

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN SENATOR LORENTS GROSFIELD, on
February 6, 1995, at 3:45 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield Chair (R)
Sen. Larry L. Baer (R)
Sen. Sue Bartlett (D)
Sen. Al Bishop, (R)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Subcommittee Business Summary:

Meeting: SB 115, SB 136

CHAIRMAN LORENTS GROSFIELD presented a list of nine issues which
were identified at the last meeting which need to be discussed.
EXHIBIT 1 He suggested the committee review SB 136.

SENATOR BAER suggested the committee use copies of the grey bill.

CHAIRMAN GROSFIELD commented that SB 136 had a narrower scope
than 115. SB 136 amends current law.

SENATOR BAER explained that Section 1 consists of boiler plate
language and the Legislative Council decided to remove gender.
There aren't any substantive changes until (3), which is new. A
number of people have complained that there are few areas in
government where a government employee can leave his or her
duties as a government employee and serve in the legislature
while collecting both salaries.

Garth Jacobson commented this is not addressed in SB 115. Public
employee by definition includes all levels of state government.

What we are really looking at is a person drawing two salaries for the same time.

CHAIRMAN GROSFIELD stated at the time he was elected to the Senate, he was an elected supervisor for a conservation district. He had to resign that position before he could take the Senate position. He was also a member of the Board of Natural Resources and had to resign that position as well. That was not a double dipping issue. In the case of the Board of Natural Resources, it was a separation of powers issue. In the conservation district, he was not sure of the issue involved. It is his understanding that a Montanan cannot hold two elected positions at once.

Greg Petesch stated that there is a constitutional provision called dual office holding. It is a specific legislative prohibition which provides that no member of the legislature shall during the term of office for which they were elected, be appointed to a civil office under the state. There are a number of constitutional decisions, primarily under the 1889 Constitution. Recently a person alleged that Representative Bradley was in violation because she was a Special Master for a judge in a district court in Bozeman. The test has not changed over time. There is a similar prohibition that you cannot have two offices. This normally arises when a legislator resigns and is named to an acting position in a department. The "acting" language states that they are not formally in the position and that person is not confirmed by the Senate and that is the way the prohibition has been dodged. That is a separate issue. The "acting" capacity has never been challenged. He felt it was questionable.

SENATOR DOROTHY ECK stated that the statement is quite clear as written. It would cause some agencies to change their procedures. For instance, the teacher who now draws a salary and then pays his or her replacement. That board would have to change that policy and not pay a salary during the time they were in the legislature. People who work at the university do not receive a salary again until the next semester.

SENATOR BARTLETT stated that for the Butte teachers in their local school district this would be a part of their collective bargaining contract. All teachers who are absent are required to pay their substitutes. The salary would continue to go to the teacher who would then be responsible for paying the substitute.

SENATOR BAER stated that is the situation now. In many school districts the pay for a substitute teacher is so low that there is not much of an inducement for quality substitutes. The teacher must take the pay of the substitute out of their salary but they still collect the difference for not being there. As far as any contractual agreements now in existence, this would not affect those until they expired and it would then place the restriction not to do so again. This would not interfere with

any existing contractual obligation in regard to this situation.

Mr. Petesch stated the constitutional clause on impairment of contracts would protect those persons.

Mr. Jacobson commented they would need to consider the situation wherein a person would take a leave of absence and have accrued annual leave or comp time which they could take. The committee would need to define whether or not that would be permissible. The other item to consider would be whether retirement benefits would be considered as salary. If there are other benefits like disability, that should not be construed to be a salary.

Section 2.

SENATOR BAER stated that current law was like Moses coming down from the mountain with the ten suggestions rather than the ten commandments. These ethical principles should be requirements. It changes the discretionary nature of the language to something which would be required and provides for a penalty for those who breach their duty. We need some type of ethical enforcement. He and **Mr. Petesch** discussed the "public officer" or "employee" who should leave their job and use their knowledge and information for private benefit. They decided to use a 12 month period in which they could not use their insider information in a wrongful manner. Section 2 makes a requirement of adhering to ethical rules of conduct.

Mr. Petesch, in referencing the 12 months following voluntary termination of office, stated there are no formal interpretations or decisions under this provision because these are guidelines and a breach of a guideline is not a violation of a public trust. There is a six month revolving door provision in a different area of law. This is in 2-2-201 which states that a former employee may not within six months following termination of employment, contract or be employed by an employer who contracts with the state involving matters with which the former employee was directly involved during employment. There are no penalty provisions which apply. The contract would be voidable. That is a contracting situation only. This is the specific provision which is in litigation involving the former local government auditors for the Department of Commerce at this time. This lawsuit is still in district court.

SENATOR BAER stated if we only have "principles" intended as guides, why have ethics in the code at all?

SENATOR BARTLETT stated she questioned disciplinary action. As far as a public employee is concerned, their supervisor within an agency could take disciplinary action. That would not apply for public officers.

CHAIRMAN GROSFIELD questioned the situation wherein the governor or a legislator violated the statute, who would go after them? There is also no discussion as to what "disciplinary action" would mean or how it might be set. He asked what other states do in this regard?

Mr. Petesch commented disciplinary action involving a public officer or employee is usually a suspension, reprimand, censure, or reduction in grade. The MOMS manual covers disciplinary action. There are some administrative standards for disciplinary action.

SENATOR BAER stated they should consider the exclusion of legislators from some of these provisions since that seems to be the desire of the committee.

Mr. Petesch stated the existing definitions in this part of law provide that "public officer" does not include a judge or legislator. They are referred to as a "state officer".

Mr. Jacobson commented that this parallels Section 11 of SB 115. In the matter of agency enforcement, the individual would have already left the position.

SENATOR BAER stated that where there is a civil penalty involved, the judge could set a fine.

CHAIRMAN GROSFIELD suggested changing "and" to "or" so this sentence would state disciplinary action or civil penalty.

SENATOR BAER felt the major disciplinary nature of this would be the embarrassment which would follow.

CHAIRMAN GROSFIELD stated it would remain forever in their personnel file.

Section 3.

CHAIRMAN GROSFIELD commented that disciplinary action for a legislator might be a resolution by the body.

Mr. Petesch commented that there is a censure provision in current law. A member is censured by resolution. This would be accomplished by chastising the member formally on the record printed in the session laws for all the world to see. The only time it was seriously considered was when a senator submitted false information on the floor, had it printed and distributed to the members' desks knowing it was false. There has not been an impeachment action under the new Constitution. In the late 60s there was an impeachment action where a resolution of charges was filed but it did not pass the House of Representatives so the trial was not conducted. Impeachment is possible under current law. The Constitution gives each house the authority to judge the qualifications and seating of its own members. If a member

so offended the rest of the body, he could be disqualified from serving.

CHAIRMAN GROSFIELD questioned if the vacancy would be handled as if the member had resigned or died.

Mr. Petesch answered that it would create a vacancy.

SENATOR BAER commented that (2) previously provided that the legislator should consider disclosing a conflict. If there is a conflict of interest the legislator should be forced to disclose that there is a conflict and try to remove the conflict. Abstaining from official action is an area of great discomfort. He felt that many times there would be the opportunity to eliminate the conflict situation by eliminating the interest which causes the conflict.

CHAIRMAN GROSFIELD believed that in a 90 day legislature these issues would appear too fast. There would be no time to eliminate the conflict. Disclosing and abstaining would be reasonable.

SENATOR BAER stated they were having difficulty abstaining from official action in regard to the requirement to vote which is now in the rules of the Senate.

SENATOR ECK commented there would be a real problem because not only the legislator would have to eliminate an interest, it could be a grand nephew who would have to eliminate an interest.

SENATOR BAER thought it would be a bad situation to allow a direct and substantial conflict of interest by disclosing and then voting anyway.

CHAIRMAN GROSFIELD referred to (3) which, when the double negative is taken out, says that a conflict situation does arise from legislation that does directly effect the entire membership of a class. This states that the conflict situation arises if you are a member of a class.

SENATOR BAER stated his intent was to not hold a legislator in a conflict situation where he or she was a member of a profession or occupation or a class as the code currently states. He reversed this for a public employee. If they were a member of a class, profession or a group, they should not be given special treatment. Public employees should have to live to a higher standard of ethics rather than a lesser standard of ethics which is what is implied by current law.

SENATOR ECK commented that if a legislator is a member of a class, they could vote on something that affects that class and a public employee may not. What would happen if the legislator had a wife, niece, etc., who was a public employee?

SENATOR BAER stated that it would affect the legislator if it would affect someone in his or her direct family. The legislator would be helping them by the way of vote. This language appears in the nepotism section.

CHAIRMAN GROSFIELD commented there were two issues in (3). The first issue addresses, for instance, a rancher voting on an ag issue if it affects the whole class. There could be a situation where it affects the legislator directly but also affects other ranchers directly. The other issue is the question of consanguinity.

SENATOR BAER suggested modifying that to read direct family members to include either spouse and children or just spouse.

Section 4.

CHAIRMAN GROSFIELD stated this is a general section which applies to everyone. The issue is using public resources and time for campaigns or lobbying or to influence political decisions.

SENATOR BAER commented this was the main crux of the bill. This is where 98% of the problem lies. Legislators are insignificant compared to the problems caused by public employees who use their position to wrongfully or unduly influence political issues or elections. There is a lot of it going on. He has many examples of problems.

CHAIRMAN GROSFIELD questioned whether current law dealt with this specifically. **SENATOR ECK'S** bill addresses it.

Mr. Argenbright stated that 13-35-226 (3) states, "No public employee may solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at his place of employment. However, nothing in this section is intended to restrict the right of a public employee to express his personal political views."

CHAIRMAN GROSFIELD commented that the code of ethics is in Title 2, election laws are in Title 13, and the authority for the disclosure form is in Title 5.

Mr. Petesch commented that criminal law was also involved.

SENATOR BAER commented that there is a problem because this activity goes on all the time. These people are never reprimanded, prosecuted and there is no disciplinary action taken. There have been blatant situations regarding a school mill levy wherein a notice is printed on school paper using a school computer and sent home with children threatening parents that if they don't vote for the mill levy horrible things will happen. A complaint may be filed but nothing ever comes of it.

CHAIRMAN GROSFIELD asked what the enforcement would be under Title 13.

Mr. Argenbright commented that there had been complaints filed with his office and he has conducted investigations. The question comes down to whether informing parents about the effects of a loss of funding in the mill levy is an attempt to influence the outcome of the election. Based on their legal advice, it has to be a very direct solicitation of a "no" or "yes" vote. It has to be very direct. The school trustees are elected officials who can give their views.

SENATOR BAER commented these flyers are printed at the order of school superintendents and principals, not trustees. They are sent out to influence an upcoming election. Something needs to be done to strengthen the law so that **Mr. Argenbright** can take action on this type of wrongful behavior. Public funds should not be used to influence elections.

CHAIRMAN GROSFIELD asked who would handle the enforcement under 2-2-121.

Mr. Petesch commented that existing (6), which becomes (5), has both a civil and a criminal provision attached to it. The criminal provision would be handled by the county attorney. The civil provision could either be the agency or the county attorney could seek concurrent civil and criminal penalties.

SENATOR BAER asked if that would take it away from Mr. Argenbright's jurisdiction.

Mr. Petesch commented they have not amended the provision in Title 13, but with this provision in place Commissioner Argenbright would see a lot less complaints.

SENATOR BARTLETT questioned the associations of various groups of school or public employees who pay dues to an organization from their tax revenues and then represent their interests before the legislature. She would see that as different from the use of public facilities, etc. This deserves specific attention.

CHAIRMAN GROSFIELD commented that entities such as Montana School Board Association, League of Cities and Towns, MACO, etc., are covered by dues which all come from taxpayer dollars.

SENATOR ECK stated that there are usually quite a few lobbyist from state government who testify at the legislature. Previously, they did not register as lobbyists.

Mr. Petesch stated that that was the practice. Legislative committees grew weary of the practice of public employees, particularly department directors, sitting in hearings and saying they were only there to provide technical information or respond to comments when they supported or opposed virtually every bill.

The decision was made that if they were going to show up and support or oppose legislation, they would have to be registered.

SENATOR ECK commented she could see real problems for committees such as taxation. If they could not have the various division directors there to ask questions, they would have a difficult time operating.

SENATOR BAER stated this is addressed in line 20 through 23 on page 4. There are exceptions if it is authorized by law or is properly incidental to another activity. The problem which arises is when an MSBA lobbyist comes up during the legislative session and tries to influence votes of the legislators. There we have public funds paying for a lobbyist to do just the very thing we are trying to prohibit.

CHAIRMAN GROSFIELD questioned how the school boards around the state would have effective representation in the legislature when they are dealing with school budgets or an issue such as who would qualify to be a school board member.

SENATOR BAER commented they should send their trustees to give input. This way they would not be using public funds, money, time, and resources. Volunteers serve on school boards.

CHAIRMAN GROSFIELD stated they were talking about school boards, county commissions, and conservation districts.

SENATOR BAER stated he had a problem with Fish and Game employees appearing at Trout Unlimited banquets in uniform trying to further the advancement of Trout Unlimited ideologies on public time. Collectively, it is a bad mentality for our public funds and resources to be used for private purposes.

CHAIRMAN GROSFIELD posed a situation wherein he was a director of the Montana Stockgrowers and at their annual meeting there would be a contentious issue presented. If he decided it was best for his membership to get the word from an expert, he may call Fish and Game and ask that someone speak at their meeting to explain the deal. Line 23, page 4, states "in the normal course of their duties."

SENATOR BAER agreed that would be in the normal course of their duties. This differs from influencing a decision made by a public body.

Mr. Jacobson stated that in this language it would appear to him that Professor Natelson would be prohibited from doing anything during the term of his contract. How would a person be able to exclude his salary for a portion of that year where he was doing things other than teaching activities?

CHAIRMAN GROSFIELD commented that even Professor Natelson would have some spare time and he could do whatever he wants in his spare time.

SENATOR BAER commented that Professor Natelson is very careful to use only his spare time since he is one of the major advocates of this. He is very cautious about anything improper in using public time or resources.

Mr. Jacobson stated it is hard to identify that time. For college teachers, this might be construed as the time of their contract.

SENATOR BAER stated he had an on/off duty situation as would anyone who works for an employer. When he is off campus doing his own thing and not using university resources to do so, he is exercising his first amendment rights.

CHAIRMAN GROSFIELD stated the issues in respect to Section 4 would be: use of public times and facilities and local governments putting public money into lobbying.

Section 5

CHAIRMAN GROSFIELD commented this section deals with local government officers and employees. This would deal with rules the legislature might set for local government officers and employees, which would cover county commissioners, school teachers, janitors, etc. Line 18 deals with disclosing and eliminating a conflict of interest.

Mr. Petesch stated SB 115 leaves the local government provisions in place and unchanged.

SENATOR BAER stated this provides for disciplinary action.

CHAIRMAN GROSFIELD stated the rules and the penalty are the same as they would be for a legislator.

SENATOR BARTLETT commented that at the very end the member is required to disclose and eliminate the interest.

CHAIRMAN GROSFIELD commented that the difference is that a legislator could disclose or refrain from action where this says disclose and eliminate.

SENATOR ECK said that many requirements for public employees and officials would refer to the local government sections.

Mr. Petesch stated that **SENATOR BAER'S** inclusion of public employee extends those requirements to all state and local government employees. He does not extend them to local government officers except in this section. Public officers refers to state officers and elected officers of subdivisions of

the state. It excludes legislators and judges. He suggested visiting the definitions in existing law because there is some ambiguity in them.

SENATOR ECK stated the bulk of SB 115 does not address local governments. She stated they had prepared amendments so that section was not left by itself.

Mr. Jacobson commented on his handouts. One document, **EXHIBIT 2**, is a survey of all the agencies. It is a list of all the agencies which were sent questionnaires regarding ethics activities of each agency. Approximately half of the agencies responded and identified what their agency does or doesn't do regarding ethics. The other document, **EXHIBIT 3**, is a checklist to show what areas the ethics legislation covers. It is also a guide as to what type of issues may be raised.

CHAIRMAN GROSFIELD questioned if this is covered in current law?

Mr. Jacobson answered that agencies covered different items. SB 136 and SB 115 beef up what can or cannot be done. Under current law, a lot of things are not being done. This gets back to enforcement and ambiguity.

CHAIRMAN GROSFIELD asked Mr. Jacobson to summarize how most agencies responded to the question of having personnel matters involving ethics violations handled by an independent outside agency or by their own agency.

