

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the)	SUMMARY OF FACTS
Complaint Against)	AND
Mike Cooney)	STATEMENT OF FINDINGS

On June 14, 2002, Michelle Willhoft and Virginia McDaniel ("Complainants") filed a complaint with the Commissioner of Political Practices ("Commissioner") against former Secretary of State Mike Cooney and/or certain unnamed staff members employed by Mike Cooney while he was serving as Montana's Secretary of State. The Complainants allege that Mike Cooney and/or his Secretary of State staff violated Montana Code Annotated Section 13-35-226(4) by placing two campaign-related documents on the Secretary of State's computer system. The Complainants also allege that placement of the campaign-related documents on the Secretary of State's computer system violated Montana Code Annotated Section 2-2-121(2)(a) which prohibits the use of public time, facilities, or equipment for personal use.

On June 19, 2002, the Commissioner advised the Complainants that the portion of the complaint alleging a violation of Montana Code Annotated Section 2-2-121(2)(a) did not contain sufficient facts to demonstrate a potential violation and that no further action would be taken by the Commissioner unless the Complainants submitted an amended complaint in accordance with Administrative Rules of Montana 44.10.605(2). The Complainants did not submit an amended complaint. Accordingly, this decision only will address the alleged violation of Montana Code Annotated Section 13-35-226(4).

SUMMARY OF FACTS

1. The Complainants filed this complaint in response to newspaper articles in the *Missoulian* and the *Independent Record* reporting that two campaign-related documents had been placed on the Secretary of State's computer system by Mike Cooney and/or his staff while he was serving as Montana's Secretary of State. The Complainants obtained copies of the documents in question from the Secretary of State's office and appended the documents to the June 14, 2002, complaint. The two campaign-related documents were:

A. A contributor list, complete with names, addresses, and the amounts contributed or pledged from Mike Cooney's first campaign for the office of Secretary of State in 1988. The contributor list was updated to include the names, addresses, and amounts contributed by some individuals to Mike Cooney's 1992 campaign for Secretary of State.

B. A four-page document prepared by Mike Cooney's 2000 gubernatorial campaign for a May 16, 2000, Gubernatorial Candidate Forum on Women's Issues at Carroll College. The heading of the first page of the document contains pictures of Mike Cooney and his running mate, Diana Wyatt, and Mike Cooney's 2000 gubernatorial campaign slogan: "Leadership for all Montana." The document contains Mike Cooney's responses to six questions involving women's economic issues.

2. During this investigation, a third campaign-related document was discovered on the Secretary of State's computer system. A personal computer file of Dan Whyte, who served as Secretary of State Mike Cooney's Chief Legal Counsel from mid-1997 through October of 2000, contained an untitled one-page listing of the key advisors to

Mike Cooney's 2000 gubernatorial campaign and the campaign tasks assigned to each individual. Virtually all of the key 2000 Cooney campaign advisors listed were also employed by Mike Cooney in the Secretary of State's office during calendar years 1999 and 2000, including Dan Whyte. The campaign task list was prepared early in Mike Cooney's 2000 gubernatorial campaign. Dan Whyte, for example, was responsible for "Economic Development" issues in the 2000 Cooney gubernatorial campaign, and one of his assigned tasks was "meeting with experts and Mike by January 15th."

3. The Complainants said the complaint was filed because they are taxpayers concerned about how tax dollars are being spent. Complainant Willhoft said it is evident that Mike Cooney or his staff had placed political documents on the Secretary of State's computer system and that the political documents did not relate to Mike Cooney's official duties as Secretary of State. Beyond these general allegations and concerns, the Complainants provided no information concerning the use of the campaign-related documents by Secretary of State Cooney or his staff during 1999 or 2000.

4. Section 13-35-226(4), MCA, reads as follows:

(4) A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to express personal political views.

5. Mike Cooney and the Secretary of State staff employed by him who also worked on his 2000 gubernatorial campaign (hereafter collectively referred to as "Mike Cooney and his SOS/campaign staff") deny that the Secretary of State's office, equipment, or staff time were used for campaign activities in 1999 or 2000. Mike Cooney and his staff stated that any person employed by Secretary of State Cooney

who wished to volunteer to work on his 2000 gubernatorial campaign was instructed that such campaign work had to occur on their own time and outside the Secretary of State's office.

6. Mike Cooney and his SOS/campaign staff agree with the Complainants that the three campaign-related documents should not have been placed on the Secretary of State's computer system; however, Mike Cooney and his SOS/campaign staff deny that there was any use in the Secretary of State's office of any of the three campaign-related documents to support Cooney's campaign activities or any other campaign activity.

