

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

CASE NO. OS 2005-0030

AGENCY DECISION

**IN THE MATTER OF THE COMPLAINT FILED BY TRINIDAD CITY CLERK AUDRA
FATUR REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE
VIOLATIONS BY AFSCME COUNCIL 76**

This matter is before the Office of Administrative Courts on the complaint of Audra Fatur (“Complainant”) against AFSCME Council 76 (“Respondent” or “Union”). The complaint was filed with the Colorado Secretary of State on November 17, 2005. On November 18, 2005, the Secretary of State referred the complaint to the Office of Administrative Courts as required by Colo. Const. art. XXVIII, § 9(2)(a). The complaint alleges that Respondent violated the Fair Campaign Practices Act (“FCPA”)¹ and the Colorado Constitution by failing to timely register as a political or small donor committee and comply with mandatory reporting requirements.

The hearing on the complaint was conducted in Denver, Colorado, on December 20, 2005 before Administrative Law Judge (“ALJ”) Michelle A. Norcross. The hearing was digitally recorded in Courtroom 2. Complainant was represented by Eugene Duran, City Attorney, City of Trinidad. Respondent was represented by Mark Schwane, Esq. Complainant’s exhibits 1 through 18 were admitted into evidence. At the December 20 hearing, the parties requested that the record remain open for the submission of a list of union members in attendance at a meeting held in the fall of 2005. On January 3, 2006, Complainant submitted a copy of the union list and requested an additional telephone hearing for examination of witnesses regarding the document. On January 10, 2006, Respondent filed a response and requested, as an alternative, that the parties file a written stipulation of date and authenticity regarding the document and that the evidentiary record be closed by January 16, 2006. On January 13, 2006, Complainant filed a reply and reiterated the need for a telephone hearing. The ALJ granted Complainant’s request and commenced an additional telephone hearing on January 19, 2006. The January 19 hearing was electronically recorded. At the January 19 hearing, the ALJ accepted additional testimony and admitted the document as exhibit 19.

The ALJ issues this Agency Decision pursuant to Colo. Const. art. XXVIII, §§ 9(1)(f), (2)(a) and § 24-4-105(14)(a), C.R.S. (2005).

¹ Section 1-45-101, *et seq.* C.R.S. (2005)

Parties' Positions

Complainant's Position. Complainant alleges that Respondent violated the Colorado Constitution and the reporting requirements of the FCPA by failing to register as a political committee or a small donor committee prior to accepting monetary contributions and making expenditures on behalf of three city council candidates. More specifically, Complainant contends that Respondent violated Article XXVIII, § 3(4)(a) when it paid for six newspaper advertisements ("ads") supporting the candidacies of Joe Bonato, Dottie Santistevan Hill, and Linda Velasquez. Complainant further argues that Respondent failed to file its contribution and expenditure reports in a timely manner or establish a separate account for the funds it collected prior to the election. Finally, Complainant asserts that Respondent failed to comply with the reporting requirements for independent expenditures.

Respondent's Position. Respondent denies that it violated Article XXVIII, § 3(4)(a) of the Colorado Constitution because § 3(4)(a) does not apply to candidates for local office. Accordingly, it was not required to register as a political or small donor committee, establish a separate account, or file reports of contributions and expenditures. In the alternative, Respondent asserts that even if its activities were subject to the requirements of Article XXVIII and the FCPA, it should not have to pay civil fines or penalties for a found violation because it made good faith efforts to comply with all registration and reporting requirements as soon as it was notified by the City Clerk of the need to register and file campaign reports.

Matters Raised At Hearing

At hearing, Respondent moved to dismiss the complaint on the basis of lack of subject matter jurisdiction. In support of this argument, Respondent contends that the City of Trinidad ("City"), as a home rule municipality, is governed by the provisions of its charter and not the provisions of Article XXVIII. Further, in accordance with a Formal Attorney General Opinion issued by former Attorney General Ken Salazar, § 3(4)(a) of Article XXVIII, which places limitations on contributions from labor organizations and corporations, does not apply to candidates for local offices. Therefore, Respondent asserts that Complainant's complaint should be dismissed.

Complainant opposes Respondent's motion to dismiss and argues that the provisions of Article XXVIII and the FCPA do apply to the facts of this case. Complainant contends that the City, although governed by charter, has not adopted any provisions, ordinances, or resolutions addressing any matters covered by Colorado's campaign finance laws. And therefore, the limitations in § 3(4)(a) as well as the reporting requirements in the FCPA are applicable to Respondent's actions concerning the November 8, 2005 election.

