulting dissemination of information
 15 by a board of trustees or a school superintendent or a designated employee in a district with no superintendent
 16 in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended
 17 for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the
 18 electors.

19 (c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express
 20 personal political views.

21 (4) (a) A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any
 22 advertisement or public service announcement in a newspaper, on radio, or on television that contains the
 23 candidate's name, picture, or voice except in the case of a state or national emergency and then only if the
 24 announcement is reasonably necessary to the candidate's official functions.

25 (b) A state officer may not use or permit the use of ~~state~~ PUBLIC TIME, FACILITIES, EQUIPMENT, SUPPLIES,
 26 PERSONNEL, OR funds to produce, print, or broadcast any advertisement or public service announcement in a
 27 newspaper, on radio, or on television that contains the state officer's name, picture, or voice except in the case
 28 of a state or national emergency and then only if the announcement is reasonably necessary to the state officer's
 29 official functions.

30 (5) A public officer or public employee may not participate in a proceeding when an organization, other

1 than an organization or association of local government officials, of which the public officer or public employee
2 is an officer or director is:

3 (a) involved in a proceeding before the employing agency that is within the scope of the public officer's
4 or public employee's job duties; or

5 (b) attempting to influence a local, state, or federal proceeding in which the public officer or public
6 employee represents the state or local government.

7 (6) A public officer or public employee may not engage in any activity, including lobbying, as defined in
8 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of
9 which the public officer or public employee is a member while performing the public officer's or public employee's
10 job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing
11 charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized
12 by law.

13 (7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101
14 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section.
15 The public officer or public employee may not make arrangements for the listing in the electronic directory during
16 work hours.

17 (8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act
18 notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute
19 and if the person complies with the disclosure procedures under 2-2-131.

20 (9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless
21 the member is also a full-time public employee.

22 (10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government
23 from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise
24 enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to
25 performing the official act."

26

27 **Section 2.** Section 2-2-136, MCA, is amended to read:

28 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint**
29 **involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state
30 employee may file a complaint with the commissioner of political practices. The commissioner does not have

1 jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The
2 commissioner also has jurisdiction over complaints against a county attorney that are referred by a local
3 government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to
4 2-2-144(6). The commissioner may request additional information from the complainant or the person who is the
5 subject of the complaint to make an initial determination of whether the complaint states a potential violation of
6 this part.

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

13 (c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a
14 potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint
15 as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record
16 established before the commissioner.

17 (2) ~~(a) # Except as provided in subsection (2)(b), if the commissioner determines that a violation of this~~
18 ~~part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than~~
19 ~~\$1,000, and if,~~

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

22 ~~(c) If the violation was committed by a state employee, the commissioner may also recommend that the~~
23 ~~employing state agency discipline the employee. The employing entity of a state employee may take disciplinary~~
24 ~~action against an employee for a violation of this part, regardless of whether the commissioner makes a~~
25 ~~recommendation for discipline. The commissioner may assess the costs of the proceeding against the person~~
26 ~~bringing the charges if the commissioner determines that a violation did not occur or against the officer or~~
27 ~~employee if the commissioner determines that a violation did occur.~~

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

30 (4) Except for records made public in the course of a hearing held under subsection (1) and records that

1 are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the
2 commissioner in connection with an investigation or complaint are confidential documents and are not open for
3 public inspection. The complainant and the person who is the subject of the complaint shall maintain the
4 confidentiality of the complaint and any related documents released to the parties by the commissioner until the
5 commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing,
6 the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and
7 any related documents must be open for public inspection. The commissioner's decision issued after a hearing
8 is a public record open to inspection.

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

12 (6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."
13

14 **NEW SECTION. Section 3. Public service announcements -- restricted funds -- reporting.** (1) A
15 state agency may use only funds specifically appropriated to produce, print, or broadcast public service
16 announcements in a newspaper, on radio, or on television. Appropriations for all public service announcements
17 must be specifically identified and restricted for that sole purpose. A complaint alleging violation of this subsection
18 must be filed pursuant to 2-2-136.

19 (2) Each agency shall report to the legislative finance committee on a biennial basis all expenditures
20 related to the production and distribution of public service announcements.
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22 **NEW SECTION. Section 4. Codification instruction.** [Section 3] is intended to be codified as an
23 integral part of Title 17, chapter 8, and the provisions of Title 17, chapter 8, apply to [section 3].
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