

SENATE BILL NO. 43

INTRODUCED BY S. MALEK

BY REQUEST OF THE COMMISSIONER OF POLITICAL PRACTICES

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE COMMISSIONER OF POLITICAL PRACTICES TO DEPUTIZE ATTORNEYS EMPLOYED BY THE OFFICE OF THE COMMISSIONER FOR ANY MATTER UNDER THE JURISDICTION OF THE COMMISSIONER ~~AND~~ EXCEPT FOR MATTERS IN WHICH THE COMMISSIONER IS RECUSED; AND AMENDING SECTION 13-37-111, MCA."

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

**Section 1.** Section 13-37-111, MCA, is amended to read:

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

(2) The commissioner may:

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

(b) inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35 of this title or this chapter that are held by any political committee or candidate, as long as the inspection is made during reasonable office hours; ~~and~~

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

(d) appoint an employee from the office of the commissioner who is licensed as an attorney as a deputy



1 commissioner for any matter under the jurisdiction of the commissioner. A deputy commissioner appointed under  
 2 this subsection (2)(d) has the same authority, duties, and responsibilities as the commissioner would have absent  
 3 the deputy's appointment. However, the deputy commissioner's authority, duties, and responsibilities are limited  
 4 to the specific matter for which the deputy commissioner is appointed, and the deputy may not exercise any  
 5 powers of the office that are not specifically related to the matter for which the deputy is appointed. An  
 6 appointment under this subsection (2)(d) is effectuated as provided in subsection (7)(a).

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 hearings 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 hearings 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 (6) (a) If the commissioner is recused pursuant to ~~this section~~ SUBSECTIONS (3), (4), OR (5), the  
 25 commissioner shall, except as provided in subsection (5), appoint a deputy, subject to subsection (6)(b).

26 (b) The deputy:

27 (i) may not be an employee of the office of the commissioner ~~other than an attorney~~;

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 (7) (a) Except as provided in subsection (7)(b), the appointment of the deputy is effectuated by a contract  
4 between the commissioner and the deputy. A contract executed pursuant to this subsection (7) must specify the  
5 deputy's term of appointment, which must be temporary, the matter assigned to the deputy, the date on which  
6 the matter assigned must be concluded by the deputy, and any other items relevant to the deputy's appointment,  
7 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 hearings officer, but the contract is construed to be with the office of the commissioner."

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