

**BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES  
STATE OF MONTANA**

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In the Matter of the Complaint of )	<b>FINDINGS OF FACT AND CONCLUSIONS OF LAW</b>
Carole Mackin Against Joseph Mazurek )	
and Dorothy Bradley )	

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On May 18, 2000 complainant Carole Mackin (Mackin) filed a complaint with the Commissioner of Political Practices against Joseph Mazurek (Mazurek) and Dorothy Bradley (Bradley). The Mackin complaint alleges that Mazurek and Bradley violated § 2-2-121(3), Montana Code Annotated (MCA), and that, in causing this violation of the Code of Ethics, actions of other public employees may have violated § 13-35-226(3), MCA.

Pursuant to § 2-2-136, MCA, an informal contested case hearing was held on May 30, 2000 to allow both parties to present evidence and testimony regarding the alleged violation of § 2-2-121(3), MCA. Subsequent to this hearing, the Commissioner determined that sufficient evidence and testimony had been presented to allow a decision to be rendered regarding the alleged violation of § 13-35-226(3), MCA.

**FINDINGS OF FACT**

1. Mazurek and Bradley are public officers or public employees subject to § 2-2-121, Montana Code Annotated (MCA).
2. Mazurek is a candidate for the Democratic nomination for governor; Bradley is a candidate for the Democratic nomination for lieutenant governor.
3. Mazurek and Bradley are individually responsible for the acts of the

Mazurek/Bradley campaign.

4. On or about March 17, 2000, the Mazurek/Bradley campaign mailed campaign literature from their campaign office to several state employees, including at least one employee of the Department of Environmental Quality, an agency of the State of Montana. An example of the campaign literature is attached as Exhibit 1.

5. The processing and distribution by state employees of this unsolicited Mazurek/Bradley campaign literature required the expenditure of public time, facilities, and personnel in an amount that cannot be determined but which is not substantial.

6. The Mazurek/Bradley campaign made reasonable efforts to avoid sending campaign literature to public employees at their places of work. In this instance, the mailing was made to some attendees of a land use conference. Mazurek/Bradley volunteers entered the names from the list of attendees into a campaign database and did not notice that some of the addresses listed were public employees' work mailing addresses rather than personal mailing addresses. There is no evidence that the Mazurek/Bradley campaign intended to solicit public employees at their places of work.

7. It is acknowledged that other political campaigns have sent campaign literature to public employees at their places of work.

## **DISCUSSION**

Section 2-2-121(3), MCA, part of the Code of Ethics that governs public employees, provides:

A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds for any campaign activity persuading or affecting a political decision unless the use is:

(a) authorized by law; or

(b) properly incidental to another activity required or authorized by law, such as the function of an elected official, the official's staff, or the legislative staff in the normal course of duties.

When the Mazurek/Bradley campaign mailed campaign literature to public employees at the public employees' places of work, the campaign did not use public time, facilities, equipment, supplies, or personnel to make the mailing. The mailing was a Mazurek/Bradley campaign mailing and was made using campaign staff, facilities, and supplies. When the Mazurek/Bradley campaign literature was received by public employees at their places of work, public facilities and the services of public employees were required to process and distribute the mail. Public employees who simply receive or open unsolicited campaign literature at their places of work do not violate Montana's Code of Ethics by virtue of such innocent actions. Processing and distributing unsolicited mail addressed to public employees at their places of work are properly incidental to the duties of the public employees involved.

Even though no violation occurred, the practice of mailing campaign literature to public employees at their places of work should not be encouraged. Indeed, this practice might be construed by some people as being inappropriate. There are a variety of means whereby such mailings can be discouraged. Individual campaigns should voluntarily restrict the practice, as the Mazurek/Bradley campaign has generally done. Additionally, government agencies can adopt policies that restrict the distribution of campaign literature, along with other forms of solicitations and advertising.

Section 13-35-226(3), MCA, also governs the conduct of public employees and provides:

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 is not intended to restrict the right of a public employee to express personal political views.

Mazurek and Bradley did not violate § 13-35-226, MCA, because they did not mail campaign literature “while on the job or at the place of employment.” The mailing was accomplished using their campaign facilities. It would be absurd to construe that the employees of the Department of Environmental Quality engaged in political activity merely by distributing or receiving the unsolicited mailing from the Mazurek/Bradley campaign.

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## CONCLUSIONS OF LAW

1. Mazurek as a public officer and Bradley as a public employee did not violate § 2-2-121(3), MCA, by mailing campaign literature from the Mazurek/Bradley campaign office to a state employee at the employee's place of work. Mazurek and Bradley did not use public facilities, equipment, supplies, personnel, or funds to make the mailing.

2. A state employee who receives or distributes to the recipient unsolicited campaign literature does not engage in political activity in violation of § 13-35-226(3), MCA.

Section 2-2-136(2), MCA, provides that the Commissioner may assess the costs of the proceeding against the person bringing the charges if the Commissioner determines that a violation did not occur. Such a provision is necessary to deter a citizen from making a frivolous complaint; but it should not be used to deter citizens from making complaints in good faith. This complaint provided a useful opportunity for further clarification of the Code of Ethics. The costs of the proceeding, therefore, will not be assessed against the complainant.

Dated this \_\_\_\_\_ day of June, 2000.

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Linda L. Vaughey  
Commissioner of Political Practices