Mr. Jacobson stated that most agencies wanted to have initial internal control. They try to give that to them by not setting anything in motion until a formal complaint is filed with the Commissioner of Campaign Practices. That would give them an opportunity to go outside the agency. All personnel matters would be handled internally and that is consistent with what most of the agencies wanted. Flagrant violations would go beyond the agency itself.

CHAIRMAN GROSFIELD stated that within the Department of Administration there was the state personnel office. He questioned whether they would be involved in ethics issues.

Mr. Petesch answered that they provide some training but have no explicit authority over ethics. They do adopt the MOMS manual which has some guidelines.

Mr. Jacobson commented that in talking with Mr. Seacat from the Legislative Auditor's Office, he indicated that their hotline had about 400 calls of which 100 would probably be legitimate. Of that 100, 30 or so involved conflict of interest matters of state employees. There was no enforcement mechanism or agency control which could deal with those problems which he considered to be legitimate concerns.

CHAIRMAN GROSFIELD commented the language in **SENATOR BAER'S** bill would give them the requirement to do something internally within the agency.

Mr. Jacobson stated there is confusion regarding enforcement of civil penalties. One agency may give a slap on the wrist whereas another agency may totally level the employee. He would suggest one consistent prosecution entity.

SENATOR BAER commented that a self regulatory atmosphere in regards to ethics would be very prudent. There would be too much possibility of abuse and lack of enforcement. A mechanism is necessary to enforce ethics but it should not be a \$600,000 bureaucracy.

CHAIRMAN GROSFIELD asked if the Commissioner of Political Practices dealt with public employees.

Mr. Argenbright stated they deal with candidates and elected officials but they do have the statute which deals with public employees abusing company time.

Mr. Petesch commented on current law definitions. "Compensation" has a term "thing of value". This would become important in both bills in terms of gifts. "Employee" is defined for purposes of the state only and the term "public employee" is used extensively in SB 136. If it is to apply to local government employees, it may need to be clarified. "Financial interest" is an existing, defined term. In SB 115 "anything of value" is defined. "Public officer" has a series of "ors". This includes any state officer except a legislator or member of the judiciary or any elected officer. The "or any elected officer" goes back to "includes". That definition should be clarified.

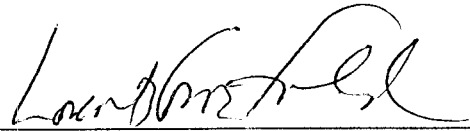
CHAIRMAN GROSFIELD commented the Constitution states prohibiting conflict between public duty and private interest. The code of ethics defines financial interest but not private interest.

Mr. Petesch stated the existing code of ethics does not use private interest. Financial interest is made the equivalent of private interest.

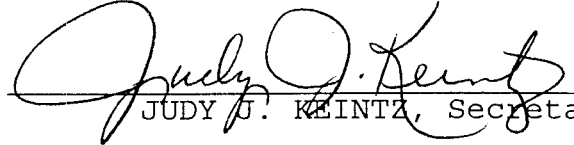
CHAIRMAN GROSFIELD commented that it might make sense to pull all ethics issues into one Section.

ADJOURNMENT

Adjournment: The meeting adjourned at 5:30 p.m.



SENATOR LORENTS GROSFIELD, Chairman



JUDY J. KEINTZ, Secretary

LG/jjk

ROLL CALL

JUDICIARY SUBCOMMITTEE _ ETHICS

SENATE COMMITTEE . _____

DATE 2/16/95

NAME	PRESENT	ABSENT	EXCUSED
CHAIRMAN LORENTS GROSFIELD	✓		
SENATOR LARRY L. BAER	✓		
SENATOR SUE BARTLETT	✓		
SENATOR AL BISHOP	✓		
SENATOR LINDA NELSON	✓		

Attach to each day's minutes

ISSUES IDENTIFIED FOR ETHICS SUBCOMMITTEE

- (1) Education function concerning ethics in government.
- (2) Gifts:
 - (a) 5-7-208(5) requires \$25 for purposes of lobbying -- \$25 amount was established in 1980;
 - (b) add criteria in 2-2-104(1)(b)(i)? (gifts that tend to improperly influence)
- (3) Disclosure statements: filing and timing.
- (4) District officials status should be clarified: state office elected from a district or county/state subdivision offices.
- (5) Nepotism - clarify status of pages, other legislative session staff, elections judges, etc.
- (6) Clarify "Gain of another" page 8, line 13. Clarify exemption on lines 14 and 15. Clarify lines 26 and 27.
- (7) "Conflict of interest" disclose conflict and vote or not vote.
- (8) Level of financial disclosure. Content -- applicability (who is required to file). Current law v. political practices form v. SB 115
- (9) Role of commission: education, advisory opinions, enforcement.

MONTANA STATE GOVERNMENT
Departments and Directors

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 2/6/95
BILL NO. SB115
SB136

Department of Administration
Ms. Lois Menzies, Director

Department of Agriculture
Mr. Leo Giacometto, Director

State Auditor's Office
Honorable Mark O'Keefe, State Auditor

Department of Commerce
Mr. Jon Noel, Director

Dept of Corrections and Human Services
Mr. Rick Day, Director

State Board of Education
Mr. Wayne Buchanan, Executive Secretary

Department of Family Services
Mr. Hank Hudson, Director

Department of Fish, Wildlife & Parks
Mr. Pat Graham, Director

Governor's Office
Honorable Marc Racicot, Governor

Dept of Health & Environmental Services
Mr. Bob Robinson, Director

Montana Historical Society
Mr. Brian Cockhill, Director

Montana Supreme Court
Honorable Ed Smith, Clerk Supreme Court

Department of Justice
Honorable Joe Mazurek, Attorney General

Department of Labor and Industry
Ms. Laurie Ekanger, Commissioner

Department of Military Affairs
Mr. John Prendergast, Adjutant General

Montana Advocacy Program, Inc.
Ms. Kris Bakula, Executive Director

Dept of Nat. Resources & Conservation
Mr. Mark Simonich, Director

Commissioner of Political Practices
Mr. Ed Argenbright, Commissioner

Office of Public Instruction
Honorable Nancy Keenan, Supt of Pub Inst

Department of Public Service Regulation
Ms. Madeline Cottrill, Administrator

Department of Revenue
Mr. Mick Robinson, Director

Secretary of State
Honorable Mike Cooney, Secretary of State

Dept of Social and Rehabilitation Services
Mr. Peter Blouke, Director

State Capitol Employees Credit Union
Mr. Gene Rice, President

Department of State Lands
Mr. Bud Clinch, Commissioner

State Library
Mr. Richard Miller, State Librarian

Department of Transportation
Mr. Marvin Dye, Director

Montana University System
Mr. John Hutchinson, Cmiss of Higher Ed

TO: Garth Jacobson, Chief Counsel
Secretary Of State

FROM: Frank Graham, DMA *FRANK*

DATE: December 15, 1993

SUBJECT: Ethics in Government

Garth:

Your recent request for information on ethics policies in state agencies was given to me for input by The Adjutant General. While I'm not aware of what his final reply to your committee was, I'd like to take an opportunity to expand on a concept as a private citizen and a public servant.

One of the difficulties we face in state government is the inability of the average employee to find redress within the system. None of us has to look very far or listen very hard before we begin to see and hear of examples of conduct which, in a well managed organization, would not be tolerated. Examples of abuse of authority by mid- and senior-level managers, and fraud and waste at all levels abound. Fortunately, many of the abuses are relatively minor and many are not prosecutable crimes but, cumulatively, they contribute to the popular conception of lazy or inefficient state employees and, by extension, a lousy government. Yet those who become aware of such transgressions generally feel as if there is little they can do about them. (I'm also convinced that is a significant reason many are taking advantage of early retirement incentives. It's not just pay scales! But that is a subject for another discussion.)

Samuel Huntington has pointed out that one of the hallmarks of a "profession" is the fact that it polices itself internally. The American Bar Association and the American Medical Association are cogent examples (regardless of how we individually feel about their effectiveness). We don't do that in state government, although we'd like very much to consider ourselves professionals! In too many cases, there is a very legitimate fear that "my job is in jeopardy if I rock the boat too much." Folks are just afraid or wary of voicing their concerns. There is no effective mechanism to investigate and take action on such allegations. There is no means to provide confidentiality to the accuser or the accused and there is no protection against retribution.

I'd like to offer the Inspector General concept as a model to examine for internal regulation. The concept was initiated in the military in the last century but in 1978 the Congress required all federal agencies to create such a position. Subsequently, a number of states have also adopted the concept. Essentially, the Inspector General is an official, organizationally subordinate only to the chief (the governor in our case),

whose principle function is to accept complaints or allegations about fraud, waste, and abuse; investigate the complaints in a thorough and impartial manner; and make recommendations to the organizational leadership for corrective action. Principle operational tenets include a relationship of special trust and confidence with the chief, guarantees of confidentiality to accuser whenever possible, guarantees of protection to the accused against false accusations, unlimited access to the organization (within the scope of each specific investigation), and independence from undue influence from organizational leadership (not a political appointee) yet high enough in the organization to guarantee access and authority. I've enclosed selected excerpts from the current Army regulation covering Inspector General activities.

The model is not without challenges in Montana, not the least of which are the classic conflicts of the public right to know versus the individual right to privacy. The scope of authority of the Inspector General must be very carefully defined. Some Inspectors General have subpoena authority, some do not. Clearly there will be resistance from agencies accustomed to working autonomously. And there will be resistance to establishing any new bureaucratic function. But, if we agree there are standards of acceptable conduct in state government, then we must agree that, human nature such as it is, some will violate those standards, and there will be a need to somehow police the system.

My experience with the Inspector General system was in the Army (my last eight years of active duty), but I was privileged to serve at the national level and, in that capacity, was exposed to the operation of other IG systems, civilian as well as military. I'd enjoy an opportunity to discuss the concept further with you or the committee.

If we are to give the government of the state of Montana back to the citizens of the state, if we are to restore pride in being state employees, we must have standards - high standards - against which we are willing to be measured. Public service requires public trust and an independent, objective Inspector General could be an agent to help regain that trust.

Enclosures

Chapter 1 The Inspector General Corps

Section I Introduction

1-1. Purpose

This regulation—

- a. Prescribes policy and procedures concerning the mission and duties of The Inspector General (TIG) of the Army.
- b. Prescribes duties, missions, standards, and requirements for inspectors general (IGs) throughout the Army.
- c. Prescribes responsibilities of commanders, State Adjutants general (AGs), and heads of agencies, activities, centers and installations for support of IG activities.

1-2. References

Required and related publications and prescribed forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

- a. Abbreviations and special terms are explained in the Glossary.
- b. The acronym DAIG stands for Department of the Army Inspector General. The term SAIG is a basic office symbol used by Office of The Inspector General and by the U.S. Army Inspector General Agency.
- c. Citations of U.S. statutes are abbreviated. For example, a reference to section 3014, title 10, United States Code is abbreviated 10 USC 3014.

1-4. Statutory authority

- a. 10 USC 3014 establishes TIG within the Office of the Secretary of the Army (SA) and assigns TIG sole responsibility within the Office of the Secretary and the Army Staff for IG functions.
- b. 10 USC 3020 states TIG's statutory mission and provides for deputies and assistants for TIG.
- c. 10 USC 3065 provides for detail of commissioned officers as IGs.
- d. 10 USC 271 authorizes screening of Army Reserve IGs.
- e. 24 USC 60 requires TIG to annually inspect the U.S. Soldiers' and Airmen's Home.
- f. 32 USC 105 provides for inspection of the Army National Guard (ARNG) on matters of Federal concern.
- g. 32 USC 315 provides for detail of commissioned officers and enlisted personnel of the Regular Army for duty with the ARNG.

Section II Responsibilities

1-5. The Inspector General (TIG)

When directed by the SA or Chief of Staff, U.S. Army (CSA), TIG shall—

- a. Inquire into and report upon the discipline, efficiency, and economy of the Army:
- b. Perform any other duties prescribed by SA or CSA.
- c. Periodically propose programs of inspection to SA and shall recommend additional inspections and investigations as may appear appropriate.
- d. Cooperate fully with the Inspector General of the Department of Defense (IG, DOD) in connection with the performance of any duty or function by the IG, DOD under the Inspector General Act of 1978 (5 USC App. 3) regarding the Department of the Army (DA), and DODI 5106.3, paragraph D.2.
- e. Provide the SA and CSA a continuing assessment of command, operational, managerial, logistical and administrative effectiveness of the Army.
- f. Inquire into and report on the state of economy, efficiency, discipline, morale, esprit de corps, and readiness of the Army.
- g. Maintain liaison with IG, DOD, Inspectors General (IG) of the other military services, other statutory IGs, and other agencies concerning Army IG activities.

h. Serve on boards, committees, councils and similar organizations as directed by SA and CSA.

i. Monitor and report to the SA and CSA on the effectiveness of the Army IG system.

j. Publish IG policy and procedures for Army IGs.

k. Approve or disapprove nominations of soldiers to be IGs; approve or disapprove the removal or early release of soldiers from IG duty.

l. Conduct the Department of Army Inspector General (DAIG) Course for personnel selected to be IGs.

m. Maintain custody of DAIG records on behalf of SA; serve as the Access and Amendment Refusal Authority for Privacy Act requests for all IG records; serve as the Initial Denial Authority for Freedom of Information Act (FOIA) requests for all IG records.

n. Serve as the functional proponent and manager for inspector general information systems and subsystems.

o. Coordinate inspection and audit schedules with IG, DOD General Accounting Office (GAO), and U.S. Army Audit Agency (USAAA) and provide information about IG, DOD, GAO, and USAAA inspections and audits to IGs worldwide.

p. Conduct long range planning and mobilization planning for DAIG and the IG system.

q. Give assistance and—

(1) Provide a system for resolving problems of soldiers, family members, civilian employees of the Army, and retirees; protect confidentiality and guards against reprisal.

(2) Process Hotline cases that relate to Army activities.

(3) Conduct assistance visits to active and reserve units.

r. In the areas of inspection, technical inspection, and investigation—

(1) Conduct inspections and assessments directed by SA, Under Secretary of the Army (USofA), CSA or Vice Chief of Staff of the Army (VCSA), determined necessary by TIG, or prescribed law or regulation.

(2) Report inspection results to the directing authority; identify root causes, recommend solutions, and fix responsibility for implementation.

(3) Establish a system to identify potential inspection issues and recommend inspections to SA and CSA.

(4) Serve as proponent for Army inspection policy.

(5) Conduct followup inspections to evaluate the effectiveness of solutions implemented.

(6) Publish inspection guidance for and conduct the Army nuclear and chemical surety programs and inspection systems.

(7) Implement the Army's portion of the Defense nuclear weapons technical inspection (NWTI) system.

(8) Support the Director, Defense Nuclear Agency (DNA) in executing of DNA's nuclear weapons technical inspection responsibilities.

(9) Conduct the DA Nuclear Surety Program Inspection (NSPI) and Chemical Surety Program Inspections (CSPI) Orientation Course.

(10) Review the Army's nuclear and chemical-related testing, maintenance, diagnostic and evaluation quality assurance inspection program.

(11) Conduct investigations directed by SA, USofA, CSA, VCSA, or as determined necessary by TIG and submit the report of investigation to the directing authority.

s. For intelligence oversight, exercise oversight of intelligence activities as prescribed in AR 381-10.

t. Provide followup and—

(1) Serve as the Army's followup official and manage the Army's audit followup system.

(2) Publish Army followup policies for DAIG inspections for internal and external audits of Army matters.

(3) Manage the command reply process for response to USAAA audit reports.

(4) Perform on-site followup of selected inspection and audit findings and recommendations.

(5) Mediate disagreements between Army commands, the Army Secretariat, the Army Staff (ARSTAF) and USAAA.

Section IV
Sphere of Activity

1-12. IG activities

a. The IG sphere of activity includes everything for which the commander or State AG is Federally responsible, and over which the commander or State AG has Federal authority.

b. The IG is an extension of the eyes, ears and conscience of the commander or State AG. The IG's relationship with the commander or State AG is one of extraordinary trust and confidence. The IG is normally granted a high degree of independence and unlimited access to information in performing IG duties. The IG normally has direct access to the commander or State AG. To be fully effective, the IG must have the full support of the commander or State AG and the confidence of the command or activity. This confidence is obtained only when the command understands that the IG is an extension of the commander or State AG and that the commander or State AG has complete trust and confidence in the IG. To protect this independent and special relationship, the commander or State AG must rate the command or State IG. (See AR 623-105, paras 3-1d and 3-17a(2).)

c. IGs will not establish command policy except as provided in AR 1-2Q1. IGs have no directive authority outside IG channels, beyond that normally associated with their ranks. Any additional authority must come from their commander.

d. IGs are authorized access to all documents and all other evidentiary materials needed to discharge their duties. These documents and materials include normally protected data. Examples are: classified documents, records of board proceedings, acquisition information, medical records, medical quality assurance records, drug and alcohol records, financial records, evaluation reports, back channel messages, security dossiers, criminal investigation reports, personnel Restricted fiche (R-fiche) (after compliance with AR 640-10), and financial disclosure statements. This authority may include direct access to pertinent extracts under applicable regulations. IGs must present proof of their security clearance or special access to review classified documents. They also must present sufficient justification to the record holder to obtain sensitive records. Should compartmentation or classification restrictions preclude immediate access to information required by an IG, the denying commander will immediately report the situation to the appropriate access control authority for an access eligibility determination. If this does not result in granting access, the IG will notify the commander and TIG of the situation. The notice to TIG will include the location, date, and command; scope of inquiry, inspection or investigation; who denied access; who verified denial and approved denial; and the reason access was denied.

