

LEGISLATIVE AUDIT DIVISION

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MEMORANDUM

TO: Angus Maciver, Legislative Auditor
FROM: Kenneth Varns, Legal Counsel
DATE: March 26, 2025
RE: Hotline Submission FY 25-0106 Findings

At the request of the Montana State Senate, the Legislative Audit Division completed an investigation into allegations related to current Senate President, Matt Regier. On March 6, 2024, the Montana State Senate voted to refer a series of items to the Legislative Audit Division to be investigated as a fraud, waste and abuse complaint. The original motion contained the following six allegations/inquiries:

1. Whether the President acted unlawfully by hiring an attorney to perform legal work after the failure of House Bill 260 (2023)—a bill intended to provide legal authority and funding to hire an attorney.
2. Whether the President engaged in waste, fraud and abuse by hiring an attorney to perform legal tasks that the legal staff in legislative services typically performs, such as word-smithing amendments.
3. Whether the President acted unlawfully by using state resources to pay for legal services related to a private matter; the Lake County CI-126 and CI-127 lawsuit.
4. Whether the President engaged in fraud, waste and abuse by attempting to bifurcate or invade limits of spending authority by accepting invoices for amounts less than \$10,000 for legal services.
5. Whether the President acted unlawfully by authorizing or directing his attorney to perform legal work on state and federal immigration laws without lawful authority.
6. Whether the President failed to disclose a conflict of interest regarding Senate Bill 352 (2025) regarding immunity for legislative staff, including contracted legislative staff.

The complaint refers to a press article by the Montana Free Press entitled “Regier’s counsel conundrum” dated March 5, 2025.

To place the complaint in context, we examined the Montana Free Press article. We also interviewed Jaret Coles, Deputy Director of Legal Services, Legislative Services Division, Matt Regier, President of the Senate, and Angie Carter, Financial Manager, Legislative Services Division. We also examined the relevant legal contracts and invoices submitted by attorney Abby Moscatel of Blacktail Law Group, PLLC, Lakeside, MT. In addition to interviews, we reviewed relevant statutes and rules, we obtained legislative branch email records for all parties involved in the contracts, we reviewed expenditures and other financial data from the state’s accounting records, and we reviewed records from the judicial branch relating to court filings.

This memorandum will address each of the complaints/allegations separately.

I. Whether the President acted unlawfully by hiring an attorney to perform legal work after the failure of House Bill 260 (2023)—a bill intended to provide legal authority and funding to hire an attorney.

In 2021, MCA §5-5-110 was passed to allow the speaker of the house of representatives and the president of the senate to hire one special counsel as exempt personal staff. It required that both leaders consent to the hiring of special counsel. The statute enumerated non-exclusive potential duties that could be assigned to the special counsel. It further specified how the special counsel position was to be funded. An individual was hired on a contractual basis as special counsel by the then Senate President and Speaker of the House. MCA §5-5-110 contained a sunset clause, terminating June 1, 2023.

During the 68th session (2023), then Speaker of the House Matt Regier and Representative Rhonda Knudsen introduced House Bill (HB) 260. The purpose of the bill was to allow legislative leadership to hire special counsel as exempt personal staff. It also would have repealed the sunset clause in MCA §5-5-110. The bill would have acted retroactively to cover the hiring of special counsel and exempt personal staff during the 68th legislative session (2023). HB 260 failed to pass due to procedural issues. As such, MCA §5-5-110 terminated on June 1, 2023.

While HB 260 failed to pass, HB 518 and Senate Bill (SB) 278 (2023) did pass which granted the legislature standing to sue and defend lawsuits regarding legislation it had passed and specific authority to intervene in certain lawsuits involving legislation. SB 278 also permitted the speaker of the house and president of the senate to use funding approved by the legislative council to pay attorney fees and costs associated with the intervention.

