

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

CASE NO. OS 20050007

AGENCY DECISION

**IN THE MATTER OF THE COMPLAINT FILED BY JUSTUS REED DRAKE
AND JOE HALL REGARDING ALLEGED CAMPAIGN AND POLITICAL
FINANCE VIOLATIONS BY ESTES PARK CITIZENS FOR REPRESENTATIVE
GOVERNMENT, MAUREEN “DEE” PRITCHARD, KENNETH COLEMAN,
RICHARD H. CLARK and DEWEY SHANKS**

Procedural History

This matter is before the Office of Administrative Courts¹ on the complaint of Justus Reed Drake and Joe Hall (“Complainants”) against the Estes Park Citizens for Representative Government (“EPCRG” or “Committee”), Maureen “Dee” Pritchard, Kenneth Coleman, Richard H. Clark, and Dewey Shanks (collectively “Respondents”). The complaint was filed with the Colorado Secretary of State on April 5, 2005. On April 7, 2005, the Secretary of State referred the complaint to the Division of Administrative Hearings as required by Colo. Const. art. XXVIII, § 9(2)(a). Complainants allege that EPCRG and Respondents violated provisions of the Fair Campaign Practices Act (“FCPA”)² by: failing to register the Committee as an political committee with the Municipal Clerk of Estes Park; failing to identify the Committee’s registered agent; and failing to file reports of contributions and expenditures.

Hearing on the complaint was scheduled before Administrative Law Judge (“ALJ”) Michelle A. Norcross on April 21, 2005. Respondents moved to continue the April 21 hearing. The hearing was reset on May 18, 2005. The May 18 hearing was continued for the Committee to obtain legal representation. Hearing on the merits of the complaint was held on July 5, 2005, at the Office of Administrative Courts, in Denver, Colorado in courtroom 2. Complainants were represented by Nathan F. Donovan, Esq. The Committee and Respondents Pritchard and Clark were represented by Herbert C. Phillips, Esq. Respondent Coleman represented himself; Respondent Shanks did not appear at hearing. At hearing, the ALJ admitted Complainants’ exhibits A through I, O, N, and P and the Committee’s exhibit 1 into evidence.

¹ On July 1, 2005, the Division of Administrative Hearings became the Office of Administrative Courts.

² Section 1-45-101, *et seq.* C.R.S. (2004)

Motions Made at Hearing

At the conclusion of Complainants' case-in-chief, Respondents Pritchard, Clark, and Coleman moved to dismiss the complaint against them in their individual capacities. Respondents assert that Complainants' entire case is against the Committee, not them individually, and that they cannot be held personally liable for the Committee's actions or inactions. Finding that Complainants' evidence presented at hearing relates exclusively to the actions and/or inactions of the Committee and that the allegations made in the complaint are all made against the Committee, not the individuals named in the complaint, the ALJ granted Respondents' motion to dismiss the complaint against them in their individual capacities, including Respondent Shanks. The remainder of this Agency Decision relates to Complainants' allegations against EPCRG.

Parties' Positions

Complainants: Complainants contend that EPCRG became a political committee on or before January 14, 2005, but failed to register itself as such with the Municipal Clerk of Estes Park on or before that date. Additionally, EPCRG failed to disclose the name and address of its registered agent and failed to file disclosure reports as required by § 1-45-108 (6), C.R.S.

EPCRG: The Committee denies the allegation that it was required to register as a political committee in January 2005. The Committee asserts that it first became aware of its responsibility to register and submit campaign reports on March 22, 2005. On that date, it filed all the necessary registration forms and disclosure reports with the Town Clerk of Estes Park.

FINDINGS OF FACT

Based on the evidence in the record, the ALJ makes the following Findings of Fact:

1. A group called "Estes Park Citizens for Representative Government" organized for the purpose of recalling David Habecker, an Estes Park town councilman, for his refusal to say the Pledge of Allegiance.

2. The Committee assisted in getting a recall petition signed and submitted, resulting in a recall election. The recall election was scheduled on February 15, 2005. Prior to the February 15 election, Habecker and The Freedom from Religion Foundation, Inc. filed an injunction in Federal District Court. As a result of the federal court case, the recall election was postponed to March 22, 2005.

3. On January 11, 2005, EPCRG registered its website Domain ID and Domain name, EPREPGOV.ORG. Its website address is: www.eprepgove.org; its electronic mail ("email") address is: info@eprepgov.org.

