

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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IN THE MATTER OF THE	)	
COMPLAINT AGAINST	)	SUMMARY OF FACTS AND
JACK REA, Candidate in	)	STATEMENT OF FINDINGS
Senate District 38	)	

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Sam Hofman, a candidate in Montana Senate District 38 in 1990, filed a complaint with the Commissioner of Political Practices on December 7, 1990, alleging that Jack "Doc" Rea, his opponent in the general election, violated section 13-35-234, Montana Code Annotated (MCA). That statute prohibits a person from knowingly misrepresenting the voting record or position on public issues of any candidate.

The results of an investigation conducted between December 19, 1990, and April 5, 1991, are set forth in the summary of facts that follows.

SUMMARY OF FACTS

1. Sam Hofman and Jack Rea were candidates for the state Senate from District 38 in the November 1990 general election. Hofman ran as an incumbent in the district, having been elected to a four-year term in 1986.

2. A campaign advertisement paid for by the Rea campaign appeared in five Montana weekly newspapers in late October and early November 1990: the Three Forks Herald (October 31, 1990),

the Whitehall Ledger (October 31, 1990), the Belgrade High Country Independent Press (November 1, 1990), the Boulder Monitor (November 1, 1990), and the Townsend Star (November 1, 1990). Following is the entire text of the advertisement as it appeared in the Boulder Monitor:

WHAT DOES SAM  
HOFMAN SAY?

**Sam says he is against gambling. He voted as follows:**

- SB 443 authorizing multi-state lottery -- Sam voted yes
- SB 406 to allow TV betting on horse racing -- Sam yes
- HB 207 to revise lottery law -- Sam yes
- SB 431 allow Dept. of Justice to regulate gambling -- Sam no
- SB 369 to repeal authorization of Calcutta pools because of misuse -- Sam no

**Sam says he is against tax increases. He voted as follows:**

- SB 469 on the Crippen Sales Tax Bill (which would have added \$70 million in new taxes) -- Sam yes

**Sam says this regarding our young people:**

- SB 266 to prohibit the sale of tobacco products to persons under 18 -- Sam no
- HB 346 to exempt school districts from providing smoking areas -- Sam no (bill passed)

**Sam says this about school, county, and state issues:**

- HB 370 to allow cost of living increases for state employees -- Sam no (bill passed)
- HB 398 funding research at MSU -- Sam no (bill passed)
- HB 402 continuing support for Shodair Hospital programs -- Sam no (bill passed)
- HB 676 controlling infectious wastes -- Sam no
- HB 754 to establish river restoration programs through fishing license fees -- Sam no (bill passed)
- HB 765 Micro Business Finance Program (supported by Gov. Stephens and the chamber of commerce to increase small business starts in Montana) -- Sam no (bill passed)

Sam says he favors cutting programs as a way to raise revenue. Recently, 200 employees at the Montana Developmental Center in Boulder received employment termination notices. Should the mentally and physically disabled be the first to feel the budget cuts?

In some newspapers, including the Monitor, the advertisement ended with this statement: "Elect JACK 'DOC' REA Democrat Senate District 38." Slight variations in the advertisement occurred from paper to paper in layout, spelling, and capitalization. In each of the five newspapers, a notation at the bottom of the advertisement indicated that it had been paid for by "Jack Rea" or "Jack 'Doc' Rea for Senate District 38." The advertisement centered on Hofman's purported voting record during the 1989 regular session of the Montana legislature.

3. Hofman's complaint alleges certain misrepresentations of his voting record in the advertisement. First, he contends that explanatory language following some of the bill numbers listed in the ad is misleading. Second, he alleges that the ad misrepresented his actual votes on four bills: Senate Bills 266 and 443 and House Bills 370 and 398. Third, Hofman asserts that the last paragraph in the ad included false statements and misrepresented his position on a public issue.

4. Rea defeated Hofman in the November 1990 general election and currently is serving in the Montana legislature as senator from Senate District 38.

