



February 19, 2025

Senator Matthew Regier  
Senate President  
Montana State Capitol  
P.O. Box 201706  
Helena, MT 59620-1706

RE: Jurisdiction of Ethics Complaint against a Legislator

Senate President Regier:

Thank you for your February 14, 2025, letter. The Department of Justice lacks jurisdiction to investigate or enforce an ethics complaint against a legislator.<sup>1</sup>

“The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.” Mont. Const. art. XIII, § 4. The Legislature set forth a Code of Ethics in Title 2, Chapter 2, Part 1. Section 2-2-112 provides express ethical standards for legislators.

The Code of Ethics provides that a “person alleging a violation of [the Code] by a judicial officer, state officer, legislator, or state employee may file a complaint with the commissioner of political practices.” Mont. Code Ann. § 2-2-136(1). The commissioner, however, lacks jurisdiction over “a legislator if a legislative act is involved in the complaint.” *Id.* And, “[p]ursuant to Article V, section 10, of the Montana Constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators.” Mont. Code Ann. § 2-2-135(2).

First, the Department of Justice takes no position at this time whether the allegations in the referred motion constitute a protected “legislative act,” which presents a separate jurisdiction bar. Mont. Code Ann. § 2-2-136(1). Speech or Debate Immunity protects those acts integral to the “deliberative and communicative processes by

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<sup>1</sup> This letter should not be construed to state a position on the Department’s authority to investigate violations of Mont. Code Ann. § 45-7-401, or matters referred to the Attorney General pursuant to Mont. Code Ann. § 5-13-310.

DEPARTMENT OF JUSTICE

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which [legislators] participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.” *Doe v. McMillan*, 412 U.S. 306, 313 (1973). Those “cases make perfectly apparent, however, that everything a [legislator] may regularly do is not a legislative act....” *Id.*; see also *United States v. Brewster*, 408 U.S. 501, 518 (1972) (some legitimate activities done by legislators—constituent services, “assistance in securing Government contracts,” and speeches outside the legislature—fall outside the scope of legislative acts). Whether an act is a legislative act is a fact-dependent inquiry.

Second, the Commissioner of Political Practices, not the Department of Justice, investigates alleged violations of the Code of Ethics. Mont. Code Ann. § 2-2-136.

Finally, the statutory scheme recognizes that the Montana Constitution requires the Legislature to enforce the Code of Ethics against legislators. See Mont. Code Ann. § 2-2-135; Mont. Const. art. V, § 10(1). In short, the Montana Constitution confers exclusive authority to the Legislature to enforce ethical proceedings against legislators.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin Knudsen".

Austin Knudsen  
Montana Attorney General