1-13. IG guidelines for Army National Guard (ARNG) matters

IG activities within the ARNG are, with some exceptions, the same as for the active Army and the United States Army Reserve (USAR). Exceptions are stated in appropriate sections of this regulation. For Air National Guard (ANG) matters, Army personnel serving as IGs for the National Guard (NG) will follow these guidelines:

- a. IGs will not inspect ANG units.
- b. At the discretion of the State AG, requests for assistance from ANG personnel or family members may be received and processed by the State IG office.
- c. The State AG may direct an IG investigation of ANG personnel. If technical support for the investigation is needed from outside of the State, that support will be requested through the Chief, National Guard Bureau, ATTN: NGB-IG, WASH DC 20310.
- d. Release of IG records involving ANG units or personnel will be coordinated by the National Guard Bureau (NGB) IG, the Records Release Office, USAIGA and with the Air Force Inspector General.

Section V
Punitive Prohibitions

EXHIBIT 2
DATE 2-6-95

1-14. Prohibited activity SB 115, SB 136

a. *Prohibition on restricting lawful communication with an IG, Member of Congress, or the Office of Special Counsel (OSC).* Persons subject to this regulation will not restrict anyone in any manner from lawfully communicating with an IG, Member of Congress, or the OSC. This prohibition also applies to communications with the DOD IG and the IGs of other Services and Federal agencies.

b. *Prohibition on taking reprisal against someone for lawfully communicating with an IG, Member of Congress, or the OSC.* Persons subject to this regulation will not take or threaten to take an adverse action (see glossary), or withhold or threaten to withhold a favorable action, as a reprisal against a person who lawfully communicates with an IG, Member of Congress, or the OSC. This prohibition also applies to communications with DOD IG and the IGs of other Services and Federal agencies.

c. *Prohibition against making an unlawful communication with an IG, a Member of Congress, or the OSC.* Persons subject to this regulation will not knowingly make an unlawful communication with an IG, Member of Congress, or the OSC. An example of unlawful communication is a false official statement (Article 107, Uniform Code of Military Justice (UCMJ)). This prohibition also applies to communications with DOD IG and the IGs of other Services and Federal agencies.

d. *Persons subject to the UCMJ.* Persons subject to the UCMJ who violate the above prohibitions are subject to punishment under the UCMJ. They are also subject to adverse administrative action and other adverse action authorized by the United States Code or Federal regulations. Civilian employees not subject to the UCMJ who violate the above prohibitions are subject to disciplinary action under AR 690-700, chapter 751 or criminal prosecution authorized by the United States Code or Federal regulations.

e. *Reporting prohibited actions.* Persons who believe an action prohibited by paragraphs a, b, and c above has occurred, should report the circumstances to the chain of command or to the local inspector general. Alternatively, the circumstances may be reported to a higher headquarters IG listed in the permanent notice of rights to submit complaints that is posted on local bulletin boards. (See fig 7-1 and 7-2.)

1-15. Confidentiality

a. Persons who ask the IG for help, make a complaint, give evidence, contact or assist an IG during an inspection or investigation, or otherwise interact with an IG, often have an expectation of confidentiality. This expectation encompasses safeguarding their identity and the nature of their contact with the IG, and protection against reprisal. The IG has a duty to protect confidentiality to the maximum extent possible, particularly when it is specifically requested. While the need for confidentiality and the measures necessary to protect it will vary with the circumstances, the IG always gives them priority attention.

(1) When a person complains or provides information about impropriety or wrongdoing, the IG will not disclose the person's identity as complainant outside IG channels or the directing authority without the person's consent, unless the IG determines such disclosure is unavoidable during the course of an inquiry or investigation. If the IG determines that disclosure is unavoidable, the IG will try to inform the person before disclosure. If the person objects, the IG will coordinate with the Legal Office, USAIGA, before proceeding. Efforts to notify the person and the circumstances of any disclosure of the person's name will be made part of the record.

(2) When a person seeks assistance from the IG, it is often necessary to reveal the person's identity to obtain the help needed. The IG will inform the person of that necessity. The IG file will reflect the person was informed.

b. When a person requests anonymity, the IG will take more extensive measures to protect the person's identity. The person's name will not be used as a file identifier or as a means to retrieve a

(6) Serve as the Army's point of contact for receipt and control of all GAO and IG, DOD audit reports and task the appropriate Army agency or command for preparation of responses to audit reports.

(7) Disseminate information concerning GAO and IG, DOD audit reports within Headquarters, Department of the Army (HQDA); prepare weekly summary of significant audits.

1-6. Inspectors General (IG)

a. Inspectors general will—

(1) Determine the state of economy, efficiency, discipline, morale, esprit de corps, and readiness throughout the command.

(2) Provide the commander or State AG with a continuous, objective and impartial assessment of the operational and administrative effectiveness of the command.

(3) Conduct inspections, investigations, and inquiries directed by TIG, the commander or State AG, or as prescribed by law or regulation. A report will be provided to the directing authority.

(4) Monitor effectiveness of IG functions within the command or State. Inform the commander or State AG of this effectiveness and other matters concerning IG functions.

(5) Participate in the Program Budget Advisory Committee (PBAC) cycle at major Army command (MACOM), installation or State level. Budget for all IG functions. This includes identifying required budget and manpower resources and establishing the means to account for funds during budget execution.

(6) Provide oversight of intelligence activities within their command in accordance with Army Regulation (AR) 381-10, and as prescribed by Executive Order (EO) 12333, and DOD 5240.1-R.

(7) Serve as the office of record, on behalf of the Secretary of the Army, for all IG records which originate in their offices.

(8) Process requests for release or amendment of IG records (see chap 3).

(9) Perform audit and internal control functions as follows:

(a) Review the command or State's audit followup system to ensure effectiveness and compliance with AR 36-2.

(b) Perform audit followup when directed by the commander or State AG, or by TIG.

(c) Review internal control programs during the normal course of inspections (see AR 11-2), to determine if—

1. Policies, standards, and requirements have been effectively implemented (including procedures for supplementing and using internal control review checklists).

2. Management has taken effective action to address internal control problems identified in audit/inspections findings and recommendations.

(10) Forward problems that cannot be corrected at the local level through command and/or IG channels.

(11) Teach Army systems, procedures, and processes to help the inspected activity improve operations and accomplish command objectives.

(12) Train IG personnel not required to attend the IG training course. Use the Programs of Instruction (POIs) provided by the Training Division, U.S. Army Inspector General Agency (USAIGA).

(13) Serve as ombudsman for soldiers and civilians who request assistance through the Inspector General Action Request (IGAR) process.

(14) Provide IG support to Program Manager (PM) and Program Executive Offices (PEO) through their functionally aligned MACOM and major subordinate command (MSC) by—

(a) Responding to requests for inquiries, assistance, investigations, and inspections.

(b) Conducting independent inquiries, assistance, investigations, and inspections associated with programmatic functions (such as, management, cost, schedule, and performance) performed by the PM/PEO. The MACOM/MSC retains authority to direct and approve investigations and inspections. However, coordination will be made with the PM/PEO prior to final approval or disapproval of investigation and inspection results.

(15) Inspect issues designated "special subjects for inspection" as part of inspection programs and provide feedback to TIG, as required. Also, IGs will consider incorporating "Army senior leadership concerns" into scheduled inspections. (See glossary).

(16) Conduct followup inspections of action taken on inspection findings and recommendations.

(17) Input all IG inspection findings, and investigations and assistance data into the Inspector General Worldwide Network (IGNET) data base.

(18) Conduct long-range planning and mobilization planning for IG activities in the command or State.

(19) Report to TIG, within 1 week of receipt, all allegations of impropriety by general officers, members of the Senior Executive Service (SES), and other Army civilian employees of comparable rank or position. (see para 8-3i.)

b. IGs perform the functions described in this regulation and other ARs and IG publications as follows:

(1) Planning and Analysis (Technical Bulletin (TB) IG 1).

(2) Inspection (AR 1-201, and TB IG 1), including technical inspections.

(3) Assistance (TB IG 4).

(4) Investigation (TB IG 4).

(5) Teaching and training.

(6) Followup (AR 1-201, AR 36-2, and TB IG 1).

1-7. Commanders, State AGs, Principle HQDA Officials, activities, centers, and installations

Commanders, State AGs, Principle HQDA Officials, activities, centers, and installations will—

a. Ensure all personnel under their jurisdiction are informed of their right to register complaints, with or request assistance from an IG. (See para 7-3.)

b. Ensure that persons registering complaints with any IG, including Department of Defense (DOD) and other service IGs, are afforded protection from reprisal actions as a result of the person's contact with the IG. (See para 1-14.)

c. If a host commander, provide IG support for tenant organizations, agencies, and activities of other commands as established by agreements between the MACOMs concerned.

d. Report to TIG, within 1 week of receipt, all allegations of impropriety by general officers, members of the SES, and other Army civilian employees of comparable rank or position. (See para 8-3i.)

Section III

Organization

1-8. The Inspector General

TIG is a confidential representative of the Secretary of the Army (SA) and the Chief of Staff of the Army (CSA). TIG serves on the personal staff of the SA and has direct access to CSA. TIG commands the U.S. Army Inspector General Agency (USAIGA).

1-9. Office of The Inspector General (OTIG)

The OTIG is the HQDA agency that coordinates IG activities. The OTIG includes TIG, Deputy The Inspector General (Investigations, Assistance, Training and Information Management) Deputy The Inspector General (Inspections), and Executive.

1-10. The U.S. Army Inspector General Agency (USAIGA)

USAIGA is a field operating agency of the OTIG. The operational resources responsive to TIG are assigned to USAIGA.

1-11. Inspectors General (IG)

IGs are assigned to commands, agencies, activities, centers, communities, installations, and States in accordance with authorization documents. Commanders and State AGs determine the need for IG supporting staff. The command or State IG is a member of the personal staff of the commander or State AG.

file. The request for anonymity will be prominently stated and the use of the person's name will be minimized in any file or record created by the IG. This is most easily done by referring to the person as "complainant," "witness," or similar title, instead of by name.

c. The intent behind this emphasis on confidentiality is to protect individual privacy, maintain confidence in the IG system, and minimize the risk of reprisal. It is a key component of the IG system because it encourages voluntary cooperation and willingness to ask for help or to present a complaint for resolution.

d. While protecting confidentiality is a priority concern for the IG, it cannot be absolutely guaranteed. IGs will not unconditionally promise confidentiality. It may be breached if required by law or regulation, or by direction of The Inspector General. Persons who request anonymity or who express a concern about confidentiality will be told this.

Chapter 2 Inspector General Personnel Procedures and Training

Section I Personnel Procedures

2-1. IG positions

a. IG positions are designated in approved modification tables of organization equipment (MTOEs) and tables of distribution and allowances (TDAs). Authority to establish IG positions in TDAs has been delegated to commanders reporting directly to HQDA (AR 614-100). TIG provides guidance and reviews manpower standards and staffing guides regarding minimum manpower requirements for IG activities.

b. TIG approves or disapproves nominations of all active component and full-time USAR soldiers (staff sergeant (promotable) (SSG(P) and above) to be assigned to IG duties, and part-time USAR and full-time ARNG commissioned officers to be assigned as detailed IGs. The Commander in Chief (CINC), Forces Command (FORSCOM), the CINC, U.S. Army Europe and Seventh Army (USAREUR), and the commanders, U.S. Army, South (USARSO), U.S. Army Pacific Command (USARPAC) and Eighth U.S. Army (EUSA) approve nominations of part-time warrant officers (WOs) and enlisted soldiers to be assigned as assistant IGs and commissioned officers to be assigned as acting IGs in subordinate USAR units. TIG establishes the prerequisites for service as an IG.

c. A soldier serving in an IG position may not be removed by the commander or State AG without TIG's concurrence, unless the soldier is removed for cause. TIG will be notified immediately of any removal for cause. TIG may remove any active duty soldier, full-time and part-time USAR soldier, and full-time ARNG commissioned officer from service as an IG.

2-2. IG categories

Persons are assigned as IGs in one of three categories: detailed IGs, assistant IGs, and acting IGs. Persons serving in each category are referred to by the title Inspector General.

a. Detailed IGs are commissioned officers selected for detail as a continuation of their development for future command and staff assignments. They must be qualified for detail under AR 614-100.

(1) Command and State IGs must be detailed IGs. The command or State IG is a personal staff officer of the commander or State AG. The IG works directly for the commander or State AG, but operates with, contributes support to, and obtains support from IGs Army-wide.

(2) Detailed IGs may receive and process requests for assistance, conduct inquiries, investigations and inspections, and administer oaths. They will wear the IG insignia.

(3) Detailed IGs will attend the IG course before performing IG functions. Exceptions require TIG approval. See paragraph

2-9b regarding reserve component soldiers and persons with a previous assignment as an IG.

(4) Detailed IGs will be assigned to MTOE or TDA positions.

b. Assistant IGs are WOs, enlisted soldiers (SSG(P) and above), or civilian employees (GS-6 and above) who perform IG functions on the staff of a command or State IG.

(1) An assistant IG may receive and process requests for assistance, conduct IG inquiries, help conduct IG investigations (see para 2-2b(2) and 8-1b), and perform administrative duties.

(2) Assistant IGs may not administer oaths.

(3) Assistant IGs will attend the IG course before performing IG functions. Exceptions require TIG approval. See paragraph 2-9b regarding reserve component soldiers and persons with a previous assignment as an IG.

(4) Assistant IGs will be assigned to MTOE or TDA positions.

(5) Enlisted soldiers serving as assistant IGs will wear IG insignia. Warrant officers serving as assistant IGs will wear warrant officer insignia (AR 670-1).

(6) Soldiers and civilian employees who serve in administrative and support positions (such as, administrative assistants, secretaries, drivers, computer operators, clerks, typists, and so forth) on the staff of a command or State IG are not assistant IGs.

(7) Commissioned officers, WOs, enlisted soldiers, and civilian employees may be assigned as temporary assistant IGs to augment an IG inspection or investigation team. AR 570-4 provides general guidance on manpower management. Further guidance on assignments and details can be found in AR 614-100 on commissioned officers and WOs, AR 600-200 on enlisted soldiers, and AR 140-10 on Reserve Components. Civilians are managed through the local Civilian Personnel Office. The term of service of a temporary assistant IG is as specified in the appropriate authorizing regulation.

(a) Soldiers assigned as temporary assistant IGs who perform IG functions over 90 days must be approved by TIG or by delegated authority in paragraph 2-1b.

(b) The command or State IG will ensure that persons selected to serve as temporary assistant IGs receive appropriate training before performing IG functions. Temporary assistant IGs who perform IG functions over 90 days will attend the IG functions portion of the IG course. Exceptions require TIG approval. See paragraph 2-9b regarding persons with a previous assignment as an IG.

(c) Temporary assistant IGs may not administer oaths.

(d) Commissioned officers and enlisted soldiers assigned as temporary assistant IGs will wear IG insignia.

(e) Temporary assistant IGs will work under the direct supervision of a detailed IG.

c. Acting IGs are commissioned officers appointed to additional duty by a commander or State AG authorized a detailed IG. Commissioned officers selected for this duty will be approved by TIG. The CINC, FORSCOM, the CINC, USAREUR, and the commanders, USARSO, USARPAC, and EUSA are delegated approval authority for appointment of commissioned officers as acting IGs in subordinate USAR units. The State AG approves appointment of commissioned officers as acting IGs in the ARNG. If no commissioned officer is available, a request for exception may be submitted to TIG. The request must demonstrate the need for an acting IG, must explain why no commissioned officer is available, and must describe the qualifications of the nominee.

