

COMMISSIONER OF
POLITICAL PRACTICES

COPY



STATE OF MONTANA

DENNIS UNSWORTH
COMMISSIONER
TELEPHONE (406) 444-2942
FAX (406) 444-1643

1205 EIGHTH AVENUE
PO BOX 202401
HELENA, MONTANA 59620-2401
www.politicalpractices.mt.gov

November 10, 2008

Lawrence Jansen
RR #1 Box 80
Harlem MT 59526

Subject: Amended complaint received October 30, 2008; Denise Juneau

Mr. Jansen, the requirement that complaints include specific allegations and cite specific statutes or rules within my jurisdiction is set forth in an administrative rule (ARM 44.10.307(2)).

I reviewed the additional information you and Mr. Harshman provided. You allege that the calls referenced in your initial complaint violate § 13-35-301 and § 45-8-216, MCA. You urge that these allegations warrant an investigation.

The Commissioner's role with respect to § 13-35-301, MCA, the Code of Fair Campaign Practices, is limited to preparing a form that sets forth the Code and providing each candidate with an opportunity to sign the form and thereby subscribe to the Code. The law grants the Commissioner no authority to take any action if a candidate is alleged to have violated the Code. (See Matter of Complaint Against John Vincent, Summary of Facts and Statement of Findings (2008); Matter of Complaint Against Brian Close, et al., Summary of Facts and Statement of Findings (2005). Both are available on our website.)

Mr. Harshman correctly notes that the "robo call" statute, § 45-8-216, MCA, is found in Montana's criminal code. As I explained in my previous letter, my authority in the area of campaign practices is limited by law to Title 13, chapters 35 and 37. I have no authority to enforce the robo call statute. We take numerous calls and informal complaints about the calls during the campaign season and have discussed possible changes to the law with lawmakers. Unless changes are made, we're only able to provide information and refer callers to local law enforcement.

For the reasons discussed above, I am dismissing your amended complaint based on ARM 44.10.307(3)(a). While I'd like to be more helpful, my authority necessarily has limits and I'm required to be mindful of those limits.

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

Dennis Unsworth
Commissioner of Political Practices

copy: Mark Harshman

Cert.

HAUGE, SHEEHY & HARSHMAN, PLLP
A Professional Limited Liability Partnership

ATTORNEYS AND COUNSELORS AT LAW

Mark Harshman
Thomas J. Sheehy
Lane M. Hauge (1950-2003)

500 Illinois Avenue
P.O. Box 1594
Chinook, Montana 59523

PHONE: (406) 357-4444
Facsimile: (406) 357-4445

RECEIVED
COMMISSIONER OF
POLITICAL PRACTICES

2008 OCT 30 A 10:20

Havre office:
410 - 4th Avenue
PO Box 1440
Havre, MT 59501
(406) 265-9059

Reply to the Chinook address

October 29, 2008

POSTMARKED

OCT 29 2008

Dennis Unsworth, Esq.
Commissioner of Political Practices
1205 Eighth Avenue
PO Box 202401
Helena, MT 59620-2401

**RE: *Complaint of Lawrence Jansen
Juneau Automated Telephone Solicitations***

Dear Commissioner:

On October 13, 2008, Mr. Lawrence Jansen, a Blaine County resident, wrote your office to voice his complaint regarding several automated telephone solicitations from the Denise Juneau campaign. Your letter of October 23, 2008, summarily dismissed Mr. Jansen's complaint without investigation because he failed to adequately inform your office of the particular statutes allegedly violated by the Juneau campaign. Your letter goes on to inform Mr. Jansen that your office has jurisdiction over the provisions of Title 13, Chapters 35 and 37 of the Montana Code Annotated.

In Mr. Jansen's letter of October 13, 2008, he informed your office that the automated calls urged listeners to vote "Indian" - which Mr. Jansen believes, on its face, is an appeal to prejudice based on race. Mr. Jansen strongly feels that the nature of his complaint and the statute violated should have been readily apparent to one admittedly charged with enforcing the provisions of Title 13, Chapter 35.

Section 13-35-301 states that every candidate for public office has a moral obligation to observe and uphold certain basic principles. One of those principles is to refrain from making appeals to prejudice based on race, sex, creed, or national origin.

