

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

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March 5, 2013

Daniel "D.J." O'Neill
3310 Monroe Avenue
Butte, MT 59701

Re: Complaint against Brian Kahn received February 20, 2013

Dear Dr. O'Neill:

I have received and carefully reviewed your complaint against Brian Kahn. I note you alleged statutory violations which I do not have jurisdiction to enforce, i.e., 13-13-120 and 121. This letter addresses only those statutes you allege Mr. Kahn violated that are within the purview of my authority, specifically, Mont. Code Ann. §§ 13-35-211 (electioneering), 13-35-218 (coercion or undue influence of voters), and 13-35-235 (incorrect election procedures information).

The factual basis for your complaint is that Mr. Kahn approached you while you were waiting to vote and asked, "How long have you been here?" According to the complaint, you responded 15 or 20 minutes, and Kahn replied, "You've been here 35 minutes." In your complaint, you say your response to that last statement by Kahn was "to the point." In your op ed, attached to the complaint, you say your response "was all Butte; you fill in the blanks." In any event, you state that a booth opened up and you went in and voted.

With respect to the alleged electioneering violation (13-35-211), you first claim that two people complained that you were campaigning, but you deny that you were. You then describe alleged acts by Kahn that constitute electioneering by Kahn (p. 7 of the complaint). However, I don't see any basis for a conclusion that those alleged acts state a potential violation of the electioneering statute by Kahn.

The alleged coercion or undue influence of voters violation similarly has no basis in fact, based on the facts alleged in the complaint. Asking a person how long they have been in the polling place, without more, does not constitute coercion or undue influence of a voter. In fact, the additional facts alleged establish that you were not in any way coerced or unduly influenced, since you in fact voted. Even if I analyze these alleged

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facts as a potential *attempt* to coerce or exert undue influence, the facts simply don't rise to the level of a potential attempt to violate the statute.

The final statute that you claim Kahn violated, 13-35-235, does not apply to the facts stated in the complaint. Again, simply asking a voter how long they have been in the polling place, followed by a statement that the person had been there for 35 minutes, does not amount to knowingly or purposely disseminating information about election procedures that is incorrect or misleading.

Under ARM 44.10.307(3)(a), no investigation is required if a complaint does not contain sufficient allegations to enable the commissioner to determine that it states a potential violation of a statute or rule within the commissioner's jurisdiction. After analyzing the facts and allegations in the complaint, in light of the statutes that were alleged to have been violated, I must dismiss your complaint.

Sincerely,

A handwritten signature in black ink that reads "Jim Murry" followed by a date "Mar 12 2013". The signature is written in a cursive style.

Jim Murry
Commissioner

c: Brian Kahn