

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

**CASE NO. OS 2004-0009**

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**AGENCY DECISION**

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**IN THE MATTER OF THE COMPLAINT FILED BY CHARLES H. BUCKNAM  
REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY  
JEFF WASDEN, THE COMMITTEE TO ELECT JEFF WASDEN and FRONT RANGE  
WINDOW & DOOR, INC.**

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This matter is before the Administrative Law Judge on the complaint of Charles H. Bucknam (Bucknam). A Revised Complaint was filed with the Colorado Secretary of State on May 29, 2004. The Secretary of State referred the complaint to the Division of Administrative Hearings on July 1, 2004, as required by Colo. Const. Art. XXVIII, sec. 9(2)(a). The complaint alleges that the Respondents violated certain provisions of Article 28 of the Colorado Constitution and the Fair Campaign Practices Act, Section 1-45-101 *et seq.*, C.R.S. (2003) (the FCPA), as well as the Secretary of State's Rules Concerning Campaign and Political Finance, 8 CCR 1505-6.

The hearing on this complaint was conducted on July 15, 2004 before Administrative Law Judge Kathleen T. Muramoto (ALJ). The hearing was digitally recorded in Courtroom E from 9:01 a.m. to 10:37 a.m.

Bucknam was not present at the hearing but was represented by Jerri L. Hill, Esq. Respondents Jeff Wasden (Wasden) and The Committee to Elect Jeff Wasden (the Committee) were represented by Robert B. Wareham, Esq. Respondent Front Range Window & Door, Inc. (Front Range) was represented by Shane Roth.

The record of the hearing was held open until July 26, 2004 for the submission of written closing arguments, at which time this matter was ready for the issuance of an Agency Decision. The Administrative Law Judge issues this Agency Decision pursuant to Colo. Const. Art. XXVIII, sec. 9(1)(f), (2)(a) and Section 24-4-105(14)(a), C.R.S. (2003).

**ISSUES PRESENTED**

Complainant contends that:

- Wasden and the Committee violated Colorado Constitution Article XXVIII ("the Article") Section 7 and C.R.S. 1-45-108(1)(a)(II), by failing to report the

employers of four individuals or couples who had made contributions of \$100 or more on the Year End Report.

- Respondent Front Range violated Section 3(4)(a) of the Article by contributing \$250 to Wasden and the Committee.
- Respondents Wasden and the Committee violated 8 C.C.R. 1505-6 (4.10) by failing to return the illegal donation from Front Range within thirty (30) days after receiving it on December 2, 2003.

### **FINDINGS OF FACT**

1. For purposes of this complaint, Wasden is a candidate for local office in Douglas County, Colorado.

2. Douglas County, Colorado, is not a home rule county.

3. For purposes of this complaint, it is undisputed that Front Range is a corporation.

4. On December 2, 2003, Front Range made a \$250 contribution to the Committee.

5. On or about January 8, 2004, Wasden, by and through the Committee, filed a manual report (hereinafter "Year End Report") with the Douglas County Clerk and Recorder's office (hereinafter "Clerk"), which disclosed a contribution of \$250 from Front Range, received on or about December 2, 2003.

6. On October 31, 2003, Julie L. Riber, a bookkeeper, made a \$100 contribution to the Committee. The Year End Report did not include the name of her employer in the space provided on the form for that information.

7. On October 31, 2003, David J. Martz, an Engineer, made a \$100 contribution to the Committee. The Year End Report did not include the name of his employer in the space provided on the form for that information.

8. On December 2, 2003, Lee and Katharine Lindig, Non-Profit Volunteer Coordinators, made a \$100 contribution to the Committee. The Year End Report did not include the name of their employers in the space provided on the form for that information.

9. On December 2, 2003, Paul and Lois McKeag, Computer Technicians, made a \$100 contribution to the Committee. The Year End Report did not include the name of their employers in the space provided on the form for that information.

10. The Committee did not disclose the employers of these individuals because it did not have this information. There is no evidence that the Committee made any attempt to determine this information prior to filing its Year End Report.

11. Wasden was not aware of the requirement to disclose the employer of contributors of \$100 or more. He believed he simply needed to make the best effort to do so. He became aware of the deficiency in the Year End Report he filed by way of the complaint which is the subject of this case.

12. On July 9, 2004, Elizabeth Oulliber, Treasurer of the Committee, by and through the Committee, filed an amended Year End Report which provided the names of the employers of contributors Julie L. Riber, David J. Martz, Lee and Katharine Lindig and Paul and Lois McKeag. Ms. Oulliber served as Treasurer on a voluntary basis. She is also an employee of Front Range.

13. Ms. Oulliber had spoken with Nicole Beary, Election Coordinator of the Douglas County Office of the Clerk and Recorder, about the difference between election finance laws in state and local campaigns. She also inquired of the Secretary of State's Office as to whether it was allowable to accept corporate contributions on a local level.