(1) An acting IG's only IG duty is to receive and process DA Form 1559-R (Inspector General Action Request (IGAR)) (para 7-12). DA Form 1559-R will be locally reproduced on 8½ by 11-inch paper. A copy for reproduction purposes is located at the back of this regulation. Acting IGs will not conduct investigations, serve on IG inspection teams, or perform duties in the office of a detailed IG. Acting IGs may not administer oaths.

(2) Acting IGs will not wear IG insignia.

(3) Acting IGs will be trained and supervised by a detailed IG.

(4) Commissioned officers in the chain of command or those who routinely assume duties in the chain of command will not be designated acting IGs. For example, a battalion executive officer

base during the semiannual update if they are serving at the time of the update and are approved to serve for longer than 90 days.

2-6. IG oath

a. Persons serving in any position in an IG office (including administrative positions), and persons serving as acting IGs will take the IG oath (figs 2-1, 2-2, and 2-3). The commander or State AG, or an authorized representative, will administer the IG oath.

b. The IG oath, while primarily descriptive of the position of a detailed IG, is nevertheless appropriate for all personnel serving as an acting IG or in an IG office. Everyone serving in an IG office contributes to the effectiveness of the IG system, manages sensitive information, and represents the IG functions to other persons and agencies. The IG oath reminds all IG personnel of the special trust and confidence inherent in their position.

c. Personnel who have sworn to or affirmed the IG oath will be issued DA Form 5097 (Inspector General Oath) (fig 2-1), or DA Form 5097-1 (Inspector General Oath Certificate (Non-IG)) (fig 2-2), or DA Form 5097-2 (Inspector General Oath Certificate (Acting IG)) (fig 2-3), as appropriate. DA Forms 5097, 5097-1, and 5097-2 are available through normal publications supply channels.

2-7. IG duty restrictions

a. Detailed IGs, assistant IGs, and temporary assistant IGs will not—

(1) Be assigned to any non-IG assistance or evaluation functions, such as maintenance assistance and inspection teams, command logistics evaluation and review teams, Reserve Component (RC) evaluation teams, Army Training and Evaluation Program (ARTEP) teams, command or staff inspection teams, or similar teams.

(2) Be appointed as investigating officers under article 32 or article 138, UCMJ, AR 15-6, or other regulation providing for the appointment of investigating officers, members of administrative separation boards, or members of courts-martial.

(3) Be assigned duties that may subsequently disqualify them from making or assisting in impartial inquiries or investigations into any function or activity of the command to which they are assigned. Examples include staff duty officer or noncommissioned officer (NCO), line of duty investigator, casualty assistance officer or NCO, member of interior guard force, member of an awards board, and funeral detail.

b. The restrictions in this paragraph are not intended to exclude IGs from performing management functions normal for offices and staff office chiefs, such as participating in the budget process and contributing to goal setting for the command. Also, IGs may serve on DA centralized promotion boards.

2-8. Retiree mobilization program

TIG is the approving authority for retired commissioned officers (under 60 years of age) nominated for preassignment orders to IG positions. The Army Reserve Personnel Center (ARPERCEN) has overall responsibility for administering the program. ARPERCEN will approve officers to serve as IGs in this program who can be identified as having an Additional Skill Identifier (ASI) of 5N (Inspector General). All other officers will be approved by TIG. Nominations will be forwarded by ARPERCEN per paragraph 2-3c. Individuals or IGs who desire to volunteer for or who wish to identify other individuals for possible participation in the program may contact Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-MOP, 9700 Page Boulevard, St Louis, MO 63132-5260.

Section II Training

2-9. IG course

a. TIG conducts a training course to prepare persons selected as detailed IGs and assistant IGs to perform IG functions. Currently, the IG course is 6 weeks long. The first 2 weeks provide comprehensive instruction on the basic IG functions of assistance,

investigations, and inspections. The last 4 weeks cover Army systems, procedures, and programs, plus application of the IG functions within the United States Army.

b. Completion of the IG course is a prerequisite for detailed IGs and assistant IGs before performing IG functions. Reserve component soldiers do not have to attend all 6 weeks of the course at one time. However, they will attend the first 2 weeks as soon as possible after being appointed an IG. Persons who attended the IG course together with a previous IG assignment may request an exception to attend only the 2-week IG functions part of the course instead of the full 6-week program. The request will be submitted telephonically to the Training Division, USAIGA, commercial (703) 355-2585, or AUTOVON 345-2585.

c. Before 1 July of each year, the Training Division, USAIGA will distribute a schedule of IG courses for the next fiscal year. Requests for quotas for the IG course are approved by HQDA (SAIG-TR). Quota requests will be coordinated as follows:

(1) Requests for course quotas for active duty soldiers and DA civilians will be submitted by IG offices or by PERSCOM to the Commander, U.S. Army Inspector General Agency, ATTN: SAIG-TR, Casey Building, Room 112, Humphreys Engineer Center, Fort Belvoir, VA 22060-5581.

(2) Requests for course quotas for ARNG personnel will be submitted by the State AG (designated representative) to the ARNG Operating Activity Center, ATTN: ARNG-ARO-ME, Building E6814, Edgewood Area, Aberdeen Proving Ground, MD 21010-5401, or to the address in (1) above.

(3) Nominations for course attendance by USAR personnel will be submitted through the appropriate continental United States Army (CONUSA) commander to the CINC, FORSCOM, ATTN: FCJ3-TS, Fort McPherson, GA 30330-6000. FORSCOM will coordinate with SAIG-TR for a specific class quota for course attendance. Nominations for course attendance by mobilization augmentee IGs will be submitted through the appropriate CONUSA, MACOM, or installation commander to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-MSB-IM, St. Louis, MO 63132-5260. Once a nomination is approved, a request for a quota will be submitted by ARPERCEN to the Commander, U.S. Army Inspector General Agency, ATTN: SAIG-TR, Casey Building, Room 112, Humphreys Engineer Center, Fort Belvoir, VA 22060-5581.

d. Funding for attendance at the IG course is provided through a variety of sources. Coordination for and questions pertaining to funding for a specific student should be addressed with SAIG-TR when requesting a quota for the course.

e. Award of the ASI 5N to commissioned officers is authorized upon successful completion of the course. Award of the ASI will be made by the officer's local military personnel office (MILPO) based upon receipt of a course completion letter prepared by the Training Division, USAIGA. There is no IG ASI for warrant officers or noncommissioned officers.

2-10. IG Worldwide Network (IGNET) training

a. IGs will receive IGNET familiarization training in office automation, electronic mail, and data base software during the course.

b. Training in site administration is also provided for select personnel by the Information and Resource Management Division, USAIGA.

c. Following site installation and initial training, each IGNET site will develop a program to train personnel in IGNET applications.

2-11. Nuclear weapons and chemical surety technical inspector qualification training

a. Officers, WOs, and civilian employees assigned to conduct technical inspections will undergo a four phase training program:

- (1) Phase I: IG Course.
- (2) Phase II: TIG's Technical Inspectors Orientation Course.
- (3) Phase III: A technical training course conducted by either the Ordnance Missile and Munitions Center and School, Redstone Arsenal, AL; the Field Artillery Center and School, Fort Sill,

(4) With the approval and approval of the agency commander concerned, any investigative agency may be used in support of an investigation being conducted by another.

(5) All allegations of impropriety made against U.S. Army general officers or Army civilians of equivalent rank, wherever assigned, will be reported to the Department of the Army and referred to TIG for appropriate action. In cases involving criminal offenses, TIG will forward the criminal aspects of the case to the Commanding General, USACIDC, for investigation. Allegations against other U.S. Army personnel who occupy key positions may be referred to TIG on a selective basis.

5. This MOU supersedes the Memorandum of Understanding between the Inspector General, the Commander, USACIDC, and the DCSPER, dated August 1983, and published in AR 20-1, dated 16 September 1986.

6. This MOU will be effective upon signature by all parties and will be disseminated through Inspector General technical channels, USACIDC command channels, and ODCSOPS law enforcement channels.

(Signed Eugene R. Cromartie)

EUGENE R. CROMARTIE
Major General, USA
Commander, CIDC
(10 March 1988)

(Signed H. Norman Schwartzkopf)

H. NORMAN SCHWARTZKOPF
Lieutenant General, GS
Deputy Chief of Staff for
Operations and Plans
(17 March 1988)

EXHIBIT 2
DATE 2-6-95
SB 115, SB 136

(Signed Henry Doctor, Jr.)

HENRY DOCTOR, JR.
Lieutenant General, USA
The Inspector General
(24 March 1988)

Figure 3-1. Memorandum of Understanding—Continued

Chapter 4 The Inspector General Planning and Analysis Function

4-1. General

a. The principal purpose of planning and analysis is to ensure limited IG inspection resources are employed in areas that provide the highest payoff to the commander or State AG and the Army.

b. The planning and analysis function is a continuous systematic process of collecting, reviewing and integrating information from all available sources. Its purpose is to identify possible systemic problems affecting mission accomplishment and attainment of Army goals.

c. The products of these analyses are used to identify and prioritize subjects for IG inspections. This is the initial step in development of the IG inspection program. The analysis process also provides information to answer the commander's questions; to help commanders and staff implement inspection recommendations; to help IGs identify trends in their command; and to teach commanders and staff how to analyze and inspect their areas. Additionally, these analyses aid the IG by providing valuable information to use in resolving IG inquiries.

4-2. Procedures for IG planning and analysis

a. Planning and analysis responsibilities will be identified and assigned to a particular individual or organizational element in each IG organization.

b. IGs will develop the IG inspection program as a component of the overall organizational inspection program in accordance with the commander's or State AG's guidance.

c. A deliberate process will be developed within each IG organization to identify, evaluate, and prioritize potential inspections for inclusion in the IG inspection program. The Planning and Analysis Division, USAIGA, (HQDA(SAIG-PA), WASH DC 20310-1718), is available to provide guidance and assistance for the inspection identification process.

Chapter 5 The Inspector General Inspection Function

5-1. General

a. AR 1-201, prescribes policy and responsibilities for conduct of inspections in Army organizations. IG inspections are an integrated element of a commander's and State AG's organizational inspection program.

b. This chapter provides general policy guidance for IG inspections. It is to be used with TB IG 1, which gives detailed guidance for planning, coordinating and conducting IG inspections.

c. IG technical inspections of nuclear and chemical-capable units are addressed in chapter 6.

d. There are occasions during IG inspections when an IG must protect the confidentiality of persons. For example, confidentiality may be required when a person identifies organizational deficiencies in response to IG questions asked during an inspection. An IG conducting an inspection who receives an allegation or request for assistance must normally protect the confidentiality of the person making the allegation or request. (See para 1-15.)

5-2. IG inspection policy

a. There are three types of IG inspections—special, followup, and general.

(1) The IG special inspections are the preferred type for IGs to conduct. IG special inspections orient on systemic issues to—

- Focus on issues or functions, not units.
- Identify the root cause(s) of problems.
- Pursue systemic issues affecting the command, especially those beyond subordinate commanders' authority to fix.
- Teach systems, processes, and procedures.
- Identify responsibility for corrective action.
- Spread innovative ideas by publicizing them.

(2) The IG followup inspection is an essential component of all IG inspections.

7-2. Definitions

Significant assistance function terms—IG assistance, IGAR, IG inquiry, requester—are defined in the glossary.

7-3. Submitting an IGAR

a. Anyone may submit a complaint, allegation, or request for help to any Army IG concerning matters of DA interest. Soldiers and DA civilians should be afforded the opportunity to present complaints, allegations, or requests for help in person to an IG quarterly, when practicable. Permanent notices, substantially as shown in figures 7-1 and 7-2, will be posted on bulletin boards at DA activities.

b. IGs will encourage soldiers to first discuss complaints, allegations, or requests for help with their commander or chain of command, as provided in AR 600-20. If a soldier does not wish to do so, the IG will accept the IGAR.

7-4. Receiving an IGAR

a. The DA Form 1559-R is the control document for each IGAR. All materials gathered during resolution of the IGAR will be filed with the form. A copy of DA Form 1559-R is located at the back of this regulation and may be reproduced on 8½- by 11-inch paper.

b. An IGAR may be submitted in any form. Completion of a DA Form 1559-R by the requester is the preferred method for submission. The IG receiving the IGAR will fill in the DA Form 1559-R when the IGAR is submitted by any other means.

c. An IG receiving an IGAR is acting for the commander or State AG. In many cases, it is essential for the IG and the commander or State AG to protect confidentiality of the requester. (See para 1-14.)

d. The IG will analyze each IGAR upon receipt to determine the action needed to resolve it.

(1) The IG may refer the requester to the chain of command or an appropriate local staff agency for action. For example, a soldier with a pay complaint who has not been to the local finance office may be referred to that office for resolution of the complaint. Paragraph 7-6 provides guidance for referral of IGARs related to soldier nonsupport of family members, soldier indebtedness, and soldier equal opportunity complaints. The IG will followup this kind of referral to ensure the requester receives the needed assistance.

(2) The IG may conduct an IG inquiry to resolve the IGAR. (See para 7-5.)

(3) In certain cases, the IG may be required to conduct an IG investigation to resolve the IGAR. (See chap 8.)

(4) If appropriate, the IG may refer the IGAR to another IG at any organizational level for action. The referring IG will send the original records of the IGAR to the IG taking the action. All referrals to HQDA will be sent to Assistance Division, USAIGA.

(5) When the IGAR concerns an activity or program of another Service, the IG should refer the IGAR to the local IG of that Service. The IG will provide information copies of the referral to the MACOM and the Assistance Division, USAIGA. If an IGAR cannot be resolved locally through referral to the other Service IG, it will be forwarded to Assistance Division, USAIGA.

(6) The IG will inform the requester of redress available through other means. Paragraphs 7-7 and 7-8 list some specific types of redress available. IGs will limit their assistance in these cases to a review, after completion of action on the request for redress, of whether due process was afforded the requester.

e. The requester may withdraw the IGAR. Withdrawal is a voluntary action. IGs will not suggest withdrawal or require the requester to submit any statement of acknowledgment of withdrawal. When an IGAR is withdrawn, the commander, State

G or detailed IG may decide to continue to process some or all of the IGAR to address deficiencies in Army procedures or systems.

f. IGs must analyze the substance of complaints and requests for assistance from contractors involved in commercial activities, procurement activities, or contracting, to determine if they are

proper for IG inquiry. Coordination with the supporting judge advocate, general counsel, or the Legal Advisor, USAIGA is recommended.

7-5. Conducting an IG Inquiry

a. An IG inquiry is the most common means IGs use to gather information needed to respond to a requester. It is an informal fact finding process that may be as simple as making a single telephone call. If statements are taken, they normally are not recorded or sworn. If reduced to writing, they are normally summarized. An IG inquiry must be timely and thorough. It must provide the basis for responding to the IGAR and for correcting underlying deficiencies in Army procedures and systems. The IGAR file must contain information that supports conclusions reached and the response to the requester.

b. The IG responsible for processing the IGAR determines the best way to conduct the IG inquiry. Telephone calls, visits, interviews, and coordination of actions taken by various agencies are some of the more common IG inquiry actions.

c. An appropriate format for recording the results of an IG inquiry is to list each request or allegation, provide a discussion of the facts and evidence, and state a conclusion. Allegations must be worded carefully. A substantiated allegation should represent a violation of Army policy or standards, or a deficiency in Army procedures or systems. In those instances where an allegation is substantiated, but no violation of Army policy or standards, or no deficiency in procedures or systems has been identified, the IGAR file will reflect that the allegation was substantiated and will explain why no violation occurred.

d. When an IG interviews a person, the IG may record impressions of the person's attitude, sincerity and veracity. The IG will enter these in the IGAR file and will clearly indicate they are impressions.

7-6. Actions on certain types of IGARs

a. *Soldier nonsupport of family members or private indebtedness.* When an IGAR concerns these matters, the IG should first provide assistance to ensure the immediate needs of the family are met. Notice will be sent through command channels to the soldier's commander. AR 608-99 prescribes actions for the commander to take for nonsupport cases; AR 600-15 prescribes commander's action for private indebtedness cases. An IG becoming involved with these matters will determine if the requester has forwarded the complaint through command channels to the soldier's commander. If not, the IG should offer assistance in formulating and properly routing the complaint. If the requester has already initiated appropriate action, the IG should continue assistance only if the responsible commander has not responded satisfactorily. In that case, the matter should be handled in IG channels, but only to the extent necessary to ascertain if the responsible commander fulfilled obligations required by law or regulation. PERSCOM (Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDO-IP, 200 Stovall St., Alexandria, VA 22332-0400) has established an office to assist in these cases. PERSCOM will provide policy interpretations and guidance on unresolved or complex cases.

b. *Soldier equal opportunity complaints.* The Equal Employment Opportunity (EEO) advisor, under provisions of AR 600-20, the IG, or an investigating officer appointed under AR 15-6 may address EEO complaints made by soldiers. Who will address the complaint and how is a command decision (ARNG personnel see para 7-14b). However, when an EEO complaint is forwarded for inquiry or investigation through IG channels, any response must be transmitted using the same channels. When the requester seeks redress for past alleged discriminatory practices that have become part of official Army records, the IG should encourage the requester to seek redress through appeals procedures provided for by law or Army regulations pertaining to the particular adverse action. Examples include OER or EER appeals, courts-martial, and other actions listed in paragraph 7-7.

