

ATTORNEY GENERAL
STATE OF MONTANA

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Honorable Members of the
Law & Justice Interim Committee
Sen. Jim Shockley, Chair
Sen. Terry Murphy
Sen. Lynda Moss
Sen. Greg Hinkle
Sen. Steve Gallus
Sen. Shannon Augare
Rep. Ken Peterson
Rep. Michael More
Rep. Mike Menahan
Rep. Margaret MacDonald
Rep. Steve Lavin
Rep. Ellie Hill

Dear Honorable Committee Members:

Please accept this letter as the Department's response to a March 29, 2012 letter inviting the Department of Justice ("DOJ") to present testimony to the Law & Justice Interim Committee ("LJIC") concerning allegations that have appeared in the news media regarding law enforcement in Lake County. After careful review of a January 4, 2012 Legal Memorandum written by Mr. Niss, staff attorney, as well as the March 29th invitation, we have determined that it would be inappropriate for the Department to provide testimony on matters that would require the Department to comment upon criminal investigations.

As outlined in the invitation, at its meeting on April 20th, the LJIC will undertake an inquiry into "allegations that have appeared in the print media that public officers or employees from Lake County were involved in poaching animals and perhaps other offenses as well." While the letter acknowledges that the LJIC has "no authority to adjudicate any of the facts involved in the allegations or actions" related to Lake County, the LJIC is interested in whether the allegations indicate a need for statutory changes.

As more specifically outlined in the March 29th Legal Memorandum, the LJIC will review:

- the statute of limitations applicable to certain criminal offenses that may have been committed in Lake County;
- the investigative and disciplinary functions and jurisdiction of the Peace Officer Standards and Training Council concerning any of the alleged or potential offenses in Lake County or elsewhere;
- the investigation and prosecution of alleged fish and game or other criminal violations;
- investigation by agents of one law enforcement agency of another law enforcement agency; and
- the supervisory authority of the Attorney General in Lake County or elsewhere.

While the LJIC may monitor the operation of executive branch agencies and determine whether statutory changes are needed to improve operations, efficiency and oversight, the review the LJIC proposes crosses over into oversight of active criminal investigations. Such oversight is not authorized by the statutes governing the LJIC and potentially raises separation of powers questions. Adequately addressing the issues identified by LJIC could put DOJ in the position of compromising current investigations or disclosing confidential criminal justice information. In light of these issues, we have determined a written response is appropriate and we will try to address the areas of inquiry outlined above.

Since the spring of 2010, DOJ has received approximately 10 referrals stemming from complaints about the Lake County Sheriff's Office. The complaints have ranged from allegations of poaching to violation of state election laws. The timing of the complaints coincided with a contentious race for sheriff in Lake County. All of the candidates in that election were employed in the Lake County Sheriff's Office and the unsuccessful candidates continue to work in the Office.

Each of the referrals received by DOJ has been reviewed and when appropriate investigations have been initiated and referrals for prosecution have been made. It is also important to note that many of the allegations reported in the Flathead Beacon and the Missoula Independent, which are the source of the LJIC's review, have been considered by other authorities including the Commission on Political Practice and federal authorities. The allegations also form the basis of a civil lawsuit filed in Federal District Court by Terry Leonard, Steven Kendley (Independent candidate for sheriff in 2010), Michael Gehl, Ben Woods and Levi Read against Alan Jay Doyle (successful Republican candidate for sheriff in 2010 election), Michael Sargeant, Dan Duryee and Dan Yonkin (Democratic candidate for sheriff in 2010). All named plaintiffs and defendants are current or former employees of the Lake County Sheriff's Office.

I will now address the areas identified by the LJIC for consideration of potential legislative changes.

Statute of limitations and investigation and prosecution of fish and game or other criminal allegations.

Pursuant to Montana law, unless otherwise designated, the statute of limitations for a felony offense is five years and for a misdemeanor is one year. See Mont. Code Ann. 45-1-205(2). The legislature has extended the misdemeanor statute of limitations in cases involving fish and game violations or violations involving outfitters to three years. See Mont. Code Ann. 45-1-205(5) &(6). DOJ considers these statutes of limitations to be appropriate and has no changes to recommend to the LJIC in this area.

The investigation and prosecution of the complaints DOJ has received concerning Lake County have not revealed a gap in our criminal laws or investigatory authority and DOJ has no changes to recommend to the LJIC in this area.

Investigative and disciplinary functions and jurisdiction of POST.

The POST Council is administratively attached to DOJ and is governed by a board of 13 members appointed by the Governor. As an administratively attached agency, POST operates independently and without approval or control of DOJ. See Mont. Code Ann. 2-15-121 (1)(a). DOJ agrees that review of POST and how it is structured and funded in comparison to other states may be a helpful exercise. DOJ would recommend review of such questions more broadly and absent the specifics of a particular case, which raises concerns with privacy and disclosure of confidential criminal justice information.

Investigation of one law enforcement agency by another.

Montana is a small, rural state in which conflicts of interest are inevitable. Based on current practice, when a conflict is identified law enforcement makes a referral for investigation to the Division of Criminal Investigation or in some instances to a neighboring agency. While this practice requires exercise of some judgment at the local level, DOJ believes that in most instances it is dealt with properly.

The March 29th invitation to DOJ questions the actions of this Office to “investigate or review those [Lake County] allegations, and to ultimately dispose of those allegations by turning them over to the Lake County Attorney instead of an independent prosecutor.” In fact, when indicated, Prosecution Services Bureau has reviewed investigations involving Lake County to determine whether charges should be filed.

Additionally, a broader review of recent cases investigated and prosecuted by this Office indicates that when a law enforcement officer engages in criminal conduct they are held accountable and that conflicts are dealt with in an appropriate fashion. (Ravalli County Deputy convicted of felony Theft for stealing ammunition from the Sheriff's department; Glendive


police officer convicted of felony Theft for stealing from police association; Sweet Grass County Deputy convicted of DUI; Glacier County Sheriff's Department Undersheriff convicted of Official Misconduct; and Lewis & Clark Deputy convicted of Privacy in Communications.) DOJ has no changes to recommend to the LJIC in this area.

Supervisory authority of the Attorney General

Pursuant to Mont. Code Ann. 2-15-501, the Attorney General has supervisory authority over county attorneys "in all matters pertaining to the duties of their office." Recognizing that county attorneys are also independently elected officials, this Office has historically exercised this authority with restraint and with respect for the independence of the office of County Attorney. Nothing in the matters being reviewed by the Committee indicates a failure to exercise this power appropriately and DOJ has no changes to recommend to the LJIC in this area.

In conclusion, we believe this inquiry goes beyond LJIC's authority to monitor the operations of an executive branch agency and crosses into oversight of active criminal investigations. We are not aware of any other instance of the LJIC engaging in this type of inquiry and in order to protect the integrity of our investigations we believe written response is the best way to provide the LJIC with the information it seeks.

Sincerely,


ALI BOVINGTON
Deputy Attorney General

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