Additionally, Mr. Jansen wishes to point out that the Montana criminal code, at section 45-8-216, MCA, prohibits a person from using an automated telephone service or device for the selection and dialing of telephone numbers and playing of recorded messages if a message is completed to the dialed number the purpose of... (e) promoting a political campaign or any use related to a political campaign.

Honorable Dennis Unsworth
Commissioner of Political Practices
October 28, 2008
Page 2 of 2.

Mr. Jansen urges your reconsideration of the decision to dismiss his complaint without investigation. Mr. Jansen's complaint, as hereby amended, contains sufficient allegations of a potential violation of specific rules within your jurisdiction.

Will you kindly provide this office with a courtesy copy of your anticipated response to Mr. Jansen's renewed inquiry.

Thank you for your consideration.

Sincerely yours,

HAUGE, SHEEHY & HARSHMAN, PLLP

By: 

Mark Harshman

Copy to: Lawrence Jansen
RR 1, Box 80
Harlem, MT 59526

Enclosures
§13-35-301 & §45-8-216

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ec. 10790, R.C.M. 1935;
6, L. 1975; R.C.M. 1947,
Sec. 1, Ch. 294, L. 1997

corporation may not
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, or any part thereof

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ec. 223, Ch. 571, L. 1979.

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13-35-240. Voluntary filing of broadcast campaign materials — affidavit — penalty. (1) (a) A political committee not organized by or on behalf of a candidate may file with the commissioner of political practices a copy of a campaign script intended for broadcast advertising.

(b) The committee's authorized agent may sign an affidavit swearing that the content of the script is true and verifiable and may file supporting documentation.

(2) (a) Scripts and affidavits must be filed in the manner prescribed by the commissioner of political practices.

(b) The commissioner of political practices shall file the scripts, affidavits, and any documentation in a manner that allows for them to be readily inspected.

(3) (a) Any person who believes that the content of a script filed pursuant to this section is either untrue or unverifiable may bring the matter to the attention of the county attorney of the county in which the person is a resident.

(b) The county attorney may investigate the alleged falsification or unverifiability of the script and, if the county attorney determines that sufficient evidence exists to justify a criminal prosecution, shall file a cause of action.

(c) An allegation of violation of subsection (1) may not be filed with, investigated by, or prosecuted by the commissioner of political practices.

(4) A person filing an affidavit under this section is subject to the penalty for false swearing under 45-7-202, except that the fine may not exceed \$5,000.

History: En. Sec. 1, Ch. 407, L. 2007.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

**Part 3
Code of Fair Campaign Practices**

13-35-301. Adoption of code of fair campaign practices. The following code of fair campaign practices is adopted by Montana:

"There are basic principles of decency, honesty, and fair play that every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammelled choice and the will of the people may be fully and clearly expressed on the issues before the country. Therefore:

I will conduct my campaign in the best American tradition, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponent and his party which merit such criticism.

I will defend and uphold the right of every qualified American voter to full and equal participation in the electoral process.

I will conduct my campaign without the use of personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on my opposition or his personal or family life.

I will not use campaign material of any sort which misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations which aim at creating or exploiting doubts, without justification, as to the loyalty and patriotism of my opposition.

I will not make any appeal to prejudice based on race, sex, creed, or national origin.

I will not undertake or condone any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections or which hampers or prevents the full and free expression of the will of the voters.

Insofar as is possible, I will immediately and publicly repudiate support deriving from any individual or group which resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I have pledged not to use or condone."

History: En. Sec. 1, Ch. 475, L. 1979.

Cross-References

Rules of conduct for public officers, legislators, and public employees, 2-2-104.

13-35-302. Candidates to be given opportunity to subscribe to campaign practices code. (1) The commissioner of political practices shall prepare a form that sets forth the code of

Cross-References

Knowingly defined, 45-2-101.

Purposely defined, 45-2-101.

45-8-216. Unlawful automated telephone solicitation — exceptions — penalties.

(1) A person may not use an automated telephone system, device, or facsimile machine for the selection and dialing of telephone numbers and playing of recorded messages if a message is completed to the dialed number for the purpose of:

- (a) offering goods or services for sale;
- (b) conveying information on goods or services in soliciting sales or purchases;
- (c) soliciting information;
- (d) gathering data or statistics; or
- (e) promoting a political campaign or any use related to a political campaign.

