



Senate Ethics Committee

69th Montana Legislature

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Members: Forrest Mandeville, Chair; Tom McGillvray, Vice Chair; Christopher Pope, Vice Chair; Laura Smith
Staff: Joe Carroll, legislative attorney; Trudy Burke, lead secretary



REPORT AND FINDINGS OF FACT

Senate Ethics Committee



MARCH 19, 2025

Introduction

On January 27, 2025, the body of the Senate voted 49:0 that the Senate Ethics Committee be convened, investigate the conduct of the Senator from Senate District 43, and make findings of fact and a report to the body of the Senate. This document is that report.

Senate Ethics Committee Rule E10-80, adopted February 28, 2025, provides that “to promote clarity . . . the legislative practice of avoiding referring to people and organizations by name is not operative.”

The Senator from Senate District 43 is Senator Jason Ellsworth, who served as President of the Senate during the biennium of the 68th Montana Legislature. Senator Ellsworth remains a member in good standing of the 69th Montana Legislature. He is frequently referred to as “respondent” and “Senator Ellsworth” in this report. He was represented by Joan Mell, who is referred to as “respondent’s counsel.”

The committee was assisted by staff attorney Joe Carroll and by W. Adam Duerk, who is referred to as “special counsel.”

The committee investigated whether the respondent violated section 2-2-112(3), MCA, a statutory provision of the Code of Ethics. By its own terms, the requirements of section 2-2-112, MCA, are “intended as rules for legislator conduct.”

Because the January 27 floor motion contemplates the possibility of the respondent’s punishment or expulsion from the Senate, the Senate Ethics Committee ensured that the due process provisions required by Mason’s Manual of Legislative Procedure (2020), Section 562(4), for punishment or expulsion were integral components of the investigation.

This report contains a timeline summarizing the committee’s actions, a description of due process in the investigation, a reproduction and discussion of section 2-2-112, MCA, and some

other relevant statutes, findings of fact, and a timeline of those facts. This report fulfills the charge the body of the Senate made to the Senate Ethics Committee. This matter is now before the body of the Senate.

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I. Timeline of committee actions relevant to this report

January 27, 2025: body of the Senate votes 49:0 to convene the Senate Ethics Committee, ordering that the committee conduct an investigation, and make findings of fact and report.

January 29, 2025: organizational meeting of the Senate Ethics Committee. Preliminary rules adopted.

February 3, 2025: initial meeting of the Senate Ethics Committee. Notice and formal charges provided to the respondent. Subpoenas for records approved.

February 6, 2025: investigation is suspended pursuant to a floor motion in the body of the Senate.

February 14, 2025: records from subpoenas issued prior to suspension of investigation are provided to committee, special counsel, and respondent's counsel.

February 20, 2025: investigation resumes.

February 24, 2025: meeting of the Senate Ethics Committee. New notice and formal charge provided to the respondent. Additional subpoenas for records approved. March 7, 2025, set as start date for adjudicatory hearing.

February 27, 2025: Records subpoenaed February 24 are shared with committee, special counsel, and respondent's counsel.

February 28, 2025: meeting of the Senate Ethics Committee. Additional rules adopted, with some amendments to the preliminary rules previously adopted on January 29. The amended rules are attached to this report. Committee rules include a requirement for counsel to exchange preliminary lists of proposed witnesses and exhibits at least 24 hours prior to the adjudicatory hearing.

March 1, 2025: special counsel provides respondent with preliminary list of proposed witnesses.

March 5, 2025: special counsel provides respondent with preliminary list of proposed exhibits.

March 6, 2025: chairman rules on written objections submitted by respondent's counsel.

March 7, 2025: Committee reviews respondent's requested witness list, and determines relevance and admissibility of witnesses. Adjudicatory hearing begins. Angie Carter and Jaret Coles are called to testify at the request of the special counsel.

March 8, 2025: subpoena for records requested by respondent's counsel is approved and issued.

March 10, 2025: records subpoenaed March 8 shared with committee, special counsel, and respondent's counsel.

March 14, 2025: adjudicatory hearing continues. Bryce Eggleston, who previously agreed to testify, submits a letter stating that he will not appear. Subpoena issued for Mr. Eggleston. Committee calls Misty Ann Giles, Ken Varns, Bowen Greenwood, and Angus Maciver to testify at the request of the special counsel. Committee calls Todd Everts and Matt Regier to testify at the request of respondent's counsel. President Regier appeared, was asked a question, and made a statement.

March 15, 2025: Bryce Eggleston subpoenaed. Adjudicatory hearing continues. Counsel for Bryce Eggleston submits letter that Mr. Eggleston retained counsel March 15, 2025, and asserts his Fifth Amendment right to remain silent. At the request of respondent's counsel, committee views sworn statement of Mr. Eggleston that respondent's counsel conducted on March 12. Adjudicatory hearing concludes.

II. Due process

Mason's Manual of Legislative Procedure (2020), Section 562(4), provided the definitive statement on the due process required in this investigation: 1. adequate notice; 2. formal charges; and 3. a public hearing with the opportunity to cross-examine witnesses.

The committee provided notice and formal charges to the respondent most recently on February 24, 2025. At the adjudicative hearing, beginning on March 7, 2025, and continuing on March 14 and 15, 2025, the respondent's counsel cross-examined all witnesses called at the request of the special counsel.

Beyond the due process requirements stated in Mason's, the respondent was afforded and exercised additional due process, including representation by counsel, the ability to request the committee issue subpoenas, the ability to propose exhibits, the ability to request the committee call witnesses, and the ability to object at the adjudicative hearing.

For additional discussion of due process, the committee attaches to this report a legal memorandum regarding due process read into the record at the committee's February 28, 2025, meeting.

