

COMMISSIONER OF POLITICAL PRACTICES



STATE OF MONTANA

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CERTIFIED MAIL
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December 18, 2009

Jason Wiener
Missoula County Democrats
PO Box 9305
Missoula MT 59807

Subject: Complaint received October 30, 2009

You filed a complaint alleging that John Hendrickson, an incumbent candidate for Ward 2 on the Missoula City Council, violated § 13-37-131(1), MCA, which provides: "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."

You allege the violation arose based on a campaign mailer sent by Roy Houseman, another candidate for Ward 2, containing the following endorsement from Mayor John Engen:

"The Missoula City Council should be comprised of leaders willing to offer solutions, work together and represent this great city as we meet the challenges of this remarkable place. Roy Houseman has demonstrated that brand of leadership. He listens and learns and acts to serve the best interests of his community. You can't ask for more and you shouldn't settle for less."

According to the complaint, shortly thereafter Hendrickson began airing a radio ad that included the following statements:

"Mayor John Engen says the Missoula City Council should be comprised of leaders willing to offer solutions, work together and represent this great city as we meet the challenges of this remarkable place. City Councilor John Hendrickson fits these qualifications and has represented Ward 2 with proven leadership and solution-oriented policymaking. John Hendrickson brings experience, accountability and responsibility to the City Council."

The complaint alleges that the ad is scripted to suggest Mayor Engen supported the campaign of Hendrickson, when in fact Engen supported Houseman, violating § 13-37-131(1), MCA.

In a response to the complaint, Hendrickson said that he used the statement made by Mayor Engen because:

"I believed then as I do now that I possess those qualities that the Mayor stated. It was not my intention to convey or suggest that the Mayor was endorsing me. My statement was broken into two separate thoughts. The first as stated above as to the qualities the Mayor was looking for. And the second, that I possess those qualities and what I have done in my previous four years representing my ward."

In the *Matter of the Complaint Against the Montana Republican State Central Committee (May 25, 2006)*, Commissioner Gordon Higgins ruled that the Republicans did not violate §13-37-131, MCA when they sent out a campaign flyer that implied that Dave Gallick had supported several tax proposals during the 2003 legislature. Gallick had neither supported nor even voted on any of the bills. In concluding that there was no violation, Commissioner Higgins noted:

"artfully crafted language [in the flyer] may well have left the typical reader with the impression that Rep. Gallik, if elected, would support measures similar to those described in the flier. But a violation of [MCA] 13-37-131 must be based on more than statements that only imply or suggest matters, or that may create false impressions. Moreover. . . there must be clear and convincing proof that whoever made the representation subjectively entertained serious doubts as to the truth of the representation. There is insufficient evidence to meet that standard of proof in this case." (*Id.* at 6.)

When construing statutes similar to § 13-37-131, MCA, the courts have consistently afforded a high degree of First Amendment protection to campaign statements made by candidates for public office. (See the *Matter of the Complaint against John Vincent (Amended 11/17/08)* on our website at politicalpractices.mt.gov/2recentdecisions/campaignfinance.mcp.x). The United States Supreme Court has observed that the constitutional guarantee "has its fullest and most urgent application precisely to the conduct of campaigns for political office." (*Monitor Patriot Co. v. Roy*, 401 U.S. 265, 271-72 (1971)).

Although the campaign ad in the case at hand may have left some listeners with the incorrect impression that Mayor Engen supported the candidacy of Hendrickson, a violation of the statute must be based on false statements, rather than on statements that merely suggest or imply matters. Furthermore, even if the statements made by Hendrickson were to be construed as false statements, there is no clear and convincing proof that Hendrickson "subjectively entertained serious doubts" as to the truth of the statements.

Based on the information presented to me as described in this letter, and the analysis set forth above, I am dismissing your complaint.



