



REPUBLICAN GALLAGHER CHALLENGES INCUMBENT DEMOCRAT TOOLE

PSC: High Stakes in Obscure Race

By Dan Testa, 9-01-10

Ask the average voter what role Montana's public service commission plays in their lives and they may be hard-pressed to give you an answer. But this five-person, quasi-judicial body of elected officials charged with regulating Montana utilities and private water companies has a hand in nearly everything from gas bills to phone service.

And in 2010, the race for PSC District 5 – which encompasses Kalispell, Polson, Helena and the Rocky Mountain front – will be the second-biggest partisan race on the ballot in the Flathead, after the U.S. House.

It's also already shaping up as one of the hardest-fought battles this year, as incumbent Democrat Ken Toole is questioning his opponent, Republican Bill Gallagher's interest in a small Helena water utility. Toole is clear that he is not alleging Gallagher is doing anything illegal, but likened his challenger's campaign for a seat on the PSC regulating the industry in which he does business to "letting a fox in the hen house."



Caption: Left: Ken Toole; Right: Bill Gallagher

"His orientation is much more for protecting utilities and making sure that utilities are getting what they want out of the system," Toole said.

Gallagher, meanwhile, dismisses Toole's assertions as "innuendo and insinuation," and said his experience managing a utility would aid him in regulating them.

"I am disappointed in his inability or unwillingness to understand basic business structure," Gallagher, a Helena attorney who specializes in land use, real estate and utilities, said. "Who better to understand a corporate or business structure than a guy who does that for a living?"

At issue is Gallagher's role as manager of AquaFlo, a water and sewer company that serves 142 customers in the north Helena Valley. AquaFlo is owned by Aqua Sierra, a limited liability company incorporated in Nevada, where there is no income tax. Aqua Sierra acquired AquaFlo in 2007, a purchase approved by the PSC, including Toole.

Gallagher is a partial owner of both companies, and has received payments from AquaFlo for legal and management work. His wife, Jennifer, has also received payments from AquaFlo for accounting services. Toole compared this arrangement to a "shell game" where AquaFlo can avoid paying Montana income tax because profits go toward fee payments and a Nevada entity.

At an April 8 hearing where AquaFlo sought to switch from a flat rate to net metering water bill for its customers (from which Toole recused himself), Gallagher declined to name the other owners of Aqua Sierra when questioned by District 4 Commissioner Gail Gutsche.

Toole has since called on Gallagher to reveal his investment partners, which Gallagher says he is under no obligation to do.

"They're not running for public office and they've not waived their right to privacy," Gallagher said. "I'm going to stand on protecting the Constitution and their right to privacy."

Though AquaFlo is not yet profitable, Gallagher said the company is set up so it will pay income taxes when it turns a profit, and added that he is proud of the improved service its customers have received over the last two years. He questions why Toole is calling attention to a legal business arrangement he voted in favor of on the PSC.

"The innuendo is that there is some kind of a deficiency going on and there absolutely is not," Gallagher said. "I'm far better qualified than he is to spot something like that."

Gallagher added that he would recuse himself from any decisions before the PSC related to companies he does business with or former legal clients. But Toole believes Gallagher's ownership in, and management of, utility businesses make him less likely to take the side of the consumer when faced with decisions regarding utilities and corporate structures.

"You just can't be in this business and regulate it," Toole said. "This kind of moving around money and sheltering it within a number of different corporations is not a good thing."

He also asserts that Gallagher, should he retain his interest in AquaFlo, would need to recuse himself from any crafting of statewide rules on water utilities or decisions that establish precedents for such utilities, which Toole said would take him out of a significant amount of PSC business.

Toole is seeking a second four-year term on the PSC following a narrow victory over Republican Mike Taylor in 2006, winning by 181 votes in a race where 80,000 votes were cast. A former Helena state senator and founder of the Montana Human Rights Network, Toole stands a good chance of becoming chairman of the PSC should he win reelection; he is currently vice chairman. He touts his vote on the PSC against allowing an Australian investment bank to acquire NorthWestern Energy (noting the bank no longer exists), his support for renewable energy and advocacy for consumers.

Gallagher defeated former Secretary of State Brad Johnson in a close GOP primary where Johnson pleaded guilty to drunken driving shortly before the election and suspended his campaign. A 1983 graduate of UM Western in Dillon, Gallagher taught high school in Plains and sold insurance in Polson during the 1980s and 1990s, moving to Helena in 1996. He graduated in 2005 from UM's law school and runs a private practice in Helena. A political newcomer, Gallagher describes himself as a conservative and has been endorsed by the Montana Chamber of Commerce.

Gallagher seeks to make the PSC District 5 race about a pushback against Democratic control of state governing bodies like the Land Board and PSC, where Democrats hold a 4-1 majority. He calls Toole a "career politician" in the sway of environmentalists, who supports conservation and efficiency mandates that could end up raising rates for consumers.

Toole is unrepentant that improving efficiency is economical and obtainable.

"Energy efficiency is the cheapest thing to do to meet our power needs," Toole said. "I've been a long-term advocate of it."

Gallagher also blasts Toole's work to craft a rule mandating that top executives at public utilities disclose their compensation as an invasion of privacy.

"That's a Constitutional overstep that has nothing to do with the rates or regulation of utilities," Gallagher said. "He thinks people are paid too much and he wants to make a public example out of them."

Toole fires back that consumers of non-profit utilities, with monopolies, should be able to know what the top executives are being paid, and how much of their bill may go toward salaries.

“These are public utilities; they have all kinds of obligations that your normal business doesn’t have,” Toole said. “There is a public interest in knowing their values and how they manage their business.”

As a member-owned cooperative, Flathead Electric, like other co-ops, is not subject to the authority of the PSC, though other local utilities like CenturyLink and NorthWestern Energy are. Despite Flathead Electric’s exemption, Gallagher said measures pushed by environmental groups have come close to passing in recent legislative sessions that would have imposed mandates on cooperatives, allowing the PSC new authority over these utilities.

“I don’t support the PSC regulating them and I don’t support outsiders – environmental groups – regulating them,” Gallagher said.

But Toole replied no push exists on the part of the PSC to impose authority on co-ops, and that he took steps in the 2009 session to exclude Flathead Electric from a bill aimed at NorthWestern Energy and Montana-Dakota Utilities.

“This whole idea that I want to regulate co-ops is just nutty,” Toole said.

The other PSC seat up for grabs this year is District 1, where Republican Travis Kavulla faces off against Democrat Don Ryan for the position currently held by Commissioner Greg Jergeson, D-Chinook, who is currently term-limited.

The GOP hopes to win back a majority on the PSC, where Commissioner Brad Molnar is the Republican currently holding the highest office in state government. In an election year shaping up to be tough on Democrats nationally, it falls on Toole and Gallagher to clearly differentiate themselves to voters for a job that deals with complex issues, and affects Montanans’ lives in ways that often don’t square neatly with the simplistic language of partisan politics. **[End of article]**

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