III. Relevant statutes

Section 2-2-112, MCA

On February 24, 2025, the committee provided formal notice to the respondent that the committee would investigate a potential violation of section 2-2-112(3), MCA. That statute is reproduced in its entirety below:

2-2-112. Ethical requirements for legislators. (1) The requirements in this section are intended as rules for legislator conduct, and violations constitute a breach of the public trust of legislative office.

(2) A legislator has a responsibility to the legislator's constituents to participate in all matters as required in the rules of the legislature. A legislator concerned with the possibility of a conflict may briefly present the facts to the committee of that house that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of subsection (5). The legislator may, subject to legislative rule, vote on an issue on which the legislator has a conflict, after disclosing the interest.

(3) When a legislator is required to take official action on a legislative matter as to which the legislator has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter, the legislator shall disclose the interest creating the conflict prior to participating in the official action, as provided in subsections (2) and (5) and the rules of the legislature. In making a decision, the legislator shall consider:

- (a) whether the conflict impedes the legislator's independence of judgment;
- (b) the effect of the legislator's participation on public confidence in the integrity of the legislature;
- (c) whether the legislator's participation is likely to have any significant effect on the disposition of the matter; and
- (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.

(4) A conflict situation does not arise from legislation or legislative duties affecting the membership of a profession, occupation, or class.

(5) A legislator shall disclose an interest creating a conflict, as provided in the rules of the legislature. A legislator who is a member of a profession, occupation, or class affected by legislation is not required to disclose an interest unless the class contained in the legislation is so narrow that the vote will have a direct and distinctive personal impact on the legislator. A legislator may seek a determination from the appropriate committee provided for in **2-2-135**.

-end of section 2-2-112, MCA-

Regarding section 2-2-112, MCA, the chair of the committee ruled on March 6, 2025, in response to an objection to the scope of the committee's investigation that:

The statute by its own terms provides that it is a rule. The statute along with other provisions of the Code of Ethics applicable to legislators, the Joint Rules, the Senate Rules, and the House Rules together form a synthetic body of rules applicable to the Legislature, its members, and their conduct. Legislators must conform their conduct to it. The fact that this statutory rule for legislator conduct is in the Code of Ethics and may only be amended or repealed through bicameralism and presentment demonstrates the importance attached to it.

Statutes related to 2-2-112, MCA

Subsections (6) and (7) of section 2-2-102, MCA, provide two definitions for terms used in section 2-2-112(3), MCA. They are:

- (6) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.
- (7) "Private interest" means an interest held by an individual that is:
 - (a) an ownership interest in a business;
 - (b) a creditor interest in an insolvent business;
 - (c) an employment or prospective employment for which negotiations have begun;
 - (d) an ownership interest in real property;
 - (e) a loan or other debtor interest; or
 - (f) a directorship or officership in a business.

Section 2-2-112(1), MCA, states that violations of the statute "constitute a breach of the public trust of legislative office." This is a textual reference to section 2-2-103(1), MCA. The statute is reproduced in its entirety below:

2-2-103. Public trust -- public duty. (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of judicial officers, public officers, legislators, and public employees. A judicial officer, public officer, judge, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A judicial officer, public officer, judge, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

(4) (a) The enforcement of this part for:

- (i) judicial officers, state officers, judges, legislators, and state employees is provided for in 2-2-136;
 - (ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136;
 - (iii) local government officers and employees is provided for in 2-2-144.
- (b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government.
- end of section 2-2-103, MCA-

Section 2-2-135, MCA, referenced in sections 2-2-112 and 2-2-103, MCA, establishes the House and Senate ethics committees in statute. The statute is reproduced in its entirety below:

2-2-135. Ethics committees. (1) Each house of the legislature shall establish an ethics committee. Subject to 5-5-234, the committee must consist of two members of the majority party and two members of the minority party. The committees may meet jointly. Each committee shall educate members concerning the provisions of this part concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.

(2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators.

IV. Findings of fact

After receiving extensive documentary and testimonial evidence, the Senate Ethics Committee makes the following findings of fact. These facts are presented in relation to section 2-2-112(3), MCA, and represent only a portion of information provided to the committee:

When a legislator

1. Jason Ellsworth is a member of the Montana State Senate during this 69th legislative biennium. Senator Ellsworth was first elected in 2018 and is serving a second 4-year term.
2. During the 68th legislative biennium, Senator Ellsworth additionally served as President of the Senate, and as Chairman of the Senate Select Committee on Judicial Oversight and Reform (Special Select Committee), which met for the first time in April 2024. The roles of president and presiding officer of a Senate committee are reserved for Senators.

is required to take official action on a legislative matter

3. Section 2-2-102(6), MCA, states: “Official act” or “official action” means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.
4. On December 26, 2024, Senator Ellsworth signed two contracts, labeled “BILL IMPLEMENTATION ANALYSIS CONTRACT (A)” and “BILL IMPLEMENTATION ANALYSIS CONTRACT (B)”. The contract stated it was an agreement “between Agile Analytics” and “the President of the Senate of the Montana State Legislature, acting in their official capacity.” Senator Ellsworth signed the contracts above a line labeled

“President of the Senate.” Exhibits 5 and 6.

5. Legislative Services Division Deputy Legal Director Jaret Coles testified regarding contract review for these contracts that “it was a different process because they were already signed.” Testimony of Jaret Coles 13:50:56 – 13:50:59 (March 7, 2025).
6. Department of Administration Director Misty Ann Giles testified that Senator Ellsworth’s actions bound the state, and there was not much the state could do to unwind this contract. Testimony of Director Giles, 09:14:30–09:15:30 (March 14, 2025).
7. Legislative Services Division (LSD) and Department of Administration staff worked to create a third contract that would reform the deficiencies they could identify in the two contracts. This is discussed in greater detail below.
8. On December 31, 2024, Senator Ellsworth signed the final contract with Agile Analytics, replacing the December 26, 2024, contracts, as:

Jason Ellsworth
President of the Senate
Chairperson of SSCOJOR.

