

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

JEFF MANGAN
COMMISSIONER
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1209 EIGHTH AVENUE
P.O. BOX 202401
HELENA, MT 59620-2401

July 8, 2020

Foundation for Accountability and Civic Trust
Attn. Kendra Arnold, Executive Director
1717 K Street NW
Washington, DC 20002

Subject: Complaint received May 26, 2020: Foundation for
Accountability and Civic Trust v. Cooney, COPP-2020-
ETH-010

Kendra:

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 be "J. Mangan".

Jeffrey A. Mangan
Commissioner of Political Practices

THE STATE OF MONTANA

Commissioner of Political Practices
1205 Eighth Avenue
Post Office Box 202401
Helena, MT 59620-2401
Phone: 406-444-2942
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2020 MAY 26 P 5:32

COMMISSIONER OF POLITICAL PRACTICES
HAND DELIVERED

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SIGNED/NOTARIALIZED

MAY 21 2020

Ethics

Complaint Form (10/09)

Type or print in ink all information on this form except for verification signature

Person bringing complaint (Complainant):

Complete Name Foundation for Accountability & Civic Trust
Complete Mailing Address Kendra Arnold, Executive Director
1717 K Street NW, Washington DC 20006
Phone Numbers: Work (202) 787-5860 Home _____

Person or organization against whom complaint is brought (Respondent):

Complete Name Mike Cooney
Complete Mailing Address Office of the Governor, PO Box 200801, Helena, MT 59620-0801
Phone Numbers: Work (406) 444-5529 Home _____

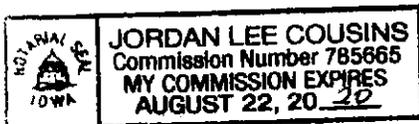
Please complete the second page of this form
and describe in detail the facts of the alledged violation.

Verification by oath or affirmation

State of Iowa, County of Polk

I, Kendra Arnold, being duly sworn, state that the information in this
Complaint is complete, true, and correct, to the best of my knowledge and belief.

(SEAL)



K Arnold
Signature of Complainant

Subscribed and sworn to before me this 20th day of
May, 2020.

Jordan Cousins
Notary Public

My Commission Expires: 8.22.20

**Ethics
Complaint Form**

Page 2

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.

See attached.

1/11/11

1/11/11

Complaint must be:

- signed
- notarized
- delivered in person or by certified mail.



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

May 20, 2020

Commissioner of Political Practices
1209 Eighth Avenue
P.O. Box 202401
Helena, MT 59620-2401

Email: cppcompliance@mt.gov

Dear Commissioner Mangan,

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We submit this complaint seeking an investigation into Lt. Gov. Mike Cooney for using state resources for political purposes in violation of the law.

Under the Montana code of ethics, a public employee or officer may not engage in political activities while using “public time, facilities, equipment, supplies, personnel, or funds.”¹ The law is clear, a state officer cannot participate in any activity from a state office to support a political candidate or campaign, and there are no exceptions.² This is a foundational ethics law, which both prevents state officials from abusing taxpayer funded resources for political purposes and maintains citizens’ confidence that their funds are not being wasted and abused to help officials gain reelection.

On April 13, 2020, Mike Cooney, who is a state official and running for Governor, participated in a political conference call from his Capitol office.³ The purpose of the call was political, i.e. Cooney spent approximately thirty minutes “discussing campaign strategy” with a national

¹ Montana Code § 2-2-121(3)(a) (2019) (“[A] public officer or public employee 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 unless the use is: (i) authorized by law; or (ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer’s staff, or the legislative staff in the normal course of duties.”). *See also id.* § 2-2-102(7)-(8) (defining public employee and public officer).

² *Id.* § 2-2-121(3)(a) (“As used in this subsection (3), ‘properly incidental to another activity required or authorized by law’ does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office.”).

³ Mike Dennison, *Lt. Gov. Cooney Used Capitol Office During Campaign-Related Call*, KTVH, May 18, 2020, available at <https://www.ktvh.com/news/montana-news/lt-gov-cooney-used-capitol-office-during-campaign-related-call> (last accessed May 19, 2020).