5. Rea was interviewed on January 4, January 11, and January 23, 1991. In addition, Rea submitted a letter to the Commissioner of Political Practices, dated January 24, 1991, in which he responded to the allegations in the complaint. Rea also responded to additional questions asked of him on April 4, 1991.

6. When first interviewed Rea stated that several of his campaign people helped to write the advertisement. He stated that he obtained the information set forth in the advertisement regarding Hofman's voting record from Senator Dorothy Eck. Rea said that he never verified for accuracy any of the information concerning Hofman's voting record supplied by Eck, nor did any of his staff. Rea stated that he believed the information provided by Eck to be accurate because she is a "veteran legislator" while he is a "novice."

7. When questioned again on April 4, 1991, Rea admitted that one of his campaign helpers, Richard Seiler, helped him to compose the advertisement and that Seiler actually typed it. Seiler, in a subsequent interview on April 5, 1991, confirmed that he and Rea worked together on the composition of the ad on a Sunday evening shortly before the dates on which the ad appeared in the five weekly newspapers. The process, as described by Seiler, was one in which Seiler would compose a portion of the ad; then Rea would examine it and give his reaction. Seiler said that Rea was present during the entire time the ad was being composed (on Seiler's word processor) and that Rea took the final copy with him when it was completed.

8. When asked about the wording of the last paragraph in the advertisement, Rea said that he and Hofman had participated in a forum sponsored by the League of Women Voters in Clancy prior to the election. He recalled that one question asked at the forum was "How do you propose to raise revenue for the State of Montana?"

Rea remembered that Hofman responded by saying he wanted to investigate cutting spending in the areas of welfare and education, since 80 percent of the state's revenue is spent in these two areas. Rea interpreted that response to mean that Hofman was in favor of cutting programs as a means of raising revenue. In his letter of January 24, 1991, to the Commissioner of Political Practices, Rea stated that an employee of the Montana Developmental Center provided him with information that 200 termination notices had been sent to employees of the center. Rea said that he had no reason to doubt the accuracy of that information. Rea stated that both Hofman's statements at the forum sponsored by the League of Women Voters and the information Rea obtained from the employee of the Montana Developmental Center prompted him to make the statement that appears as the final paragraph in the advertisement.

9. When personally interviewed on January 4, 1991, Rea stated that several weeks before the election his campaign treasurer, James Richard Rennie, told him that 200 employees of the Montana Developmental Center had just received termination notices. When Rennie was interviewed, he stated that a union representative of employees at the Montana Developmental Center had told both him and Rea that 200 employees had received termination notices.

10. According to Jennifer Pryor, superintendent at the Montana Developmental Center, although plans are to reduce significantly the size of the staff at the institution, primarily through attrition, no termination notices were sent to employees

of the center in October or November 1990. Pryor also stated that Rea did not talk to her about the claimed terminations.

11. Senator Dorothy Eck stated that she compiled information on Sam Hofman's voting record during the 1989 regular session of the legislature at the request of someone from the Democratic Party headquarters in Bozeman. She did not recall specifically who had made the request. The typed, two-page document she prepared has the heading "Hoffman [sic] Profile." It lists information concerning fourteen bills treated in the advertisement, as well as a number of other bills that Hofman had voted on during the 1989 regular session but that were not mentioned in the advertisement. Eck said that she used the Senate Journal and the House Journal for the 1989 regular session to compile the information.

12. Eck stated that she prepared the information in the document around the time of the primary election and that it was gathered and compiled in document form "in a hurry." After she had typed the information from what she described as her "scribbled notes," the document remained on her desk for several months. She then gave the document to someone (she did not recall whom) in Bozeman, who was traveling to Three Forks for a meeting, and asked that person to give the information to Rea. Eck stated that she was never able to meet personally with Rea to discuss the contents of the document.

13. Rea said that he believed the document prepared by Eck had arrived by mail. He did not recall any cover letter with the document.