14. In November, 2002 the Colorado Constitution was amended to add Article 28, titled Campaign and Political Finance. On January 13, 2003 Colorado Attorney General Ken Salazar issued a Formal Opinion of the Attorney General on several questions related to Article 28 and the FCPA (the AGO). This opinion addressed the question of whether Article 28 and the FCPA applied to home rule cities and counties. The opinion specifically dealt with the issue of whether the prohibition against contributions by corporations and labor organizations to candidate committees in Section 3(4)(a) of Article 28 applied to candidates for election in home rule municipalities and counties. This opinion was provided to Ms. Oulliber approximately in January of 2004 by the Office of the Secretary of State in response to Ms. Oulliber's questions.

15. The AGO concluded that Article 28 did not supplant the authority of home rule cities and counties to regulate campaign finance. The AGO stated that "Article XXVIII does not apply to home rule counties and municipalities which have charters or ordinances that already address the matters covered in Article XXVIII". The AGO also concluded that Article 28 did not impose limits on contributions to candidate committees by corporations and labor organizations in elections in home rule "or other local entities". The AGO added in this regard that "the prohibition in section 3(4)(a) of Article XXVIII, limiting corporate or labor organization contributions, does not apply to candidates for local offices".

16. During 2003 many people involved in political campaigns believed that Article 28 did not prohibit corporate or labor organization contributions to a candidate

committee in a local government election, regardless of whether the local government entity was a home rule city or county. Ms. Oulliber held this belief.

17. Ms. Oulliber received no conflicting information that the AGO opinion might not be accurate until the Committee received a letter dated April 12, 2004 from the Clerk's office. The letter included a copy of a Memorandum from Carole Murray of the Clerk's office regarding campaign contributions by corporations. The Memorandum advised that if any candidate had mistakenly accepted money from a corporation, that it be returned immediately. The letter dated April 12 stated that: "Due to the type of corrections that may need to be done to the filings the date to cure the deficiencies shall be thirty (30) business days from the date of this notice." The Committee received a follow up letter from the Clerk's office dated May 5, 2004, which served as a reminder notice regarding the Corporate Contribution notice dated April 12, 2004. This notice stated that: "The deadline to amend a filing is May 12, 2004."

18. Based on these two notices, Ms. Oulliber returned the corporate contribution of \$250 to Front Range on May 10, 2004, and amended the reports as necessary.

19. Regarding the deficiencies in the Year End Report of not listing the employers of contributors of \$100 or more, Ms. Oulliber believed as did Wasden, that the information would have been provided if the Committee had it available, but that it was not necessary if it did not. The first Ms. Oulliber became aware that the filing was deficient in this regard was by way of the complaint which is the subject of this case.

20. Before making the December 2, 2003 contribution to the Committee, Shane Roth, president of Front Range, believed that it was legal for Front Range to make a contribution to the Committee. Roth did not consult a lawyer regarding the legality of a contribution to a local campaign. Roth acted under no intentional motive to break the applicable laws and regulations.

21. Front Range presented no evidence that Roth or anyone else on behalf of Front Range was aware of or relied upon the rules of the Secretary of State on campaign finance, was aware of or relied upon the AGO, spoke to anyone in the Secretary of State's office regarding the legality of corporate contributions to local candidates, or reviewed the Secretary of State's web site in this regard at the time the \$250 contribution was made on December 2, 2004. The Administrative Law Judge therefore finds that Front Range did not rely on any of these sources when it made its contribution.

22. Effective April 21, 2003 Colorado Secretary of State Donetta Davidson issued temporary rules concerning Article 28 and the FCPA. Rule 27.2 of these temporary rules provided as follows:

The provisions of section 3(4) of article XXVIII of the state constitution relating to contributions and expenditures of corporations and labor unions apply to elections to every state and local public office, except local public offices in home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address any of the matters covered by article XXVIII or article 45.

23. Davidson made Rule 27.2 permanent effective July 21, 2003.

24. The Administrative Law Judge finds on the basis of all of the evidence, including the conflicting opinions of government officials, that with regard to Front Range's corporate contribution, the Committee and Front Range acted in a good faith belief that corporate contributions were allowable in local races.