Dennis Unsworth
Commissioner of Political Practices

copy: John Hendrickson

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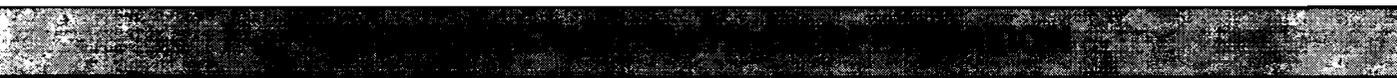
COMPLAINT FORM (07/01)

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

PERSON BRINGING COMPLAINT (COMPLAINANT):
COMPLETE NAME Jason Wiener, Chair, Missoula County Democrats
COMPLETE MAILING ADDRESS PO Box 9305
Missoula, MT 59807
TELEPHONE NUMBERS: WORK 541-2602 HOME 542-3232

PERSON OR ORGANIZATION AGAINST WHOM COMPLAINT IS BROUGHT (RESPONDENT):
COMPLETE NAME John Hendrickson
COMPLETE MAILING ADDRESS 1365 Starwood Drive
Missoula, MT 59808
TELEPHONE NUMBERS: WORK _____ HOME 728-1918

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



STATE OF MONTANA, COUNTY OF Missoula
I, Jason Wiener, being duly sworn, state that the information in this
Complaint is complete, true, and correct, to the best of my knowledge and belief.
Jason Wiener
Signature of Complainant
Subscribed and sworn to before me this 29th day of
OCTOBER, 2009.
[Signature]
Notary Public
My Commission Expires: _____



VERNA LEMER
NOTARY PUBLIC-MONTANA
Residing at Missoula, Montana
My Comm. Expires Apr. 15, 2011

Statement of Fact in Political Practices Complaint by Jason Wiener on behalf of Missoula County Democrats against John Hendrickson

Roy Houseman is challenging incumbent city councilman John Hendrickson in Missoula ward 2 in the 2009 municipal election.

On October 19, 2009, Roy Houseman sent the attached mailer to voters in ward 2. The mailer contains the following endorsement from Mayor John Engen: "The Missoula City Council should be comprised of leaders willing to offer solutions, work together and represent this great city as we meet the challenges of this remarkable place. Roy Houseman has demonstrated that brand of leadership. He listens and learns and acts to serve the best interests of his community. You can't ask for more and you shouldn't settle for less."

As early as October 23, 2009, John Hendrickson began airing the attached radio ad, voiced by Gap West Broadcasting News Director Pete Deneault. The radio ad begins as follows: "Mayor John Engen says the Missoula City Council should be comprised of leaders willing to offer solutions, work together and represent this great city as we meet the challenges of this remarkable place. City councilor John Hendrickson fits these qualifications and has represented ward 2 with proven leadership and solution-oriented policymaking. John Hendrickson brings experience, accountability and responsibility to the City Council."

The ad is scripted to suggest Mayor John Engen supports the campaign of John Hendrickson.

Mayor John Engen has endorsed Roy Houseman.

Therefore, Missoula County Democrats allege that John Hendrickson's ad is deliberate deception, written and disseminated with the intent to mislead.

"The Missoula City Council should be comprised of leaders willing to offer solutions, work together and represent this great city as we meet the challenges of this remarkable place. Roy Houseman has demonstrated that brand of leadership. He listens and learns and acts to serve the best interests of his community. You can't ask for more and you shouldn't settle for less." — Mayor John Engen



www.housemanforcouncil.com

Endorsed by: Missoula County Democrats | Missoula Area Central Labor Council | Montana Conservation Voters
Mayor John Engen | Councilwoman Pam Walzer | Councilman Jason Wiener | Representative Betsy Hands
Representative Sue Malek | Representative Dave McAlpin | Representative Michele Reinhart
Commissioner Gail Gutsche | State Senator Dave Wanzonried | State Senator Cliff Larsen

Amended Statement of Fact in Political Practices Complaint by Jason Wiener on behalf of Missoula County Democrats against John Hendrickson

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The ad is scripted to suggest Mayor John Engen supports the campaign of John Hendrickson.

Mayor John Engen has endorsed Roy Houseman.

Therefore, Missoula County Democrats allege that John Hendrickson's ad is deliberate deception, written and disseminated with the intent to mislead in violation of MCA 13-37-131 (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."