U.S. Army Finance and Accounting Center
U.S. Army Element, SHAPE
U.S. Army Element, AFCENT
U.S. Army Element, AFNORTH
U.S. Army Element, LANDSOUTHEAST
U.S. Army Element, AFSOUTH
97th Signal Battalion
The Judge Advocate General's School
Community & Family Support Center

Figure 7-3. Acting Inspectors general

Chapter 8 The Inspector General Investigation Function

8-1. General

a. Significant IG investigation function terms—IG investigation, IG inquiry, directing authority, directive—are in the glossary.

b. Only detailed IGs may conduct an investigation. An assistant IG may help. An acting IG may only provide limited administrative support.

c. IGs seeking advice on any aspect of IG investigations or investigative IG inquiries, should contact the Investigations Division, USAIGA. If a legal issue is involved, IGs should contact the USAIGA Legal Advisor.

8-2. Duties of IG investigators

a. IG investigators—

(1) Conduct IG investigations in accordance with procedures in regulation and TB IG 4.

(2) Make or obtain conscious decisions on disposition of all allegations. IGs never discard an allegation solely because it is anonymous, appears frivolous, unimportant, or not relevant to matters under investigation, or is subsequently withdrawn by the complainant.

(3) Obtain evidence sufficient to determine that an allegation is either substantiated or not substantiated. The standard for reaching this conclusion is that the preponderance of evidence, as viewed by a reasonable person, supports it. Preponderance is defined as "superiority of weight." In the rare instance where an allegation can be neither substantiated nor refuted, so state. Word allegations carefully; a substantiated allegation should always represent impropriety.

(4) Include in the report of investigation (ROI) a complete, objective and impartial presentation of all pertinent evidence gathered during the investigation.

(5) Never recommend adverse action against an individual. IGs are fact finders. A ROI presents the facts to the directing authority; it will not contain recommendations for adverse action against an individual.

(6) Report systemic problems discovered during an investigation to the appropriate authority and follow up to ensure corrective action is taken.

b. In all investigative activities, IGs will be sensitive to actual and potential concerns that people have about keeping both the fact and extent of their involvement confidential. (See paras 1-15 and 3-4b.)

8-3. Jurisdiction

IGs may investigate or conduct investigative IG inquiries in—

(1) Noncriminal violations of policy, regulation or law.

(2) Mismanagement, unethical behavior, or misconduct which, if true, may not violate any policy, regulation, or law but is of concern to the directing authority.

b. IGs should not normally investigate or conduct investigative IG inquiries when—

(1) The alleged impropriety, if true, constitutes criminal misconduct. Criminal investigators focus on criminal activity; IGs do not. Exceptions should be rare, and should be preceded by consultation with appropriate legal and USACIDC officials. (See the MOU at fig 3-1.)

(2) Substantiation of allegations is likely to result in adverse action against individuals. (See para 3-3.)

(3) The Army has established means of redress. (See paras 7-7 and 7-8.)

(4) The allegations are against a member of the Judge Advocate Legal Services. Such allegations will be referred through the USAIGA Legal Advisor to The Judge Advocate General (TJAG) for disposition per AR 27-1.

c. When IGs need more information to determine disposition of allegations or issues, they may conduct an IG inquiry or IG investigation to develop the situation. If it becomes apparent that further IG involvement is inappropriate, close or recommend closure of the IG inquiry or IG investigation in favor of a better course of action (that is, investigate per AR 15-6).

d. The SA has authorized TIG to investigate all Army activities. Only the SA, USofA, CSA, VCSA, and TIG may direct conduct of DAIG investigations. Heads of HQDA agencies, commanders, and State AGs may request TIG conduct an investigation, but are not authorized to direct TIG to do so.

e. Commanders whose staffs include a detailed IG may direct IG investigations into activities within their command. Detailed IGs are authorized to investigate within their organizations and activities, as specified by their directing authority.

f. State AGs whose states have detailed IGs may direct IG investigation into Federally-related Army activities within their states. Before directing an IG investigation into a Federally-related Air Force activity, a State AG should coordinate with the NGB IG and Investigations Division, USAIGA.

g. An IG investigation of an allegation concerning a command or its commander normally will be conducted by the next higher command, except that an allegation involving a general officer will be handled per paragraph 8-3i.

h. Allegations against IGs will be forwarded to the next higher command IG for determination of action to be taken. An information copy of the circumstances and results will be provided to the Investigations Division, USAIGA, as soon as practicable.

i. Investigations of allegations against general officers and senior civilian employees of the Army will be conducted as follows:

(1) Only the SA, USofA, CSA, VCSA, and TIG may authorize or direct IG investigations of allegations against general officers, members of the SES, and other civilian employees of comparable grade or position.

(2) Forward all allegations, including criminal allegations, against general officers and senior civilians directly to the Investigations Division, USAIGA, by a rapid but confidential means, within 1 week of receipt. Do not inform intermediate commanders or their headquarters. TIG will determine or recommend disposition of the allegations.

INSPECTOR GENERAL ACTION REQUEST

For use of this form, see AR 20-1; the proponent agency is the OIG

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: Title 10, USC, Section 3039.
PRINCIPAL PURPOSE: To secure sufficient information to make inquiry into the matters presented and to provide a response to the requester(s) and/or take action to correct deficiencies.

ROUTINE USES: Information is used for official purposes within the Department of Defense; to answer complaints or respond to requests for assistance, advice or information; by Members of Congress and other Government agencies when determined by The Inspector General to be in the best interest of the Army; and in certain cases in trial by court martial other military matters as authorized by the Uniform Code of Military Justice.

DISCLOSURE OF THE SOCIAL SECURITY NUMBER AND OTHER PERSONAL INFORMATION IS VOLUNTARY. HOWEVER, FAILURE TO PROVIDE COMPLETE INFORMATION MAY HINDER PROPER IDENTIFICATION OF THE REQUESTER, ACCOMPLISHMENT OF THE REQUESTED ACTION(S) AND RESPONSE TO THE REQUESTER.

LAST NAME - FIRST NAME - MIDDLE INITIAL	GRADE	SSN	DUTY TELEPHONE
---	-------	-----	----------------

COMPLETE PRESENT MILITARY ADDRESS (If no military address, state current civilian address, including Zip Code.)

SPECIFIC ACTION REQUESTED

INFORMATION PERTAINING TO THIS REQUEST (Use additional sheets if necessary; list enclosures if applicable.)

This information is submitted for the basic purpose of requesting assistance, correcting injustices affecting individual, or eliminating conditions considered detrimental to the efficiency or reputation of the Army. I fully understand that I may be held accountable for any statements which are proved to be knowingly untruthful.

SIGNATURE	DATE
-----------	------

the union representative to be present at the interview regardless of the employee's status in the investigation.

(3) The union representative serves only as an advisor to the employee at the interview and may not ask or answer questions for the employee. The union representative's presence is in addition to any right the employee may have to a lawyer.

(4) If the union, having been given the opportunity to be represented, does not send a representative for the employee, the interview may proceed as scheduled.

8-6. Unfavorable Information

During an IG investigation, unfavorable information (see glossary) obtained about an individual may result in an adverse comment in the ROI. If the individual was not informed of the unfavorable information during the IG investigation, the IG will advise the person concerned, orally or in writing, of its substance before the IG investigation is completed. The IG will provide the person an opportunity to comment on the unfavorable information. The comment may be—

- a. Presented orally, in person, sworn or unsworn.
- b. The testimony of reasonably available witnesses the person desires be heard.
- c. Written statements, preferably sworn, made by the person or others who wish to make a statement on that person's behalf.
- d. Any other evidence, documentary or physical, the person wishes to present.

8-7. Reports of investigation

a. *Preparation.* IGs will prepare a separate written report for each IG investigation. Formats are in TB IG 4. Complete the ROI as soon as practicable after completing the investigation.

b. *Processing.*

- (1) The command or State IG will—
 - (a) Review the ROI and forward the report to the supporting judge advocate or command counsel for legal review.
 - (b) Submit the report with recommendations to the directing authority. IGs do not recommend policy or adverse action against individuals.

(2) The directing authority will—

(a) Approve or disapprove the ROI in its entirety, or approve it in part. Approval or disapproval will be indicated on the ROI itself over the signature of the directing authority. Commanders and State AGs may delegate approval and disapproval authority during their temporary absence. General officer commanders may permanently delegate approval and disapproval authority to a general officer deputy commander or a general officer chief of staff.

(b) Take action on the approved portions that are within his or her authority and responsibility. A record of the action taken will be made a part of the original report and all copies. See paragraph 3-3 for restrictions concerning the use of an IG ROI as a basis for adverse action.

(3) A ROI or any portion of it that requires action at levels above that of the directing authority will be forwarded, with recommendations, through IG channels to the next higher commander in the chain of command. Each higher commander will indicate approval or disapproval and take appropriate action on matters within his or her authority. Remaining matters will be forwarded through IG channels, with appropriate recommendations, to the next higher commander.

(4) When the IG investigation has been directed by higher authority, the immediate commander of the IG who conducted it will indicate concurrence or nonconcurrence in the investigation's conclusions. The ROI will be forwarded through IG channels to the directing authority. Each intermediate commander will indicate concurrence or nonconcurrence with the ROI and will forward the report, with appropriate remarks and recommendations, through IG channels to the next higher commander.

8-8. Recording investigations in IGNET

Reports of investigation will be entered into the IGNET data base using the procedures defined in paragraph 7-11 and the IGNET User's Manual (ADSM 18-G04-GAA-CVT-UM).

Chapter 9 Information Management

EXHIBIT 2
DATE 2-6-95
SB 115, SB 136

9-1. General

The Inspector General Worldwide Network (IGNET) is an information management system designed to support data collection, analysis, communication, and administrative requirements of IGs. The IGNET data base uses both manual and automated techniques to record selected data generated as a result of IG activities. This data is processed to produce management information products at each IG office.

9-2. Use of the IGNET

The IGNET supports the effective and efficient execution of the IG mission by providing IGs with—

- a. Common office automation capabilities for accomplishing correspondence and electronic communications tasks.
- b. An automated means to collect, record, and analyze data, and produce information products.

9-3. The capabilities of IGNET

- a. Office automation:
 - (1) Word processor.
 - (2) Spreadsheet.
 - (3) Electronic Mail.
- b. Inspector general data base applications—
 - (1) Inspection.
 - (2) Assistance/investigations.
 - (3) Information gathering system (IGS).
 - (4) Data transfer.
 - (5) Inspector General Personnel System (IGPERS).
- c. Technical Inspection Division Management Information System (TIDMIS).
- d. Training Division Management Information System (TRDMIS).
- e. These systems and subsystems are described in detail, with operating instructions, in the IGNET User Manual (ADSM 18-G04-GAA-CVTUM) or appropriate subsystem manual.

9-4. IGNET operations

All IG offices are required to perform two major IGNET operations.

a. The IG offices will enter all required data from inspection findings, investigations and assistance cases (Inspector General Action Request System (IGARS)) into the IGNET data base. IG offices without IGNET will code and submit that information to a site designated by their MACOM. NGB will designate the site for State IGs.

b. The IG offices will transfer their inspection findings and assistance case (IGARS) to their higher commands each quarter. MACOMs and NGB will consolidate this data. MACOMs, NGB and Army Staff field operating agencies (ARSTAF FOAs) will transfer the consolidated data to Information Resource Management Division, (IRMD), USAIGA, by the 45th calendar day after each fiscal quarter.

9-5. Security

a. The security and protection of sensitive IGNET data is essential. The security of IGNET includes physical security of automatic data processing equipment, data security, and information security.

- b. Physical security is mainly concerned with ensuring that—
 - (1) The equipment is secured in IG offices only.
 - (2) Access to the equipment is limited to IGs.
 - (3) Access to software, hardware, data and information is limited to IGs or personnel supervised by IGs.
 - (4) AR 380-5 provisions are met.
- c. Data and information security are as follows:
 - (1) AR 380-5 is the governing regulation for security.
 - (2) Only IG offices will have access to the IGNET system. Only designated IG personnel within these offices shall be allowed access to IG automated records or data.

(3) IGs who receive allegations against general officers and senior civilians may tell their commanders the general nature of the allegations and the identity of the person(s) against whom the allegations were made. Do not reveal either the source of the allegations or the specific nature of the allegations. (See para 1-15.)

(4) Address questions to the Chief, Investigations Division, USAIGA (HQDA (SAIG-IN), WASH DC 20310-1746), or the Legal Advisor, USAIGA (HQDA (SAIG-ZXL), WASH DC 20310-1714).

j. Forward allegations against PM/PEOs who are general officers or DA civilian employees of the SES or equivalent grade, directly to Investigations Division, USAIGA in accordance with paragraph 8-3i. If allegations are made against the PM/PEO staff, the supporting MACOM or MSC IG will normally conduct the IG inquiry or IG investigation under a directive from the MACOM or MSC commander. The PM/PEO will be told the general nature of the allegation and the identity of the individual against whom the allegation has been made. The results of the IG inquiry or IG investigation will be briefed to the PM/PEO. Final approval authority for the ROI remains with the MACOM or MSC commander. The MACOM or MSC will coordinate with the PM/PEO before final approval.

k. The directing authority may terminate at any time an IG investigation that he or she directed. When this occurs, the IG conducting it will file in the IG office an abbreviated report using the applicable parts of the ROI format per TB IG 4.

8-4. Conduct of IG investigations

a. IG investigations will be limited to the matters approved by the directing authority per TB IG 4. Expanding the scope of an IG investigation requires approval of the directing authority. If the IG discovers matters requiring investigation, which are totally unrelated to an ongoing IG investigation, the IG will report them to the directing authority so an appropriate investigation can be initiated.

b. In most IG investigations, evidence will be developed through documents and interviews of witnesses per TB IG 4. IGs always seek the best available evidence. The best evidence from individuals is sworn and recorded testimony by persons with direct knowledge. Evidence of a lesser quality, such as, memoranda of conversations, handwritten notes, unsworn statements, second-hand information (hearsay), is also acceptable.

c. IGs will use interview guides in TB IG 4 when conducting interviews.

d. Persons who provide testimony in an IG investigation will normally not be allowed to record their testimony by tape or any other means. After the IG investigation and action by the directing authority are completed, individuals may obtain transcribed copies of their own testimony by following the procedures in paragraph 3-5a(2)(b).

e. To protect confidentiality of IG investigations and the rights, privacy and reputations of all people involved in them, IGs, during notifications and interviews, will ask people with whom they are talking not to reveal matters under investigation or to discuss them with anyone, except their own lawyer if they consult one, without permission of the investigating officer(s). Inspectors general will not withhold permission for defense counsel to interview witnesses about matters under investigation.

8-5. Discussion of rights

a. The appropriate rights warning for persons interviewed during an IG investigation varies with their employment status. Consult TB IG 4 for the appropriate interview guide and warning to use.

b. A witness is a person who saw, heard, knows, or has something relevant to the issues being investigated and who is not a subject or suspect. A witness has the right to protection of IG confidentiality (see para 1-15) and protection against restrictions on or reprisal for lawfully communicating with an IG (see para 1-14). (Also see para 8-5e.)

c. A subject is a person against whom a non-criminal allegation has been made. A subject has the right to notice of the allegation

and an opportunity to respond to it. Although subjects do not have the same right to a lawyer that suspects do, they may choose to talk with a lawyer before the interview. While subjects do not have the right to have a lawyer present during interviews, IGs should normally grant such requests. If a subject is accompanied by a lawyer at the interview, the lawyer's role is that of an advisor. The lawyer may not ask or answer questions for the subject, but the subject may confer privately with the lawyer at any time during the interview. (See para 8-5e.)

d. A suspect is a person against whom a criminal allegation has been made. A person may also become a suspect as a result of incriminating information that arises during an investigation or interview. Suspects have the right to be informed of their rights in accordance with DA Form 3881 (Rights Warning Procedure: Waiver Certificate). When a suspect does not waive his or her rights because the suspect wants a lawyer, the IG will not interview the suspect further until the suspect's lawyer is present, or unless the supporting judge advocate, command counsel or USAIGA Legal Advisor determines the interview can continue without the suspect's lawyer. When a suspect does not waive his or her rights because the suspect does not want to be questioned or say anything, the IG will not interview the suspect further unless the supporting judge advocate, command counsel or USAIGA Legal Advisor determines the interview can continue. If the suspect is willing to discuss the matter under investigation and elects to have a lawyer present during questioning, the lawyer's role is that of an advisor. The lawyer may not ask or answer questions for the suspect, but the suspect may confer privately with the lawyer at any time during the questioning.

e. Persons interviewed as witnesses or subjects in an IG investigation also have the right not to incriminate themselves. However, a witness' or subject's claim of self-incrimination as the reason for refusing to answer an IG investigator's questions need not merely be accepted. If there is a possibility of self-incrimination, the IG should not pursue further the particular line of questioning that led to the claim until legal advice on the issue is obtained. Additional questioning, concerning matters for which there is no claim of self-incrimination, may continue if the individual is not a suspect as a result of making the claim.