14. Eck stated that her intent in providing the information to Rea was to "acquaint" Rea with his opponent. She said that she did not intend the information to be used in the manner in which it was, i.e., to prepare a representation of an opponent's voting record in a campaign advertisement. She recalled having mentioned this point to one of Rea's campaign workers. Eck was uncertain to whom she had told that, but she thought it might have been Brian Smith.

15. Brian Smith worked for the Democratic Party during the 1990 election campaign. He recalled speaking with Eck during the campaign, but he did not recall her stating that the information she had compiled should not be used in campaign advertisements.

16. As set out below, a comparison of the document prepared by Eck with the official journals for the 1989 regular session of the legislature reveals some inaccuracies with respect to those bills discussed in the advertisement. (Senate and House bills are abbreviated "SB" and "HB" respectively.)

SB 443 Eck document states "authorizing multi state lottery..Hoffman [sic] yes."

The bill authorized the Montana Lottery Commission to participate with other states in lottery games. Hofman actually voted "yes" on second reading and "no" on third reading.

SB 406 Eck document states "to allow TV betting on horse races Hoffman [sic] yes."

Simulcast pari-mutuel betting already was allowed under then existing statutes. This bill expanded the scope and number of allowable simulcast races and meets. The document correctly attributed a "yes" vote to Hofman on this bill.

HB 207 Eck document states "to reivse [sic] lottery law..Hoffman [sic] yes."

While the characterization of the bill's intent is accurate, Hofman voted "yes" on second reading and "no" on third reading.

HB 370 Eck document states "to allow county cost of living increasses, [sic] passed but Hoffman [sic] was 1 of 14 voting no."

HB 370 increased the amount authorized for meal reimbursement for state employees. Hofman voted "yes" on both second and third readings. Senate Bill 370 allowed a county governing body to restore cost of living increases of county officers. Hofman was one of fourteen voting "no" on SB 370.

HB 398 Eck document states "Funding genetic research at MSU -passed Hoffman [sic] 1 of 16 noes."

Hofman not only voted "yes" on two second reading votes, he also moved both times that the bill be concurred in; his vote on third reading was "yes" as well.

17. The advertisement repeated the same inaccuracies as are in the document prepared by Eck regarding Senate Bills 406 and 443 and House Bills 207, 370 and 398. Further, the advertisement deleted the word "genetic" with respect to its claims regarding House Bill 398, stating that the bill funded "research at MSU."

18. While Hofman complained only about the representations in the advertisement concerning his position or vote on the four bills enumerated above, this investigation also included an examination of all representations of Hofman's votes included in the advertisement.

19. The document prepared by Eck states that House Bill 402 continued "support for Shodair genetic program" and that Hofman voted "no." The bill continued funding for the statewide genetics

program, which is being administered at Shodair Hospital in Helena; Hofman did vote "no" on the bill. Thus, the Eck document is accurate in its description of that bill, as well as Hofman's vote on it. The advertisement, however, stated that House Bill 402 was for the purpose of "continuing support for Shodair Hospital programs." [Emphasis added.]

20. The document prepared by Eck states: "SB 266 to prohibit sale of tobacco products to persons under 18. Hoffman [sic] argued against bill on floor, voted no, failed 21-29, reconsidered and again he voted no (1 of 17), voted yes on 3rd (likely a mistake.)" A review of Senate Journal entries regarding that bill reveals that the Eck document correctly traces Hofman's voting record.

21. The advertisement stated: "SB 266 to prohibit the sale of tobacco products to persons under 18 -- Sam no," inaccurately representing Hofman's vote on third reading of the bill.

22. Eck said she was unaware that some of the information she had compiled for Rea was inaccurate until after it had appeared in the campaign advertisement. She wrote a letter, postmarked November 14, 1990, to Sam Hofman stating, in part, as follows:

Please accept this belated apology for the misrepresentation which I think came from a paper I had typed out. I had wanted to call you immediately but Jack asked that I not do it I'm not sure why. . . .

