

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

CASE NO. OS 20050027

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AGENCY DECISION DISMISSING COMPLAINT

**IN THE MATTER OF THE COMPLAINT FILED BY LANE MILLS REGARDING
ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY COMMUNITY
OPTIONS, INC.**

This matter is before the ALJ on the Motion to Dismiss ("Motion") filed by defendant Community Options, Inc. ("Community Options"). The Motion included supporting documentation regarding Community Options' status as a nonprofit corporation registered with the Secretary of State and its involvement with the State of Colorado as an independent contractor. Because Community Options has included documentation in support of its Motion, the ALJ will treat the Motion as one for summary judgment pursuant to C.R.C.P. 56. See Alexander v. Morrison-Knudsen, Co., 166 Colo. 116, 123, 444 P.2d 397, 400 (1968).

Summary judgment is proper when the pleadings, affidavits, depositions, or admissions show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Thompson v. Maryland Casualty Co., 84 P.3d 496, 501 (Colo. 2004); Parker v. City of Golden, 119 P.3d 557, 561 (Colo. App. 2005). The party seeking summary judgment bears the initial burden of showing the absence of any genuine issues of material fact. Nelson v. Gas Research Institute, 121 P.3d 340, 343 (Colo. App. 2005). The burden then shifts to the nonmoving party to demonstrate by specific facts that there is a genuine issue of material fact to be resolved at trial. Guaranty Bank v. LaSalle Nat'l Bank Ass'n, 111 P.3d 521, 522 (Colo. App. 2005).

For the following reasons, the ALJ concludes that there are no genuine issues of material fact and that Community Options is entitled to judgment as a matter of law. Accordingly, Community Options' Motion is granted and the hearing scheduled for December 21, 2005, in this matter is vacated.

BACKGROUND

On October 25, 2005, Lane Mills ("Mills") filed a Complaint against Community Options, Inc. ("Community Options"). The Complaint alleged that Community Options violated the Fair Campaign Practices Act ("FCPA") §§1-45-101 *et seq.*, C.R.S. (2005) by using state funds to support the passage of Referenda C and D in the November 1, 2005, election. The FCPA broadly prohibits public agencies and employees from using public moneys to support or oppose election measures.

On October 28, 2005, the Colorado Secretary of State referred the Complaint to the Office of Administrative Courts pursuant to Article XXVIII, §9(2)(a) of the Colorado Constitution. This matter was set for hearing on November 21, 2005.

On November 18, 2005, Community Options filed a Motion for Extension of Time To Conduct Hearing pursuant to §9(2)(a). Section 9(2)(a) provides that defendants "shall" be granted an extension of time of up to 30 days upon request. Consequently, on November 21, 2005, the ALJ issued an Order Vacating Hearing and Notice to Set. The matter was reset for December 21, 2005.

Prior to the hearing, Community Options filed a Motion to Dismiss the Complaint. Both parties subsequently filed responses and replies. The dispositive issue presented by the Motion and responses is whether Community Options is a "political subdivision" or otherwise a state entity that is subject to the FCPA. The ALJ concludes that Community Options is not a "political subdivision" or otherwise a state entity. Accordingly, the FCPA is inapplicable and the Complaint is dismissed in its entirety.

FINDINGS OF FACT

The ALJ makes the following Findings of Fact supporting Summary Judgment:

1. Community Options is a private, nonprofit corporation that is registered with the Colorado Secretary of State.
2. Community Options is a "community centered board" as defined in §27-10.5-102(3), C.R.S. (2005).
3. Community Options contracts with the State of Colorado as an independent contractor to provide services to developmentally disabled individuals in a portion of Southwest Colorado.

DISCUSSION AND CONCLUSIONS OF LAW

In his Complaint, Mills asserts that Community Options violated the FCPA by expending public moneys to support Referenda C and D. He specifically contends that Community Options transported employees and clients in Community Options' vans to a rally in support of Referenda C and D during working hours on October 24, 2005. Mills claims that the costs for transportation to the rally, gasoline, vehicle maintenance, and employee salaries exceeded \$50.

Mills specifically referenced §1-45-117(1)(a)(I), C.R.S. (2005) of the FCPA as the basis for his Complaint. In subsequent filings Mills broadened the scope of his Complaint by contending that he was relying on all relevant sections of the FCPA. However, based on the nature of Mills' allegations regarding the expenditures of public money in support of Referenda C and D, §1-45-117(1)(a)(I) is the only section of the FCPA that is implicated.

Section 1-45-117(1)(a)(I) of the FCPA provides, in relevant part:

No agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity expend any public moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:

...

(C) Referred measure, as defined in section 1-1-104(34.5);¹

(Emphasis added). Section 1-45-117(1)(a)(II), C.R.S. (2005) provides an exception to §1-45-117(1)(a)(I) for expenditures that do not exceed \$50.

On December 7, 2005, Community Options filed a Motion to Dismiss the Complaint because it is not a “political subdivision” or otherwise a state entity as enumerated in §1-45-117(1)(a)(I). Community Options argues that it is a private, nonprofit “community centered board” pursuant to §27-10.5-102(3) C.R.S. (2005), that contracts with the state to provide developmental disability services to individuals. Accordingly, Community Options asserts that its actions in support of Referenda C and D are not covered by the FCPA.