## DISCUSSION

### Corporate Contribution to the Committee

1. Colo. Const. art. XXVIII, sec. 3(4)(a) states: "It shall be unlawful for a corporation or a labor organization to make contributions to a candidate committee . . .". A candidate is defined as any person who seeks election to any state or local public office. Colo. Const. art. XXVIII, sec. 2(2). Candidates for election to local public offices and their committees are therefore subject to Article 28 by the express language of that constitutional amendment. Colo. Const. art. XXVIII, sec. 2(2), (3). A person remains a "candidate", as defined in the constitution, as long as his candidate committee exists. Colo. Const. art. XXVIII, sec. 2(2). The Committee remained open, had a bank account, and accepted contributions through 2003. Therefore, Wasden remained a candidate as that term is defined in Section 2 of Article 28, and the Committee remained a candidate committee to which corporations were prohibited from contributing. The Committee was formed for Wasden to campaign for local office and was thus a committee as defined by Article 28. *Id.* Front Range does not contest that it is a corporation as defined in the FCPA or the rules of the Secretary of State. Front Range made a contribution to the Committee. Therefore, this respondent was a corporation that made a contribution to a candidate committee in violation of the plain language of the constitutional prohibition in Section 3(4) of Article 28.<sup>1</sup>

2. In addition to this constitutional provision, Secretary of State Rule 27.2, 8 CCR 1505-6, made clear that the prohibition against corporate contributions in Article 28, Section 3(4) applied to local elections, except local elections in home rule cities and counties. A rule of the Secretary of State is presumptively valid. *Colorado Ground*

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1. When the language of a constitutional provision is plain and the meaning is clear, it should be interpreted and applied as written. *People v. Johnson*, 77 P.3d 845 (Colo.App. 2003).

*Water Commission v. Eagle Peak Farms, Ltd.*, 919 P.2d 212, 217 (Colo. 1996). In addition, the construction of this constitutional provision by the Secretary of State, the official responsible for the administration of the campaign finance laws, is entitled to great weight. See *Janssen v. Industrial Claim Appeals Office*, 40 P.3d 1 (Colo. App. 2001); *Mile High Greyhound Park, Inc. v. Colorado Racing Commission*, 12 P.3d 351 (Colo. App. 2000).

3. Therefore, despite the contrary opinion of the Attorney General, on April 21, 2003 the Secretary of State, the official charged with enforcement of Article 28, Section 3(4), clarified that this measure prohibited corporate contributions to candidate committees in local races in non-home rule government entities. The Administrative Law Judge is not entitled to ignore the plain language of the constitutional provision or the Secretary of State's equally plain and consistent regulation adopted in April, 2003.

4. The Administrative Law Judge therefore concludes that Front Range violated Colo. Const. art. XXVIII, sec. 3(4)(a).

5. Respondent Front Range argues that it acted in good faith, but that a lack of clarity existed as to whether corporate contributions were permitted in local elections. In support of this argument it points to the conflict between the opinions of the Attorney General and the Secretary of State. Regardless of these conflicting opinions, by April 21, 2003 (when Rule 27.2 was promulgated) the public was put on notice that contributions such as these were prohibited. There is no requirement in Article 28, Section 3(4) or in Rule 27.2 that a violation must be willful, knowing or intentional.

6. Further, even if there was confusion in some quarters regarding whether corporate contributions were permitted in local races, Front Range did not rely on the AGO or Secretary of State's rules or opinions when it made the contribution at issue in this case.

### **Return of the Corporate Contribution**

1. Secretary of State Rule 4.10, 8 CCR 1505-6, as amended on January 6, 2004 states that contributions received in excess of contribution limits shall be returned to the contributor within 30 days. The prior rule (Rule 24.9) adopted on July 21, 2003 set a 10-day limit for the return of contributions in excess of the contribution limits. The prohibition against corporate contributions amounts to a contribution limit; that limit is "zero".<sup>2</sup> Colo. Const. art. XXVIII, sec. 3 does not prohibit a committee from accepting unlawful corporate contributions, such that a committee can be penalized for accepting the contribution under Article 28, Section 10(1). Nevertheless, the Secretary of State by this rule has required that a committee return unlawful contributions by corporations.

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2. Although not dispositive of the issue, it is instructive that Colo. Const. art. XXVIII, sec. 3, including the prohibition against corporate contributions to candidate committees, is titled "Contribution Limits".

Wasden and the Committee did not do so within 30 days. However, as found, Ms. Oulliber received two notices from the Clerk's office giving the Committee until May 12, 2004 to return corporate contributions and amend its filings. The notices indicated they were being sent due to confusion in the community regarding the issue addressed. Ms. Oulliber relied on the notices and returned the contribution at issue within the thirty days allowed. Therefore, the ALJ must conclude that Wasden and the Committee were not in violation of Rule 4.10 and its predecessor Rule 24.9 in this regard.

### **Reporting of Employers**

1. Candidate committees are required to report the employer of every person who has made a contribution of \$100 or more. Colo. Const. art. XXVIII, sec. 7; Section 1-45-108(1)(a)(II), C.R.S. (2003). In its January 8, 2004 report the Committee failed to include the employer of four individuals and couples who contributed \$100 or more. As found, on July 9, 2004, the Committee filed an amended Year End Report which provided the names of these employers.