Let me first assure you that my intent was not to malign you in any way. . . . I have always discouraged candidates from using voting records but agreed to do this as it was to be used only to understand their opponent's legislative interests.

. . . . .

Finally, I have not seen the ad in question. From the description I've had, I certainly would not have approved of such an ad and think that specific votes on genetic research or county benefits would not sway anyone. I'm trully [sic] sorry and chagrined that my faulty information was used in this way.

23. Sam Hofman placed an advertisement in the November 5, 1990, editions of the Helena Independent Record, the Montana Standard (Butte), and the Bozeman Daily Chronicle. The Hofman advertisement stated that the earlier Rea advertisement represented Hofman's voting record in a misleading and irresponsible manner. The Hofman advertisement did not discuss specific bills mentioned in the Rea advertisement.

24. Rea recalled that he found out about the inaccuracies in his advertisement when he saw Hofman's advertisement in a newspaper. He stated that he was enroute to Oklahoma at the time. When he realized some of the representations in his advertisement were in error, he said that he called Sam Hofman and apologized.

25. Brian Smith recalled that Rea called him the Friday before the election and told him that the advertisement might contain some errors. Smith then looked up the bills discussed in the advertisement in the Senate Journal and House Journal and discovered that there were in fact some errors in the advertisement. Smith suggested to Rea that he call Hofman and apologize.

26. Hofman stated that he thought Jack Rea may have telephoned him around 6:30 on election day morning (November 6, 1990). He recalled Rea's telling him that he (Rea) had just

discovered that some information in the advertisement was wrong and that he (Rea) had gotten the information from Senator Eck. During the telephone conversation, according to Hofman, Rea did not give any indication of being aware that some information included in the advertisement was inaccurate prior to his placing the advertisement in the five weeklies. In his letter to the Commissioner of Political Practices, Rea stated that he "apologized by phone to Mr. Hofman on November 2, 1990." During one interview with him, Rea stated that he called Hofman on either November 6 or 7, 1990.

27. When asked how she learned that some of the representations in the advertisement were wrong, Eck stated that either Sam Hofman or someone else from his campaign had telephoned the Democratic Party headquarters in Bozeman, pointing out the errors in the advertisement. She also recalled discussing the problem with Jack Rea prior to Rea's calling Hofman to apologize.

28. Rea stated that he did not intend to win the election by using inaccurate information. He stated that he was a novice in the political arena and that he believed the information provided by Eck to be correct. He also stated that at no time did Eck or anyone else advise him not to use voting records of his opponent in the election campaign. Rea said that he and his campaign staff had been concerned because Hofman was conducting a door-to-door campaign in the closing weeks before the election, and they felt they needed to do something to counter that effort.

29. As to the last paragraph in the Rea advertisement, Hofman recalled that he had many times stated that 80 percent of state

money was spent in two areas, education and welfare. His position was that if the legislature wanted to cut spending it would have to look at these two areas. He felt that the wording of the last paragraph implied that he was in favor of cutting funding for programs for disabled, such as those at the Montana Developmental Center. He emphasized that he had never advocated budget cuts in those areas, and he felt that the advertisement was misleading because it implied that he was in favor of such cuts.

30. In his complaint, Hofman alleges that the advertisement did not disclose his votes on third reading of bills, which he characterized as the "official and final position" of a legislator. In his letter to the Commissioner of Political Practices, [redacted] responded to that portion of Hofman's complaint:

Mr. Hofman argues that third reading votes are the final and official votes of a legislator. I agree that third reading is the final vote, but there is nothing "official" about it. Many associations who compile voting records choose the vote most critical to an issue to represent the position of the legislators.