Exhibit 22, page 33, attachment LSD25-0016LS.

9. The 69th regular legislative session began on January 6, 2025. On January 10, 2025, the fifth legislative day of this session, Mr. Eggleston submitted an invoice for \$7,087.50. On January 14, 2025, Legislative Services Division Financial Director Angie Carter stated via email to Senator Ellsworth: “I need your approval to pay.” Senator Ellsworth emailed Director Carter “Approved” from his legmt.gov email address. Exhibit 22, page 35; Exhibit 23; Director Carter, 12:32:31–12:34:31 (March 7, 2025).

as to which the legislator has a conflict created by a personal or private interest

10. Mr. Eggleston has had a personal and professional relationship with Senator Jason Ellsworth for over 20 years. Exhibit 40, page 2.
11. Conclusive records from a federal lawsuit spanning 2008 to 2014 demonstrate that Senator Ellsworth and Mr. Eggleston had a financial relationship, which involved a company named Time 2 Read. Exhibits 37 and 39.
12. On March 12, 2025, Mr. Eggleston made a sworn statement to the respondent's counsel. He was asked: "What relationship is there between Time 2 Read and Ellsworth and you?" Mr. Eggleston answered: "He's the owner, and – and I am an employee of Time 2 Read." Bryce Eggleston, 3/12/25 sworn statement, page 49, lines 11-14.
13. Mr. Eggleston additionally stated: "I've worked for Senator Ellsworth for many years. I've ran several of his businesses. Over that time, we've developed a personal relationship. I would consider him a friend . . ." Bryce Eggleston, 3/12/25 sworn statement, page 5, lines 15-18.
14. When questioned by respondent's counsel, Mr. Eggleston answered "no" to questions regarding whether Senator Ellsworth had an ownership interest in Mr. Eggleston's business, a creditor interest, or a loan or other debtor interest or directorship in Agile Analytics. Bryce Eggleston, 1/27/25 sworn statement, page 48, lines 13-15; 3/12/25 sworn statement, page 6, line 12 to page 9, line 3
15. The Secretary of State filing for Agile Analytics indicates Mr. Eggleston is the sole LLC owner. No additional financial documents were obtained by the committee to confirm or deny Senator Ellsworth has creditor, loan, or other debtor interests in Agile Analytics.

Exhibit 35, page 2; Bryce Eggleston, 3/12/25 sworn statement, page 5, lines 7 – 23.

that would directly give rise to an appearance of impropriety as to the legislator’s influence, benefit, or detriment in regard to the legislative matter

16. On December 26, 2024, Senator Ellsworth submitted two contracts and two invoices for a total of \$170,100 that were “due on receipt.” Exhibits 5-8.

17. By submitting these two contracts, Senator Ellsworth created a not typical, “alarming” and difficult situation for staff over the holiday period. Testimony Director Angie Carter, 11:53:20–11:56:19 (March 7, 2025).

18. The contracts were missing information that Director Carter would typically see, including the fact that a contract would have been through a legal review; include a payment schedule, payment terms, payment tethered to receipt of deliverables; and include insurance and termination rights. Testimony of Director Angie Carter, 12:00:22–12:03:46 (March 7, 2025).

19. Jaret Coles testified that he was concerned “from a protection of the state purpose, both contracts were immediately due and payable upon receipt.” Testimony of Jaret Coles, 13:54:40 (March 7, 2025).

20. Mr. Coles further testified “so that means that the services would be rendered for a period of almost 2 years and if something was to occur with the vendor, the state would have already paid on the contract.” Testimony of Jaret Coles, 13:54:41 – 13:54:53 (March 7, 2025).

21. Legislative Auditor and Division Director Angus Maciver testified that his office substantiated the allegations involving Senator Ellsworth’s actions related to the Agile

contracts as instances of waste and abuse, and there was “an artificial division of the contract, contrary to state law.” Testimony of Legislative Auditor and Division Director Angus Maciver, 13:40:38–13:41:48; 13:54:56–13:55:29 (March 14, 2025).

22. On January 14, 2025, Senator Ellsworth approved an invoice from Agile Analytics submitted on January 10, 2025, for \$7,087.50. The invoice states: “Work performed: data gathering and analysis prep.” However, Mr. Eggleston later stated under oath that he had “never actually started or performed work” on the contract before it was terminated. (Exhibit 22; Exhibit 23; Exhibit 45, page 32, lines 11-16).

the legislator shall disclose the interest creating the conflict prior to participating in the official action

23. Testimony from Angie Carter, Jaret Coles, Misty Ann Giles, and Todd Everts indicates Senator Ellsworth did not disclose a potential conflict of interest to them.
24. At no time before the execution of these contracts (nor at any other time) did Director Carter receive any information about the nature of the relationship between Senator Ellsworth and Mr. Eggleston, learn anything about a previous financial relationship between the two, or learn from Senator Ellsworth that he had had a financial relationship with Mr. Eggleston for 20 years. Testimony of Director Carter, 12:17:05–12:18:21 (March 7, 2025).
25. Jaret Coles explained that his knowledge of Agile Analytics was “very limited” and that his knowledge is from Angie Carter, the contracts, “some stuff after that, obviously who the president of the company is, but it’s very limited.” Mr. Coles did not testify to any disclosures by Senator Ellsworth. Testimony of Jaret Coles, 13:57:37–14:01:56 (March 7, 2025).