4. On January 14, 2005, EPCRG placed an ad in the Trial Gazette urging voters in Estes Park to recall Habecker. There is no evidence regarding the cost of the January 14 ad, when it was paid, or who paid for it.

5. On January 21, 2005, EPCRG placed a full-color quarter page ad in the Estes Park News. On January 28, 2005, the Committee also placed a black and white, eighth-page ad in the Estes Park News. Both these ads also urged the recall of Habecker. The total cost of these ads was \$238. The Committee paid for these ads on March 24, 2005.

6. On March 22, 2005, after reading an article in the Rocky Mountain News concerning its campaign activities, EPCRG believed it needed to file a committee registering form. On this date, EPCRG completed a Committee Registration Form registering itself as an issue committee and identified Dee Pritchard as its registered agent. It also completed a Report of Contributions and Expenditures Form listing itemized monetary and non-monetary contributions and loans received. These reports were received by the Estes Park Town Clerk on March 23, 2005.

7. On April 14, 2005, EPCRG completed a second Report of Contributions and Expenditures Form for the period March 15, 2005, through April 15, 2005. The April 14 report also lists itemized monetary and non-monetary contributions and loans. This report was received by the Estes Park Town Clerk on April 15, 2005.

8. According to the Committee's filed reports, it received its first monetary donation on March 15, 2005. Prior to that date, the Committee was using funds from a \$1,050 loan made to the Committee by Norman Pritchard and Richard Clark. Four hundred and fifty dollars of the loan amount was received by the Committee on February 15, 2005. The remaining six hundred dollars was received by the Committee on March 16, 2005.

9. The Committee received just over \$2,000 in total contributions; the majority of its funds came from loans from Pritchard and Clark. At the time of hearing, the Committee had very limited resources; most of its money had been spent on the recall election.

DISCUSSION

Complainants allege that on January 14, 2005, EPCRG became a "political committee" as that term is defined in the Colorado Constitution. And, as such, it had a duty to register as a political committee and identify its registered

agent with the Estes Park Town Clerk within ten days from that date. Further, the Committee was required to file disclosure reports of contributions and expenditures on a schedule as established by the FCPA, specifically § 1-45-108 (6), C.R.S. The first issue that must be resolved is whether EPCRG is a political or issue committee.

“Political committee” means any person, other than a natural person, or any group of two or more persons, including natural persons that have accepted or made contributions or expenditures in excess of \$200 to support or oppose the nomination or election of one or more candidates. Political committee does not include political parties, issue committees, or candidate committees as otherwise defined in § 2 of Article XXVIII. Colo. Const. art. XXVIII, § 2 (12)(a) and (b). The Colorado Constitution defines “issue committee” as any person, other than a natural person, or any group of two or more persons, including natural persons: (1) that has a major purpose of supporting or opposing any ballot issue or ballot question; or (2) that has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question. Issue committee does not include political parties, political committees, small donor committees, or candidate committees as otherwise defined in § 2 of Article XXVIII. Colo. Const. art. XXVIII, § 2 (10)(a)(I) - (II) and (b).

The undisputed facts establish that EPCRG considered itself an issue committee when it registered with the Estes Park Town Clerk on March 23, 2005. Additionally, and more importantly, EPCRG’s purpose was to recall an elected official, not nominate or elect a candidate. Under the law, EPCRG cannot be both a political committee and an issue committee. The ALJ concludes that EPCRG is an issue committee. Thus, the next question to be answered is when EPCGR, as an issue committee, was required to register and file its reports?

As an issue committee, EPCRG was required to file a committee registration form with the appropriate officer within ten business days of receiving its first contribution. Additionally, reports of contributions and expenditures must be filed with the appropriate officer within fifteen days of the filing of the committee registration and every thirty days thereafter until the date of the recall election has been established and then fourteen days and seven days before the recall election and thirty days following the recall election. § 1-45-108 (6), C.R.S. In order to determine whether EPCRG violated campaign reporting requirements, the ALJ must determine when the Committee received its first contribution.

Contribution includes, “the payment, loan, pledge, gift or advance of money or guarantee of loan, made to any candidate committee, issue committee, political committee, small donor committee, or political party.” Colo. Const. art. XXVIII, § 2(5)(a)(I). In this case, the Committee received its first contribution on February 15, 2005, when it received a loan from Norman Pritchard and Richard Clark. Therefore, under § 1-45-108(6), C.R.S., EPCRG was required to file its

committee registration on or before March 2, 2005, ten business days after receiving its first contribution.

