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 provisions 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 13th 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

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
HAUTZINGER by placing same in the U.S. Mail, postage prepaid, at Denver,
Colorado to:

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William Hobbs
Deputy Secretary of State
1560 Broadway
Suite 200
Denver, CO 80202

on this ___ day of June, 2005