

**SYNOPSIS OF THE CASE**

**2020 MT 37: DA-19-0169, MARTHA SHEEHY, Petitioner and Appellee, v. the COMMISSIONER OF POLITICAL PRACTICES, Respondent and Appellant.**<sup>1</sup>

The Montana Supreme Court has held that the Montana Code of Ethics applies to members of the Board of Regents of the Montana University System. However, questions asked by a Regent in a public meeting were not a violation of the Ethics Code. Finally, the Court ruled that the Commissioner of Political Practices does not have authority to enforce the Ethics Code against members of a state administrative board, like the Board of Regents.

In March 2018, the Commissioner of Political Practices (“Commissioner”) received a complaint alleging that members of the Board of Regents, including Regent Sheehy, violated the Ethics Code by soliciting support of the 6-Mill Levy ballot issue while using public resources during the Board’s meeting in May 2017. During a presentation to the Board of Regents on the 6-Mill Levy, Regent Sheehy asked two questions of the presenter concerning how Regents could support passage of the 6-Mill Levy, and how much work there was left to do.

In April 2018, the Commissioner issued a Summary Decision concluding Regent Sheehy’s questions amounted to an ethical violation by soliciting support for a ballot issue while using public time, facilities, and equipment. The Commissioner concluded that Regents are public employees subject to its Ethics Code enforcement authority.

The Yellowstone County District Court overruled the Commissioner’s Summary Decision, holding that the Ethics Code does not apply to Regents, the Commissioner lacked enforcement authority over Regents, and that, regardless, Regent Sheehy’s statements did not violate the Ethics Code.

The Supreme Court affirmed the lower court’s conclusion that Regent Sheehy did not violate the Ethics Code and that the Commissioner lacks enforcement authority over Regents. However, the Supreme Court held that Regents are public employees subject to the Ethics Code. The Ethics Code’s plain language provides that Regents are public employees subject to the Code. The Commissioner’s enforcement authority is limited to state officers, legislators, and state employees, not public employees, including local government or contract personnel or members of a board with rulemaking authority, such as the Board of Regents.

Justice Laurie McKinnon agrees the Code of Ethics applies to the Board of Regents and that the Commissioner does not have enforcement authority of Regents. Justice McKinnon concluded, however, that Regent are public *officers*, and not employees, because the Board is a constitutionally created entity with constitutional autonomy over the Montana University System.

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<sup>1</sup> The Court prepared this synopsis for the reader’s convenience. It constitutes no part of the Opinion of the Court and may not be cited as precedent.