

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Rhoades v. Dudik No. COPP 2019-CFP-004	SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICES VIOLATION
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On June 12, 2019, Quentin Rhoades of Missoula, MT, filed a campaign practices complaint against Kimberly Dudik, also of Missoula. The complaint alleges that candidate Dudik violated campaign practice laws by bulk emailing messages advocating for her candidacy from the University of Montana computer system to University employees.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance law addressed by this decision is whether a candidate for public office can lawfully email campaign documents to public employees using the government email addresses of the employees.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Kimberly Dudik filed a C-1 Statement of Candidate as a 2020 candidate for Attorney General on April 5, 2019. (Commissioner's Records.)

Finding of Fact No. 2: On May 30, 2019, the COPP received an email from Allyson Brown, Project Manager for the Office of Legal Counsel at the University of Montana (UM). This email message contained attachments to two email messages Allyson Brown had received from the Dudik campaign to her UM email account. The

first message, received on May 29, 2019 at 8:45 AM, contained the subject line “I will put people first as Attorney General” (Exhibit 1), while the second message, received on May 30, 2019 at 2:19 PM, contained the subject line “Introducing myself” (Exhibit 2). Both emails were sent from the same email address, info@dudikformontana.com. The COPP also received a related telephone call from Allyson Brown around this time that indicated she had not submitted her email address to the Dudik campaign for its use and did not appreciate receiving email messages from the Dudik campaign on her UM email account. (Commissioner’s Records.)

Finding of Fact No. 2A: As included in the complaint, the “Introducing myself” message was received on May 30, 2019 at 2:18 PM by Sean Boushie, another member of the UM faculty/staff, via his UM email account. The message was sent from the info@dudikformontana.com email address. Sean Boushie responded to the Dudik campaign alerting them to his displeasure at receiving the message, that he had not “requested any information from you”, and that he would be referring the message to UM’s Legal Counsel. Candidate Dudik sent Sean Boushie a follow up message saying “Thank you for this email. I will have my campaign look into this immediately and address it”. (Commissioner’s Records.)

Finding of Fact No. 2B: The University of Montana (UM) is a public four-year university located in Missoula, Montana that operates as part of the Montana University System. (Commissioner’s Records.)

Finding of Fact No. 3: Commissioner Mangan reached out to candidate Dudik via telephone attempting to discuss this matter on May 30, 2019, and on May 31 was able to speak with her directly. During this conversation, Commissioner Mangan shared that the COPP had received public concerns about the campaign’s May 29 and May 30 email messages (Exhibits 1 and 2) and asked candidate Dudik to purge any public employee or government email addresses from her contact or recipient lists for campaign emails. (Commissioner’s Records.)

Finding of Fact No. 4: On May 31, 2019, as a follow up to their phone conversation, Commissioner Mangan emailed candidate Dudik a link to former Commissioner Jonathan Motl’s Decision in the matter of *Thomas v. Gianforte*, a 2016 campaign practices decision that dealt with similar issues. (Commissioner’s Records.)

Finding of Fact No. 5: On June 7, 2019, the COPP Investigator spoke with the UM IT Helpdesk about University email and contact lists. The Helpdesk employee who answered the call stated that the email addresses of all UM students, staff, and employees are available for public search on UM's website via the Directory function, but that he was not aware that UM would provide that information in bulk directly to an interested person or organization not affiliated with UM. While an interested person or organization could use the Directory search to build a bulk mailing list, he did not believe UM had that information compiled or ready to provide. A follow-up call received from Lorrie Deyott with UM Information Technology later that day clarified that UM does not provide individuals or organizations not affiliated with the University this information and that the University specifically would prohibit the release of faculty, staff, or student email contact information to a political campaign for its use. (Commissioner's Records.)

Finding of Fact No. 6: On June 19, 2019, candidate Dudik emailed a response to this complaint to the COPP. In the response, candidate Dudik wrote that "The campaign obtained University email addresses for individuals affiliated with the University of Montana (UM) by looking at the publicly available website online and all of the publicly available email addresses on the website" via the UM Directory. Candidate Dudik further stated that "The campaign was under the impression that because these emails were publicly available in the manner they were, that it was permissible to use them to contact individuals". The response clarified that two separate campaign emails were sent to UM staff or employee email addresses, and that approximately 2,481 individuals affiliated with UM received either one or both messages.

Candidate Dudik finally claimed that "When the campaign was notified the email addresses used were not the publicly available ones that were available for individual communications, the campaign immediately stopped all email communications" to UM affiliated addresses and purged them all from its contact lists. A follow-up response received via email from candidate Dudik on June 20 stated that the campaign hired a firm called Run the World Digital "for email fundraising purposes. That is the entity that sent the emails". (Commissioner's Records.)

