

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

DENNIS UNSWORTH
COMMISSIONER
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October 18, 2006

 **COPY**

Jim Farrell
Montana Democratic Party
PO Box 802
Helena, MT 59624

Subject: Your complaint against Mike Taylor; October 12, 2006

This letter is in response to your complaint alleging Mike Taylor violated Montana campaign finance and practices laws by misrepresenting his legislative voting record in violation of § 13-37-131, MCA (claiming he voted against energy deregulation).

I am unable to accept the complaint, as it appears neither statute applies in instances where a candidate misrepresents his or her own record. A 1995 decision speaks directly to this issue:

“[i]t does not appear that an allegation that a candidate misrepresented his own voting records can establish a violation of the statute... [t]he choice of language by the Legislature suggests an intention to prohibit the misrepresentation of a candidate by a person other than the candidate. Had the Legislature intended to also specifically prohibit a candidate from misrepresenting his own voting record, it could easily have included express language to that effect in statute. Its failure to do so supports a conclusion that the statute does not apply to this situation.” [Commissioner Ed Argenbright, *Bishop v Towe*; January 12, 1995]

You also allege that Taylor failed to provide the necessary disclosure regarding contrasting votes required in § 13-35-225, MCA. This section specifically pertains to printed election materials containing information about "another candidate's" voting record. It is not a violation for a candidate to fail to include specific information about his or her own voting record.

No investigation of a complaint is required if the complaint does not contain sufficient allegations to enable a determination that it states a potential violation of a particular statute or rule. (44.10.307(3)(a), Administrative Rules of Montana) I am dismissing your complaint since it does not allege a potential violation of campaign practices law.

A handwritten signature in black ink, appearing to read "Dennis Unsworth".

Dennis Unsworth
Commissioner of Political Practices



RECEIVED
COMMISSIONER OF
POLITICAL PRACTICES

HAND DELIVERED

OCT 12 9 50 AM '06

October 11, 2006

Commissioner of Political Practices
1205 8th Ave
P.O. Box 202401
Helena, MT 59620-2401
406-444-2942 (Tel.) 406-444-1643 (Fax)

Dear Dennis Unsworth, Commissioner:

We are writing to formally lodge a complaint against Mike Taylor, Republican candidate for Public Service Commission District # 5. Attached is a post card Taylor is sending throughout the district in which he claims he voted against deregulation. The problem is that this statement misrepresents Taylor's record as a state Senator.

In reality, Taylor co-sponsored Senate Bill 390 in 1997—the bill that deregulated electricity in Montana. He voted for it on Second Reading following floor debate. Then, he changed his vote on third reading. As you know, third reading votes occur after the die is cast and often everyone knows whether or not the bill is going to pass.

On natural gas deregulation, Senate Bill 396, in 1997, Taylor voted for the bill every time it was before him. His campaign materials do not distinguish between electric and natural gas deregulation.

During the primary election, Taylor ran a series of radio ads claiming that he voted against deregulation. The Democratic candidate, Ken Toole, wrote to Taylor and asked him to quit misrepresenting his record on this issue. Taylor continued running the ads.

Montana Code, in 13-37-131, Misrepresenting of Voting Record—Political Libel, provides that it is unlawful to, "misrepresent a candidate's public voting record." While Taylor did vote against the electric deregulation bill, he also voted for it and voted for the deregulation of natural gas. He also opposed efforts to stop deregulation. His attempt to portray himself as an opponent of deregulation by citing the vote in exception to his general pattern of votes supporting deregulation is extremely misleading.

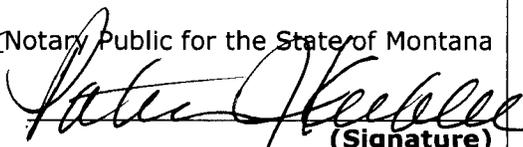
Taylor may think that he can hang his hat on the fact that his statement is "technically true." We refer you to 13-35-225. This section of code deals extensively with advertising and the requirement of accurate representation of voting records. In Section 3, the code deals with representation of candidate voting records. Specifically, it requires, "a disclosure of contrasting votes known to have been made by the candidate on the same issue if closely related in time."

We believe that these two sections of code clearly show the intent of the legislature to address the misrepresentation of a candidate's voting record and request that you address this matter by requiring Taylor to disclose his pro-deregulation votes.

Sincerely,



Jim Farrell, Executive Director
Montana Democratic Party
PO Box 802
Helena, MT 59624
406.442.9520

State of <u>Montana</u>
County of <u>Lewis & Clark</u>
Signed and acknowledged before me on <u>10/11/06</u> by <u>Jim Farrell</u>
<u>Patricia J Keebler</u> Notary Public for the State of Montana
 (Signature)
(SEAL)
<u>Patricia J. Keebler</u> (Name)
Residing at: <u>Helena Montana</u>
My commission expires: <u>12-26-2009</u>

Montana Code Annotated 2005 13-17-131

13-37-131. Misrepresentation of voting record -- political civil libel. (1) It is unlawful for a person to misrepresent a candidate's public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

(2) It is unlawful for a person to misrepresent to a candidate another candidate's public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

(3) For the purposes of this section, the public voting record of a candidate who was previously a member of the legislature includes a vote of that candidate recorded in committee minutes or in journals of the senate or the house of representatives. Failure of a person to verify a public voting record is evidence of the person's reckless disregard if the statement made by the person or the information provided to the candidate is false.

(4) A person violating subsection (1) or (2) is liable in a civil action brought by the commissioner or county attorney pursuant to 13-37-124 for an amount up to \$1,000. An action pursuant to this section is subject to the provisions of 13-37-129 and 13-37-130.

History: En. Sec. 1, Ch. 483, L. 1995; amd. Sec. 1, Ch. 352, L. 1999.

Montana Code Annotated 2005 13-13-225

13-37-225. Reports of contributions and expenditures required. (1) Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this chapter shall be filed with the commissioner and with the election administrator of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports shall be filed with the election administrator of the county in which the election is to be held or, if the election is to be held in more than one county, with the election administrator in the county that the commissioner specifies.

(2) In lieu of all contribution and expenditure reports required by this chapter, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States and their political committees pursuant to the requirements of federal law.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(1), (2); amd. Sec. 255, Ch. 571, L. 1979; amd. Sec. 24, Ch. 591, L. 1991.