26. According to Director Giles' testimony, Senator Ellsworth suggested the Special Select Committee "had signed off on hiring someone from outside" to provide services regarding bill tracking and reporting. Testimony of Director Giles, 09:05:10–09:05:56 (March 14, 2025).
27. The Special Select Committee considered the concept of bill tracking at meetings on November 14, 2024, and December 4, 2024. Exhibits 30 and 31.
28. At the November 14 meeting, Senator Ellsworth described the potential work as including keeping the committee: "aware of changes to the bill, how they are progressing, what committees they are in, if they fail, pass, vote counts, amendments." Senator Ellsworth suggested that this work would continue into the interim, stating:
- I don't know if Mr. Speaker or the President-elect is gonna try to do this in committee in the interim, which I hope they do, you know, its something that I may be able to use that person if I can find them, maybe a college student or somebody that can work cheap, and just keep us informed, and I want them also to keep the public members that were on this to keep them informed of how this all ends up, and then what's progressing and how its progressing.
- Special Select Committee meeting, 14:09:45 – 14:12:22 (November 14 2024).
29. The committee did not express support for the motion. Senator Ellsworth withdrew the motion. Special Select Committee meeting, 12:12:41 – 14:21:50 (November 14, 2024, meeting).
30. The committee discussed the bill tracking concept again on December 4, 2024, and discussed using legislative services division staff for the purpose. Senator Ellsworth stated "I am perfectly fine with that." Special Select Committee, 14:25:16 – 14:26:56 (December 4, 2024, meeting).

31. Director Giles testified that Senator Ellsworth did not tell her that his committee had already decided to use a staff member to perform these services. The only thing Senator Ellsworth did tell Director Giles about this subject was “that the committee wanted to hire someone out to track these bills.” Testimony of Director Giles, 09:22:15–09:22:50 (March 14, 2025).
32. Director Giles’ testified that Senator Ellsworth did not mention the name Mr. Eggleston to Director Giles, that Senator Ellsworth did not mention that Mr. Eggleston was running a “one-man shop,” that Senator Ellsworth did not mention that he had had a financial relationship with Mr. Eggleston for over 20 years, and that Senator Ellsworth did not mention any sort of personal relationship between himself and Mr. Eggleston. Testimony of Director Giles, 09:08:53–09:09:33 (March 14, 2025).
33. Director Giles testified that Senator Ellsworth stated to her that he had reached out to several law firms that would be “pretty pricey for the budget that he had,” but that he had found another firm that “specialized in this work, and he preferred to hire them.” Exhibit 9, pg. 3; Testimony of Director Giles, 09:15:45–09:18:02 (March 14, 2025).
34. Director Giles testified that Senator Ellsworth noted: “The committee had a desire to hire a third-party vendor to provide these services.” Testimony of Director Giles, 09:22:50–09:23:12 (March 14, 2025).
35. Director Giles asked Senator Ellsworth to put all the reasons for hiring this contractor on the Sole Source Procurement Justification form. Testimony of Director Giles, 09:17:52–09:18:01 (March 14, 2025).
36. Senator Ellsworth worked with Jaret Coles to complete the Sole Source Procurement Justification form. Mr. Coles spoke with Senator Ellsworth about the information

required by the form, immediately drafted responses based on his conversation with Senator Ellsworth, and shared the responses with Senator Ellsworth for review. Senator Ellsworth did not provide additional edits. Testimony of Jaret Coles 14:05–14:12 (March 7, 2025).

37. The answers on the Sole Source Procurement Justification form state:

“I have been searching for someone to conduct post-bill analysis since the Senate Select Committee on Judicial Oversight and Reform started requesting legislation. I was unable to find anyone that could perform the services that are desired other than through Agile Analytics. The closest thing I could find was individual attorneys that charge upwards of \$300 per hour. This would only amount to 567 hours of work, or approximately 25 hours per month. The time that is required to perform the detailed analysis that is required for 27 bills is far in excess of this amount.”

Exhibit 9, page 3.

38. On December 12, 2024, Mr. Eggleston filed a Registration of Assumed Business Name for Agile Analytics. The Business Purpose for Agile Analytics was “Data compiling, Data cleansing, Data Analysis, Custom reporting, Consulting.” (Exhibit 35, pg.2).

39. In his sworn statement of January 27, 2025, during testimony in which Mr. Eggleston claimed he split the work into two contracts, Mr. Eggleston stated:

“I am a single person at my business currently, then I’m just looking at how I am going to fulfill the obligation. So that really just comes down to the volume of work and not knowing if I’m gonna be able to accomplish that work by myself, if I’m going to have to hire additional staff within my business, or even potentially subcontract out the work.”

Bryce Eggleston sworn statement, 1/27/25, page 24, lines 12-20.

40. Respondent's counsel asked Mr. Eggleston during the sworn statement, "And what's your relationship or experience with judicial reform?" Mr. Eggleston answered: "None." Bryce Eggleston sworn statement, 1/27/25, page 9, lines 14-16.

41. Director Giles testified:

“When you’re talking about taxpayer funds, and you’re in a position of public trust and integrity, what you really just want to make sure is you’re not giving at least even the appearance that you’re putting the thumb on the scale for someone that you may know, no matter the relationship.”

Testimony of Director Giles, 09:32:30–09:32:45 (March 14, 2025).

42. Director Giles agreed that whether it is a prior personal relationship or a prior financial relationship with a contractor, the relationship must be disclosed, not concealed.

Testimony of Director Giles, 09:33:37–09:34:44. (March 14, 2025).

43. According to Director Giles, Senator Ellsworth, not Agile Analytics, had the obligation to disclose any conflict. Testimony of Director Giles, 09:35:17–09:35:31 (March 14, 2025).

44. Director Giles testified:

“I think we’re gonna look at more formality now around all of these processes of disclosure. But again, it’s just best practices, and most people just disclose it. If it’s a personal relationship—you used to work there—it’s very common as y’all know. Usually it’s not an issue, but we do just believe it should always be disclosed. And most often it always is because you just never want that appearance of bias, unfairness, or putting your finger on the scale for any business that’s trying to compete for business with the state of Montana.”