Finding of Fact No. 7: Run the World Digital is a digital strategy consulting firm that provides "a unique combination of in-depth digital fundraising knowledge, exceptional client services, and our personal commitment to progressive values" to candidates running for public office. Email Marketing and Digital Acquisition and

Persuasion are both listed as services Run the World Digital offers. On June 21, 2019 Devon Brown, a Digital Strategist for Run the World Digital who has worked closely with the Dudik campaign, spoke with the COPP via telephone. Mr. Brown stated that the Dudik campaign provided Run the World Digital with a list of names to send the “I will put people first as Attorney General” and “Introducing Myself” email messages to, and Run the World Digital simply sent the messages to those individuals. Mr. Brown also stated that, while Run the World Digital still has all UM email addresses those messages were sent to in its possession, they, along with any other addresses ending in .edu, .gov, etc., have been segregated into an encrypted “Do Not Send” folder to ensure campaign messages are not sent to them. Unless someone unlocks that folder specifically, no further Dudik campaign emails will be sent to the email addresses in that folder. (Commissioner’s Records.)

Finding of Fact No. 8: The UM website contains a directory function where users can “Search for students, faculty and staff by name or browse faculty and staff members” and obtain UM telephone and email contact information for that individual. All email listings included in the UM directory are official @umontana.edu addresses. (Commissioner’s Records.)

Finding of Fact No. 9: All 2,481 individuals included on the Dudik campaign’s Excel spreadsheet that was sent to Run the World Digital (see FOF #6) were listed as having @umontana.edu email addresses. (Commissioner’s Records.)

DISCUSSION

This complainant alleges the Dudik campaign utilized the “University of Montana computer system” to “bulk email” official campaign email messages to the accounts of University of Montana (UM) staff or employees, in violation of Montana’s established campaign practice regulation. Further, the complaint alleges, the campaign sending of a campaign email to a list of public employee’s work email addresses violates Montana campaign finance law.

Utilizing the University of Montana Computer System

The emails submitted with the complaint clearly indicate the emails were sent from info@dudikformontana.com (FOF Nos. 2, 2A), and the COPP investigation concluded the UM's computer network system prohibits the release of contact information for political purposes (FOF No. 5). The complainant provided no evidence to conclude a State of Montana or UM system was utilized to originate the bulk emailing of political messages. Additionally, the Dudik campaign claimed responsibility for the compiling of UM email addresses (FOF No. 6) and emailing of its campaign messages which were sent by a third party vendor not affiliated with UM (FOF No. 7). The specific allegation that UM's computer system itself was used to send the emails to state employees and staff political material is hereby dismissed as frivolous.

Sending campaign materials to public employee work email addresses

The Dudik campaign did, however, send campaign material to public employees at their governmental email address (FOF Nos. 2, 2A, 6). The public employees had not supplied their email address to the Dudik campaign (FOF Nos. 2, 2A) and did not ask that Candidate Dudik's campaign material be emailed to them. The Dudik campaign compiled publicly available UM email addresses, delivered them to its vendor, Run the World Digital, who in-turn emailed campaign messages, including the emails found in Exhibits 1 and 2 (FOF Nos. 6, 7).

The Commissioner reviews two previous decisions involving the use of a public employee's address to distribute campaign material: a physical

workplace address in *Mackin v. Mazurek*, June 10, 2000; and the use of a workplace email address in *Thomas v. Gianforte*, February 7, 2016.

In *Mackin v. Mazurek*, Candidate Mazurek had mailed campaign literature to state employees at their state office building addresses and the complaint challenged the legality of this activity. Then Commissioner Vaughey determined that there was no campaign practice violation, as the campaign had taken steps to purge government addresses and the occurrences were **‘infrequent and accidental’** (emphasis added).

In *Thomas v. Gianforte*, Candidate Gianforte’s campaign purchased and used an email address list maintained by a governmental entity and sent campaign emails to the entire list. In *Gianforte*, then Commissioner Motl was tasked with making a determination of whether a **planned and deliberate** (emphasis added) use of governmental email addresses by a candidate violated Montana’s campaign practice laws. To do so, Commissioner Motl, examined coercion under Mont. Code Ann. §13-35-226(3), “a person may not coerce, command, or require a public employee to support or oppose...the election of any person to public office”. Motl found the Gianforte campaign was a “person” under Montana law, §13-1-101(28) MCA, and Motl moved to determine whether the Gianforte campaign’s mailing of campaign material to public employees email constituted coercion. In his determination, Motl wrote that the emailing in *Gianforte* “involve a deliberate mailing by a campaign to the work addresses of public employees in the state of Montana” and “any campaign action involving public employees in Montana must be measured

against explicit Montana law that both prohibits Montana public employees from carrying out campaign activity at work and protects those same public employees from being subjected to any suggestion or requirement of campaign activity while at work, §2-2-121(3) MCA, §13-35-226(4) MCA”.

