

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

FINAL AGENCY DECISION

**RE: LOBBYIST COMPLAINT FILED BY ROBERT CORRY
AGAINST CITIZENS ADVOCATING FOR OUR STATE/BOOT
THE BLACK MARKET**

THIS MATTER came before Suzanne Staiert, Deputy Secretary of State, in accordance with section 24-4-105, C.R.S., after complainant Robert Corry filed a complaint with the Secretary of State (“the Secretary”) alleging that Respondent Citizens Advocating for Our State/Boot the Black Market (“CAFOS”) had violated Colorado laws and regulations governing lobbyist registration and disclosure.

The complaint alleged that CAFOS engaged in lobbying activities without first registering as a lobbyist with the Secretary as required by section 24-6-303 (1), C.R.S., and failed to comply with various disclosure requirements. The communications that gave rise to this were (1) a website posting at www.BoottheBlackMarket.com and (2) “email action alerts” that CAFOS sent to Colorado residents. The email alerts and website encouraged readers and recipients to “call or email their state lawmaker and ask them to support legislation to help boot the black market, House Bills 17-1220 and 17-1221. The complaint also alleges that the email alerts contained false and misleading information concerning HB 17-1220, and therefor violated section 24-6-308 (1) (n), C.R.S., which prohibits a person engaged in lobbying from “engaging in any other practice that discredits the practice of lobbying.”

As authorized by section 24-6-305 (2) (c), C.R.S., Department of State staff investigated the allegations in Robert Corry’s complaint. Thomas M. Rogers of Lewis Roca Rothgerber Christie responded as legal counsel to CAFOS to the Secretary’s inquiries. Mr. Rogers indicated that CAFOS did not meet the statutory definition of a “professional lobbyist” found in section 24-6-301 (6), C.R.S., and that it was a principal of professional lobbyist Dieter Raemdonck.

Applicable law

Colorado's broad definition of "lobbying" includes "communicating directly, or soliciting others to communicate with a covered official for the purpose of aiding in or influencing ... [t]he drafting, introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, or veto by any covered official on ... [a]ny bill, resolution, amendment, nomination, appointment or report."¹ An individual "who is compensated by a client or another professional lobbyist for lobbying" is a "professional lobbyist."² Colorado law requires professional lobbyists to register with the Secretary "before lobbying," and to file periodic disclosure statements identifying their lobbying income and expenditures.³

On the organizational level, section 24-6-307, C.R.S., makes it "unlawful for any person to employ for pay or any consideration ... an individual to engage in lobbying who is not registered except upon condition that such individual register forthwith."

The Secretary has the authority to investigate complaints concerning lobbying activities, and where he "has reasonable grounds to believe that any person is in violation of section 24-6-302 or 24-6-303," the Secretary may conduct a hearing under the Colorado Administrative Procedure Act.⁴ Following such a hearing, if a violation is found, the Secretary may "issue a cease- and desist order."⁵

Summary of investigation and factual findings

Based on the Department's investigation and my review of the complaint, the attachments, correspondence, and other materials cited below, I make the following findings of fact:

1. "Citizens Advocating for Our State" is the registered trade name for Coalition Against Outrageous Subsidies, a Colorado nonprofit corporation formed in 2013.
2. CAFOS's Statement of Trade name of a Reporting Entity filed April 17, 2016, indicates that the business transacted is "advocating for Colorado community interests."
3. On January 4, 2013, Dieter Raemdonck first registered as a professional lobbyist with the Colorado Department of State.
4. On April 18, 2016, Dieter Raemdonck updated his registration with the Department of State by adding CAFOS as a client.

¹ Section 24-6-301 (3.5) (a), C.R.S.

² Section 24-6-301 (6), C.R.S.

³ Sections 24-6-301 (1) and 24-6-302(2.5), C.R.S.

⁴ Section 24-6-305(3), C.R.S.

⁵ *Id.*

5. On July 11, 2016, Dieter Raemdonck renewed his professional lobbyist registration, which covers lobbying activities through June 30, 2017.
6. On March 2, 2017, HB 17-1220 and HB 17-1221 were introduced. HB 17-1220 purported to impose limits on residential marijuana cultivation in Colorado, while HB 17-1221 would create the gray and black market marijuana enforcement program.
7. On or about March 7, 2017, CAFOS sent an email to Colorado residents stating: “Call or email your state lawmaker and ask them to support legislation to help boot the black market. House Bills 1220 and 1221.” The email also contained a link to assist email recipients to look up and find their legislator.
8. CAFOS sent another email to Colorado residents after HB 17-1220 passed out of the House of Representatives on March 13, 2017. This email contained the same language and links as the previous email.
9. Mr. Raemdonck timely filed a Disclosure Report with the Secretary of State’s office covering the lobbying activities for March 2017 on April 10, 2017. The Disclosure Report indicated that he had lobbied on behalf of CAFOS in support of HB 17-1220 and HB 17-1221.
10. In Mr. Raemdonck’s April 10, 2017, Disclosure Report, he disclosed the amount, nature, and purpose of total expenses spent on lobbying activities with HB 17-1220 and HB 17-1221. Expenses were paid to Onsite Public Affairs and Audience Partners, LLC, to cover the outreach and media campaigns “to encourage support for legislation to limit residential marijuana grows.”

Analysis and ruling

The evidence before me is insufficient to establish that the entity who sent the communications in question was a “professional lobbyist.” To qualify as a professional lobbyist an individual or entity must be “compensated by a client or another professional lobbyist for lobbying.”⁶ CAFOS does not meet this definition, and the evidence shows that it is not organized as a lobbying firm. Instead it appears CAFOS is the client of a registered professional lobbyist. Mr. Raemdonck was engaged to lobby on behalf of CAFOS and disclosed such engagement in his filing with the Secretary on April 18, 2016. In his disclosure covering March 2017 lobbying activities, Mr. Raemdonck included his work lobbying in support of HB 17-1220 and HB 17-1221. Additionally, he included the expenses incurred during March for his work lobbying on the two bills, and his total income from lobbying.

The email action alerts were not sent to legislators, but instead to Colorado residents. Although Colorado lobbying law generally covers both direct and indirect communications and members of the General Assembly, the type of communication at issue here commonly understood as

⁶ Section 24-6-301 (6), C.R.S.

“grassroots lobbying.” In 2003, former Deputy Secretary of State William A. Hobbs issued an advisory opinion concerning grass roots lobbying. He stated that a one-time occurrence of grassroots lobbying may be “sufficiently minimal” so as to not require registration and reporting. I find that the communications at here were sufficiently minimal. In regard to the second allegation in the complaint, CAFOS’s statement addressing patients and caregivers continuing to grow at elevated levels regardless of HB 17-1220 is subject to interpretation. I do not find that CAFOS’s email alerts were “obviously false statements” nor did they discredit the practice of lobbying under section 24-6-308 (1) (n), C.R.S.

Conclusion

Because the evidence before me is insufficient to establish that CAFOS or Mr. Raemdonck violated Colorado’s laws governing lobbying and professional lobbyists, I hereby DENY the relief requested in the complaint. This Decision constitutes final agency action subject to judicial review in accordance with section 24-4-106 (2), C.R.S.

Dated this 31 day of July, 2017.



Suzanne Staiert
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CERTIFICATE OF MAILING

This is to certify that I have duly mailed the within **FINAL AGENCY DECISION** to the addresses below by depositing copies of the same in the United States mail, first class postage paid, at Denver, Colorado, **Tuesday, August 1, 2017** addressed as follows:

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