Testimony of Misty Ann Giles, 10:17:22–10:17:47 (March 14, 2024).

45. Legislative Services Division Legal Director Todd Everts testified: “We have learned from this process. Going forward we will likely have some detailed checklists just like the Director of Administration testified to.” Testimony of Director Everts, 15:26:58–15:27:13 (March 14, 2025).

46. Director Giles testified she thought she would add conflict of interest to the sole source form. 10:19:30–10:19:37 Testimony of Director Giles (March 14, 2024).

47. Director Giles testified that presenting the Agile contract as a “sole source” bypassed the open bidding process. Testimony of Director Giles, 09:36:18–09:36:36 (March 14, 2025).

48. On December 29, 2024, Department of Administration sent a memorandum to Jaret Coles stating: "Your request for a Sole Source contract with Agile Analytics has been approved by the sole source review committee." Exhibit 10, page 11.
49. All of the issues of exigency, public bidding, and sole source were "moot" because the December 26 contracts were already fully executed. Testimony of Director Giles, 09:36:37–09:37:47 (March 14, 2025).
50. Director Giles testified regarding the Department of Administration's efforts to reform the contracts. Director Giles testified:
- "We were very grateful that Agile Analytics, um, was open to reforming that contract and working with our terms and conditions that we require on all state contracts, and so my team quickly worked with them to have those provisions changed and modified and then re-execute with our state terms and conditions."
- Testimony of Director Giles, 09:38:00–09:41:41 (March 14, 2024).
51. Director Giles stated: "Our terms and conditions got added in and perfected that contract, and it was re-executed." Testimony of Director Giles, 09:41:33–09:41:41 (March 14, 2025).
52. During committee questioning, Director Giles was asked regarding the December 26 contracts:
- "So, I think I read some narrative and conversations where the Auditor wrote he had conversations with you that you perfected them. The word "perfected" them is the word you've used, but would it be accurate to say that you perfected them to make them legal?"
- Director Giles responded, "Mr. Chair, Senator McGillvray, um, I'm think that's probably a fair statement." Testimony of Director Giles, 10:21:00–10:21:27 (March 14, 2025).
53. Director Giles testified that Senator Ellsworth's actions "short-circuited" the normal procurement process. Testimony of Director Giles, 09:37:46–09:38:27 (March 14, 2025).

54. Regardless of the Department of Administration’s efforts to “re-form” the Agile contract, Director Giles agreed that “no one can contract their way around ethics.” Testimony of Director Giles, 09:38:27–09:38:44 (March 14, 2024).

55. Director Maciver testified:

“In summary, when we walk through all these things, what we saw was a pattern of conduct. And the pattern of conduct was indicative of an attempt to evade scrutiny of these contracts.”

Testimony of Legislative Auditor Angus Maciver, 14:04:58–14:05:21 (March 14, 2025).

as provided in subsections (2) and (5) and the rules of the legislature.

56. Section 2-2-112(1), MCA, states: “The requirements in this section are intended as rules for legislator conduct, and violations constitute a breach of the public trust of legislative office.” Subsection (2) allows for disclosure to the relevant ethics committee. Subsection (5) is a general statement requiring disclosure as provided in the rules of the legislature. By its own terms, all of section 2-2-112, MCA, is part of those rules.

57. The chairman of the Senate Ethics Committee ruled regarding section 2-2-112, MCA, that:

The statute by its own terms provides that it is a rule. The statute along with other provisions of the Code of Ethics applicable to legislators, the Joint Rules, the Senate Rules, and the House Rules together form a synthetic body of rules applicable to the Legislature, its members, and their conduct. Legislators must conform their conduct to it. The fact that this statutory rule for legislator conduct is in the Code of Ethics and may only be amended or repealed through bicameralism and presentment demonstrates the importance attached to it.

V. Timeline of events described in finding of facts

2014: Federal judge finds that Senator Ellsworth and Mr. Eggleston had a financial relationship.

2018: Senator Ellsworth elected to the Senate.

2022: Senator Ellsworth reelected to the Senate.

January 2023: Senator Ellsworth elected President of the Senate.

April 2024: Senate Select Committee on Judicial Oversight and Reform meets for the first time. Senator Ellsworth chairs the committee.

November 14, 2024: Senator Ellsworth makes a motion to hire someone for bill tracking, possibly extending into the interim. Committee expresses lack of support. Senator Ellsworth withdraws motion.

December 4, 2024: Special Select Committee discusses having bill tracking services provided by legislative services division.

December 26, 2024: Senator Ellsworth presents two signed contracts with two invoices totaling \$170,100 due on receipt to the Legislative Financial Office.

December 27, 2024: Senator Ellsworth told Director Giles that the Special Select Committee approved, authorized, or agreed to hire an outside contractor.

December 31, 2024: After working with Legislative Services and the Department of Administration in the days since the presentation of the two contracts, Senator Ellsworth signs a new contract as President of the Senate and “Chairperson of SSCOJOR.” Senator Ellsworth did not disclose conflicts of interest prior to signing.

January 6, 2025: 69th regular session of the Montana Legislature begins.

January 10, 2025: Mr. Eggleston submits an invoice for \$7,087.50. The invoice states: “Work performed: data gathering and analysis prep.”

January 14, 2025: Senator Ellsworth approves payment on the invoice.

January 19, 2025: Mr. Eggleston cancels contract.

March 12, 2025: Mr. Eggleston makes a sworn statement, including a statement that he is Senator Ellsworth’s employee and friend, and that no work was performed on the contract.

