

COMMISSIONER OF  
POLITICAL PRACTICES



STATE OF MONTANA

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April 13, 2010

Patricia Coombs  
5365 Florence Carlton  
Florence MT 59833

Subject: Complaint received March 5, 2010; Candidates for Sense

You filed a complaint alleging that Paul Kamrath, Margie O'Brien, and Ron and Judy Sass, campaigning as "Candidates for Sense" for three positions on the Florence County Water and Sewer District, 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 statements of the candidates published in the *Ravalli Republic* newspaper prior to the 2009 election and a six page flyer mailed to voters in October 2009. The information includes what you allege are "falsehoods" describing actions of the Water and Sewer District Board, which you characterize as "a malicious character defamation of an honest board."

In a response to the complaint, the respondents dispute the allegations. They cite what they allege is documentation of their assertions, and supporting statements from the flyer in question.

When construing statutes similar to Montana's § 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.mcpX](http://politicalpractices.mt.gov/2recentdecisions/campaignfinance.mcpX)). The United States Supreme Court has observed that the constitutional "free speech" 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).) To establish a violation there must be proof by clear and convincing evidence that a person was actually aware of the probable falsity of a statement. (*St. Amant v. Thompson*, 390 U.S. 727, 732 (1968).)

Applying these principles to the allegations in this case does not support a finding that there was a violation of § 13-37-131, MCA. Upon careful review of the allegations in your complaint as well as the respondents' reply, there is insufficient evidence the respondents acted with reckless disregard – no clear and convincing proof that they subjectively entertained serious doubts as to the truth of any of the representations made in the campaign materials.

For purposes of analyzing whether § 13-37-131, MCA was violated, the focus is not on whose position is correct, but on whether there is evidence that the respondents acted with the requisite mental state (whether they subjectively entertained serious doubts regarding the truth of the representation). There is insufficient evidence to support such a finding.

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



Dennis Unsworth  
Commissioner of Political Practices

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                  Margie O'Brien  
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