By enacting the FCPA, the general assembly sought to prevent state or political subdivisions from devoting public resources toward persuading voters during an election. Coffman v. Common Cause, 102 P.3d 999, 1006 (Colo. 2004). The FCPA seeks to control campaign expenditures of public monies to prevent the state machinery from thwarting the electoral process. Id.

In construing a statute, it is axiomatic that we examine specific statutory language in order to discern legislative intent. Id. at 1005. The unambiguous language of §1-45-117(1)(a)(I) prevents “political subdivisions” and other state entities from using public moneys to support or oppose election measures. The critical issue is thus whether Community Options is a “political subdivision” or is otherwise a state entity as enumerated under §1-45-117(1)(a)(I) of the FCPA.

The phrase “political subdivision” is not defined in the FCPA. However, Black’s Law Dictionary defines “political subdivision” as “a division of a state that exists primarily to discharge some function of local government.” Black’s Law Dictionary 1179 (7th ed. 1999); see Davidson v. Sandstrom, 83 P.3d 648, 656 (Colo. 2004) (relying on Black’s Law Dictionary definition in ascertaining whether judicial districts constitute political subdivisions). More specifically, “political subdivisions” are either created by the state or administered by individuals who are responsible to public officials or the electorate.

¹ A “referred measure” as defined in §1-1-104(34.5), C.R.S. (2005) “includes any ballot question or ballot issue submitted by the general assembly or the governing body of any political subdivision of the eligible electors of the state or political subdivision pursuant to article 40 or 41 of this title.” Referenda C and D were referred measures.

See Jefferson County Community Center v. N.L.R.B., 732 F.2d 122, 124 (10th Cir. 1984). Finally, "political subdivisions" possess specific attributes including the powers of taxation, subpoena, eminent domain, and the authority to issue tax-exempt bonds. Id. at 126.

Under the preceding guidelines, Community Options is not a "political subdivision." Community Options is a "community centered board" as defined in §27-10.5-102(3). A community centered board is "a private corporation, for profit or not for profit, which, when designated pursuant to section 27-10.5-105, provides case management services to persons with developmental disabilities . . . within a specified geographical area" (Emphasis added). Section 27-10.5-105, C.R.S. (2005) requires a private corporation to apply annually with the State Department of Human Services to be designated as a community centered board.

Applying the preceding case law and statutes to the undisputed record, Community Options is a private, nonprofit corporation that is registered with the Colorado Secretary of State. Community Options provides services to developmentally disabled persons in portions of Southwest Colorado. Community Options contracts annually with the State of Colorado's Department of Human Services as an independent contractor. The contract provides that "[n]either the contractor nor any agent or employee of the contractor shall be or shall be deemed to be an agent or employee of the State"

Community Options thus functions as part of an integrated legislative scheme to provide services to developmentally disabled individuals under §§27-10.5-101 to -601, C.R.S. (2005) and is defined as a "community centered board." However, Community Options does not provide these services as a state created department or administrative arm of state government. Community Options is not administered by individuals who are responsible to public officials or to the general electorate. Community Options does not have the powers of taxation, subpoena, or eminent domain and it cannot issue tax-exempt bonds. Accordingly, Community Options is not a "political subdivision" or otherwise a state entity as enumerated under §1-45-117(1)(a)(I) of the FCPA. See Jefferson County Community Center, 732 F.2d at 126 (concluding that, under former §27-11-103, nonprofit corporation offering services to developmentally disabled individuals was not a political subdivision for purposes of the federal National Labor Relations Act because it functioned as a private contractor).

Furthermore, Community Options is not even a "public entity" under the Colorado Governmental Immunity Act. See §24-10-103(5), C.R.S. (2005). A "public entity" is:

the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof organized pursuant to law, and any separate entity created by intergovernmental contract or cooperation only between or among the state, county, city and county, municipality, school district, special improvement district, and

every other kind of district agency, instrumentality, or political subdivision thereof.

§24-10-103(5). Community Options is not included in the preceding expansive definition of "public entity" because it is a private corporation that was not created by statute or intergovernmental contract as an arm of state government. Instead, Community Options is a private corporation that functions as an independent contractor to provide services to developmentally disabled individuals.

AGENCY DECISION

For the preceding reasons, Community Options is not a "political subdivision" or otherwise a state entity as enumerated under §1-45-117(1)(a)(I) of the FCPA. Therefore, the FCPA is inapplicable to Community Options as a matter of law and the Complaint filed by Mills is dismissed in its entirety. The hearing scheduled for December 21, 2005 in this matter is vacated.

APPEAL RIGHTS

This dismissal constitutes final agency action and is subject to review by the Colorado Court of Appeals, pursuant to § 24-4-106(11), C.R.S. (2005) Colo. Const. art XXVIII, § 9(2)(a).

DONE AND SIGNED

December 19, 2005



PETER J. CANNICI
Administrative Law Judge

CERTIFICATE OF SERVICE

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

Lane Mills
64300 Lincoln Road
Montrose, CO 81401

Tom Turner, Executive Director
Community Options, Inc.
P.O. Box 31
Montrose, CO 81402-0031

and to

William A. Hobbs
Deputy Secretary of State
Department of State
1700 Broadway, Suite 250
Denver, CO 80290

on this 20th day of December, 2005.



Technician IV