2. The extent of the non-compliance here was total. The Committee wholly failed to disclose the required employers. In addition, the purpose of the law was not substantially achieved. The purpose of this requirement is to make available to the public the employer of contributors of \$100 or more. That purpose was not accomplished in this case. Finally, the Committee did not establish that it made a good faith effort at compliance; there was no evidence that the Committee made any attempt to determine this information at the time it filed its January 8, 2004 Year End Report. Therefore, the Committee failed to comply with this requirement between January 8 and July 9, 2004.

3. The Administrative Law Judge concludes that the Committee violated Colo. Const. art. XXVIII, sec. 7 and Section 1-45-108(1)(a)(II), C.R.S. (2003) because its January 8, 2004 report failed to disclose the employer of four individuals or couples who contributed \$100 or more to the Committee, and this was not corrected by an amended filing until July 9, 2004.

### **CONCLUSIONS OF LAW**

1. On December 2, 2003, Front Range violated Colo. Const. art. XXVIII, sec. 3(4)(a) when it made a contribution of \$250 to the Committee in a local race in a non-home rule county.

2. Wasden and the Committee did not violate Colo. Const. art. XXVIII, sec. 3(4)(a) when the Committee accepted corporate contributions.

3. Wasden and the Committee did not violate Secretary of State Rule 4.10, 8 CCR 1505-6, when they failed to return a corporate contribution within 30 days of its receipt.

4. The Committee violated Colo. Const. art. XXVIII, sec. 7 and Section 1-45-108(1)(a)(II), C.R.S. (2003) because its January 8, 2004 report failed to disclose the employer of four individuals or couples who contributed \$100 or more.

### **AGENCY DECISION**

1. The issues in a hearing conducted by an Administrative Law Judge under Article 28 of the Colorado Constitution are limited to whether any person has violated Sections 3 through 7 or 9(1)(e) of Article 28, or Sections 1-45-108, 114, 115 or 117, C.R.S. Colo. Const. art. XXVIII, sec. 9(2)(a). If an Administrative Law Judge determines that a violation of one of these provisions has occurred the Administrative Law Judge's decision must include the "appropriate order, sanction or relief *authorized by [article 28]*" (emphasis supplied). Colo. Const. art. XXVIII, sec. 9(2)(a). Accordingly, any order issued by the Administrative Law Judge in this case must relate to a violation of one of the identified constitutional or statutory provisions, and any sanction must be authorized by Article 28 of the Constitution.

2. Colo. Const. art. XXVIII, sec. 10(1) provides that any person who violates a provision of Article 28 relating to contribution limits shall be subject to a civil penalty of at least double and up to 5 times the amount contributed in violation of Article 28. Respondent Front Range made a contribution of \$250 in violation of the contribution limit in Colo. Const. art. XXVIII, sec. 3(4)(a). A civil penalty of at least double the amount of the contribution is mandatory under Article 28, Section 10(1). The Administrative Law Judge does not have the discretion to issue a lesser sanction. The Administrative Law Judge has found, however, that this Respondent acted in a good faith, though mistaken, belief that its contribution was lawful. Accordingly, the Administrative Law Judge concludes that the minimum allowable penalty of twice the amount of the contribution is appropriate. The Administrative Law Judge therefore orders that respondent Front Range pay a civil penalty to the Secretary of State in the amount of \$500.

3. The Committee violated Colo. Const. art. XXVIII, sec. 7 and Section 1-45-108(1)(a)(II), C.R.S. (2003) because it failed to disclose the employer of four individuals or couples who contributed \$100 or more. However, Colo. Const. art. XXVIII, sec. 10(1) provides for penalties only for those violations of Article 28 that relate to contribution or voluntary spending limits. Colo. Const. art. XXVIII, sec. 10(2)(a) provides that penalties for violations of reporting requirements under Article 28, Section 7 of the constitution or Section 108 of the FCPA must be assessed by the "appropriate officer". In this case the Douglas County Clerk and Recorder is the "appropriate officer" because that is the official with whom Wasden and the Committee were required to file reports. Colo.

Const. art. XXVIII, sec. 2(1); Section 1-45-109(1), C.R.S. (2003) Neither Article 28 nor the FCPA give an Administrative Law Judge the authority to assess penalties for reporting or disclosure violations. Therefore, the Administrative Law Judge cannot assess a penalty for this violation.

4. In all other respects the complaint is dismissed.

DATED: August \_\_\_\_\_, 2004.

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KATHLEEN T. MURAMOTO  
Administrative Law Judge

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above **AGENCY DECISION** was placed in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Jerri L. Hill, Esq.  
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William Hobbs  
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on this \_\_\_\_ day of August, 2004.

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Administrative Assistant