31. Rea's letter also included the following comments regarding the representations of Hofman's voting record on Senate Bills 266 and 443:

I maintain that my ads did not misrepresent Mr. Hofman's position on SB 266, prohibiting the sale of tobacco products to youth, nor on SB 443, Montana's participation in a multi-state lottery. The Senate voted four times on SB 266. For three of the four votes, Mr. Hofman supported the tobacco industry, and opposed measures to pass the bill. Only when it was very obvious that SB 266 would be approved did Mr. Hofman vote on third reading to support this bill. With SB 443, the critical vote took place on second reading after Senate debate. Mr. Hofman's position, after debate on the issue, was in support of the multi-state lottery.

32. Concerning Hofman's complaint about the final paragraph in the advertisement, Rea makes the following comments in his letter:

My ad stated that Mr. Hofman favored cutting programs as a way to raise revenue. In his letter of complaint, Hofman seems to agree with this summary of his position. He says, "I did say that I wanted to cut spending and since 87% of State Revenue is spent in 2 areas - welfare and education - I wanted to investigate and make changes that would result in cutting cost in these areas." In addition, Mr. Hofman and I appeared before a number of groups, including the League of Women Voters, when he expressed this position in debate. Many people from Clancy attended the forum, and are willing to verify Hofman's remarks. [Emphasis in original.]

An employee of the Montana Developmental Center provided me with the figure of 200 termination notices. I had no reason to doubt the accuracy of this information. In addition, my ad does not say that Mr. Hofman supported cuts at MDC. Rather, the staff cuts are an example of what happens when legislation is passed which requires agencies to cut budgets.

#### STATEMENT OF FINDINGS

Section 13-35-234(1), MCA, prohibits a person from "knowingly" misrepresenting the voting record or position on public issues of any candidate. As discussed in the summary of facts, the advertisement placed by Jack Rea unquestionably misrepresented the voting record of candidate Sam Hofman on a number of bills on which he voted during the 1989 regular legislative session. The issue, therefore, is whether Rea made any of the misrepresentations with the requisite mental state set forth in the statute.

Prior to its amendment in 1983, section 13-35-234(1), MCA, provided:

It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality. A person making such a statement with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

The statute was then amended to add the following underlined language:

It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality or to knowingly misrepresent the voting record or position on public issues of any candidate. A person making such a statement or representation with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

Thus, the amendment adopted in 1983 effected an additional prohibition under the statute, a violation of which can be established through proof of alternative mental states. The statute requires proof of either "knowledge" or "reckless disregard" on the part of the person alleged to have violated the statute.

Section 13-35-101(1), MCA, states that the "penalty provisions of the election laws of this state are intended to supplement and not to supersede the provisions of the Montana Criminal Code." Section 45-2-101(33), MCA, in the Criminal Code of 1973, provides as follows:

"Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability

of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

Section 13-35-234, MCA, prohibits a misrepresentation made "with knowledge of its falsity." In making a determination whether a misrepresentation was made "knowingly" or "with knowledge," in violation of section 13-35-234, MCA, the second-to-last sentence of the above definition would apply. To prove that a person made a representation about a candidate's voting record or position on public issues with knowledge of the representation's falsity, it would be necessary to prove that the person who made such a representation was "aware of a high probability" that the representation was false. Section 45-2-101(33), MCA.

A violation of the statute also can be proved if there is evidence that a person acted with "reckless disregard." The Compiler's Comments to section 13-35-234, MCA, note that the source of the "standard" in subsection (1) of the statute is "apparently drawn from New York Times Co. v. Sullivan, 376 U.S. 254 (1964)." That case involved a civil libel action filed by a public official against a newspaper. The Supreme Court held that recovery would be allowed only if the public official could prove that the alleged libelous statement had been made with "actual malice"; that is, with "knowledge that it was false or with reckless disregard of whether it was false or not." Sullivan, 376 U.S. at 279-80. In a later case, Herbert v. Lando, 441 U.S. 153 (1979), the Supreme Court, citing Sullivan, stated that "reckless disregard for truth" means that the defendant "in fact entertained serious doubts as to

the truth of his publications." The Court noted that such "subjective awareness of probable falsity" may be found if "there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." Herbert, 441 U.S. at 156-57. Other cases have held that "reckless disregard" is "more than mere negligence," Major v. Drapeau, 507 A.2d 938, 941 (R.I. 1986), and that "a failure to investigate is not sufficient in itself to establish reckless disregard," Bartimo v. Horsemen's Benevolent and Protective Association, 771 F.2d 894, 898 (5th Cir. 1985). In Green v. Northern Publishing Co., Inc., 655 P.2d 736, 742 (Alaska 1982), the Court observed:

