

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

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February 9, 2012

Representative Cleve Loney
93 Brandywine Lane
Great Falls, MT 59404

Re: Complaint against Montana Democratic Party

Dear Representative Loney:

I am in receipt of your complaint against the Montana Democratic Party dated February 2, 2012. Your complaint was received in this office on February 3, 2012.

Your complaint alleges the Montana Democratic Party violated § 13-35-225(3)(a)(iii), Montana Code Annotated, by misrepresenting your voting record on House Bill 1 during the 2011 Legislative session when it distributed a flier stating, "After giving himself a taxpayer-funded pay raise*..." House Bill 1 provided the following:

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE CURRENT AND
SUBSEQUENT LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Appropriation. (1) The following amounts are appropriated from the state general fund for fiscal years 2011, 2012, and 2013 for the operation of the 62nd legislature and the costs of preparing for the 63rd legislature:

LEGISLATIVE BRANCH (1104)

1. Senate \$2,827,566
2. House of Representatives 4,609,477
3. Legislative Services Division 616,237

(2) The following amounts are appropriated from the state general fund for fiscal year 2013 for the initial costs of the 63rd legislature:

LEGISLATIVE BRANCH (1104)

1. Senate \$101,521
2. House 161,000
3. Legislative Services Division 7,663

Section 2. Effective date. [This act] is effective on passage and approval.

The relevant provision of Montana law provides:

§ 13-35-225. Election materials not to be anonymous -- statement of accuracy. (1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill,

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bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

...

(3) (a) **Printed election material** described in subsection (1) that includes information about another candidate's voting record **must include:**

(i) **a reference to the particular vote or votes** upon which the information is based;

(ii) **a disclosure of contrasting votes known to have been made by the candidate on the same issue if closely related in time;** and

(iii) **a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.**

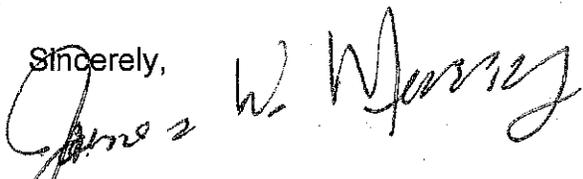
(b) The statement required under subsection (3)(a) must be signed:

(i) by the candidate if the election material was prepared for the candidate or the candidate's political committee and includes information about another candidate's voting record; or

(ii) by the person financing the communication or the person's legal agent if the election material was not prepared for a candidate or a candidate's political committee. (Emphasis added.)

There were no contrasting votes on House Bill 1, and your voting record reflects you voted "aye" at each stage of the Bill. The flyer at issue accurately reflects your votes on House Bill 1 during the 2011 Legislature and comports with all other requirements of 13-35-225(3), Montana Code Annotated, including a signed statement attesting to the accuracy of the statements in the flyer. Whether you accepted pay or per diem addressed in HB 1 is irrelevant to the provisions of the statute you allege to have been violated. Thus, your complaint against the Montana Democratic Party filed with this office on February 3, 2012, is dismissed.

Sincerely,



James W. Murry
Commissioner