While the email activity of candidate Gianforte was found to be a violation of Montana campaign practices, Commissioner Motl declined to find him in violation under the principle of excusable neglect, as it was the first time the COPP had made a determination such activity was indeed a violation¹. While the action against candidate Gianforte was dismissed, Motl wrote “If there is such a use in the future it will be a campaign practice violation unless it can be shown to fit under the *Mackin* test of an **infrequent and accidental** mailing or under another exception such as a public employee affirmatively consenting and directing a campaign to use his or her workplace address for campaign mailings” (emphasis added).

With his *Gianforte* decision, Commissioner Motl set up two inquiries for future complaints alleging the use of state addresses for political purposes: is the behavior infrequent or accidental, as found in *Mackin* or planned and deliberate, as found in *Gianforte*?

¹ Commissioner Motl applied the principle of excusable neglect to dismiss the action as he “applies this principle on the basis that the necessary distinctions were first made in this Decision. See discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009”.

In her response, Candidate Dudik states the campaign built a contact list comprised of approximately 2,481 University of Montana email addresses from the UM Directory (FOF No. 8) and knowingly sent campaign messages to public employees at those addresses (FOF No. 6, 9). The campaign itself took responsibly for obtaining all UM email addresses in question and compiling them into an email contact list that was later delivered to its vendor, Run the World Digital, who in turn emailed both the “I will put people first as Attorney General” and “Introducing myself” messages to the intended UM addresses (FOF Nos. 6, 7, 9).

The campaign deliberately and purposefully collected this information with the intent of directly sending campaign communications to those email addresses. The Dudik campaign knew it had collected official UM email address information that was undoubtedly government workplace contact information for public employees (FOF Nos. 8, 9) and actively chose to send them campaign messages.

The Dudik campaign’s use of UM staff and employee email contact information to distribute campaign messages was not accidental but a planned and deliberate activity of the campaign. Under the *Gianforte* test, the email messages sent by candidate Dudik to UM staff and employees are found to constitute coercion in violation of Mont. Code Ann. §13-35-226(3).

Sufficiency Finding No. 1: The Dudik campaign sent political messaging on two separate occasions to public employees workplace government email addresses.

The Commissioner notes candidate Dudik has accepted full responsibility for her campaign sending out two distinct email messages to public employees at their place of work, over the span of two days. After the activity had occurred and the campaign had been notified that use of University email addresses may be improper, candidate Dudik halted the practice and sequestered all public email addresses from its contact lists (FOF Nos. 6, 8).

Commission Mangan reiterates the finding in *Gianforte* that Montana law does not allow political campaigns the use of workplace addresses of public employees for political purposes.

DECISION

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner “shall investigate” any alleged violation of campaign practices law. Mont. Code Ann. § 13-37-111(2)(a). The mandate to investigate is followed by a mandate to take action; where there is “sufficient evidence” of a violation the Commissioner must (“shall notify,” *see id.*, at § 13-37-124) initiate consideration for prosecution.

Second, having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice decision. This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence to show that the Kimberly Dudik campaign violated Montana’s campaign practice laws, including, but not limited to the laws set out in the Decision. Having determined that sufficient

evidence of a campaign practice violation exists, the next step is to determine whether there are circumstances or explanations that may affect prosecution of the violation and/or the amount of the fine.

The failure to fully and timely report and disclose cannot generally be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law as it relates to failures to prohibit use of state or local resources for campaign purposes. *See Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing excusable neglect principles). Likewise, the Commissioner does not normally accept that failures to prohibit use of state or local resources for campaign purposes as *de minimis*. *Id.* (discussing *de minimis* principles).

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Kimberly Dudik. Because of the nature of the violation (the violation occurred in Missoula County), this matter is referred to the County Attorney of Missoula County for her consideration as to prosecution. *Id.*, at (1). Should the County Attorney waive the right to prosecute (*id.*, at (2)) or fail to prosecute within 30 days (*id.*, at (1)) this Matter returns to this Commissioner for possible prosecution.

Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further

consideration. Assuming that the Matter is waived back, this Finding and Decision does not necessarily lead to civil prosecution as the Commissioner has discretion (“may then initiate” *see id.*) in regard to a legal action. Instead, most of the Matters decided by a Commissioner are resolved by payment of a negotiated fine. In setting that fine the Commissioner will consider matters affecting mitigation, including the cooperation in correcting the issue when the matter was raised in the Complaint.

While it is expected that a fine amount can be negotiated and paid, in the event that a fine is not negotiated and the Matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of campaign practice law, including those of Mont. Code Ann. § 13-35-226(3). *See id.*, at § 13-37-128. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 25th day of June 2019.



Jeffrey A. Mangan
Commissioner of Political Practices
Of the State of Montana
P.O. Box 202401
1209 8th Avenue
Helena, MT 59620
Phone: (406)-444-3919

Cook, Scott

From: Kimberly Dudik <info@dudikformontana.com>
Sent: Wednesday, May 29, 2019 8:45 AM
To: Allyson Brown-Rossberg
Subject: I will put people first as Attorney General

Follow Up Flag: Follow up
Flag Status: Flagged



Allyson, I'm a proud Montanan, born and raised.

I am a product of our public education system, graduating from the Frenchtown School District and both the University of Montana and Montana State University. I love the natural beauty of our state and the welcoming spirit of its people. I'm a former registered nurse, prosecutor, 16-year attorney, and working mom -- and I hope you will join me in trying to make our communities safer.

I'm running to be our next Attorney General because I'm passionate about making our state stronger -- and my career shows that I'm qualified.

I'm proud of my work in the State Legislature to reform our criminal justice and child protection systems. I've had to help balance a multi-billion dollar state budget four times while making sure we adequately funded public safety programs. **I am ready to make our state safer and put people -- not corporations or businesses -- first as Montana's top law enforcement officer and legal advocate.**

I'm focused on building this campaign so that I can tell my story and share my vision with all Montanans. Will you join me in this campaign and donate any amount?

We need an Attorney General with a history of prioritizing our access to public lands, ensuring that health insurers and drugmakers do not take advantage of people, protecting a woman's right to choose, and who is a fearless advocate for consumers.

We need a proven reformer with frontline experience about how to address the chemical dependency issues that are ravaging our state. And we need someone with a proven record of leading bipartisan work that puts our children and their safety first.

I intend to show Montanans why I am qualified and best-prepared to be that

leader.

I look forward to meeting folks from all corners of the state and exchanging ideas about how we can achieve the best possible future together.

I know this campaign will be an undertaking, but I've never backed down from a challenge. I hope you will be with me on this journey.

Please donate to help us run the most effective campaign possible. Together, we can make our state even better.

Thank you so much,

Kimberly

Kimberly Dudik is an attorney and state representative who's dedicated her career towards fixing our criminal justice system, protecting children, and putting people before corporate interests. She's running for Attorney General because Montanans need a fearless and qualified advocate. Will you make a grassroots contribution now to help her reach voters?

CONTRIBUTE

To learn more about Kimberly, please visit her website.

Paid for By Friends of Kimberly Dudik

Friends of Kimberly Dudik
P.O. Box 674
Frenchtown, MT 59834-0674
United States

Democrat

[unsubscribe](#)



Cook, Scott

From: Andria Schafer <info@dudikformontana.com>
Sent: Thursday, May 30, 2019 2:19 PM
To: Allyson Brown-Rossberg
Subject: Introducing myself



Allyson, I'm honored to join Kimberly's campaign as finance director.

I'm from Denton, a small town in central Montana, and I'm excited to work for a candidate who believes in giving communities like mine a voice in our state.

Whether it's child safety, consumer rights, or access to public lands, I know that Kimberly will fight for us. But to get her into the Attorney General's office, it's going to take a massive grassroots effort -- and it's my job to make sure that our team is stepping up.

We're \$3,471 away from reaching our May budget goal, and I'm counting on your help. Will you rush a donation before tomorrow's deadline?

If we close our first full month on the campaign trail strong, we'll be able to ramp up our outreach efforts this summer and get Kim's message and story out to every corner of the state.

We face a competitive primary and the possibility of an extreme GOP opponent in the general election. **In a race like ours, we can't afford to miss a single budget deadline.**

So please, stand with Kimberly and pitch in any amount before tomorrow night.

Thank you,

Andria
Finance Director

Kimberly Dudik is an attorney and state representative who's dedicated her career towards fixing our criminal justice system, protecting children, and putting people

before corporate interests. She's running for Attorney General because Montanans need a fearless and qualified advocate. Will you make a grassroots contribution now to help her reach voters?

CONTRIBUTE

To learn more about Kimberly, please visit her website.

Paid for By Friends of Kimberly Dudik

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