

COMMISSIONER OF  
POLITICAL PRACTICES



COPY



STATE OF MONTANA

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November 5, 2008

Brian Close  
PO Box 5212  
Bozeman MT 59715

Subject: Your complaint received October 29, 2009; Tom Burnett

I have carefully reviewed your complaint and allegations. You allege that candidate Tom Burnett sent campaign material representing that it was "Official" correspondence, but that it was not. You allege that this activity was dishonest, and constitutes a violation of § 13-35-301, MCA, the Code of Fair Campaign Practices.

Under § 13-35-301, MCA, the Commissioner's role 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 Commissioner is granted 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.)

44.10.307(3)(a), Administrative Rules of Montana, states that no investigation is required if a complaint is too indefinite or does not contain sufficient information to enable a determination that it states a potential violation of a particular statute or rule under my jurisdiction. I am therefore dismissing your complaint.

Dennis Unsworth  
Commissioner of Political Practices

Certified

POSTMARKED

OCT 29 2008

**CAMPAIGN PRACTICE COMPLAINT AGAINST THE  
TOM BURNETT, CANDIDATE FOR HOUSE DISTRICT 63**

**Complainant:** Brian F. Close, Attorney at Law, P.O. Box 5212, Bozeman, Montana 59717 (Ph.: 406-582-0478).

**Violator:** Tom Burnett, Candidate for House District 63, 4143 Rain Roper Drive, Bozeman, Montana 59715.

**Code Provisions Violated:**

Section 13-35-301, MCA.

**Factual Background:**

Tom Burnett is the Republican candidate for House District 63. On October 24, 2007, he filed with the Commissioner of Political Practices, pursuant to Section 13-35-302, MCA, a statement that he endorsed, subscribed to and pledged to abide by the code of fair campaign practices provided for in 13-35-301, MCA.

On or about October 24, 2008, Tom Burnett mailed a campaign packet to Brian F. Close, P.O. Box 5212, Bozeman, MT 59717. Mr. Close is a registered voter living in House District 63.

Included in the packet on green legal sized paper is what is entitled an "Official General Election Survey House District 63".

**Specific Violation:**

Violation of Section 13-35-301, MCA. Adoption of code of fair campaign practices.

Section 13-35-301, MCA, provides that a candidate may pledge that:

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 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.

Emphasis supplied.

The packet mailed out to this constituent, and presumably others, contained a survey headed:

**Official General Election**  
**Issue Questionnaire**

***House District 63***

However, despite its representation as being "Official", there is nothing "official" about it since Tom Burnett is not an "Official" of anything. This reminds one of "official" looking forms sent out by devious bulk mailers to exploit senior citizens.

Representing that a survey is an "official" document when it is not constitutes campaign material "*which misrepresents, distorts, or otherwise falsifies the facts,*" in violation of Section 13-35-301, MCA, which Mr. Burnett has pledged to uphold by filing a statement with the Commissioner of Political Practices pursuant to Section 13-35-302, MCA.

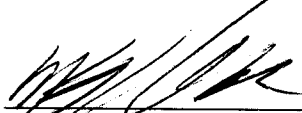
Further, representing that a survey is an "official" document when it is not constitutes a "*dishonest or unethical practice which tends to corrupt or undermine our American system of free elections which misrepresents, distorts, or otherwise falsifies the facts,*" in violation of Section 13-35-301, MCA, by preying on the tendency of some people to respond to "official" documents.

Finally, this purported "Official General Election Issue Questionnaire" instead of the scientifically neutral questions that an official survey would contain, contains "hot button" push poll questions, constituting a "*dishonest or unethical practice which tends to corrupt or undermine our American system of free elections which misrepresents, distorts, or otherwise falsifies the facts,*" in violation of Section 13-35-301, MCA.

**Conclusion**

The purpose of the code of fair campaign practices is to ensure that candidates who subscribed to it do not lie to the public in word or deed. Tom Burnett has failed in that obligation and it is the responsibility of the Commissioner of Political Practices to hold him legally accountable.

Respectfully Submitted:



Brian F. Close, Attorney at Law



# Official General Election Issue Questionnaire

House District 63

- 
- On property taxes, do you think the State Legislature should . . .**
    - Substantially reduce all property taxes
    - Eliminate residential property taxes
    - Cap residential property taxes
    - Change the assessment system
    - Keep things the same
  - Do you agree with the Democrat leadership's decision to increase state spending by 26% -- or \$1.3 BILLION dollars -- in 2007? (HB 2SA, SS, 3<sup>rd</sup> reading)\***
    - Yes
    - No
    - Undecided
  - Do you believe that Montana should allow illegal aliens to receive taxpayer-funded benefits?**
    - Yes
    - No
    - Undecided
  - Should the Montana State Legislature do more to stop out-of-state special interests from preventing development of our natural resources?**
    - Yes
    - No
    - Undecided
  - Montana has 25% of the nation's cleaner-burning coal, and massive proven oil reserves. Please indicate the role you believe Montana should play in solving our energy crisis:**
    - Much larger production role
    - Some increased production role
    - No change/no opinion
    - We should decrease production
    - Stop all energy development
  - Regarding gun control, I generally . . .**
    - Oppose gun control
    - Support gun control
    - Undecided
  - Do you agree with some Democrats in the legislature who voted AGAINST a bill that would guarantee MT citizens have the ability and the right to defend themselves against criminals? (2007, HB 340, 3<sup>rd</sup> reading)\***
    - Yes
    - No
    - Undecided
  - On the issue of abortion, I consider myself . . .**
    - Strongly pro-life
    - Somewhat pro-life
    - Somewhat pro-choice
    - Strongly pro-choice
    - Undecided
  - Do you agree with Representative Pomnichowski's vote AGAINST constitutionally defining life as being at conception? (2007, HB 403, 3<sup>rd</sup> reading)\***
    - Yes
    - No
    - Undecided

\*To the best of my knowledge, all of the statements made about my opponent's record are accurate and true. --  
Tom Burnett

## Reply Form

Dear Tom,

With the November 4 General Election fast approaching, I want you to know you can count on me to:

- Volunteer my time on your campaign, so please have your campaign team call me at:  
\_\_\_\_\_

- Place a "Vote for Tom" sign in my front yard