

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

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| <b>Esp v Assembly Action Fund</b><br>No. COPP-2010-CFP-025 | NOTICE OF COMPLAINT |
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This Complaint against the Assembly Action Fund (AAF) grows out of those certain Complaints, captioned *Esp v WTP* No. COPP-2012-CFP-048, filed in December of 2012. By this Notice AAF and the public are informed that, pursuant to §13-37-111(2)(a) MCA and 44.10.307(3) ARM, the Commissioner will in this Matter now consider the coordination/corporate contribution issues, including the involvement of AAF, comparable to those addressed by or inherent in *Bonogofsky v Kennedy* COPP 2010-CFP-15 and the companion matter of *Bonogofsky v Assembly Action Fund* COPP 2010-CFP-013. The caption is dated for 2010 because the events complained of in the Esp complaint took place during the 2010 election cycle.

DATED this 12<sup>th</sup> day of November, 2013.



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Jonathan R. Motl  
Commissioner of Political Practices  
Of the State of Montana  
P. O. Box 202401  
1205 8<sup>th</sup> Avenue  
Helena, MT 59620  
Phone: (406)-444-4622

COMMISSIONER OF  
POLITICAL PRACTICES



STATE OF MONTANA

JONATHAN R. MOTL  
COMMISSIONER  
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HELENA, MONTANA 59620-2401  
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November 12, 2013

Assembly Action Fund  
PO Box 3662  
Lewistown, MT 59457

Via: Regular and certified mail  
RE: 2010 HD 61 activity

To Whom it may Concern:

I enclose a Notice of complaint filed against Assembly Action Fund (AAF) over activities related to its involvement in the 2010 primary election for Montana House District 61. The Notice is self-explanatory. The *Bongofsky v Kennedy* Decision referenced in the Notice is available for reading and printing from the Commissioner's website. Please call Karen at our office if you have difficulty finding the Decision on the website.

Please review the Notice and the *Bonogofsky v Kennedy* Decision. The Commissioner, pursuant to §13-37-111(2)(c) MCA, hereby declares and requires production of all "books, papers, correspondence, memoranda ...or other records" between AAF (including agents) and any candidate in the 2010 HD 69 election. Please assemble any such documents and notify me when I may inspect the same. Section 13-37-208, MCA requires that the treasurer for each candidate and political committee preserve campaign account documents for at least four years.

As Commissioner, I am authorized to inspect records, accounts and books held by a candidate or political committee, administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements, or any other records that are relevant or material for the purpose of conducting an investigation. (§ 13-37-111, MCA.) Your preservation and production of all such documents is required and destruction of any such evidence is punishable:

**§ 45-7-207, MCA. Tampering with or fabricating physical evidence.** (1) A person commits the offense of

tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(a) alters, destroys, conceals, or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in such proceeding or investigation.

(2) A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both

At this time the COPP complaint against AAF is made as part of an pre-adjudication process that requires the Commissioner to determine whether or not there is sufficient evidence to support adjudication of a violation of Montana's campaign practice laws. This process results in a Decision, such as the *Bonogofsky v Kennedy* Decision, that can lead to civil charges, in the form of a complaint, being brought against AAF in Montana state district court by the Commissioner or a County Attorney.

Any state district court Complaint brought against AAF alleging a violation of campaign practice law automatically insures that AAF is provided full civil due process protection and rights through the Court system. While the Commissioner's Decision is the necessary precursor to any such district court complaint, the Decision process also provides AAF an informal opportunity to provide information demonstrating that the evidence is not sufficient to support adjudication of any campaign practice violation. I hereby provide AAF 20 days for provision of the information, as demanded above. Please contact me should you have any questions or concerns about this Matter.

Sincerely,



Jonathan R. Motl  
Commissioner of Political Practices