(2) This section does not prohibit the use of an automated telephone system, device, or facsimile machine described under subsection (1) for purposes of informing purchasers of the receipt, availability for delivery, delay in delivery, or other pertinent information on the status of any purchased goods or services, of responding to an inquiry initiated by any person, or of providing any other pertinent information when there is a preexisting business relationship. This section does not prohibit the use of an automated telephone system or device if the permission of the called party is obtained by a live operator before the recorded message is delivered.

(3) A person violating subsection (1) is subject to a fine of not more than \$2,500.

History: En. Sec. 1, Ch. 230, L. 1991.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

45-8-217. Aggravated animal cruelty. A person commits the offense of aggravated animal cruelty if the person purposely or knowingly:

- (1) kills or inflicts cruelty to an animal with the purpose of terrifying, torturing, or mutilating the animal; or
- (2) inflicts cruelty to animals on a collection, kennel, or herd of 10 or more animals.

History: En. Sec. 2, Ch. 366, L. 2003.

45-8-218 and 45-8-219 reserved.

45-8-220. Criminal invasion of personal privacy. (1) Except as provided in subsection (2), a person commits the offense of invasion of personal privacy if the person knowingly or purposely obtains or attempts to obtain personal or confidential information about an individual while posing as the individual. A person convicted under this section shall be incarcerated for a term not to exceed 1 year or fined an amount not to exceed \$10,000, or both.

(2) Subsection (1) does not apply to a person who poses as another individual with the express consent of that other individual.

History: En. Sec. 1, Ch. 404, L. 2007.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

Part 3 Weapons

45-8-301. Uniformity of interpretation. Sections 45-8-302 through 45-8-305 and 45-8-307 must be interpreted and construed to effectuate their general purpose to make uniform the law of those states that enact them.

History: En. Sec. 11, Ch. 43, L. 1935; re-en. Sec. 11317.10, R.C.M. 1935; Sec. 94-3110, R.C.M. 1947; redes. 94-8-209 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-209; amd. Sec. 1, Ch. 466, L. 1999.

45-8-302. Definitions. In 45-8-303 through 45-8-305 and 45-8-307, the following definitions apply:

(1) "Crime of violence" means any of the following crimes or an attempt to commit any of the crimes: any forcible felony, robbery, burglary, and criminal trespass.

(2) "Machine gun" means a firearm designed to discharge more than one shot by a single function of the trigger.

COMMISSIONER OF POLITICAL PRACTICES
1205 Eighth Avenue
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Helena, MT 59620-2401
TELEPHONE: 406-444-2942
FAX NUMBER: 406-444-1643
WEBSITE: www.state.mt.us/cpp

FOR OFFICE USE ONLY

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COMMISSIONER OF
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OCT 30 AM 10:20

HAND DELIVERED
CERTIFIED MAIL
SIGNED/NOTARIZED

ETHICS

COMPLAINT FORM (11/02)

TYPE OR PRINT IN INK ALL INFORMATION ON THIS FORM EXCEPT FOR VERIFICATION SIGNATURE

PERSON BRINGING COMPLAINT (COMPLAINANT):

COMPLETE NAME LAWRENCE JANSEN
COMPLETE MAILING ADDRESS RR#1, Box 80
HARLEM MT 59926
(City, State, Zip)
TELEPHONE NUMBERS: WORK _____ HOME 353-2715

PERSON OR ORGANIZATION AGAINST WHOM COMPLAINT IS BROUGHT (RESPONDENT):

COMPLETE NAME DENISE JUNEAU
COMPLETE MAILING ADDRESS CANDIDATE: SUPT OF PUBLIC INSTRUCTION
ADDRESS UNKNOWN
(City, State, Zip)
TELEPHONE NUMBERS: WORK UNKNOWN HOME _____

PLEASE COMPLETE THE SECOND PAGE OF THIS FORM
AND DESCRIBE IN DETAIL THE FACTS OF THE ALLEGED VIOLATION.

VERIFICATION BY OATH OR AFFIRMATION

STATE OF MONTANA, COUNTY OF Blaine

I, Kenneth Shelhamer, being duly sworn, state that the information in this
Complaint is complete, true, and correct, to the best of my knowledge and belief.

(SEAL)

[Signature]
Signature of Complainant

Subscribed and sworn to before me this 28 day of
October, 2008.

