

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

JEFF MANGAN
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P.O. BOX 202401
HELENA, MT 59620-2401

July 8, 2020

Americans for Public Trust
Attn. Caitlin Sutherland
107 South West Street, Suite 442
Alexandria, VA 22314

Subject: Complaint received May 22, 2020: Americans for Public Trust v. Cooney, COPP-2020-ETH-011

Caitlin:

I am sending this letter regarding the above-named Ethics complaint. As previously stated, this Office earlier received an Ethics complaint regarding this matter- *Merwin v Cooney, COPP-2020-ETH-007*, was lodged with the COPP on May 20, 2020.

I am dismissing your complaint, as the allegations have been considered and addressed by *Merwin*. Please see the attached Summary Decision reached in that matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Mangan".

Jeffrey A. Mangan
Commissioner of Political Practices

Ethics Complaint Form

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Statement of facts:

Describe in detail the alleged violation(s), including pertinent dates, and cite the statute or statutes you believe have been violated. Please attach copies of documentary evidence to support the facts alleged in your statement.

If the space provided below is insufficient, you may attach additional pages as necessary.

Please see attached.

- Complaints must be:**

 - signed
 - notarized
 - delivered to the Commissioner in person or by mail.

Jefferey A. Mangan
Commissioner of Political Practices
1209 8th Ave
P.O. Box 202401
Helena, MT 5962

Dear Mr. Mangan,

We respectfully request that the Montana Commissioner of Political Practices investigate Lieutenant Governor Mike Cooney for using his Capitol office to participate in a campaign conference call, in violation of state ethics laws and creating a betrayal of public trust.

I. Background

In December of 2015, Governor Steve Bullock selected Mike Cooney to be the next lieutenant governor, and he won reelection to the position in November of 2016.¹

On July 3, 2019, Lieutenant Governor Cooney announced he would run for Governor of Montana.²

On April 13, 2020, Lieutenant Governor Cooney used his Capitol office to participate in a campaign conference call with the Democratic Governors Association.³

Additionally, following Lieutenant Governor Cooney's 2002 run for state senate, the Commissioner reviewed allegations that he used the government's computer system for political purposes when he was Secretary of State.⁴ A state ethics investigation found:

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.⁵

The Commissioner, however, ultimately found that this poor judgment and dubious use of taxpayer funds did not result in a violation of Section 13-35-226(4) because there was not sufficient evidence that the documents were in fact used to engage in political activity while on the job. That is not the case here as Lieutenant Governor Cooney admits to engaging in prohibited political activity.

¹ Holly Michels, *Bullock names Mike Cooney as new lieutenant governor*, Missoulian (Dec. 30, 2015); Montana Secretary of State, *2016 Statewide General Election Canvass*.

² David McCumber, *Lt. Gov. Mike Cooney to announce run for governor* [Publ.], Montana Standard (Jul. 3, 2019).

³ Mike Dennison, *Lt. Gov. Cooney used Capitol office during campaign related call*, KRTV (May 18, 2020).

⁴ Bob Anez, *Cooney, Fox squared off in priory Senate race*, Associated Press (Oct. 21, 2012); Bob Anez, *Rulings settle complaints from Senate campaign*, Associated Press (Dec. 5, 2003).

⁵ Montana Commissioner of Political Practices, *In the Matter of the Complaint Against Mike Cooney*, (Dec. 2003).

II. Law

Pursuant to Article 8, Section 4 of the Constitution of Montana, a code of ethics governs public officials to prevent conflicts of interest between public duty and private interests.

According to Montana State Law, public officers may not use public time, facilities, equipment, supplies, personnel, or funds to 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 absent certain circumstances.⁶

State law also prohibits public employees from engaging in certain political activities on the job, including soliciting support for the election to office.⁷

The Montana Code of Ethics holds that a public office is a public trust and that elected officials shall carry out duties for the benefit of the people.⁸

The Code also states that a public officer whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties for abuse of the public's trust.⁹

III. Analysis

Elected officials in Montana have a duty to ensure their office serves the public rather than their own self-interests, according to the state's constitution and the Montana Code of Ethics.¹⁰ As a result, officials are strictly prohibited from using official time, facilities, or personnel for the furtherance of any campaign work.¹¹ Although there was no admission of engaging in political activity in the 2003 Commissioner findings, in this instance, Lieutenant Governor Cooney acknowledges that he used his Capitol office for a campaign strategy call.¹² According to his staff, the demands on his schedule as Montana's lieutenant governor, did not enable him time to leave his office to place the call.¹³ That statement itself implicates another prohibition that official time cannot be used for any political purpose.¹⁴ Despite a busy workday doing the job for which he was elected, the lieutenant governor set aside time for a political call.¹⁵ Additionally, there is the potential abuse of official personnel and supplies for this campaign strategy call.¹⁶ This additional information merits further scrutiny and investigation by this Office.