7. Dan Whyte stated he wrote a memorandum for distribution to Mike Cooney's exempt staff and any other employee of the Secretary of State who volunteered to work on Mike Cooney's 2000 gubernatorial campaign. The memorandum was written at Secretary of State Cooney's direction and emphasized that campaign work could not be done at the Secretary of State's office or involve the use of any equipment in the Secretary of State's office. Dan Whyte's memorandum also stated there had to be a "complete separation" between work for the Secretary of State and work for the Cooney campaign. Several former staff members remember receiving Dan Whyte's memorandum; however, no one involved in the 2000 Cooney campaign, including Dan Whyte and Mike Cooney, could produce a copy of the memorandum.

8. Mike Cooney and his SOS/campaign staff do not know who put the contributor list or the Women's Forum document on the Secretary of State's computer system. These documents were on the Secretary of State's "shared files" system, which means the documents were accessible and could be used or modified by anyone in the Secretary of State's office or any member of the public seeking access to the

Secretary of State's shared files (all documents on the shared files system are deemed to be public documents).

9. The contributor list contained the names and addresses of individuals who contributed to Mike Cooney's first campaign for Secretary of State in 1988, although some names of contributors to his 1992 campaign also had been added. Mike Cooney and his SOS/campaign staff allege that the contributor list was last accessed and/or modified in November of 1997.

10. Mike Cooney and his SOS/campaign staff allege that the Women's Forum document was placed in the Secretary of State's shared files on January 2, 2001, during the final hours of Mike Cooney's tenure as Secretary of State and more than six months after his unsuccessful campaign for Governor had ended.

11. The campaign task list was prepared by Angela Fultz Nordstrom, Mike Cooney's Chief of Staff in 1999 and 2000. Ms. Nordstrom also worked on Mike Cooney's 2000 gubernatorial campaign. She prepared the campaign task list in November of 1999 on her home computer and sent it to Dan Whyte. According to Ms. Nordstrom, Dan Whyte used the campaign task list to monitor the use of vacation time and compensatory time by exempt staff to "ensure that voluntary campaign activities ... would be confined to periods of vacation, comp time, or 'after hours' such as weekends." Most of Mike Cooney's exempt staff volunteered services to the 2000 Cooney campaign.

12. While Dan Whyte does not recollect the reason, the campaign task list was stored on his personal computer file in the Secretary of State' office. The campaign task list was not located on the Secretary of State's shared files system and, thus,

generally was not accessible by any person other than Dan Whyte. The campaign task list was discovered by the staff of the current Secretary of State when a search of personal computer files was conducted in response to litigation involving a contract.

13. Dan Whyte visited the Secretary of State's office in August of 2002, approximately two months after this complaint was filed. He requested access to the Secretary of State's shared files system, which contained the contributor list and the Women's Forum document. Mr. Whyte stated he requested access to the Secretary of State's shared files in an effort to locate the memorandum he had written admonishing the Secretary of State's employees not to engage in campaign activities at the office. Mr. Whyte was unable to locate the memorandum.

14. An attempt was made during this investigation to retain a computer expert in order to determine who had accessed or used the three campaign-related documents. The Commissioner's office was advised that, because of the lapse of time between the end of Mike Cooney's tenure as Secretary of State, the filing of this complaint, and the subsequent conduct of the investigation, it would not be possible to determine with any certainty who had accessed and used the three campaign-related documents or whether the three campaign-related documents had been used for political purposes in 1999 or 2000.

STATEMENT OF FINDINGS

Mike Cooney and his SOS/campaign staff agree with the Complainants' contention that the three campaign-related documents should not have been placed on the Secretary of State's computer system. Such poor judgment may in fact be, as the Complainants contend, a waste of taxpayers' money. On the other hand, poor judgment

and the inappropriate placement of campaign-related documents on the Secretary of State's computer system by Mike Cooney or his staff does not constitute a violation of Montana Code Annotated Section 13-35-226(4). A Commissioner can only take action under Montana Code Annotated Section 13-35-226(4) if a public employee is found to have solicited support for or opposition to a candidate, a political committee, or a ballot issue "while on the job or at the place of employment."

In the absence of credible evidence that any of the three campaign-related documents found on the Secretary of State's computer system were used by Mike Cooney or any of his staff to engage in political campaign activity while on the job in the Secretary of State's office, I cannot conclude that a violation of Montana Code Annotated Section 13-35-226(4) occurred.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is insufficient evidence to pursue a civil prosecution based on allegations that Mike Cooney and/or certain unnamed staff members employed by Mike Cooney while he was serving as Montana's Secretary of State violated Montana campaign practices law.

Dated this _____ day of December, 2003.

Linda L. Vaughey
Commissioner