[Signature]
Notary Public

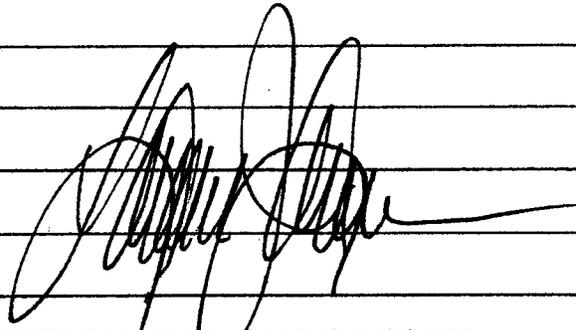
My Commission Expires: _____

STATEMENT OF FACTS:

Describe in detail the alleged violation(s), including pertinent dates, and cite the statute or statutes you believe have been violated. Please attach copies of documentary evidence to support the facts alleged in your statement.

If the space provided below is insufficient, you may attach additional pages as necessary.

SEE ATTACHED



**TYPE OR PRINT IN INK ALL INFORMATION ON THIS FORM
EXCEPT FOR VERIFICATION**

COMPLAINTS MUST BE:

- SIGNED
- NOTARIZED
- DELIVERED TO THE COMMISSIONER IN PERSON OR BY CERTIFIED MAIL

COMMISSIONER OF POLITICAL PRACTICES
1205 Eighth Avenue
Post Office Box 202401
Helena, MT 59620-2401
TELEPHONE: 406-444-2942
FAX NUMBER: 406-444-1643

CAMPAIGN FINANCE AND PRACTICES

COMPLAINT FORM (07/01)

FOR OFFICE USE ONLY	
RECEIVED COMMISSIONER OF POLITICAL PRACTICES	
OCT 30 A 10:20	
HAND DELIVERED	<input type="checkbox"/>
CERTIFIED MAIL	<input checked="" type="checkbox"/>
SIGNED/NOTARIZED	<input checked="" type="checkbox"/>

TYPE OR PRINT IN INK ALL INFORMATION ON THIS FORM EXCEPT FOR VERIFICATION SIGNATURE

PERSON BRINGING COMPLAINT (COMPLAINANT):

COMPLETE NAME LAWRENCE JANSEN

COMPLETE MAILING ADDRESS RR#1, Box 80
HARLEM, MT 59526

TELEPHONE NUMBERS: WORK _____ HOME 353-2915

PERSON OR ORGANIZATION AGAINST WHOM COMPLAINT IS BROUGHT (RESPONDENT):

COMPLETE NAME DENISE JUNEAU

COMPLETE MAILING ADDRESS CANDIDATE: SUPT OF PUBLIC INSTRUCTION
UNKNOWN

TELEPHONE NUMBERS: WORK UNKNOWN HOME _____

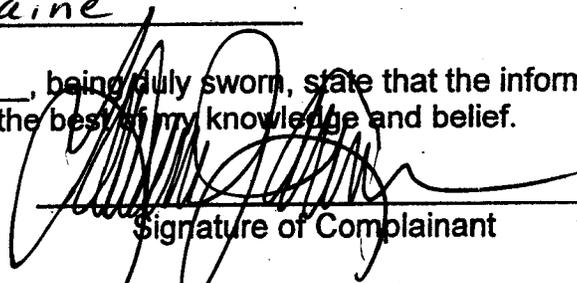
PLEASE COMPLETE THE SECOND PAGE OF THIS FORM AND DESCRIBE IN
DETAIL THE FACTS OF THE ALLEGED VIOLATION.

VERIFICATION BY OATH OR AFFIRMATION

STATE OF MONTANA, COUNTY OF Blaine

I, Kenneth Shelhamer, being duly sworn, state that the information in this
Complaint is complete, true, and correct, to the best of my knowledge and belief.

(SEAL)


Signature of Complainant

Subscribed and sworn to before me this 28th day of
October, 2008.


Notary Public

My Commission Expires:

October 27, 2008

**DENNIS UNSWORTH
COMMISSIONER
PO BOX 202401
HELENA, MONTANA 59620-2401**

Subject: Refiling of Complaint from 10/13/08.

