

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES
STATE OF MONTANA

In the Matter of:)	
)	
DENIS PITMAN,)	
)	SUMMARY OF FACTS,
vs.)	STATEMENT OF FINDINGS
)	and
JOY STEVENS.)	ORDER OF DISMISSAL
)	

INTRODUCTION

On October 31, 2011, Denis Pitman (hereinafter "Pitman") filed a Complaint With the Office of the Commissioner of Political Practices (hereinafter "COPP") against Joy Stevens. Pitman and Stevens are both running for election to the Billings City Council in the November 2011 general election.

Pitman's complaint alleges Ms. Stevens' recent newsletter, which she sent to the Billings Gazette, "is in clear violation of the C-3 that she signed." In addition, Pitman alleges three campaign newsletters published by Stevens violates Montana's campaign practices laws, as the newsletters do not contain a "political disclaimer as to the cost of these news letters or where the money to pay for them is coming from as required by law."

Based upon an investigation into the allegations by Pitman, and the response to his complaint by Stevens, COPP enters the following Statement of Facts, Statement of findings and Order of Dismissal.

STATEMENT OF FACTS

Prior to Pitman's complaint, Stevens signed a form C-3, entitled "CODE OF FAIR CAMPAIGN PRACTICES" with COPP.

Stevens' newsletters contain the following statements; "Joy Stevens for City Council, PO Box 2156, Billings, MT 59103." and "All statements concerning Mr. Pitman's voting record are, to the best of my knowledge, accurate and true. Signed by Joy Stevens, Candidate for City Council."

Stevens personally drafted and disseminated all of the newsletters at issue, via email, from her home computer.

STATEMENT OF FINDINGS

Pitman's Complaint to COPP alleges three of Stevens' campaign newsletters violate Section 13-35-301, Mont. Code Ann., the Code of Fair Campaign Practices (hereafter "the Code"). The Code is codified in §§ 13-35-301 and 302, Mont. Code Ann.

A candidate may voluntarily subscribe to the Code. The Commissioner's office has the responsibility to prepare a form that sets forth the Code and send a copy of the form to each candidate required by law to file additional reports and other information with the Commissioner's office.

A candidate's failure or refusal to sign the C-3 form is not a violation of the election laws. Section 13-35-302, Mont. Code Ann.

COPP has no authority to take any action if a candidate is alleged to have violated the Code. (See *In the Matter of the Complaints Against John Vincent Amended Summary of Facts and Statement of Findings ((2008); Matter of the Complaint Against*

Brian Close, et al., Summary of Facts and Statement of Findings (2005); Matter of the Complaint Against Terry Utter, Summary of Facts and Statement of Findings (1995).)

Pitman's Complaint to COPP also alleges Stevens three email campaign newsletters violate §§ 13-35-225(1), Mont. Code Ann., which states, in relevant part:

"All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign."

Stevens' email newsletters are a "form of general political advertising," pursuant to §§ 13-35-225(1), Mont. Code Ann.

The term "expenditure" is defined in §§ 13-1-101(11), Mont. Code Ann., as follows:

"(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

- (i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);
- (ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;
- (iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or
- (iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees."

Neither Stevens nor her campaign made an "expenditure" in the production or dissemination of the newsletters as Stevens was solely responsible for the creation and

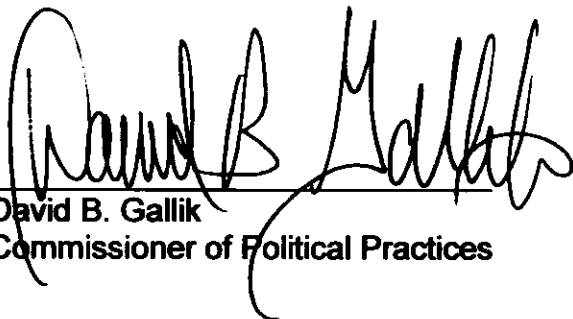
electronic distribution of her newsletter from her home computer and, therefore, has no "expenditure" related to the newsletter to report.

The reproduction of one of Stevens' email newsletters in the Billings Gazette was not a paid political advertisement by Stevens. Rather it was a part of a bona fide news story distributed through the facilities of the Billings Gazette. Therefore, the publication of the content of Stevens' newsletter in the Billings Gazette was not an "expenditure", pursuant to §§ 13-1-101(11)(b)(iii), Mont. Code Ann.

ORDER OF DISMISSAL

Based upon the investigation by COPP, the above Statement of Facts and Statement of Findings, Stevens did not violate Montana's campaign practices and finance laws, as alleged in Pitman's complaint. Accordingly, Pitman's complaint is hereby dismissed.

DATED this 3rd day of November, 2011.



David B. Gallik
Commissioner of Political Practices