(1) If, after consulting with a judge advocate or command counsel, the IG determines there is a basis for the claim of self-incrimination, no further effort should be made to obtain information concerning the area of claimed self-incrimination from the witness or subject unless the individual waives his or her right against self-incrimination.

(2) If it can be determined, after consulting with a judge advocate or command counsel, that no basis for the claim exists, the IG may resume the questioning that led to the claim. If the individual still refuses to answer the questions, assistance should be sought from the individual's commander or supervisor in the form of an order to answer the questions. If the individual requests or she should be allowed to discuss the supervisor's order with a lawyer.

(3) DA personnel who are witnesses or subjects may not lawfully refuse to answer questions properly related to an IG investigation unless answering the question will incriminate them or involve certain privileged communications. See Section V, Privileges, Military Rules of Evidence, MCM.

f. Union representation at interviews (see 5 JSC 7114(a)(2)(B)):

(1) All DA civilian employees who are represented by any labor organization which is certified as the exclusive representative of a bargaining unit have a right to union representation at any investigatory examination if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation. In addition, the local union contract may provide for union representation when the employee does not request it. IGs should know the contents of the local union contract or should coordinate with the local CPO management-employee relations specialist.

(2) Although subjects and suspects are the most likely recipients of such requests, witnesses may also make them. IGs should allow

State of Montana

Marc Racicot, Governor



Department of Revenue

Mick Robinson, Director

P.O. Box 202701

Helena, Montana 59620-2701

December 21, 1993

Mike Cooney
Secretary of State
Montana State Capitol
P.O. Box 20281
Helena, Montana 59620-2801

Dear Secretary Cooney:

Enclosed please find Mr. Robinson's response to the questionnaire sent out by John Vincent, Chairperson of the Ethics Advisory Council.

Sincerely,

A handwritten signature in cursive script that reads "Linda Goan".

Linda Goan
Administrative Assistant

/lg
Encl.

DEPARTMENT OF REVENUE

MICK ROBINSON, DIRECTOR

- A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

DOR does not have an agency policy or separate ethics code in place. We have relied on the provisions found in 2-2-101, MCA.

- B. If so, can you provide a copy of the policy and any related information available on the policy?

N/A

- C. Do you have any recommendations if, or what, you think the state should adopt to improve its ethics laws?

I think it would be beneficial if a state policy were created and published in the Montana Operations Manual, Volume III (the State Personnel Policy Manual). In addition, published guidelines similar to those already published for such issues as Political Activity, Reasonable Accommodation and Disciplinary Action would be useful in providing practical guidance for the day-to-day administration of an Ethics Policy.

- D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

If there were restrictions placed upon state employees accepting employment following service in government, any limitations should be clearly tied to those situations where an adverse impact would result upon the employee accepting other employment. The duration of any such limitation would be difficult to set and may need to be dependent upon the particular situation. A range of time that provided some flexibility and use of judgement and discretion may be beneficial in dealing with diverse situations.

- E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

If the state adopted a clearly written policy along with the published, practicable guidelines, then ethics violations could be handled much like other



EXHIBIT 2

DATE 2-6-95

SB 115, SB 136

OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59620
(406) 444-3095

Nancy Keenan
Superintendent

To: John Vincent, Chairperson, Ethics Advisory Council

Department- Office of Public Instruction

Name and Title- Ken Toole, Personnel Officer

A. Do you have any agency ethics code for your employees other than the statutory provisions found in 2-2-101, MCA?

No

B. If so, can you provide a copy of the policy and any related information available on the policy?

N/A

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

Codification of conduct should be limited to addressing situations which result in unfair enrichment or harm done to others in the course of state employment such as conflicts of interest.

A comprehensive code of conduct should be addressed through personnel policies adopted by the Department of Administration. This code should cover employer expectations of behavior such as courtesy, honesty, etc etc.

Regarding a code of conduct for elected officials, we refer you to ethical guidelines currently under consideration by the Public Service Commission (attached). These guidelines appear to be quite comprehensive.

D. If there were restrictions placed on state employees following service in government, (revolving door prohibitions) then what limitation should be established and how long should they be?

Our understanding is that there is currently a 6 month prohibition. That amount of time is adequate. We do have a concern that onerous restrictions in this area could effect our ability to recruit.

E. Would you prefer to have personnel matters involving ethics

personnel policy violations internally. However, for those ethics violations that involve the acceptance of employment outside of state government, an independent outside agency would be the better choice. Once an employee terminates their employment, the employee/employer relationship changes and I would question the agency's authority in taking actions against a terminated employee in such cases.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

This written response provides sufficient input to the panel.

DEPARTMENT: Department of Natural Resources and Conservation

YOUR NAME and TITLE: Mark A. Simonich, Director

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

No.

B. If so, can you provide a copy of the policy and any related information available on the policy?

Not Applicable.

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

This agency has not experienced problems with violations of the ethics code as it currently exists. Although improvements in the ethics code may be desirable to address potential ethics problems, we must be aware that a more restrictive ethics code, in the absence of documented problems, could have a negative effect on those individuals who are willing to commit themselves to public service. For example, severe restrictions or stringent limitations on a public employee's ability to move from the public sector to the private sector may significantly impact a person's willingness to accept public employment in the first instance. Changes to the ethics code should be responsive to real problems in Montana rather than isolated incidents or the problems experienced in large bureaucratic forums, such as the federal government.

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

In accord with the response in C. above, this agency would recommend the following amendment to Mont. Code Ann. § 2-2-201(1) (1993):

"(1) Members A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its

violations handled by an independent outside agency or your agency?

This would depend on the potential consequences. If the consequences are criminal or if civil penalties are an option, it should be handled by an outside agency. If the consequences are to be some form of disciplinary action to be taken by the agency, we would want to conduct our own investigation.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

No

DEPARTMENT: Social & Rehabilitation Services

YOUR NAME and TITLE: Russell E. Cater, Chief Legal Counsel

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

SRS has adopted 2-2-101, MCA, as part of its personnel manual. In addition, SRS has a policy regarding "outside" employment.

B. If so, can you provide a copy of the policy and any related information available on the policy?

PERS 2.13 attached.

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

More details on potential conflicts would be helpful.

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

Limitations should be reduced to six months or completely eliminated. The current law should ~~more~~ clearly exempt contracts awarded by the request for proposal process as well as the competitive bid process.

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

Independent evaluations should be an option available to state agencies. SRS has hired investigators from the Attorney General's office. That has worked well. Don't create another bureaucracy.

F. Would you be interested in presenting you position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

No.

Again thank you for your time and assistance in this survey.

Please return by November 24th to:

Secretary of State, Attn. Garth Jacobson, State Capitol, Helena, Montana 59620

subdivisions involving matters with which the former employee was directly personally and substantially involved during employment, unless the appropriate government agency consents after consultation."

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

This agency has not formed a preference as to which agency should handle personnel matters involving ethics violations. However, like all state personnel related matters, this agency believes each employee of this agency should be treated in a consistent non-discriminatory manner as compared to an employee in any other state agency. This should be an acknowledged goal regardless of the enforcing agency.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

The position described above is straightforward and clear. If explanation is needed, I would expect it could be presented in less than 10 minutes.

Department of Social and Rehabilitation Services	SECTION:	GENERAL ADMINISTRATION
	SUBJECT:	Other Employment
PERSONNEL POLICIES AND PROCEDURES		

PURPOSE: It is the purpose of this policy to outline the requirements for an employee to obtain approval to hold outside employment.

POLICY: An employee desiring to hold a job outside SRS must obtain approval from the County Director or the Division Administrator as appropriate.

REQUESTING APPROVAL: The requirements for the request for approval are:

1. The employee must submit the request in writing to the County Director or Division Administrator as appropriate.
2. The request must state:
 - a. The name, type and location of the outside employment;
 - b. The days to be worked (weekdays or weekends); and
 - c. The schedule of hours to be worked.

GRANTING APPROVAL: The County Director or Division Administrator will consider the following guidelines in responding to the request for approval:

1. Does the outside employment conflict with the time the employee should spend at his/her regular duties?
2. Does the outside employment impair the efficiency of the employee for his regular duties?
3. Do the interests of the outside employment and the employment of the individual conflict?
4. Are the public relations of the agency impaired by the employee engaged in the performance of outside duties?

SECTION:

GENERAL ADMINISTRATION

SUBJECT:

Other Employment

The employee should be notified of the decision; if approval is granted, a copy of the request and approval should be forwarded to Personnel Services for inclusion in the employee's personnel file.

OPERATING OWN
BUSINESS:

If approval for outside employment is granted to an employee who is operating his own business, the employee is not permitted to use state property such as telephones, photocopy machines, supplies, or use of state time to conduct outside employment. Use of state property to conduct outside employment may be cause for discipline.

043:2.13

DEPARTMENT: Office of the Commissioner of Higher Education

YOUR NAME and TITLE: Sue Hill Director, Labor Relations and Personnel

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

No

B. If so, can you provide a copy of the policy and any related information available on the policy?

N/A

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

We have relied on 2-2-105 M.C.A. on several occasions to rule on questions concerning potential conflicts of interest and have found it adequate.

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

The six month limitation found in 2-2-105 M.C.A, seems sufficient and has served our needs adequately.

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

We would prefer to handle personnel matters involving ethics violations internally. The Board of Regents has a good appeal mechanism for employees.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

No

Again thank you for your time and assistance in this survey.

Please return by November 24th to:

Secretary of State, Attn. Garth Jacobson, State Capitol, Helena, Montana 59620

DEPARTMENT: Montana Department of State Lands

YOUR NAME and TITLE: Bud Clinch, Commissioner

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

Ethics paper from the Legal Staff

B. If so, can you provide a copy of the policy and any related information available on the policy?

Attached.

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

No

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

Six months time frame

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

Department of State Lands to handle.

F. Would you be interested in presenting you position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

No, not unless requested to do so.

Again thank you for your time and assistance in this survey.

Please return by November 24th to:

Secretary of State, Attn. Garth Jacobson, State Capitol, Helena, Montana 59620

ETHICS REVIEW
RECLAMATION DIVISION ALL-STAFF MEETING
February 26, 1993
Jorgenson's, Helena, Montana

Ethics - Of or relating to moral action, conduct, motive of character; ... Professionally right or befitting; conforming to professional standards of conduct.

All employees of the Reclamation Division are subject to the ethical standards found in Title 2, Chapter 2 of the Montana Code Annotated.

§2-2-105, MCA, provides guidelines for conduct. Guidelines advise the employee of possible violations of ethical conduct, but do not provide a sanction. There are three guidelines:

- 1) Don't acquire any business interest which may conflict with the mission of your agency.
- 2) After termination of employment with the agency, don't work on projects you worked on while employed with the agency.
- 3) Do not do anything in your employment with the agency which could be interpreted as giving yourself a business benefit.

FIDUCIARY - A person holding the character of a trustee in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. A person having duty, created by another's undertaking, to act primarily for another's benefit in that undertaking.

The reclamation division is a fiduciary for the public trust. Our agency is obligated to administer and enforce the reclamation laws in Title 82, Chapter 4 of the Montana Code Annotated. Each employee is equally obligated to act as a fiduciary for the public trust in their position. This means acting, according to legal standards, regardless of the impact of your actions to yourself, or others.

§2-2-121, MCA states instances in which an employee has breached his or her fiduciary duty:

- 1) Don't use state equipment or time for your personal projects.
- 2) Don't have any business dealing with persons you inspect or supervise.
- 3) Don't take money or any other compensation to assist applicants, licensees, operators, or contractors. (This means

alcohol, hunting privileges, free tickets to cultural events, cash, gifts, etc.)

- 4) Don't look for job involving people or companies you inspect without informing your supervisor **IN WRITING** that you are doing so.

§2-2-125, MCA, also provides instances in which an employee is deemed to have breached his or her fiduciary duty. They are remarkably similar to the previous statutory prohibitions:

- 1) Don't have any business dealings with persons you supervise or inspect.
- 2) Do not act as counsel, consultant, representative, or agent for any applicant, licensee, operator, or contractor.

SMCRA FINANCIAL STATEMENTS

SMCRA prohibits any employee working in the coal program from possessing a direct or indirect financial interest in any underground or surface coal mining operation. Coal mining operation is defined as: "the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite or lignite or of reclaiming the areas upon which such activities occur."

We are all familiar with the financial disclosure statements which must be filed by coal program employees before February 1st of each year. The focus is generally upon any financial interest in the mining of the coal; such as owing the stock of coal producer, or having a mineral interest in the coal. I want to point out that the prohibition also includes having any financial interest in the reclamation of a coal mine as well. These interests held by the employee are not limited to the state of Montana.

SUMMARY

If you have any question about the ethical nature of your actions, consult your supervisor. If there are any questions at all, the supervisor should contact the legal staff for an legal opinion on the activity.

The ethics statutes are only one method to ensure that the credibility and integrity of the Department is preserved to serve the public trust. The best way to preserve that credibility and integrity is for each employee to consider whether his or her actions are consistent with the agency's legal obligations; and are free from any connotation of self-dealing.

DEPARTMENT: Commissioner of Political Practices

YOUR NAME and TITLE: Ed Argenbright, Commissioner

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA? No

B. If so, can you provide a copy of the policy and any related information available on the policy?

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws? Be sure in your deliberations to consider the differences between the branches of government.

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

If the legislature passed restrictions they would act as a powerful disincentive for recruiting qualified people, especially from the private sector, so the limitations should be minimal as to type and length of application.

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

This depends on the violation or potential - Generally it's best to handle issues as close to the source as possible - Certainly proactive training and involvement should be at the agency level. Enforcement is the question and this should be by an independent, politically neutral agency.

F. Would you be interested in presenting you position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

I'd prefer not to present, but rather learn from the panel's recommendations.

Again thank you for your time and assistance in this survey.

Please return by November 24th to:
Secretary of State, Attn. Garth Jacobson, State Capitol, Helena, Montana 59620

DEPARTMENT: COMMERCE

YOUR NAME and TITLE: BARBARA CHARLTON - INST SERVICES
444-4304

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

DOC DOES NOT HAVE AN AGENCY CODE OF ETHICS OR POLICY FOR ALL CIVIL EMPLOYEES OTHER THAN THE STATUTORY PROVISIONS FOUND IN 2-2-101 MCA. THE BOARD OF INVESTMENTS HAS A CODE OF ETHICS + STANDARD OF CONDUCT MEMORANDUM. (SEE ATTACHED MEMO)

B. If so, can you provide a copy of the policy and any related information available on the policy? SEE ATTACHED

BOARD OF INVESTMENTS - CODE OF ETHICS + STANDARD OF CONDUCT

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws? SOME CODE OF ETHICS ISSUES THAT HAVE BEEN RAISED

IN THE DEPT OF COMMERCE: PRIVATE BUSINESSES PAYING FOR EMPLOYEE PARTIES (E.G.) CHRISTMAS PARTIES, HOW TO HANDLE EMPLOYEES WHO "MOONLIGHT" ON THEIR OWN TIME DOING SIMILAR WORK AS WHAT THE EMPLOYEE DOES ON THEIR STATE JOB (I.E.) TRAINING SESSIONS OR CONSULTING WORK.

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

NO COMMENTS, THERE ARE A LOT OF ISSUES TO CONSIDER BEFORE THE STATE PLACES THESE KIND OF RESTRICTIONS ON FORMER EMPLOYERS.

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

WE BELIEVE THAT PERSONNEL MATTERS ARE BETTER HANDLED BY EACH DEPARTMENT RATHER THAN AN INDEPENDENT OUTSIDE AGENCY. IT WOULD BE NICE TO HAVE (1) ONE CONTACT PERSON OR OFFICE OUTSIDE THE DEPT TO CALL TO DISCUSS INTERNAL ETHICS VIOLATIONS.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

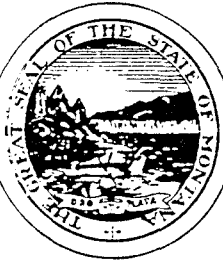
NOT INTERESTED IN MAKING A PRESENTATION.