"Reckless disregard", for these purposes, means conduct that is heedless and shows a wanton indifference to consequences; it is conduct which is far more than negligent. [citation omitted] There must be sufficient evidence to permit the inference that the defendant must have, in fact, subjectively entertained serious doubts as to the truth of his statement. (Italics in original.)

Applying these principles to the facts established during the investigation of this matter, the evidence does not support a finding that Jack Rea acted with the requisite knowledge or reckless disregard when he misrepresented Sam Hofman's voting record on Senate Bill 443 and House Bills 207, 370 and 398. The evidence does not establish that Rea was "aware of a high probability" that the representations regarding those bills were false. Section 45-2-101(33), MCA. Nor does the evidence establish that Rea had any "obvious reason to doubt the veracity of his informant [Eck] or the accuracy of [her] reports" to him. Herbert, supra. Further, the evidence does not support a finding that Rea

subjectively "entertained serious doubts as to the truth" of the representations in the advertisement concerning Hofman's vote on those four bills. Herbert, supra.

As noted in the summary of facts, Rea's advertisement included a somewhat misleading description of the intent of Senate Bill 406, but it correctly represented Hofman's "yes" vote on that bill. Under the circumstances, I do not find that Rea knowingly or with reckless disregard misrepresented Hofman's voting record on Senate Bill 406.

The advertisement diverged from the information provided by Eck in its representation of the description of House Bill 402. While Eck's document described the bill as "continuing support for Shodair genetic program," the advertisement described it as "continuing support for Shodair Hospital programs." The phrasing in the ad was a potentially misleading description of the purpose of the bill and could have led a reader to believe that Hofman's "no" vote was a vote to discontinue numerous programs at Shodair Hospital rather than just the statewide genetics program. When interviewed, Rea stated that the wording of his advertisement was taken directly from the document provided by Senator Eck. He had no explanation for the slight changes in phraseology, other than to suggest that it may have been the result of a typographical error. Under the circumstances, I find insufficient evidence to conclude that Rea intentionally misrepresented Hofman's position on a public issue based on the claim in the advertisement regarding Hofman's voting record on House Bill 402.

The minor changes in phraseology in the representations in the advertisement with respect to House Bills 370 and 398 are also troubling; however, again, I find under the circumstances insufficient evidence to conclude that there was an intentional misrepresentation.

Although the question is close, the evidence does not support a finding that Rea intentionally misrepresented Hofman's position on a public issue with the statements in the last paragraph of the advertisement. The statement: "Sam says he favors cutting programs as a way to raise revenue" is not a clear misrepresentation of Hofman's position. Hofman had stated that 87 percent of state revenue is spent in the areas of welfare and education and that he wanted to "investigate and make changes that would result in cutting cost in these areas." While that statement is open to varying interpretations, one fair conclusion that could be drawn is that "cutting cost" in those two areas would necessitate cutting some programs.

The next two statements in the concluding paragraph of the advertisement, however, are more troubling: "Recently 200 employees at the Boulder Development Center received employment termination notices. Should the mentally and physically disabled be the first to feel the budget cuts?" As noted above in the summary of facts, no termination notices were sent out in October or November 1990. Thus, the statement is false. In his letter to the Commissioner of Political Practices, Rea stated that he obtained the information from an employee of the center and that

he had no reason to question the information. When interviewed, however, he stated that his campaign treasurer, James Richard Rennie, had provided the information to him. Rennie stated that a union representative of employees at the Montana Developmental Center had made the statement to both him and Rea. There is obviously some dispute as to exactly who provided the information to Rea. In any event, although his publishing of the statement without conducting further investigation to verify its accuracy unquestionably displayed carelessness, there is no evidence that Rea subjectively believed the statement to be false or that he "was aware of a high probability" that it was false.

