

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

**CASE NO. OS 2005-0012**

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**AGENCY DECISION DISMISSING COMPLAINT AGAINST PETE  
HAUTZINGER**

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**IN THE MATTER OF THE COMPLAINT FILED BY STEPHEN FISH  
REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS  
BY THE DAILY SENTINEL and PETE HAUTZINGER**

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**Procedural History**

On April 27, 2005, Stephen Fish (“Complainant”) filed a complaint with the Colorado Secretary of State alleging, among other things, that Pete Hautzinger (“Hautzinger”) violated certain provision of the Fair Campaign Practices Act (“FCPA”). In his April 27 complaint, under Complaint #2, Complainant alleges:

During the 2004 general election, ads were published in a local Grand Junction paper by the “Hautzinger For Mesa County D.A. Committee” that contained false and libelous accusations against the Complainant as the spouse of another candidate, which accusations Hautzinger and his committee knew were false. For more particulars of this violation, please see the copy of one of the ads printed by The Free Press that I sent to the Secretary of State with my April 13<sup>th</sup> letter.

On June 2, 2005, Hautzinger, through his attorney, filed a Motion to Dismiss Complaint #2 against him by Complainant on the grounds that the Division of Administrative Hearings (“Division”) lacks subject matter jurisdiction of the complaint and that the complaint fails to state a claim upon which relief may be granted. Complainant filed a response to the motion on June 7, 2005. For reasons discussed below, the Administrative Law Judge (“ALJ”) grants Hautzinger’s motion and dismisses Complaint #2.

**Discussion**

Complainant filed his complaint against Hautzinger under the FCPA. The Colorado Constitution confers jurisdiction on the Division to hear complaints filed under section 3, section 4, section 5, section 6, section 7, or section 9 (1) (e), of Article XXVII of the Colorado Constitution, or under sections 1-45-108, 1-45-114, 1-45-115, or 1-45-117, C.R.S. Complainant’s allegations regarding Hautzinger

are not related to or governed by any of these sections. In his response to the motion to dismiss, Complainant argues that Hautzinger's statements violate the provisions of section 1-13-109, C.R.S. (2004), which prohibits any person from making false statements about a candidate running for public office.

The Division does not have jurisdiction over complaints arising under section 1-13-109, C.R.S. Election offenses brought under section 1-13-101, *et seq.* (2004), must be filed with the district attorney's office. Such complaints are investigated and/or prosecuted by the district attorney's office or by the office of the attorney general, not the secretary of state. Complainant's sole allegation made against Hautzinger in his April 27 complaint concerns false, misleading, or libelous statements made in connection with political ads and is not regulated by the FCPA. Accordingly, the ALJ concludes that the Division lacks subject matter jurisdiction over the complaint filed against Hautzinger.

It is hereby **ordered**:

1. Hautzinger's Motion to Dismiss Complaint #2 is GRANTED.
2. Hautzinger's name will be removed from the caption of the above-referenced case.

### **AGENCY DECISION**

It is the Agency Decision of the ALJ that Pete Hautzinger has established that the Division lacks subject matter jurisdiction over the complaint filed against him by Complainant Stephen Fish. Therefore, the complaint against Hautzinger is hereby dismissed. Under section 1-45-111(2)(a), C.R.S., the decision of the ALJ shall be final and subject to review by the Colorado Court of Appeals, pursuant to section 24-4-106(11), C.R.S.

**DONE AND SIGNED**

June 13, 2005

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MICHELLE A. NORCROSS  
Administrative Law Judge

**CERTIFICATE OF MAILING**

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

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Hoskin, Farina & Kampf, P.C.  
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William Hobbs  
Deputy Secretary of State  
1560 Broadway  
Suite 200  
Denver, CO 80202

on this \_\_\_\_ day of June, 2005

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