Mr. Unsworth, I have reviewed your letter of 10/23/08 in reference of my letter of complaint received by you on 10/15/08. I'm sorry that I did not make myself clear in my first letter of complaint. I'll try to do better this time. I know I should have placed underlines under "bigoted" and "racist" so that they were more easily recognized as being the violations I was speaking about. But, of course in this modern society that we live in I'm not sure that Montana has a law against "bigoted" and "racial" statements in the voting practices. Again, I was just assuming that you might know the answer to that question. Then, of course, there is the little matter of the correct statute or rule. I thought for a moment that the fact that the average Montana citizen isn't setting around home with a copy of the state statute in their bookcase would be logical to the State of Montana, but what do I know? And you must admit that things like "bigotry" and "racism" are something very obscuras and ambiguous in the code. I'm really sorry for not supplying you with that code or rule! I was just sure that you'd know, in your position as commissioner, all about it. But, I know you're busy with all the incoming complaints. I would have looked it up myself, but I live in a rural town with NO MCA OR Law library within twenty miles. Sure, I knew you'd understand.

Of course on the other hand, I can see were this new modern phenomenon known as "bigotry" and "racism" may be so new a concept to a Montana State employee, who deals with these things daily, that advising anyone as to whether it's in his jurisdiction or not, might be taken his life in his hands. I, myself, would just make my advice into a puzzle so no one would know what I said. Let the idiot citizen of Montana figure out what the law that I'm in charge of is for themselves. And hopefully they'd just go away, and I could dump a lot of complaints off this way. And if it was not my jurisdiction, I would never tell the citizen of whose jurisdiction it fell in fear he may bother some other state employee. Yea! That's how I'd handle it.

page 2

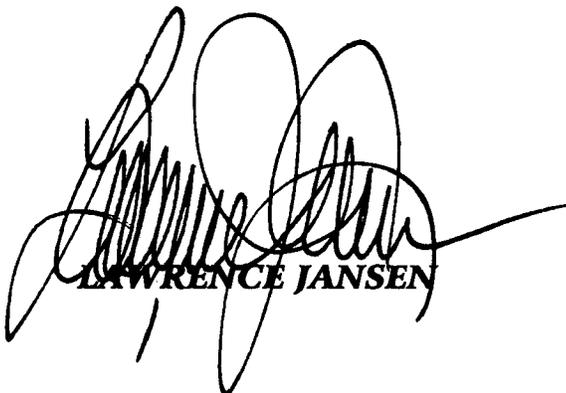
In reviewing your letter I can see were my complaint was so very difficult in it's scope and complication. So, to make this easier to be understood in it's Ethics theory for you, I'm going to have my attorney explain it for me. I'm sure he can tell you better then I can. Oh yes! I'll see if the attorney can't find the MCA code for you too, and I'll make sure he underlines the words of the violation for you as well. But, just in case you miss it in my attorneys letter, the following is the violations.

45-8-216. Unlawful automated telephone solicitation - [1] A person may not use an automated telephone system, device, or facsimile machine for the selection and dialing of telephone numbers and playing of recorded message if a message is completed to the dialed number for the purpose of:

Section [e] "promoting a political campaign or any use related to a political campaign". And NO I did not give permission for the recording to be played on my telephone.

I know, I know, this is the Criminal Code and above the pay grade of people taking political reports, but I thought that it would at least be interesting to the Commissioner of Political Practices.

My complaint falls under your jurisdiction in 13-35-301. Code of Fair Campaign Practices. Paragraph number 7 states "I will not make any appeal to prejudice based on race, sex, creed, or national origin". In the law the respondent needs to have signed this Code of Fair Campaign Practices. According to the Blaine County Attorney and the head of Voter Registration of Blaine County, Denise Juneau was, in fact, signed this Code.


LAWRENCE JANSEN

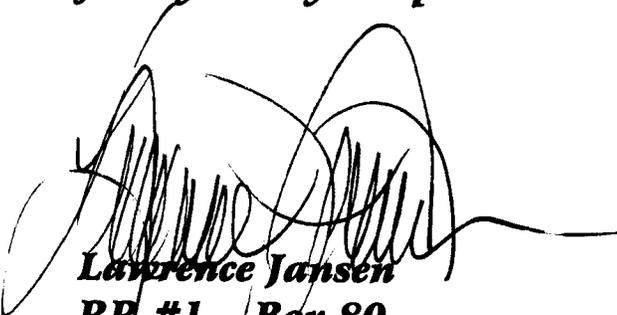
October 13, 2008

Subject: Complaint on Ethics.