In February 2023, Abby Moscatel began performing legal work at the request of then speaker Regier. Legislative branch legal staff began developing a contract with Moscatel early in January 2023, but because the scope of work appeared to be limited during the 2023 session, it was determined that a contract would not be necessary as the amount billed would qualify as a small purchase and that a formal, written contract would typically be considered optional. In any event, she submitted an invoice totaling \$4,420 for work on various matters. In his interview, President Regier explained that he routinely relied on legislative services division to advise him what he could and could not do with respect to hiring special counsel.

Since the amount invoiced for 2023 was less than \$10,000, the state procurement laws were not implicated. Requests for proposal were not required. Further, MCA §5-5-110 was still in effect at that time, authorizing the use of and payment for special counsel. Legislative staff approved the invoice. Angie Carter indicated that she used carryforward funding to pay Moscatel's invoice. (See MCA §17-7-304).

HB2 provided that in the event HB260 did not pass, the Legislative Committees and Activities budget was to be reduced, \$262,592 general fund in FY 2024 and \$113,296 in general fund in FY 2025. Since HB 260 did not pass, the appropriations for additional personal staff for the Speaker and the President were removed from the budget. However, the HB2 present law decision package did include general fund appropriations for special counsel for legislative leadership and the Committee on Judicial Accountability.

During the interim, in February 2024, Moscatel was hired to represent the legislature by way of filing an amicus curie brief in the Held case pending before the Montana Supreme Court. (Held v. State, CDV 2020-307 (First Judicial District)). Because the contract amount for this work was above \$10,000, the

request for proposal (RFP) requirements in state procurement law did apply; however, there was a very tight timeframe before the motion to intervene was to be filed, thus necessitating the use of the exigency exception to the RFP process. Legislative Services staff identified the need for an exigency determination and drafted a memo dated January 31, 2024, setting forth the rationale for using the exigency exception. The contract was signed by Speaker Regier and President Ellsworth on February 1, 2024. Moscatel billed the legislature \$15,000 for her work on the case.

In May 2024, Moscatel researched legal issues and drafted legislation regarding the propriety of passing legislation regarding immigration; specifically a state e-verify statute. This contract dated May 29, 2024 was limited to \$4,500, and therefore the RFP process was not required. Again, both Speaker Regier and President Ellsworth signed this agreement. Moscatel completed her work on this contract and billed the state \$3,550 on June 3, 2024.

Analysis:

Mont. Code Ann. §5-13-311 requires the Legislative Auditor to investigate allegations of “fraud, waste and abuse in state government.” Waste and abuse are not defined by statute. However, Government Auditing Standards issued by the Comptroller General of the United States do define the terms:

Fraud is defined in our internal hotline procedures manual as an intentional or deliberate act to deprive another of property or money by guile, deception or other unfair means. This definition is consistent with GAO-18-568G Government Auditing Standards, Para. 8.73.

Abuse is behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice [sic] given the circumstances.

... It also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate.

GAO-18-568G Government Auditing Standards, Para. 6.23.

Abuse is also defined as:

An intentional, wrongful, or improper use or destruction of government resources, or seriously improper practice that does not involve prosecutable fraud. Abuse can include the excessive or improper use of an employee or official’s position in a manner other than its rightful or legal use.

Abuse can occur in financial or non-financial settings.

Our internal hotline procedures manual adopted this definition based on Generally Accepted Government Audit Standards and other sources.

Waste is the act of using or expending resources carelessly, extravagantly, or to no purpose.

Importantly, waste can include activities that do not include abuse and does not necessarily involve a violation of law. Rather, waste relates primarily to mismanagement, inappropriate actions, and inadequate oversight.

GAO-18-568G Government Auditing Standards, Para. 6.21.

Waste is also defined by our internal hotline procedures manual as:

An unintentional, thoughtless or careless expenditure, consumption, mismanagement, use or squandering of government resources to the detriment or potential detriment of the state. Waste also includes [incurring] unnecessary costs ... as a result of inefficient practices, systems or controls.