VI. Description of attachments to this report

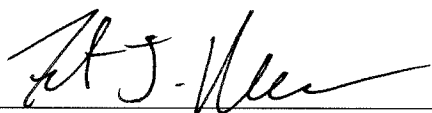
This report represents only a portion of the information received by the committee.

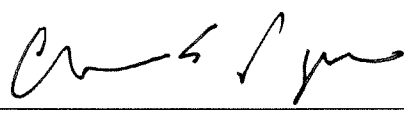
Additional information not included with this report can be viewed on the committee's web page at legmt.gov. With this report, please find the following attachments:

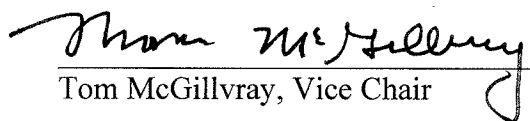
- A. A legal memorandum addressed to the Senate Ethics Committee regarding due process dated February 28, 2025.
- B. The full set of rules adopted by the committee. Preliminary rules were adopted January 29, 2025. On February 28, 2025, the committee approved amendments and additional rules.
- C. Invoices submitted with the December 26, 2024, contracts.
- D. Invoice submitted January 10, 2025, pursuant to the December 31, 2024, contract.

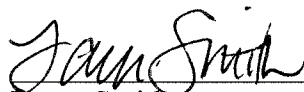
VII. Conclusion

The undersigned found that the witnesses who appeared before the committee were credible and that this report is an accurate findings of fact relevant to the allegation referred to the Senate Ethics Committee. The Senate Ethics Committee has hereby fulfilled the charge given to the committee by the body of the Senate.


Forrest Mandeville, Chair


Chris Pope, Vice Chair


Tom McGillvray, Vice Chair


Laura Smith



Senate Ethics Committee

69th Montana Legislature

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Members: Forrest Mandeville, Chair; Tom McGillvray, Vice Chair; Christopher Pope, Vice Chair; Laura Smith
Staff: Joe Carroll, legislative attorney; Trudy Burke, lead secretary

From: Joe Carroll
To: Senate Ethics Committee
Re: Due process
Date: February 28, 2025

Question: What due process is required in this investigation?

Short answer: Mason's Manual of Legislative Procedure (2020), Section 562(4) states:

Adequate notice, formal charges, and a public hearing with the right to cross-examine witnesses have been held to be necessary components of procedural due process that must be afforded to a member prior to expulsion.

Analysis: Immediately, it is helpful to recognize that due process is a constitutional issue. Its general statement can be found in the 14th Amendment to the federal Constitution: *Nor shall any State deprive any person of life, liberty, or property, without due process of law*; and in Article II, section 17, of the Montana Constitution: *No person shall be deprived of life, liberty, or property without due process of law*. Courts recognize that due process exists on a spectrum depending on the nature of the potential deprivation. In *Morrissey v. Brewer*, 408 US 471, the U.S. Supreme Court wrote that "[d]ue process is flexible and calls for such procedural protections as the particular situation demands." Mason's Manual also states in Section 563(3):

An elected official has a property right in the office which cannot be taken away except by due process of law. An official takes office subject to the conditions imposed by the terms and nature of the political system in which the official operates. The overriding need for each house to protect its integrity through the exercise of the expulsion power, the requirement for a two-thirds vote to expel by itself satisfies procedural due process.

1. Why Mason's Manual is relevant:

Section 562(4) of Mason's Manual, which deals with the potential expulsion of a member, is relevant to the committee's due process analysis because the Senate Ethics Committee has been directed to:

make a report to the body of the Senate for the Senate to determine whether good cause is shown to expel or punish the Senator from Senate District 43.

The potential expulsion of a member of the Senate is a serious issue that the committee should be cognizant of. The committee itself is not empowered to punish or expel any senator nor is the committee empowered to recommend expulsion or any level of punishment. The body of the Senate may take no action as a result of the committee's report. The body may censure the

respondent or may impose some level of punishment. These possibilities are all less grave than the possibility of expulsion. But expulsion is a possibility the body of the Senate may choose.

The due process afforded in this investigation should be appropriate to the highest level of potential sanction that the investigation may result in to protect the respondent's rights in all outcomes.

The Montana Constitution has a specific due process provision applicable to the body of the Senate when considering the expulsion or punishment of a member. The final sentence of Article V, section 10(1) states: *Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.* The Constitution does not provide further specific guidance on the question of due process for the potential expulsion of a senator.

Neither the Joint Rules of the Legislature nor the Senate Rules have specific provisions in place for the procedure regarding the potential expulsion of a senator applicable to this situation. Joint Rule 60-20 states:

Mason's Manual of Legislative Procedure (2020) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

Likewise, Senate Rule 60-20 states:

The most recent publication of Mason's Manual of Legislative Procedure governs the proceedings of the Senate in all cases not covered by these rules.

Mason's Manual's clear statement about the necessity of adequate notice, formal charges, and a public hearing with the right to cross-examine witnesses is the controlling authority for the question of what due process is required in this investigation.

2. The requirements of Mason's Manual are currently satisfied:

It may be noted that the committee provided notice and formal charges to the respondent most recently on February 24, 2025, by letter. The letter specified that a hearing will begin on March 7, 2025, and that the respondent will have the opportunity to cross-examine witnesses. This provides the respondent with 11 calendar days of notice and at least nine legislative days of notice. Nine legislative days constitutes 10% of the legislative days this Legislature may be convened in a regular session. The provided notice far exceeds the standard set by Senate Rule 30-60(2), which requires not less than 3 legislative days' notice for a hearing. Moreover, this process began with a vote of the body of the Senate on January 27, 2025, and an initial notice letter was sent to the respondent on February 3, 2025. Whether viewed narrowly or expansively, adequate notice appears present.