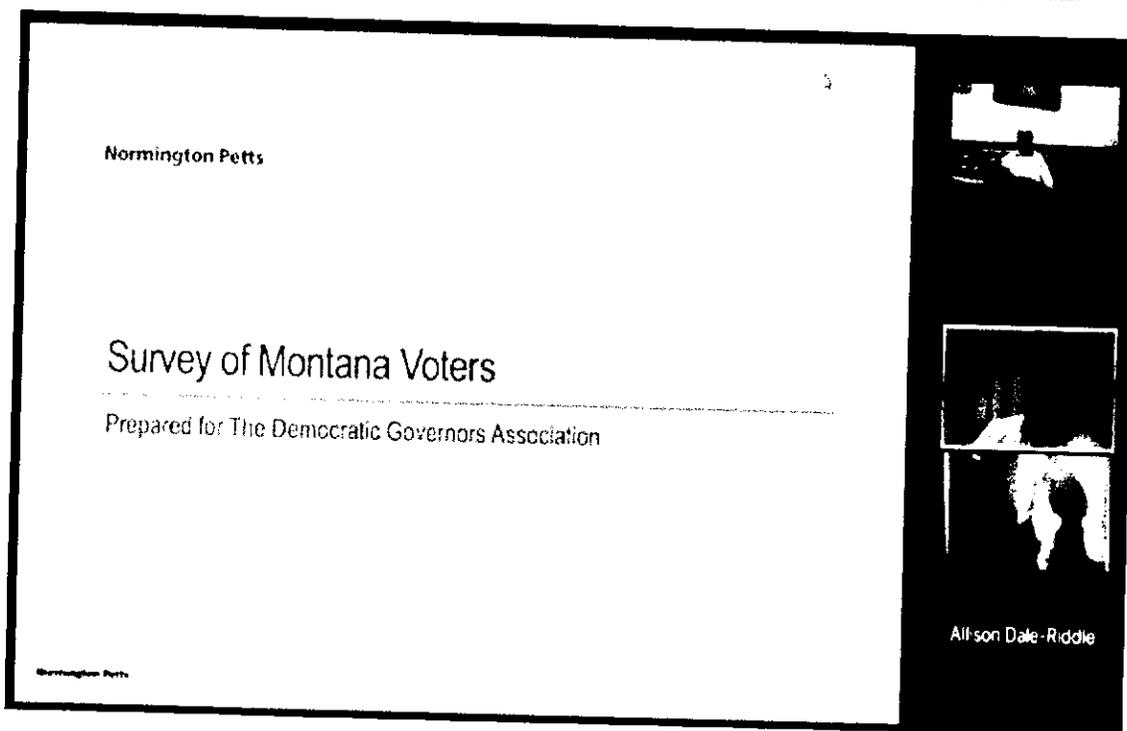
political organization.⁴ Moreover, it appears Cooney actually scheduled the call in advance to occur while he was in a state office.⁵

Any violation of this ethics law needs to be penalized, not only to deter future violations but to maintain the public trust in government. In this case, Cooney's response when questioned about the violation further demonstrates the need for accountability. Cooney's campaign admitted it was a violation, but attempted to excuse it by describing it as a "technical contravention of the rule." Moreover, they blamed it on Cooney's tight schedule and stated he did not "routinely listen to these sorts of calls in his office ..."

In spite of their attempted justification, the law is clear: state officers cannot engage in political activity from state offices and there is no exception for a busy schedule. If Cooney's official duties required him to be in state offices, then he had an affirmative choice to make: either engage in the political call in violation of the law, or don't. Not only did he choose to abuse state resources, but it appears that the call was knowingly scheduled in advance. Moreover, the campaign stated this type of activity was not routine, which indicates there may have been other occurrences.

⁴ *Id.*

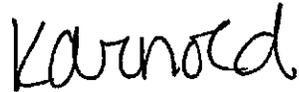
⁵ *Id.* (stating the call involved multiple people and a political organization, demonstrating it was scheduled in advance). The use of Cooney's state office was also demonstrated in a screenshot from the call:



Id.

The law is clear and Cooney's campaign admitted the violation. We ask the Commission to immediately investigate and impose appropriate penalties, including recommending remedial action to ensure Cooney does not continue to campaign from state offices.⁶

Sincerely,

A handwritten signature in black ink that reads "KArnold". The letters are cursive and somewhat slanted to the right.

Kendra Arnold, Executive Director of FACT

⁶ Montana Code § 2-2-136.

Lt. Gov. Cooney used Capitol office during campaign-related call

Exhibit A

His campaign calls it 'isolated incident'

By: Mike Dennison

HELENA — Lt. Gov. Mike Cooney, who's running for governor, used his Capitol office last month to participate in a campaign conference call, MTN News has learned — a possible violation of state law.

Cooney, one of two Democrats running for Montana's open governor seat, spent about a half-hour on the April 13 call with the Democratic Governors Association, discussing campaign strategy, his campaign confirmed Monday.

MTN News obtained a screenshot of Cooney during the video conference call, showing him sitting on a couch in the lieutenant governor's office in the east wing of the Capitol.

State ethics law says public officeholders are prohibited from using "public time, facilities, equipment, supplies, personnel or funds" to solicit support or opposition to any candidate.

The Cooney campaign told MTN News that Cooney used a personal laptop for the call and that no state personnel, equipment or supplies were involved. His opponent in the Democratic primary, Missoula businesswoman Whitney Williams, also participated in the call, his campaign said.

Cooney campaign manager Emily Harris said Monday that circulation of the picture of Cooney on the call "is nothing more than an attempt to distract voters from what really matters in this election: electing a governor with tested leadership Montanans can trust."

The winner of the Democratic primary on June 2 will take on the Republican nominee and a Green Party and Libertarian candidate this fall.

Cooney's campaign said the call is an "isolated incident" because Cooney was on a tight schedule between meetings, and needing to be on a subsequent tele-town hall with Gov. Steve Bullock on the Covid-19 crisis.

"The lieutenant governor does not routinely listen to these sorts of calls in his office and regrets if this isolated incident amounted to a technical contravention of the rule ... cited," his campaign said in a statement. "He was unavoidably in the office because he is helping lead Montana through a once-in-a-century crisis. ...

"The lieutenant governor conducts all of his political fundraising and other work for his campaign at home or in a private office."

No ethics complaint has been filed against Cooney related to the call.