CONCLUSION: Despite the failure of HB 260 to pass, legal and funding authority existed via MCA §5-5-110 through June 01, 2023, that permitted legislative leadership to expend funds for outside legal counsel. Further, although MCA §5-5-110 did sunset, the legislature continued to authorize spending for special counsel through legislation allowing intervention in legal challenges of legislative enactments, and through HB2 for other services provided by external legal counsel. Finally, throughout the process, Speaker Regier conferred with and followed recommendations of the Legislative Services Division. Thus, based upon our review of the record, we find allegations of fraud, waste and abuse set forth in the first allegation to be not substantiated.

- II. Whether the President engaged in waste, fraud and abuse by hiring an attorney to perform legal tasks that the legal staff in legislative services typically performs, such as word-smithing amendments.

As discussed elsewhere, President Regier consulted with and obtained approval from Legislative Services when engaging outside counsel. Nonpartisan staff attorneys within the Legislative Services Division cannot, by definition, provide partisan legal advice or perspectives that legislative leadership may feel is necessary to obtain specific outcomes. In these situations, it is more appropriate and oftentimes necessary to rely on outside counsel. This scenario is also recognized in the state ethics code, which provides exceptions from restrictions on use of public resources for political purposes for certain legislative staff. Customarily, when an outside attorney is hired, it is expected that amendments or “word smithing” on any proposed legislation would also be drafted by the same attorney. In most cases this would be more efficient than assigning a new staffer to come on board and get up to speed on the project. While nonpartisan staff remain responsible for bill drafting, the services of outside counsel do not necessarily duplicate these duties.

CONCLUSION: Legislative leadership has authority to obtain outside counsel for legal services, which can include tasks typically performed by nonpartisan legislative staff. Because existing legal authority allows for these activities and due to President Regier’s ongoing reliance on Legislative Service’s guidance relating to these contracts, we find the allegations of fraud, waste and abuse set forth in the second allegation to be not substantiated.

- III. Whether the President acted unlawfully by using state resources to pay for legal services related to a private matter; the Lake County CI-126 and CI-127 lawsuit.

The Lake County lawsuit was an attempt by various parties to prevent the Secretary of State from certifying for election the two referenced constitutional initiatives. One initiative involved altering the conduct of primaries and the other would have required a candidate to garner more than 50% of the vote to win an election. Plaintiffs in the suit did include Speaker Regier. The suit was filed July 12, 2024, and concluded August 19, 2024. Attorney Stephen Overstreet initially represented the plaintiffs. However, Moscatel took over representation on August 8, 2024, of at least one plaintiff. President Regier stated that this lawsuit did not involve the state. It was purely a “private matter.” Our investigation determined that Ms. Moscatel submitted no invoices to the state for work performed on this lawsuit. All the invoices submitted by Moscatel during calendar year 2024 preceded the initiation of the Lake County lawsuit and our review of the state’s accounting records did not identify any payments to Moscatel in addition to the amounts submitted via invoice. Our investigation did not detect any use of state funds to fund this lawsuit.

Conclusion: Since we could find no indication that state funds were used to facilitate this lawsuit, we find the allegations of fraud, waste and abuse set forth in the third allegation to be not substantiated.

- IV. Whether the President engaged in fraud, waste and abuse by attempting to bifurcate or invade limits of spending authority by accepting invoices for amounts less than \$10,000 for legal services.

Ms. Moscatel was utilized on three separate occasions to perform work on the behalf of the legislature. The first occasion was between January and May 2023. She worked on several different tasks during that timeframe. She submitted one invoice for all the work in the amount of \$4,420. The second occasion was in February 2024 when she was hired to file an amicus curie (friend of the court) brief on behalf of the legislature in the Held v. Montana appeal. There was no connection apparent between the 2023 issues and

the February 2024 issue. The February 2024 contract was separately negotiated. It was signed by the Speaker of the House and Senate President as required. In the May 2024 matter, Ms. Moscatel and the legislature entered into another contract, again separately negotiated, for legal research regarding the “topic of state and federal immigration laws.” This was a totally different subject matter from the earlier two occasions and again was signed off on by the speaker and president as required. There has been another contract executed between legislative leadership for potential work during the 69th legislative session. However, no invoices have been submitted for payment on that contract as of the date of this memorandum.