Again thank you for your time and assistance in this survey.

Please return by November 24th to:

Secretary of State, Attn. Garth Jacobson, State Capitol, Helena, Montana 59620

BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE



STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 442-1970

TELEFAX (406) 449-6579

HELENA, MONTANA 59620

MEMORANDUM

TO: BOI Employees
FROM: Dave Lewis *Dave Lewis*
DATE: April 30, 1991
RE: Code of Ethics

The attached code was revised by the Board at its April meeting. It is intended to give us some guidance in dealing with the sensitive situations which invariably arise as a result of our employment.

Please review this and let me know if you have any questions.

CODE OF ETHICS

Personal Benefit

No person employed by the Board of Investments may profit either directly or indirectly from proprietary information. In particular, employees may not take positions in securities held by the Board or currently on the Board's approved buy list without the prior approval of the Chief Investment Officer or his assistant. There shall be no transactions allowed in which an employee has proprietary information which gives him an unfair advantage over members of the general public.

Accepting Gifts and Favors

Gifts include substantial favors, money, credit, special discounts on goods or services, free services, loans of goods or money, trips, hotel expenses, or excessive entertainment. Except in situations described below neither you nor members of your household are allowed to accept these gifts. There are some situations when it would be appropriate however:

- (a) Gifts of small dollar value given at Christmas or for special occasions when gift giving is customary;
- (b) Unsolicited nominally valued advertising materials such as a pen or calendar;
- (c) Awards given by charitable, educational, civic, or religious organizations for meritorious contributions or services; or,
- (d) Travel expenses paid by firms in which we have invested or are considering investment, if the purpose is to further inform staff about the operations of such firms.

If you are offered a gift that is not included in the list above, by someone with whom you have a business relationship at the Board, you should politely return it. Any questions concerning the propriety of accepting a particular gift should be directed to your supervisor.

Lending Relationships

Lending officers are not permitted to extend credit to themselves, relatives, or companies in which the lending officer has an interest. Such interest may be either direct or indirect or rest in a family member. Linked deposits are covered under this regulation as well as loans, mortgages, or any other financial transaction of the Board. Any financial transaction of the Board affecting a Board member, employee of the Board, or family member of an employee or Board member must be disclosed to and approved by the Board prior to such transaction taking place.

Participation in Public Affairs

Employees may volunteer for civic, political, and public affairs activities. However, employees must participate in such activities on their own time. Such participation requires annual leave or comp time be taken if performed during regular work hours. Care must be taken to ensure that no conflict of interest occurs with Board activities.

BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE

EXHIBIT 2
DATE 2-6-95
SB 115 SB 136



STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 442-1970

TELEFAX (406) 449-6579

HELENA, MONTANA 59620

MEMORANDUM

TO: Board of Investments

FROM: Dave Lewis

A handwritten signature in cursive script that reads "Dave Lewis".

DATE: April 24, 1991

RE: Standards of Conduct

State law contains several statutes which apply to our operations. The pertinent language is shown below:

2-2-104 R.C.M. Rules of conduct for all public officers, legislators, and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty. A public officer, legislator, or employee may not:

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans

2-2-121 R.C.M. Rules of conduct for state officers and state employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A state officer or state employee may not:

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

The Code of Ethics which the Board adopted in 1988 is enclosed for your review. We attempted to address this area but I believe that we did not clearly deal with all the potential issues. We have an informal policy that any purchase of an employees mortgage would go to the Board, but obviously that does not go far enough.

I recommend to the Board that the Code of Ethics and our administrative rules be amended to require that any financial transaction of the Board affecting an employee or Board member, or the family of an employee or Board member, must be referred to the Board for final action. This will allow the Board to review that transaction and test it for compliance with the statutes referenced above. This will eliminate any inadvertent violation or appearance of violation of those statutes. The spirit of this rule is that there should be every effort made to protect the Board from any appearance of favoritism or improper action. No rule can be drafted so perfectly as to eliminate every loop hole, however, the intent can certainly be made plain to all affected parties and we must rely on the good faith effort of those parties to comply with the spirit of the rule.

SECRETARY OF STATE

Dec 23 1 17 PM '93

RECEIVED
SECRETARY OF STATE

DEPARTMENT: Department of Administration _____

YOUR NAME and TITLE: Lois Menzies, Director _____

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

No.

B. If so, can you provide a copy of the policy and any related information available on the policy?

N/A

C. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

Section 2-2-105, MCA might be improved by clarifying the language. For example, how many months following termination should an officer or employee refrain from obtaining "employment in which he will take direct advantage, unavailable to others, or matters with which he was directly involved during his term or employment?" Perhaps the six month prohibition in 2-2-201, MCA should apply in 2-2-105, MCA.

Overall, the code could be clarified by indicating clear sanctions and providing better definitions of the following terms:

a) "public trust"

b) "further substantially hinders personal economic interests",

c) "substantial financial interests."

There does not appear to be an enforcement mechanism for violations of 2-2-105, MCA. (See response to E)

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

The restrictions outlined in section 2-2-201, MCA satisfactorily address this question.

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

It is appropriate for ethics violations to be handled by the agency. They should be resolved at the lowest possible level without the time and expense of involving a board or commission. An agency has the discretion of involving the county attorney for those violations under 2-2-103, MCA.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

No.

Again thank you for your time and assistance in this survey.

Please return by September 28th to:

Secretary of State, Attn. Garth Jacobson, State Capitol, Helena, Montana 59620

...the county attorney, and the board of supervisors.

10. If not, can you provide a copy of the policy and any related information available on the policy?

11. Do you have any recommendations if or what you think the state should adopt to improve its ethics laws?

Section 2-2-105, MCA might be improved by clarifying the language. For example, for how many months following termination should an officer or employee refrain from obtaining "employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term of employment?" Perhaps the six month prohibition in 2-2-201, MCA should apply in 2-2-105, MCA.

Overall, the code could be clarified by indicating clear sanctions and providing better definitions of the following terms:

- a) "public trust"
- b) "further substantially his personal economic interests",
- c) "substantial financial interests."

There does not appear to be an enforcement mechanism for violations of 2-2-105, MCA. (see response to E)

B. If there were restrictions placed upon state employees accepting employment following service in government. (revolving door prohibitions) then what limitations should be established and how long should they apply?

The restrictions outlined in section 2-2-201, MCA satisfactorily address this question.

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

It is appropriate for ethics violations to be handled by the agency. They should be resolved at the lowest possible level without the time and expense of involving a board or commission. An agency has the discretion of involving the county attorney for those violations under 2-2-103, MCA.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?



MARC RACICOT
GOVERNOR

MONTANA
DEPARTMENT OF AGRICULTURE

OFFICE OF THE DIRECTOR
AGRICULTURE/LIVESTOCK BLDG.
PO BOX 200201
HELENA, MONTANA 59620-0201

LEO A. GIACOMETTO
DIRECTOR
(406) 444-3144

FAX (406) 444-5409

EXHIBIT 2
DATE 2-6-95
SB 115 SB 136

November 30, 1993

Mr. John Vincent
Chairperson
Ethics Advisory Council
P.O. Box 202801
Helena, MT 59620-2801

Dear John:

Thank you for involving the Department of Agriculture in your survey; however, at this time I am not sure we would have a lot to offer.

Enclosed is a copy of our completed survey.

Thank you again for your interest in the Department's opinion.
Have a wonderful day.

Sincerely,

A handwritten signature in black ink, appearing to read "Leo A. Giacometto".

Leo A. Giacometto
Director

MONTANA DEPARTMENT OF AGRICULTURE

LEO A. GIACOMETTO, DIRECTOR

A. Do you have an agency ethics code or policy for your employees other than the statutory provisions found in 2-2-101, MCA?

Answer. No

B. If so, can you provide a copy of the policy and any related information available on the policy?

Answer. N.A.

C. Do you have any recommendations if or what you think the state should adopt to improve in ethics laws?

Answer. At a minimum, the existing statutes should be reviewed in light of any Attorney General Opinions, or court cases which may have been decided on one or more of these sections. In particular we would direct your attention to a section this department has had occasion to interpret, namely Section 2-2-131 M.C.A. The Montana Attorney General has interpreted that section to apply in certain limited circumstances (37 ATTY.GEN.OP.NO.104(1978)). Your council should consider clarification.

D. If there were restrictions placed upon state employees accepting employment following service in government, (revolving door prohibitions) then what limitation should be established and how long should they apply?

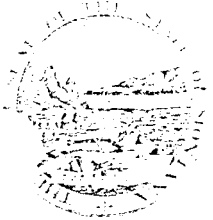
Answer. It seems to us that the focus of this type of restriction should be on the prevention of conflict where the exiting employee may become involved in the private sector on a project which was pending before the public agency and in which he was involved at the time of his employment. Absent that type of conflict, time periods may not be important unless you are concerned with the appearance of conflict as well as conflict in fact.

E. Would you prefer to have personnel matters involving ethics violations handled by an independent outside agency or your agency?

Answer. Our agency.

F. Would you be interested in presenting your position before the ethics panel at a meeting in December? If so how long would you need for your presentation?

Answer. I am not sure we would have a lot to offer.



PUBLIC SERVICE COMMISSION

1701 Prospect Avenue • PO Box 202601
Helena, Montana 59620-2601
Telephone: (406) 444-6167
FAX #: (406) 444-7618

Bob Rowe, Commissioner
District 5

November 30, 1993

Hon. Mike Cooney
Secretary of State
Montana State Capitol
Helena, MT 59620-2801

Re: Ethics Questionnaire

Dear Secretary of State Cooney and
Members of the Advisory Council:

Thank you very much for the opportunity to participate in your important work. I am responding on my own behalf, and not for the Commission as a whole. In addition to addressing your specific questions, I am enclosing several documents which may be of interest, including The Public Service Commission's draft ethics guidelines.

The Commission is accepting comments on its ethics guidelines through December 17. I would very much welcome any thoughts you may have.

In response to your specific questions:

A. Agency Ethics Code.

The Public Service Commission has tentatively adopted ethical guidelines, the product of a months long internal process. The guidelines are based generally on the Model Code of Judicial Conduct, which has not been adopted in Montana. The guidelines do not address every item I had argued should be included. They do however represent a solid compromise between parties with sincere ethical viewpoints. I am very proud of what my fellow commissioners and staff members accomplished.

B. Copies.

Attached are the draft guidelines, a summary prepared by me, and several draft sections which were not included in the draft approved by the Commission, but which may be helpful in your work.

C. Recommendations for Improved State Ethics Laws.

1. Gifts. The PSC's statutes include a specific prohibition on accepting gifts from railroads (Section 69-1-112, MCA), dating back to the days of the Railroad Commission. Other gifts are governed by the more general language of Section 45-7-104. A uniform standard should apply to interactions with all regulated entities.

The term "trivial benefit" in Section 45-7-104(5)(b) is vague. I had supported a one to three dollar limit for the Commission's guidelines, enough to allow a cup of coffee at someone's office, but less than a meal. My personal feeling is that any time I can pay I should pay (no free meals, coffee, etc. in restaurants). I'm not comfortable with the various banquets elected officials are invited to attend, and generally either avoid them or pay something toward the meal. I recognize that Public Service Commissioners should perhaps be held to a different standard than other elected officials or legislators.

2. Campaign Contributions. Montana law and all ethical codes distinguish campaign contributions from gifts. Montana law does not directly specify that campaign contributions may not be used for non-campaign personal expenses. Some states have more precise statutes specifying the uses to which campaign fund balances may be put (e.g., contributing to other candidates, charitable donations).

I drafted language (based again on the Model Judicial Code) concerning campaign contributions in sensitive situations, and concerning campaign conduct. The Commission recognized it lacked authority over non-Commissioner candidates, and focused on conduct in office.

3. Substantive Conduct in Office. I drafted language attempting to address the obligation to "work hard, be accountable and do right." This may be a fuzzy concept, but speaks to legitimate public concerns not directly addressed in most ethics codes. As a public employee, I think it's ethically important to have a clear sense of mission. I also think it's ethically important to risk unpopularity where a situation demands it (the Atticus Fitch rule of ethics). Because these matters are somewhat extraneous to the general conception of ethics, the Commission did not include them.

4. Elected Officials and Employees. Public employees should be held to a high standard. Elected public servants should be held to an even higher standard. The Commission struggled with the extent to which the same guidelines should apply to both. The Commission also attempted to address the extent to which its ex parte prohibition should apply to advisory staff.

5. Implementation and Enforcement. I drafted a lengthy implementation section. The Commission elected to remain focused on the specific guidelines, but agreed that the ethical "process" was vital. Far more important than sanctions is the effort to institutionalize an ethical conversation within state government. From this perspective the process of developing a set of ethical guidelines was as important as the guidelines themselves.

D. Revolving Door.

At the Commissioner level, this has not been a problem at the Montana Public Service Commission. Several staff members have gone on to work in regulated industries over the past fifteen or so years, but have not had any special influence with the Commission of which I am aware.

In general, there seem to be three "revolving door" concerns:

1. Allowing one's decisions in public office or employment to be influenced by prospective employment after leaving office. This should be disapproved.

2. Using specific information gained in office for personal enrichment after leaving office. Rule 1.11 of the attorneys' Rules of Professional Conduct prohibits representing "a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation." A similar provision could apply to all state employees.

3. Using one's general influence or "connections" acquired in office after leaving office. Prohibitions on appearing before the specific agency for periods of from six months to two years are intended to address this concern. The principle is important, but someone who is highly respected when they leave office may be just as well-regarded after three years. Ideally, any post-governmental service employment should be based on the merits, and not on access.

Balanced against these concerns is the ex-public employee's need to make a living doing what she or he knows how to do. That should be based on their skills and abilities, not on their well-connectedness. Part of the answer may be to emphasize to current public employees that everyone deserves equal access, and that decisions should be based upon the merits.

E. Need for an Independent Agency to Handle Ethics Violations.

Both in-house and independent processes are important. An ethical culture needs to be indigenous, and must be cultivated by the organization itself. It should be grounded in a clear agency mission or purpose. We are attempting to do this at the Public Service Commission.

An outside agency might serve three purposes:

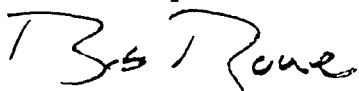
1. Provide support for the agency's own process, for example providing seminars through the Department of Administration Professional Development Center.
2. Provide non-adversarial ethical advisory opinions.
3. Conduct investigations and issue opinions as needed. Where serious ethical questions arise, all parties may have an interest in obtaining independent review.

The Attorney General now fulfills part of the "independent review" role through the advisory opinion and informal opinion process. State government would benefit from identifying the agency which will be responsible, and clarifying that ethical issues which are presented to it will be responded to promptly.

The question focuses too narrowly on "ethics violations." Most people want to conduct themselves ethically. Most ethical issues don't involve clear violations, so much as uncertainty about what conduct is appropriate. We would probably all find unacceptable much conduct which was consistent with the norms of earlier years. The goal ought to be "zero defect ethics" achieved by creating an ethical climate, articulating its standards, and then increasing those standards.

Thank you very much for your commitment to this project. I wish to be of assistance in any way possible.

Sincerely,



Bob Rowe

encl.

ETHICAL GUIDELINES

These guidelines demonstrate ethical requirements for public service commissioners, and when applicable, the commission staff. The guidelines incorporate requirements of Montana law.

GUIDELINE ONE

Commissioners should uphold the integrity and independence of the Commission.

The Commission has adjudicative, policy-making, representational and administrative responsibilities. Commissioners should observe high standards of conduct in order to preserve the integrity and independence of the Commission and adhere to the Montana Constitution and statutes.

GUIDELINE TWO

Commissioners should avoid impropriety and the appearance of impropriety.

Commissioners should conduct themselves in accordance with the law in a manner that promotes public confidence in the integrity of the Commission.

Commissioners should not allow personal relationships to influence their official conduct or judgment.

Commissioners should avoid the appearance of impropriety.

Commissioners should not convey and not allow others to convey that the Commission can be improperly influenced.

Commissioners and staff should refrain from biased public comment about pending contested cases.

GUIDELINE THREE

Commissioners and staff should perform their duties impartially and diligently.