3. The requirements of Mason's Manual are exceeded:

Committee Rule E10-30(3) directs the respondent to provide the committee with "*a list of witnesses with information related to the investigation, with contact information. . .*" This rule

facilitates the committee's ability to potentially call witnesses on behalf of the respondent. Likewise, E10-30(4) and (5) direct the respondent to provide the committee with lists of records in the possession of the Legislative Branch and the Executive Branch "*that are germane to the proceedings and requested in order to present a response at the hearing.*" This facilitates the committee's ability to consider issuing subpoenas for records on behalf of the respondent. These provisions, which potentially aid the respondent's ability to respond to the formal charges, exceed the due process requirements stated in Mason's Manual.

4. Looking to case law for guidance:

If the committee accepts for the sake of argument that there is relevant case law on the question of due process in a legislative investigation that may result in expulsion of a senator, the committee may look to cases mentioned by the special counsel and by the respondent's counsel at the February 24, 2025, hearing, and to other cases about the exercise of legislative powers.

4.A –Case raised by the special counsel:

The special counsel suggested that the committee consider the case *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 for guidance. The *Loudermill* case explains that:

An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case.

In this investigation, notice has been provided and an opportunity for a hearing that meets or exceeds the requirements stated in Mason's Manual is scheduled.

Loudermill is specifically a case about employment and termination. In that specific context, *Loudermill* explains:

The principle that under the Due Process Clause an individual must be given an opportunity for a hearing before he is deprived of any significant property interest, requires "some kind of hearing" prior to the discharge of an employee who has a constitutionally protected property interest in his employment.

The Senate Ethics Committee has taken provisions for the respondent to have not merely "some kind of a hearing," but a hearing that includes calling witnesses and cross-examination.

Boreen v. Christensen, 267 Mont. 405 is a case of the Montana Supreme Court in which the court used *Loudermill* as a guide, explaining that the federal court found Mr. *Loudermill* "*had a property interest in his continued employment,*" and concluded that:

Loudermill mandates that due process requires notice to the employee with an explanation of the employer's evidence and the opportunity for the employee to respond in "something less" than a full evidentiary hearing before termination.

4.B –Cases raised by the respondent's counsel:

At the February 24, 2025 hearing, the respondent's counsel raised for consideration *Jones v. Montana State University*. This case cites extensively the case of *Mysse v. Martens*, 279 Mont. 253. In *Mysse*, the Montana Supreme Court discussed *Loudermill*, explaining that the purpose of a pre-termination hearing required by *Loudermill* is "an initial check against mistaken decisions—essentially a determination of whether there are grounds to believe that the charges against the employee are true and support the proposed action." The committee's pending adjudicatory hearing fulfills that check.

The respondent's counsel raised the court case *State ex rel. Ryan v. Norby*, 118 Mont. 283. That case was about the termination of a "police judge" who was removed from office and who contended that he needed to be given "notice and an opportunity to defend." It seems that the due process provided to the respondent by the Senate Ethics Committee meets or exceeds the request of the police judge to have notice and an opportunity.

4.C –Additional cases to consider

The committee may also consider that no court case will provide clear guidelines on the due process that is appropriate in an investigation that could result in the removal of a senator. This is because of the separation of powers within our state government and comity between the federal and state governments.

In *State ex rel. Ford v. Cutts*, 53 Mont. 300, the Attorney General of Montana sought to oust a member of the 15th session of the Montana Legislature. The court stated:

We cannot and should not take jurisdiction of this proceeding because it must end in nothing. Each house is the judge of the ultimate right of persons claiming seats as members thereof.

The court cited Article V, section 9, of the 1889 Constitution. The relevant part of that section states: "*each house shall choose its other officers and shall judge the elections, returns and qualifications of its members.*" The 1972 Constitution moved that section on the seating of members to Article V, section 10—the same section of the current Constitution that describes each chamber's ability to potentially expel a member. The deference the court showed to the Legislature's ability to seat a member may well extend to the Legislature's ability to potentially expel a member.

In *Monserate v. N.Y. State Senate*, 599 F.3d 148, a case about the expulsion of a senator from the New York Senate, the U.S. Second Circuit Court of Appeals explained that "[p]rudence dictates that a federal court should exercise a respectful reluctance to interfere in the measures taken by a state legislature to regulate its affairs, discipline its members, and protect its integrity and good name." Addressing the particular situation, the court noted that:

The pre-expulsion process available to Monserate sufficiently reduced the risk that the charges against him would go unrefuted. "The touchstone of due process, of course, is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it."

Conclusion:

Mason's Manual of Legislative Procedure makes a clear statement that the Senate Ethics Committee should provide the respondent notice, formal charges, and a public hearing with the right to cross-examine witnesses. The committee has provided the respondent notice and formal charges. The committee provided in its notice letter a public hearing with the right to cross-examine witnesses. Aspects of the committee's rules exceed the requirements of Mason's Manual.

If case law provides the committee guidance, the due process provisions of case law cited at the February 24, 2025, meeting will likewise be met or exceeded.



Senate Ethics Committee

69th Montana Legislature

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Members: Forrest Mandeville, Chair; Tom McGillvray, Vice Chair; Christopher Pope, Vice Chair; Laura Smith
Staff: Joe Carroll, legislative attorney

Montana Senate Ethics Committee

~~Preliminary Rules~~

E10-10. General rules. (1) These rules of procedure are in addition to those in Chapter 30, Committee rules of SJ 1 and SR 1 as amended on legislative day one.