I have received two telephone calls from candidate for superintendent of Public Instruction, Denise Juneau. These calls were prerecorded calls. In these calls Denise Juneau stated to vote democratic, and then stated "remember to vote Indian because it's the right thing to do for you and the people". This is both bigoted and racist.

Can you imagine if Presidential Candidate, B. Obama stated "remember to vote black because it's the right thing to do for you and the people"? Or Presidential Candidate J. McCain stated "remember to vote white because it's the right thing to do for you and the people"?

I think this complaint is pretty self explanatory. The fact that "Indian" came up in this prerecorded message for a vote is the complete problem. This type of bigoted and racist statement in an election is uncalled for and certainly not needed by my family on my telephone.



**Lawrence Jansen
RR #1, Box 80
Harlem, Montana 59526**

(2) (a) Scripts and affidavits must be filed in the manner prescribed by the commissioner of political practices.

(b) The commissioner of political practices shall file the scripts, affidavits, and any documentation in a manner that allows for them to be readily inspected.

(3) (a) Any person who believes that the content of a script filed pursuant to this section is either untrue or unverifiable may bring the matter to the attention of the county attorney of the county in which the person is a resident.

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History: En. Sec. 1, Ch. 407, L. 2007.

Compiler's Comments

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I will not undertake or condone any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections or which hampers or prevents the full and free expression of the will of the voters.

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2007 MCA

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Purposely defined, 45-2-101.

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- (b) conveying information on goods or services in soliciting sales or purchases;
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- (e) promoting a political campaign or any use related to a political campaign.

(2) This section does not prohibit the use of an automated telephone system, device, or facsimile machine described under subsection (1) for purposes of informing purchasers of the receipt, availability for delivery, delay in delivery, or other pertinent information on the status of any purchased goods or services, of responding to an inquiry initiated by any person, or of providing any other pertinent information when there is a preexisting business relationship. This section does not prohibit the use of an automated telephone system or device if the permission of the called party is obtained by a live operator before the recorded message is delivered.

(3) A person violating subsection (1) is subject to a fine of not more than \$2,500.

History: En. Sec. 1, Ch. 230, L. 1991.

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(1) kills or inflicts cruelty to an animal with the purpose of terrifying, torturing, or mutilating the animal; or

(2) inflicts cruelty to animals on a collection, kennel, or herd of 10 or more animals.

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45-8-218 and 45-8-219 reserved.

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(2) Subsection (1) does not apply to a person who poses as another individual with the express consent of that other individual.

History: En. Sec. 1, Ch. 404, L. 2007.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

Part 3 Weapons

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(2) "Machine gun" means a firearm designed to discharge more than one shot by a single function of the trigger.

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October 23, 2008

Lawrence Jansen
RR #1 Box 80
Harlem MT 59526

Subject: Complaint received October 15, 2008: Denise Juneau

Mr. Jansen, I have reviewed the complaint you filed against Denise Juneau, a candidate for Superintendent of Public Instruction. You state that you have received two prerecorded telephone calls from Ms. Juneau urging you to vote Democratic, and to "remember to vote Indian because it's the right thing to do for you and the people." You allege that the complaint is "self explanatory," but you do not allege the violation of any particular statute or rule.

To be valid, a complaint must describe in detail an alleged violation, and cite the specific statute or rule within my jurisdiction that is alleged to have been violated. (ARM 44.10.307(2))

In the area of campaign finance and practices, my jurisdiction is limited to the provisions of Title 13, chapters 35 and 37, Montana Code Annotated. (See § 13-37-111, MCA.) In the area of ethics, my jurisdiction is limited to Title 2, chapter 2, part 1, MCA. Your complaint does not allege the violation of a statute or rule within my jurisdiction.

For the reasons discussed above, I am dismissing the complaint based on ARM 44.10.307(3)(a), which provides:

. . . [N]o investigation shall be required if the complaint does not contain sufficient allegations to enable the commissioner to determine that it states a potential violation of a statute or rule within the commissioner's jurisdiction.

I'm sorry I can't be more helpful.

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

Dennis Unsworth
Commissioner of Political Practices