In addition to the prohibition on political activities for elected officials, state employees may also not engage in political activity while on the job.¹⁷ As an elected official, Lieutenant Governor Cooney was subject to an investigation by this office for a potential violation of this provision when certain campaign documents were discovered on the computers of his employees.¹⁸ One such

⁶ Mon. Code Ann. § 2-2-121(3)(a).

⁷ Mon. Code Ann. § 13-35-226(4).

⁸ Mon. Code Ann. § 2-2-103(1).

⁹ Mon. Code Ann. § 2-2-103(2).

¹⁰ Montana Constitution - Art. XIII, Sec. 4; Mon. Code Ann. § 2-2-103(1).

¹¹ Mon. Code Ann. § 2-2-121(3)(a).

¹² Dennison, *supra* note 3.

¹³ *Id.*

¹⁴ Mon. Code Ann. § 2-2-121(3)(a).

¹⁵ Dennison, *supra* note 3.

¹⁶ Mon. Code Ann. § 2-2-121(3)(a).

¹⁷ Mon. Code Ann. § 13-35-226(4).

¹⁸ Montana Commissioner of Political Practices, *In the Matter of the Complaint Against Mike Cooney*, (Dec. 2003).

document was a roster of Secretary of State employees who also served as campaign volunteers with associated tasks and another document contained preparation for an upcoming candidate forum.¹⁹ The presence of both of these documents not only indicate a misuse of official resources but also a misuse of public employee time. In this present situation, as Lieutenant Governor Cooney incorporated his political aspirations a part of his daily work time, he has also placed his employees in a similar position.²⁰ Given his past history of using official employees as campaign volunteers, he continues to blur the lines of campaign and official work. By taking a call in the Capitol building, political activity took place in an official government building. This also creates implications of how official time is spent, by not only the elected official and candidate but also the staff.

The Montana Code of Ethics holds that a public office is a public trust.²¹ Lieutenant Governor Cooney has been entrusted to carry out his duties on behalf of the electorate, not to further his political aspirations. As someone who has a history of intertwining official resources with political campaigns, this is a departure from public duty and creates a liability for maintaining public trust.²² Lieutenant Governor Cooney's repeated disregard for the safeguards provided for by Montana law warrant further investigation into an apparent lack of policies and procedures in place in any of his elected offices to avoid intermingling campaign and official work.

IV. Request for Action

Lieutenant Governor Mike Cooney's campaign has acknowledged the use of the Montana Capitol and official time for a campaign call strictly prohibited by law. Additionally, the facts demonstrate that Lieutenant Governor Cooney has a long career in political aspirations and yet is unable to properly distinguish these political operations from his duly elected position to public service. Therefore, we respectfully urge the Montana Commissioner of Political Practices to investigate this matter and any potential violations of state law.

Sincerely,



Caitlin Sutherland
Executive Director

¹⁹ *Id.*

²⁰ Dennison, *supra* note 3.

²¹ Mon. Code Ann. § 2-2-103(1).

²² Mon. Code Ann. § 2-2-103(2).

VERIFICATION

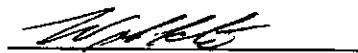
The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

For Complainant "Americans for Public Trust"

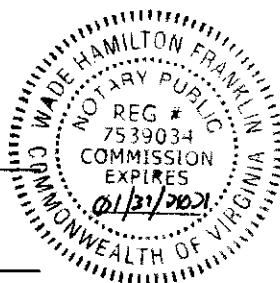

Caitlin Sutherland

City of Alexandria
Commonwealth of Virginia

The foregoing instrument was subscribed and sworn to before me this 20th day of May 2020 by
Caitlin Sutherland.


Notary Public

Notary registration number: 7539034



My commission expires: 01/31/2021