The ALJ accepted argument from the parties on the motion, but did not rule on it at hearing. Rather, the ALJ took the matter under advisement and has disposed of the issues raised in Respondent's motion to dismiss in this Agency Decision.

FINDINGS OF FACT

Based upon the evidence presented at hearing, the ALJ finds as fact:

1. The Trinidad Colorado Home Rule Charter Commission was elected on April 13, 1993, according to the provision of Article XX of the Colorado Constitution. The City of Trinidad Charter ("Charter") was adopted on August 19, 1993. It establishes a Council-Manager form of government. All powers of the City are exercised by, through, and under the direction of the City Council. Members of the City Council are elected as provided in the Charter.

2. The Charter mandates that all regular and special municipal elections are governed by state statutes, except as otherwise set forth in the Charter. The Charter has no provisions regarding contributions by corporations and labor organizations to candidates or political parties and has no provisions relating to general contribution limits, expenditures, or reporting requirements. The Charter establishes that regular municipal elections are held on the first Tuesday after the first Monday in November of odd numbered years.

3. Due to the a discrepancy between the Charter, the State Constitutional TABOR Amendment, and statutes governing elections, the City was unable to hold a coordinated election with Las Animas County for its 2005 regular municipal election. Accordingly, City Council, through Resolution 1274, adopted a mail ballot election for the election on November 8, 2005.

4. Resolution 1274 was adopted in July 2005. Concurrently, the City Council adopted Mail Ballot Election Written Plan ("Plan") for the conduct of the City's regular municipal election on November 8, 2005. Along with the Plan, the City Council also adopted a ballot measure proposing to amend the Charter pertaining to the conduct of regular municipal elections. The Plan and the proposed amendment to the Charter were submitted to the Colorado Secretary of State by Audra Fatur, the City Clerk, on July 20, 2005.

5. The Plan and Charter amendments also have no provisions regarding contributions by corporations and labor organizations to candidates or political parties or provisions relating to general contribution limits, expenditures, or committee reporting requirements.

6. The Plan was approved by the Colorado Secretary of State. And, the City held its first mail ballot election on November 8, 2005.

7. AFSCME Council 76 is a labor organization. Its local chapter, Local 1074, represents the employees of the City. The local chapter has approximately 100 members. Union dues are collected by the City and paid to the local chapter. Tom Dimino is the president of Local 1074.

8. In October 2005, Respondent (the Union) held a special meeting with its members to discuss support of the candidates for the upcoming November 8 municipal election. Candidates were invited to speak at the meeting. After candidate presentations, the members voted to support the following candidates: Joe Bonato, Dottie Santistevan Hill, and Linda Velasquez. Additionally, a majority of the Union members voted in favor of placing ads in the local paper supporting the candidacy of these three individuals. Pursuant to union bylaws, a majority vote is binding on the entire local membership.

9. In accordance with the majority-member vote, the Union paid for and ran a total of six ads in the newspaper supporting the candidacies of Bonato, Santistevan Hill, and Velasquez. The ads appeared in the local newspaper on October 19, 2005; October 21, 2005; October 24, 2005; October 28, 2005; November 4, 2005; and November 7, 2005. The Union paid a total sum of \$1050 for these ads. The general Union account was used to pay for these ads. The Union paid for the ads on October 16.

10. All six newspaper ads were identical. They read:

**WE THE
FOLLOWING
UNIONS
AFSCME LOCAL 1074,
UMWA LOCAL 9856, CWA LOCAL 7702
AND
FRATERNAL ORDER OF POLICE
LOCAL 51
SUPPORT
JOE BONATO,
DOTTIE HILL-SANTISTEVAN
AND
LINDA VELASQUEZ
FOR THE SEATS
ON CITY COUNCIL.
WE ARE ASKING THE
GENERAL PUBLIC FOR
YOUR SUPPORT IN
VOTING IN THE
THREE CANDIATES.**

PAID FOR BY AFSCME COUNCIL 76

11. On October 24, 2005, Ms. Fatur received a complaint from a citizen regarding the newspaper ads paid for by the Union. After receiving the complaint, on October 26, 2005, Ms. Fatur, as City Clerk, notified the Union that a complaint had been received in her office regarding the newspaper endorsements for the three candidates.