(2) These rules apply to the motion that was passed by a majority vote (49-0) of the Senate on Monday, January 27, 2025, specified as follows:

Pursuant to the Senate's authority under Article V, section 10(1), of the Montana Constitution and in light of the Legislative Audit Division Legal Counsel's findings and conclusions contained in the Hotline Submission FY 25-0076 Findings document dated January 24, 2025, that is on your desks, I move that the Senate Ethics Committee be convened to investigate and make findings of fact and conclusions to determine whether the Senator from Senate District 43, acting in his capacity as State Senator, violated or potentially violated:

- (1) *the provisions of the Montana Code of Ethics;*
- (2) *the Joint Rules of the Montana Legislature;*
- (3) *the Rules of the Senate; or*
- (4) *any other provision of law, administrative rule, or administrative guidelines or procedures.*

Upon completion of the Ethics Committee investigation and the production of findings of fact and conclusions, the Committee shall make a report to the body of the Senate for the Senate to determine whether good cause is shown to expel or punish the Senator from Senate District 43.

(3) For the purposes of these rules:

- (a) "committee" means the Senate Ethics Committee; and
- (b) "respondent" means the Senator from Senate District 43.

E10-20. Meetings. (1) At the initial meeting of the committee, and at subsequent meetings, the committee ~~shall~~ may:

- (a) schedule a date and time for the hearing on the matter;
- (b) notify the respondent of the basis for the investigation;
- (c) identify any documents that form the basis for the investigation;
- (d) identify witnesses who may have information related to the investigation; and
- (e) authorize the issuance of subpoenas and subpoenas for the production of a record (also known as a “subpoenas duces tecum”) in the manner provided for in section 5-5-107, MCA.

(2) Witnesses identified by the committee shall be given the opportunity to agree to fully participate prior to the issuance of subpoenas. Subpoenas may be issued 24 hours after the committee attempts to contact a potential witness.

(3) Subpoenas for the production of a record may be issued upon authorization by the committee, or at a time determined by the presiding officer after authorization.

(4) The meetings of the committee must be noticed. All meetings of the committee are open to the public unless the right of privacy outweighs the public’s right to know.

E10-30. Respondent’s initial duties. Within 4 legislative days of the committee’s initial meeting, the respondent shall prepare and submit to the committee the following:

- (1) a written response to the allegations of misconduct;
- (2) any documentation in support of the response;
- (3) a list of witnesses with information related to the investigation, with contact information for each witness, including a phone number and a business or residential address;
- (4) a list of records in the possession of the Legislative Branch that are germane to the proceedings and requested in order to present a response at the hearing; and
- (5) a list of records in the possession of the Executive Branch that are germane to the

proceedings and requested in order to present a response at the hearing.

E10-40. Rule changes. The committee may amend these rules by a majority vote.

E10-50. Prehearing procedure. (1) The respondent or respondent's counsel may apply to the committee for the issuance of subpoenas, if a potential witness does not agree to fully participate as described in E10-20(2).

(2) At least 24 hours before the start of the adjudicatory hearing, the special counsel and the respondent or the respondent's counsel shall exchange a final list of proposed witnesses to be called by the committee at the hearing, copies of all documents expected to be introduced as exhibits at the hearing, and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(3) No subpoena shall be issued to compel the testimony of the respondent. If the respondent elects not to testify, that fact shall not be noted in the record, nor shall it be considered by the committee in drawing any of its conclusions.

E10-60. Adjudicatory hearing procedures. (1) Any witness desiring to read a prepared or written statement at the adjudicatory hearing shall file a copy of the statement with the committee staff attorney.

(2) Each witness shall be permitted to present a brief oral opening statement of no more than 5 minutes duration, if he or she desires to do so.

(3) Each witness shall first be questioned by the party who called the witness or by that party's counsel. The chair may allow a party or counsel to question a witness without going through the chair.

(4) Each witness shall be subject to cross-examination by the party who did not call the witness or by that party's counsel.

(5) Following witness questioning and cross-examination, members of the committee will be allowed to ask questions of the witness.

(6) Each witness may have counsel present. There is no obligation for counsel to be present for any party or witness.

(7) A witness fulfills his or her obligation to testify, whether obtained through a commitment to fully participate or through a subpoena, upon conclusion of questioning, cross-examination, and committee questioning.

(8) When the committee has called its witnesses, the respondent may ask the committee to call witnesses who are on the list of proposed witnesses exchanged prior to the hearing pursuant to E10-50(2).

E10-70. Admissibility of testimony and documents. (1) The object of the hearing shall be to establish facts in order for the committee to outline its factual findings for the Senate.

(2) Rules of evidence may provide guidelines for this legislative procedure but are expressly not adopted and shall not be applied strictly.

(3) Objections by members of the committee and counsel shall be ruled on by the chair. Members of the committee may appeal the chair's decision to the committee. The question must be stated as, "shall the ruling of the chair be upheld?"

(4) To the extent possible, admissibility of witness testimony shall be determined prior to the adjudicatory hearing. Testimony is admissible unless a majority of the committee deems it inadmissible. Exhibits shall be admitted subject to a vote of the committee after the close of testimony.

E10-80. Referring to people and organizations by name. (1) To promote clarity in the committee's fact-finding process, the legislative practice of avoiding referring to people and organizations by name is not operative.

(2) People should generally be referred to by last name, with an appropriate salutation (Mr., Ms., Dr., etc.) or with the person's elective or appointive title (Senator, Director, etc.).

E10-90. Oath or affirmation. (1) In conformity with 5-5-112, MCA, witnesses may elect to sign a written oath or affirmation to tell the truth. The committee shall provide a form for witnesses to sign in advance of the adjudicatory hearing on request, and at the adjudicatory hearing.

(2) A person who files a written statement with the committee may elect to attach a declaration that conforms to 1-6-105, MCA.

E.10-100. Mason's Manual. In conformity with JR60-20 and S60-20, Mason's Manual of Legislative Procedure (2020) provides additional rules in all cases not covered by rules.

INVOICE

TO:

Attachment C

INVOICE

TO:

Attachment C

Attachment D