Further, the claim of 200 termination notices and the statement following it posing the rhetorical question cannot be construed as a clear-cut misrepresentation of Sam Hofman's position on a public issue. The statement does not claim that Sam Hofman advocated terminating positions at the Montana Developmental Center. Granted, all three statements, when read together, imply that Sam Hofman would be in favor of cutting positions at the Montana Developmental Center. Nevertheless, the evidence is not sufficient to support a finding that there was an intentional misrepresentation by Rea of Hofman's position on a public issue.

There is sufficient evidence to conclude that Jack Rea either knowingly or with reckless disregard misrepresented Sam Hofman's voting record on Senate Bill 266. Rea has maintained that he relied on the information provided by Senator Dorothy Eck when preparing the advertisement. Eck's information, however, provided

in writing to Rea, was that Hofman had voted "yes" on third and final reading of Senate Bill 266. Despite that information, Rea's advertisement incorrectly states that Hofman voted "no" on the bill, with no additional explanation to the reader.

In his letter to the Commissioner of Political Practices, Rea does not contend that he made a mistake in making that representation. He states:

The Senate voted four times on SB 266. For three of the four votes, Mr. Hofman supported the tobacco industry, and opposed measures to pass the bill. Only when it was very obvious that SB 266 would be approved did Mr. Hofman vote on third reading to support this bill. . . . Mr. Hofman argues that third reading votes are the final and official votes of a legislator. I agree that third reading is the final vote, but there is nothing "official" about it. Many associations who compile voting records choose the vote most critical to an issue to represent the position of the legislators.

Rea's letter discloses that he was aware Hofman had voted "yes" on third reading but that he chose to represent Hofman as voting "no" on the bill. Despite the implication in his letter that it is legitimate to cite a legislator's "vote most critical to an issue" to represent the legislator's position on a bill, section 13-35-234, MCA, prohibits misrepresentation of a candidate's voting record. Senator Hofman's voting record on Senate Bill 266 included a "yes" vote on third and final reading. If Senator Rea had intended to represent accurately Hofman's voting record on Senate Bill 266, he should have explained that Hofman voted "no" on two different second reading votes on the bill but voted "yes" on third and final reading of the bill.

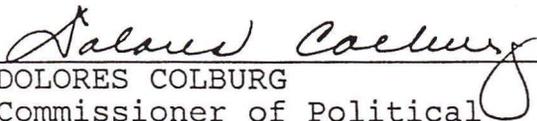
The deletion of that crucial information from the text of the advertisement was a misrepresentation under the statute, and the evidence is sufficient to conclude that Senator Rea acted with knowledge or with reckless disregard when making that misrepresentation. His actions permit the inference that, in fact, he must have entertained serious doubts as to the truth of the statement. In light of the information provided to him by Eck and Rea's claim that he relied on that information when preparing the advertisement, at the very least Rea must have been "aware of a high probability" that the statement in the advertisement was false. Section 45-2-101(33), MCA.

Section 13-37-124(1), MCA, provides in pertinent part:

Whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under chapters 35, 36, or 37 of this title, he shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation.

Since, based on the facts and these findings, I have determined that there is sufficient evidence to conclude that Senator Rea violated section 13-35-234, MCA, all information relevant to this investigation will be transmitted to the county attorneys in Broadwater, Gallatin and Jefferson counties, as required by section 13-37-124(1), MCA.

DATED this 10th day of May, 1991.

  
DOLORES COLBURG  
Commissioner of Political  
Practices