Ms. Fatur informed the Union that its activities were in violation of the Colorado Constitution because the Union failed to register as a political or small donor committee prior to paying for the ads. Ms. Fatur instructed the Union to file a written explanation to her letter within seven business days of receipt.

12. Immediately after receiving Ms. Fatur's letter, on October 26, 2005, the Union filed a small donor committee registration form along with a contribution and expenditure report, which were conditionally accepted. The report disclosed contributions in the amount of \$1,050 and an expenditure of \$1,050. The description of the itemized contribution was provided as "dues transfer." The expenditure for the newspaper ads was reported as "electioneering communications."

13. On November 2, 2005, Ms. Fatur informed the Union that its committee registration form contained several deficiencies that required explanation and/or correction, including a failure to identify the candidates being supported and a failure to list the names of the individual contributors. Ms. Fatur also informed the Union that it needed to set up a separate account with a financial institution for receipt of contributions. Finally, Ms. Fatur asked the Union to provide more information about the nature of the "electioneering communications." Specifically, she wanted to know if any of the ads were authorized by or coordinated with the candidates.

14. On November 3, 2005, Mr. Dimino, on behalf of the Union, sent letters to Mr. Bonato, Ms. Santisteven Hill, and Ms. Velasquez informing them that the Union had made an in-kind contribution in the amount of \$350 to their committees in the form of newspaper ads. Despite the fact that the letters make reference to in-kind contributions, there is no credible evidence that the Union's activities were authorized by, coordinated with, or controlled by the candidates, their agents, committees, or any political party. The Union's activities were done independently.

15. The Union did not send the November 3 letters for the purpose of imposing reporting requirements on the three candidates or placing them in a position of violating constitutional reporting deadlines. Rather, the Union sent these letters in response to the disclosure issues raised in Ms. Fatur's letters.

16. In a further attempt to comply with Ms. Fatur's November 2 letter, the Union opened an account at the International Bank for receipt of contributions on November 7, 2005. And, on November 8, 2005, it filed an amended committee registration form, which included the names of the three candidates being supported in the upcoming municipal election. The amended report, however, did not list the name of the individual contributors nor did it provide any additional information about the "electioneering communications."

17. On November 9, 2005, Respondent sent a letter to Ms. Fatur explaining how and why it believed it had complied with all filing and disclosure requirements and how it attempted to rectify the issues she raised in her letters as well as any deficiencies that may have existed in its reports. Respondent also expressed its willingness to work

with Ms. Fatur to comply with all campaign requirements. The ALJ finds that Respondent made repeated good faith attempts to provide Ms. Fatur with the requested information and to comply with all the requests made in her letters.

18. On November 17, 2005, Ms. Fatur filed this complaint with the Secretary of State.

DISCUSSION

Limitations on Contributions from Labor Organizations and Corporations

Section 3(4)(a) of Article XXVIII of the Colorado Constitution prohibits a corporation or labor organization from making contributions to a candidate committee or a political party or from making any expenditures expressly advocating the election or defeat of a candidate unless that corporation or labor organization first establishes a political or small donor committee for the purpose of accepting contributions or dues from its employees, officeholders, shareholders or members. Complainant argues that Respondent's activities on behalf of candidates Bonato, Santisteven Hill, and Velasquez violated § 3(4)(a) because it paid for ads supporting these candidates without first registering as a political or small donor committee.

In the instant case, it is undisputed that the Union paid for six newspaper ads expressly advocating the election of three city council candidates. It did so with the authorization of a majority of its members. The ads were paid for using Union dues and the ads were paid for prior to the date the Union registered as a small donor committee and prior to the date it created a separate account. If § 3(4)(a) applies to candidates for local offices, the facts establish that Respondent violated its requirements. The threshold question is whether § 3(4)(a) applies to candidates for local offices.

Since August 9, 1993, the City of Trinidad has been a home rule municipality. The City's Charter governing elections provides that its elections, regular and special, are governed by "state statutes, except as otherwise set forth in this Charter." The City has not adopted any charter or ordinance provisions regarding limitations on contributions from labor organizations or corporations. In July 2005, the City adopted a plan to conduct a mail ballot election for its local offices on November 8, 2005. The City did not adopt any provisions regarding limitations on contributions from labor organizations or corporations for the November 8 election.

Article XX of the Colorado Constitution grants powers to home rule cities and towns to generally regulate, among other things, their local elections free from outside rules. Home rule cities and towns remain responsible for compliance with state law where they have not otherwise provided a rule by charter or ordinance. Article XX of the constitution provides:

The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except

insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.

* * *

[S]uch city or town, and the citizens thereof, shall have the powers set out in section 1, 4, and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control: . . . All matters pertaining to municipal elections in such city or town.

Colo. Const. art. XX, § 6.d.

Shortly after the enactment of Article XXVIII, the former Colorado Secretary of State Donetta Davidson requested a formal opinion from the Colorado Office of the Attorney General addressing how the rules in the FCPA and Article XXVIII apply to elections in home rule municipalities. In a Formal Opinion dated January 13, 2003, Attorney General Ken Salazar concluded that in matters of local concern, neither Article XXVIII nor the FCPA applies to home rule counties and municipalities that have charters or ordinances that already address the matters covered by Article XXVIII and the statute. Following the issuance of Attorney General Salazar's opinion, Secretary Davidson adopted the following rule:

The requirements of Article XXVIII of the State Constitution and of Article 45 of Title 1, Colorado Revised Statutes, shall not apply to 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 Title 1, Article 45.

8 CCR 1505-6, § 7.1.

In the instant case, the City of Trinidad, although a home rule municipality, has not adopted any charter provisions, ordinances, or resolutions that address any of the matters covered by Article XXVIII or Title 1, Article 45. Therefore, the ALJ concludes that Article XXVIII and the FCPA apply to Respondent's actions relative to the November 8, 2005 election. The more specific question then becomes: Does the prohibition in § 3(4)(a) of Article XXVIII, making it "unlawful for a corporation or labor organization to make contributions to a candidate committee or political party, and to make expenditures expressly advocating the election or defeat of a candidate," apply to candidates for local offices?

This very question was also presented to Attorney General Salazar by Secretary Davidson. In his January 13, 2003 opinion Attorney General Salazar concluded that §

3(4)(a) of Article XXVIII, limiting corporate or labor organization contributions, does not apply to candidates for local offices. In reaching this conclusion, Attorney General Salazar examined the legislative history behind § 3(4)(a) and found:

The legislative history of the amendment says that it is intended to apply to elections for statewide officials. The “Blue Book” argument in support of the initiative specifically describes only statewide candidates as covered by the amendment:

Although corporations and labor unions cannot vote, spending by such entities influences the political process. Under this proposal, these organizations will have to raise money from employees, shareholders, and members who contribute to small donor and political committees rather than directly funding political activities. Corporations and labor unions are already banned from directly contributing to federal candidates; *this proposal [§ 3(4)(a)] simply extends the ban to state races.*

Legislative Council of the Colo. Gen. Assembly, An Analysis of 2002 Ballot Proposals, Research Pub. No. 502-10 at 6 (2002) (emphasis added); *see also Carrara Place, Ltd.*, 761 P.2d at 203 (“legislative council’s interpretation, while not binding, provides important insight into the electorate’s understanding of the amendment when it was passed”). There is no related discussion or mention of municipal elections, and the reference to state elections cannot be extended beyond its clear language. Likewise, the lack of reference to home rule charters or ordinances is instructive. *See supra* p. 5 at *Hoper*, 173 Colo. At 395, 479 P.2d at 969 (noting that in the “absence of a clear statement to the effect that municipalities are limited, such meaning cannot and should not be inferred”).

No. 03-1 Op. Att’y Gen. 10 (2003).

Subsequent to the issuance of Attorney General Salazar’s January 13, 2003 opinion, the Secretary of State adopted Rule 7.2, which provides:

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 Title 1, Article 45.

Contrary to Attorney General Salazar's opinion, Secretary of State Rule 7.2 does not impose a general inapplicability of § 3(4) on candidates for local offices. Rather Rule 7.2 exempts the limitations of § 3(4) only on home rule counties or municipalities that have adopted charters, ordinances, or resolutions that address matters covered in Article XXVIII or the FCPA. The City of Trinidad's charter contains no such provisions. Therefore, the ALJ concludes that § 3(4) of Article XXVIII does apply to the facts of this case.

Agency rules are presumed valid and an agency's construction of its own governing statute is entitled to great weight. *Mile High Greyhound Park v. Racing Comm'n*, 12 P.3d 351 (Colo. App. 2000). Attorney General Salazar's opinion does not carry the force of law. Accordingly, in reaching the conclusion that § 3(4), Article XXVIII applies to the City of Trinidad's November 8, 2005 municipal election, the ALJ has relied on Secretary of State Rule 7.2. The ALJ is also mindful that in his January 13, 2003 opinion, Attorney General Salazar makes the following disclaimer:

The reader is cautioned that this opinion does not analyze the specific laws of a particular home rule county or municipality, and it is limited in this respect. A separate legal analysis is necessary to determine if a portion of a particular charter or ordinance conflicts with one or more specific provisions of Article XXVIII of the Colorado Constitution or the FCPA.

No. 03-1 Op. Att'y Gen. 2 (2003).

Finding that the limitations in Article XXVIII, § 3(4) apply to this case, the ALJ concludes that Respondent failed to timely register as a small donor committee. However, "dues transferred by a membership organization to a small donor committee sponsored by such organization shall be treated as pro-rata contributions from individual members." Colo. Const. art. XXVIII, § 2(14)(a). Accordingly, Respondent was not required to disclose the identity of individual members in its reports since the pro-rata member share is less than \$20 per person. See § 1-45-108(1)(a)(I), C.R.S. Moreover, Respondent is not in violation of the FCPA because it was not required to report a dues transfer as a contribution. Pursuant to Colo. Const. art. XXVIII, § 2(5)(b), contribution "does not include . . . a transfer by a membership organization of a portion of member's dues to a small donor committee . . . sponsored by such membership organization."

Independent Expenditures

The next issues that must be determined are whether the newspaper ads were independent expenditures and, if so, whether Respondent complied with the reporting requirements for independent expenditures. Independent expenditure, “means an expenditure that is not controlled by or coordinated with any candidate or agent of such candidate.” Colo. Const. art. XXVIII, § 2(9). Independent expenditures are governed by § 5, Article XXVIII. Section 5 provides:

(1) Any person² making an independent expenditure in excess of one thousand dollars per calendar year shall deliver notice in writing to the secretary of state of such independent expenditure, as well as the amount of such expenditure, and a detailed description of the use of such independent expenditure. The notice shall specifically state the name of the candidate whom the independent expenditure is intended to support or oppose. . . . Any person making an independent expenditure within thirty days of a primary or general election shall deliver such notice within forty-eight hours after obligating funds for such expenditure.

(2) Any person making an independent expenditure in excess of one thousand dollars shall disclose, in the communication produced by the expenditure, the name of the person making the expenditure and the specific statement that the advertisement of material is not authorized by any candidate. Such disclosure shall be prominently featured in the communication.

(3) Expenditures by any person on behalf of a candidate for public office that are coordinated with or controlled by the candidate or the candidate’s agent, or political party shall be considered a contribution to the candidate’s candidate committee, or the political party, respectively.

(4) This section applies only to independent expenditures made for the purpose of expressly advocating the defeat or election of any candidate.

Colo. Const. art. XXVIII, § 5(1) – (4).

The ads placed in the newspaper by the Union expressly advocate the election of three candidates for city council. The cost of these ads exceeds one thousand dollars. And, despite the description of an in-kind contribution to the candidates in the letters

² The definition of “person” includes a labor organization. Colo. Const. art. XXVIII, § 2(11).

sent to the candidates by Mr. Dimino on November 3, 2005 there is no credible evidence that they were coordinated with or controlled by the candidates; they were independent expenditures made by the Union. The Union disclosed the independent expenditure in its October 26 report of expenditures; however, there is no evidence that it reported the expenditure to the Secretary of State as required in Article XXVIII, § 5(1).

In addition to the reporting requirements for independent expenditures, § 5 requires that the communication produced by the expenditure include the name of the person making the expenditure and the specific statement that the advertisement of material is not authorized by any candidate. Such disclosure shall be prominently featured in the communication. The six newspaper ads fail to state that the material is not authorized by any candidate. Therefore, the ALJ concludes that Respondent failed to comply with Article XXVIII, § 5(2) in that it did not include the required disclosures in the ads and it did not file an independent expenditure notice with the Secretary of State.

CONCLUSIONS OF LAW

1. Pursuant to Colo. Const, art. XXVIII, § 9(2)(a), the ALJ has jurisdiction to conduct a hearing in this matter and to impose appropriate sanctions.

2. The issues in a hearing conducted by an ALJ under Article XXVIII of the Colorado Constitution are limited to whether any person has violated Sections 3 through 7 or 9(1)(e) of Article XXVIII, or Section 1-45-108, 114, 115, or 117, C.R.S. (2005). Colo. