

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Swope v. Pomnichowski  No. COPP 2014-CFP-001	Summary of Facts and Finding of Insufficient Evidence to Show a Violation of Montana's Campaign Practices Act  DISMISSAL OF COMPLAINT
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Jennifer Pomnichowski is a resident of Bozeman, Montana. In 2010 Ms. Pomnichowski was a candidate for election to the Montana legislature, House District 63 (HD63). Glen Swope is a resident of Bozeman, Montana. On January 13, 2014, Mr. Swope filed a complaint with the COPP alleging that Ms. Pomnichowski had failed to fully report certain campaign contributions in her 2010 campaign.

**SUBSTANTIVE ISSUES ADDRESSED**

There are no substantive areas of campaign finance law addressed by this decision as the Matter concerns procedure.

**FINDING OF FACTS**

The foundation facts necessary for this Decision are as follows:

Finding of Fact No. 1: In 2010, Ms. Pomnichowski ran for a third term as Representative for House District #63, but was defeated in the general election by Tom Burnett. (Montana Secretary of State's Office, SOS website).

Finding of Fact No. 2: Ms. Pomnichowski filed campaign finance reports applicable to her 2010 campaign. (Commissioner's records).

Finding of Fact No. 3: The originals of Ms. Pomnichowski's 2010 campaign finance reports are available in the archives at the Commissioner's office. (Commissioner's records).

Finding of Fact No. 4: A true PDF copy of Ms. Pomnichowski's 2010 campaign finance reports are available through a search engine located under the "Featured On-Line Services" and then "Search for Candidate or Committee Activity" icon listed on the Commissioner's home page. (Commissioner's records).

### **DISCUSSION**

Ms. Pomnichowski was a 2010 candidate for HD 63 (FOF No. 1) and filed campaign finance reports applicable to that campaign (FOF No. 2).

On January 13, 2014 Mr. Swope filed a complaint with the Commissioner alleging that Ms. Pomnichowski failed to properly disclose certain required information as to four 2010 campaign contributions in the amounts of \$903, \$907, \$130 and \$160. Mr. Swope included a copy of a portion of a downloaded campaign data report produced by a search engine accessed from the Commissioner's website that appeared to show these deficiencies. (see complaint).

The Commissioner's Investigator reviewed the complaint information and determined that the downloaded information came from a particular search engine on the Commissioner's website. That particular search engine appeared under a separate "search and download" icon on the Commissioner's home page. The search engine provided a means to search, compile, and download campaign finance data from selected campaigns. The search engine used by

Mr. Swope is a secondary search engine.

Campaign reports filed by Ms. Pomnichowski and other candidates are maintained in original form (FOF No. 3) and reproduced in PDF copy. The PDF copy is available on another particular search engine (FOF No. 4). The search engine described in FOF No. 4 serves as the principal public access to view campaign finance reports.

The Investigator compared the Pomnichowski campaign data downloaded by Mr. Swope with the data in Ms. Pomnichowski's actual reports and the PDF copies. Based on that comparison the Commissioner determines that the downloaded data was corrupted and not accurate. Ms. Pomnichowski's actual reports (and the PDF copies) correctly and thoroughly report the \$903 and \$907 amounts as lump sum "contributions under \$35". In addition, the actual reports fully reported all required information for the \$130 and \$160 contributions.

The error claimed by Mr. Swope does not exist as it stems from corruption in the particular search engine data accumulation. In fact, Ms. Pomnichowski properly reported the information on the reports filed with the COPP. The reports Ms. Pomnichowski filed, with the full required data, are present and available for public view. A PDF copy can be remotely viewed using the general candidate report search engine (*see* FOF 4 for access directions). Based on the above findings and discussion the Commissioner determines that there is insufficient evidence, in fact no evidence, to show that Ms. Pomnichowski violated any provisions of Montana's Campaign Practice Act.

In way of explanation, the Commissioner recognizes that it is more time consuming to view campaign finance reports one PDF document at a time. It is understandable that Mr. Swope and others would use a search engine that merges information from all reports into one document. This current search engine, however, is faulty and the Commissioner's Office is now installing a new interactive search engine with work funded by the 2013 legislature. Mr. Swope's complaint is the first one the Commissioner has processed based on corrupted data. Accordingly, the Commissioner immediately removed the access icon to this current interactive search engine from the Commissioner's Home page. The search engine will still be available on an individual request basis to researchers and others who want to download compiled information (please contact CPP staff) rather than view the information in PDF form, one report at a time. The use of the current interactive search engine, until it is replaced, will come with a warning that the data compiled by the program may be corrupted and incomplete as it was in Ms. Pomnichowski's case.

The Commissioner further notes that Mr. Swope requested withdrawal of his complaint after he was informed by the Commissioner's Investigator of the data corruption (Investigator's records). The Commissioner, however, issues this Decision because the discussion and information set out in this Decision may be important to others in the public.

### **OVERALL DECISION**

This Commissioner, having duly considered the matters raised in the Complaint, and having completed his review and investigation, hereby holds

and determines, under the above stated reasoning, that there is insufficient evidence, in fact no evidence, to justify a civil or criminal adjudication against Ms. Pomnichowski under §13-37-124(1) MCA. The Commissioner hereby dismisses this complaint in full.

DATED this 16<sup>th</sup> day of January, 2014.

A handwritten signature in black ink, appearing to read 'J. Motl', is written above a horizontal line.

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