In addition to having distinct scopes of service, there are other explanatory variables relating to state procurement law as it relates to these services. Legislative legal staff were involved early in all the procurement decision-making and initiated and approved all of the contract actions. The 2023 session work by Ms. Moscatel was ultimately treated as a small purchase due to its low dollar value. Legal staff did begin developing formal contractual terms but decided that these services could be funded via carryforward budget authority without a written contract. The *Held vs. Montana* amicus work was correctly identified as an exigency circumstance by legal staff, who also completed the statutorily required documentation for the declaration of exigency. The immigration law questions were also treated as a small purchase, but legal staff did develop a formal written contract for this work. Finally, the contract currently in place for the 69th session was approved as a sole source exception, which is consistent with how procurement law addresses the services of legal counsel in the executive branch and is supported by the generally accepted practice that the attorney-client relationship commonly justifies categorical exclusion from competitive procurement.

The cumulative value of the work performed by Moscatel was \$22,970, which would not require competitive bidding under state procurement law, but would have been treated as a limited solicitation, even if a single scope of service was involved (which was not the case). Even if these contracts had been treated as single scope of service, they could have qualified for a sole source exception based on the attorney-client relationship and been exempt from procurement requirements at some point after the initial relationship had been established. In any event, the total amount was under the \$100,000 limit in the legislative branch’s procurement delegation agreement, so the involvement of the Department of Administration was not required. Legislative branch legal and financial staff made appropriate decisions or recommendations that conformed with the state’s procurement laws.

CONCLUSION: There was no attempt to avoid procurement rules by artificially bifurcating these contracts and we find this (fourth) allegation of fraud, waste and abuse to be not substantiated.

V. Whether the President acted unlawfully by authorizing or directing his attorney to perform legal work on state and federal immigration laws without lawful authority.

President Regier explained that in May 2024, he was attempting to generate interest for the purpose of calling a special legislative session for the purposes of passing state legislation dealing with immigration. His constituents were concerned about a perceived lack of action at the federal level on the immigration issue. He was exploring the possibility of drafting and proposing Montana’s own E-Verify law. When gathering support for a special session, it was necessary to have specifics in mind, including specific legislation. Drafting such legislation is not typically something that Legislative Services assists with. Therefore, he decided to utilize Ms. Moscatel for this purpose. Legislative Services assisted in drafting a “limited contract” with a maximum expenditure of \$4,500 for legal research in this area. The contract was approved by the speaker and president as required.

As noted above, the HB2 present law decision package did include general fund appropriations for special counsel for legislative leadership and the Committee on Judicial Accountability.

CONCLUSION: Since Legislative Services was involved in drafting the contract for outside counsel, and it was approved by the Senate President, we find this (fifth) allegation of fraud, waste and abuse to be not substantiated.

VI. Whether the President failed to disclose a conflict of interest regarding Senate Bill 352 (2025) regarding immunity for legislative staff, including contracted legislative staff.

The allegation does not specify what conflict of interest allegedly exists regarding the proposal of this bill. SB 352 was an “act extending legislative immunity to legislative staff for information that is considered privileged when held by a legislator.” Discussions prior to and during the current legislative session indicate that the intent of SB 352 was to address a recent district court decision on the legislative speech and debate privilege. There is no clear linkage between this issue and the scope of services covered by the contracts in question. Nor would SB 352 have fundamentally altered existing client-attorney privilege that are referenced in the contracts and would have applied regardless of passage of this legislation. Had the bill passed (it failed to meet the transmittal deadline), it would have only applied prospectively, not retroactively. It is difficult to discern a conflict of interest in this scenario.

CONCLUSION: Since we could not identify any apparent conflict of interest with regard to SB 352, we find this (sixth) allegation of fraud, waste and abuse to be not substantiated.

EOM.