Commissioners and staff should maintain order and decorum in Commission proceedings. Commissioners and staff should be patient, dignified and courteous to parties, witnesses, attorneys and others with whom they deal, and should expect similar conduct of participants in Commission proceedings. Commissioners and staff should encourage public involvement in its activities and afford all legally interested parties full legal rights before the Commission.

Commissioners and staff should act expeditiously and diligently on Commission business.

GUIDELINE FOUR

Commissioners should minimize the risk of conflict of interest.

Commissioners may participate in activities which do not create a conflict of interest for the Commission. Commissioners should refrain from financial, business, or professional dealings which reflect adversely on their impartiality, interfere with proper performance of their duties, or exploit their positions. Commissioners should not acquire or maintain an interest in any business or undertaking which may be affected to its economic benefit by official action of the Commission.

GUIDELINE FOUR (continued)

Commission staff members should not acquire or maintain an interest in any business or undertaking if they advise the Commission on decisions which affect such business or undertaking.

Commissioners and staff should not accept gifts or loans from regulated enterprises, employees of regulated enterprises, or parties in proceedings before the Commission.

The term "gift" does not include:

- 1) refreshment consumed while attending a meeting or other gathering scheduled in the normal course of Commission business;
- 2) the limited use of shared transportation where separate transportation would be impractical, such as a site visit to an industrial location;
- 3) reimbursement by regulated entities for Commission travel expenses for Commission business (e.g., audits, inspections and attendance at regulatory meetings) made directly to the Commission's Centralized Services Division;
- 4) campaign contributions reported as required by state law.

Commissioners may receive reasonable compensation and reimbursement of expenses from entities not subject to Commission jurisdiction or not expected to become parties before the Commission, if doing so does not give the appearance of impropriety or create a conflict of interest.

GUIDELINE FIVE

Ex parte contact is not permissible.

The prohibition on ex parte communication in contested cases or other proceedings where facts or law are adjudicated is a statutory requirement. Ex parte communications means communications to a Commissioner on an issue in a contested case by a party or person in the contested case proceeding. Commissioners must comply with Montana law on ex parte communications and must not participate in ex parte communications on an issue in a contested case at any time after the case is filed with the Commission.

Commissioners and parties should neither initiate nor respond to ex parte communications of a policy or substantive nature on an issue in a contested case proceeding. Commissioners should not solicit ex parte communications through staff and staff should not convey ex parte communications to Commissioners. Any communications with other disinterested persons or non-parties should be disclosed if (a) the person becomes a witness, or (b) the opinion is expressly relied upon by the Commissioner or staff.

A Commissioner receiving an ex parte communication subject to these guidelines should disclose it to all parties and give parties an opportunity to respond. As a result of improper ex parte communications, the Commission may 1) adversely rule on specific issues subject of the ex parte contact, 2) strike evidence or pleadings tainted by the ex parte communication, or 3) make a public statement of censure when the ex parte communication is determined to be part of a continuing pattern of conduct.

PUBLIC SERVICE COMMISSION ADOPTS
ETHICS GUIDELINES

"Public servants who appear to reasonable persons to do wrong actually do wrong by eroding the trust between citizens and representatives on which our government depends. Therefore, there is an ethical obligation to protect the appearance of propriety."

Jamison Institute on Ethics

After months of work, the Montana Public Service Commission has initially adopted a set of Ethical Guidelines. Those guidelines are now available for public comment, through December 17. Personally, I am eager to hear from western Montanans:

*What kind of conduct do you expect from me?

*Are there ethical issues unique to the Public Service Commission, which might not be faced by legislators or other public servants?

My goal will be to hold myself to the highest workable standard identified.

My interest in ethical guidelines for the PSC started over a year ago, before I was elected. Public mistrust of anyone running for office was too real to dismiss as misplaced cynicism. I wanted the public to know that even when the Commission was required to take unpopular actions, those actions were based on applying the law to the facts of the case, as scrupulously as possible. Approving rate increases is never popular, for example.

I began by taking the toughest ethical standards I knew, the Code of Judicial Ethics, and rewriting them to apply to the PSC. The Commission decides complex cases, like judges. It also makes policy, like the legislature. It also helps individuals with

utility problems, and attempts to involve the public in its decision-making. The Commission also administers a small agency staff.

After joining the Commission last January, a working group began meeting every month or so. We fired memos back and forth. We met to debate, sometimes loudly.

We asked questions: Are ethics public or private? Are they a list of "don'ts" and "gotchas," or are there positive responsibilities as well? Do tougher standards apply to commissioners than to staff? Do standards for deciding when it's proper to use Commission funds to attend a meeting belong in ethics guidelines, or in the policy manual we are also developing? Can guidelines say anything about campaign practices? Most importantly, if we become too "judicial," does that limit our ability to be responsive to the people we represent?

Several alternatives were presented to the full Commission at a public meeting. The commissioners finally narrowed the list down to five statements we all agreed are important. Each one is explained in more detail in the guidelines:

One: Commissioners should uphold the integrity and independence of the Commission.

Two: Commissioners should avoid impropriety and the appearance of impropriety. We should not allow ourselves to be improperly influenced.

Three: Commissioners and staff should perform their duties impartially and diligently.

Four: Commissioners should minimize risk of conflict of Interest. We should refrain from business or financial dealings which would affect our impartiality or take advantage of our positions, such as owning stock in regulated companies. We should not accept gifts or loans from regulated companies, or from others who are parties in cases in front of us.

Five: Ex parte contact is not permissible. "Ex parte" contact is communication from a party in a contested case. This guideline strengthens the existing requirement in Montana administrative law, and in the PSC's current rules.

Most of us, commissioners and staff alike, agreed debating ethics over the months caused us to rethink all sorts of actions, and gave us a clearer sense of how we wanted to do our jobs. Most of us also agreed "guidelines" were a necessary step, but that ethics must be built into our daily work.

I will close with one more quote, from social scientist James Q. Wilson. Duty, he writes, is a moral sense which leads individuals to "honor obligations in the absence of social rewards for doing so." I was almost surprised to find out how strong is the day-by-day sense of responsibility I experience as a public servant. It's a powerful feeling. Ethical guidelines won't create a sense of duty where one doesn't exist. They do help us understand what duty to the public means.

If you want a copy of the draft guidelines, or if you want to tell me what conduct you expect of me, please write or call. Montana Public Service Commission, 1701 Prospect Ave., Helena MT 59620. My phone number is 444-6167.

Previous discussion draft

or concerns about Commission proceedings; 2) Commissioners and staff may obtain the advice of disinterested persons or experts on issues before the Commission. These contacts should be disclosed to the parties if (a) the person becomes a witness, or (b) the opinion is expressly relied upon by the Commissioner or staff.

G. Although this Guideline does not apply to non-adjudicatory proceedings such as rulemaking or notices of inquiry, Commissioners and staff should strive to ensure that all proceedings are conducted consistently with the principles of fundamental fairness and openness.

H. Should a Commissioner or staff member receive an ex parte communication subject to these Guidelines, he or she should place a summary of the contact in the record, disclose it to all parties, and give parties an opportunity to respond. Parties may request an opportunity to cross-examine the person who made the communication.

I. The Commission reserves the right to impose additional sanctions for ex parte communications including: 1) Making an adverse ruling on specific issues which were the subject of the ex parte contact. 2) Striking evidence or pleadings which is tainted by the ex parte communication. 3) A public statement of censure when the ex parte communication is determined to be part of a continuing pattern of conduct.

GUIDELINE EIGHT *

Commissioner-Staff Relations

A. Commissioners and staff members should treat one another as professionals, and with respect.

B. Commissioners should not take advantage of their authority for personal reasons. Commissioners and staff should not allow personal relations to influence or interfere with their work as professionals.

C. Consistent with applicable law ..., staff are free to engage in political activity. However, Commissioners should not initiate requests for staff involvement in political activity.

D. This guideline applies to both non-exempt and exempt staff.

GUIDELINE NINE *

A. Commissioners and staff are caretakers of the public trust, including the prudent expenditure of public funds.

B. Commissioners and staff should generally be performing public business during office hours. Commissioners should strive to be reasonably available at other times as well.

C. Travel at public expense, including out-of-state travel, should occur when it benefits the Commission in the fulfillment of its responsibilities, benefits regulation, or benefits ratepayers generally. Travelling Commissioners and staff should be diligent in attending to official business, and upon their return should ensure that the Commission benefits from their experience. Travelling Commissioners and staff may engage in leisure activities which do not conflict with official business, but must do so at their own expense.

GUIDELINE TEN

Implementation and Compliance.

~~(These guidelines are intended both as rules to be followed, and as encouragement to ethical thinking in all situations.)~~

~~A. Ethical thought and action involves a process, as much as following specific rules. More than one outcome may be ethically acceptable. Essential elements of ethical thinking and conduct are individual reflection, dialogue, organizational consideration, public disclosure and re-examination of ethical issues.~~

~~B. The Commission and staff should periodically meet to discuss ethics and ethical issues.~~

~~C. A. The Commission and staff should incorporate consideration of ethical issues into their ongoing work and deliberations.~~

~~D. B. Commissioners and staff should discuss ethical concerns with colleagues, supervisors, or with Commission counsel. In especially sensitive situations, it may be appropriate to obtain an independent opinion.~~

~~E. C. Matters raising ethical concerns under these guidelines (i.e. receipt of certain items and ex parte contacts) should be disclosed. The Centralized Services Division will maintain a file of disclosure forms, which will be available for public inspection. A breach of these guidelines should be disclosed in a short memo to the Chairman. The memo should describe any corrective action taken. The memo will be circulated and kept in a disclosure file by the Commission Secretary.~~

~~F. The existing personnel procedure concerning corrective actions may be used in serious situations.~~

~~G. D.~~ The Commission may by vote express its disapproval of the ethical conduct of individual members, or may resort to other measures provided by law.

~~H. E.~~ These guidelines will be provided to all employees, new employees, Commissioners, and Commission candidates. ~~I.~~ These guidelines will be provided to all regulated enterprises of significant size (~~?~~), and to all frequent parties before the Commission. They will be expected to ~~adhere to~~ consider these guidelines in their relations with the Commission.

~~(F and G are especially problematic. F may conflict with Martin's advice that many such decisions are legally the individual Commissioner's alone.)~~

SB 115
SB 136

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
General conflict of interest prohibitions in decisions making actions	Section 7 prohibits voting or participation when person has direct foreseeable pecuniary interests in matter. Excludes matters in which person is a member of a class of people. Leg. creates its own rules.	2-2-112 provides guidelines for leg to not participate when matter directly affects personal or financial interest. Other officials prohibited from participating in matters if they have financial interest in matter. 23-7-203 prohibits members of the legislative liaison to state lottery from owing gambling devices.	Strict prohibition from participating in any matter that legislator or family to fourth degree in has financial interest in. Legislature creates ethics committees to deal with conflict of interest matters. Section 3.
Use of office title for personal gain. Section	Section 8 (6) Prohibits the use of title or prestige of office to obtain anything of value.	Legislators may not use office to obtain employment or contract. 2-2-111(2)	No change from existing law.
Prohibition from state employee from receiving two salaries at the same time for being a legislator and state employment	Does not address this issue. No change from existing law.	No specific provision. Handled by the agencies individually as a personnel matter. State law required all employers permit employees to attend leg	Prohibits double dipping of public employee serving in the leg. Does not address federal employees. Section 1.
Use of confidential information for personal gain	Generally prohibited in matters such as fraud or collusion in public contract or receipt of gifts. Section 8 and 9	Prohibits use of confidential info for person gain 2-2-103(1)(a)	No change from existing law.
Personal interest in public in Contracts	Extensive prohibition found in Section 9, exceptions made for competitive bid or auction bidding	Similar provisions found in 2-2-201 et seq.	No change from existing law.
Nepotism	Very similar to existing law. Section 4.	Prohibition against hiring or promoting the family members to the 4 consanguinity. Some exclusions. Section 2-2-301 et seq	No change from existing law.
Prohibitions against gifts from lobbyists, and others	Prohibits gifts or meals over \$25 if part of influencing a vote (generally prohibit lobbyist from making gifts over 25 per occasion). Can not receive "anything of value" that can be construed as influencing an official act. Section 8	Prohibits substantial gifts that would tend to improperly influence a reasonable person. 2-2-104	No change from existing law.

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
Outside employment restrictions	Limitations on public contracts. Section 9. Prohibits limits involvement in matters of representing others before state agencies. Section 6. Limits regulating one's own business. Section 7.	Similar to SB 115. Contracts 2-2-201, Prohibitions on representation 2-2-121(2)(c)(d), limits regulating one's own business 2-2-121(2)(b)	Adds legislators to these restrictions regarding representing others. Section 4.
Misuse of office for personal or political purposes	Prohibits use of office for personal or political activities unless incidental to function of office. Certain exception may permit limited non-governmental activities. Permits legislative exceptions established in joint rule. Section 5.	May not use state office for private business purposes. 2-2-121. Public employees may not campaign while on the job. 13-35-226.	Prohibits use of office for political purposes unless it is incidental to the office. Excludes legislators, Section 4. This section adds to existing law.
Limitation of post-employment activities	Creates limitations in dealing with former agency or gov. depending on the level of employment. Post-employment restrictions generally last 1 year. Legislators prohibited from lobbying for one year after the expiration of their term of office. Section 11	Officer or employee should not get involved with matter he was directly involved with during employment. 2-2-105(3)	Same as existing law but specifies 12 month period to not having any involvement
Reporting of financial interests	Requires extensive reporting requirements for state public officials, high level employees, public member boards, consultants to contacts, and candidates. Sections 13 - 15 Gifts with an aggregate value over \$500 would have to be reported. Would not report meals etc received from lobbyists.	Requires reporting of limited business information by state public officials and their families 5-7-213. Permits voluntary conflict of interest disclosures 2-2-131. Lobbyist principle required to report certain expenditures of public officials 5-7-208.	No change from existing law.

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
Restrictions against representing others before gov. agencies	Prohibits representing anyone before other state agencies by public officials and high level public employees. Other employees may not represent another before their own agency. Legislators would be restricted from representing others before state agencies during session. Legislators could do constituent representation. Section 6	Prohibits state employees and officers from representing others for a fee before their own or a contingent fee other state agencies. 121(1)(c)(d)	Adds legislators to this restriction. Section 4.
Education of regarding matters of ethical conduct.	Provides for establishing an education program for state officers and employees. Section 33.	No provision for education	No change from existing law.
Ethics advisory opinions.	Provides for ethics advisory opinions by ethics commission. Provides for confidentiality for informal opinions. Section 26	No advisory opinions available because section 2-2-132 found unconstitutional.	No change from existing law.
Enforcement provisions.	Provides for the Commissioner of Campaign Practices to investigate and prosecute ethics violation complaints. The Ethics Commission would adjudicate the cases and issue orders. Criminal matters referred to county attorney or attorney general. Sections 36-44	Enforcement preformed by county attorney using trust law 72-34-105 as the basis for initiating an action. Section 2-2-103. Criminal matters handled by county attorney or attorney general.	Leaves existing law as is but adds criminal violation for violations of 2-2-121. Provides civil penalties but does not specify if that is tied to county attorney prosecution or agency action.
Sanctions for violations.	Penalties include civil fines up to \$2,000 per offence and recommendations for disciplinary action by agency or appropriate authority. Also permits loss of pension and other employment benefits upon conviction of office related felony. Section 44, 47 No change in criminal violations.	Violation of 72-34-105 would probable provide that the benefit of the gain would have to be returned or the contract would be voided. Criminal statutes would result in fine or imprisonment.	Civil penalty between \$50 to \$1,000. Criminal penalty between \$50 to \$1,000, 6 mo jail time. Section 4. Adds penalties for local government ethics violations.

Activity or action	SB 115	Current Law 2-2-101 et seq	SB 136
Protection against malicious prosecution.	Provides for fine for malicious complaints and potential payment of other party attorney fees. Section 3	Common law tort malicious prosecution.	Attorney fees available from losing party for legislative conflict of interest violations. Section 3 statute not clear if this suggest that citizen suits possible. Otherwise common law malicious prosecution tort possible.
Treatment of local governments	Leaves existing law the same	Local gov. officers and employees generally prohibited from having a financial interest in a matter they inspect supervise or perform an official act affecting their financial interest. 2-2-125	Adds local government officials and employees to treatment similar to state employees and officers.
Confidentiality of investigations	Investigations would be confidential until concluded. Section 30.	No provision	No provision
Negotiation for future employment while serving in office or employment.	Section 10 prohibits altering actions in order to obtain future employment	Requires notification of supervisor to negotiate with potential employee that person regulates. Section 2-2-121(f)	No change from existing law
Right to call investigation on one's conduct	Section 39 permits an individual the right to have an investigation on one's own conduct.	No provision	No provision