With regard to the filing of the Committee's report of contributions and expenditures, the ALJ concludes that EPCRG was required to file this report on or before March 17, 2005, fifteen days after the Committee was required to file its committee registration, not fifteen days after it actually filed its committee registration. Any other interpretation of the statute's language renders its intent meaningless. See *Cornforth v. Larsen*, 49 P.3d 346, 348 (Colo. 2002) (when construing a statute, the court should not adopt a construction that leads to absurd results).

In conclusion, the evidence establishes that EPCRG is an issue committee. And, as such, EPCRG was required to register within ten business days after receiving its first contribution. EPCRG registered twenty-one days after it was required under the FCPA. Further, EPCRG filed its first Report of Contributions and Expenditures six days after it was required to by law.

CONCLUSIONS OF LAW

Based on the Findings of Fact, the ALJ makes the following Conclusions of Law:

1. Pursuant to Colo. Const. art. XXVIII, § 9(2)(a), the ALJ has jurisdiction to conduct a hearing in this matter.
2. If the ALJ determines that a violation of the FCPA has occurred, the ALJ's decision must include the appropriate order, sanction or relief authorized by Article XXVIII of the Colorado Constitution.
3. Colo. Const. art. XXVIII, § 9(1)(f) provides that the hearing is conducted in accordance with the Colorado Administrative Procedure Act (APA), § 24-4-101, *et seq.*, C.R.S. Under the APA, the proponent of an order has the burden of proof. § 24-4-105(7), C.R.S. In this instance, Complainants are the proponent of an order seeking civil penalties against EPCRG for violations of the FCPA. Accordingly, Complainants have the burden of proof.
4. Complainants have established by a preponderance of the evidence that EPCRG received its first contribution on February 15, 2005.
5. Complainants have established by a preponderance of the evidence that EPCRG violated § 1-45-108 (6), C.R.S. by failing to file a committee registration form with the appropriate officer within ten business days of receiving its first contribution.

6. Complainants have established by a preponderance of the evidence that EPCRG violated § 1-45-108 (6), C.R.S. by failing to file its Report of Contributions and Expenditures with the appropriate officer within fifteen days of the day it should have filed its committee registration form.

AGENCY DECISION

It is the Agency Decision of the ALJ that EPCRG failed to comply with the reporting requirements of § 1-45-108 (6), C.R.S. Once a violation of the FCPA has been established, the ALJ must include in the Agency Decision the appropriate order, sanction, or relief authorized by Article XXVIII.

One sanction authorized for a failure to file pursuant to § 1-45-108, C.R.S. is a \$50 per day fine for each day the required filing was not made. See Colo. Const. art. XXVIII, § 10(2)(a). EPCRG's failure to register within ten business days of receiving its first contribution is a violation of the FCPA. The Committee was twenty-one days late in registering and identifying its registered agent. EPCRG was further required to file its Report of Contributions and Expenditures on or before March 17, 2005. The Committee was six days late in filing its contributions and expenditures report.

The Colorado Constitution also permits the ALJ to set aside or reduce a penalty upon a showing of good cause. Colo. Const. art. XXVIII, § 10(2)(b)(I). A strict application of the constitutional sanction in § 10(2)(a) would result in a fine of \$1,350 (21 x \$50 + 6 x \$50). Under the circumstances of this case, the ALJ finds a penalty of \$1,350 excessive. The Committee was only several days late in registering and filing its report. When it learned it was out of compliance with the FCPA, it immediately registered and filed its reports. The ALJ is also mindful of the fact that the Committee has very limited funds and raised just slightly more than \$2,000 during the entire campaign. EPCRG violated the FCPA by failing to timely register and file its first report of contributions and expenditures. Accordingly, the ALJ finds no reason to set aside the fine; however, the ALJ finds good cause to reduce the fine from \$50 per day to \$10 per day. Therefore, the ALJ imposes a penalty of \$270 (21 x \$10 + 6 x \$50) on EPCRG. The penalty is to be paid in accordance with the requirements of the Secretary of State's rule, policies and procedures.

This decision is subject to review with the Colorado Court of Appeals, pursuant to § 24-4-106(11), C.R.S. and Colo. Const. art. XXVIII, § 9(2)(a).

DONE and SIGNED

July 20, 2005

MICHELLE A. NORCROSS
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the above **AGENCY DECISION** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

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on this ____ day of _____ 2005.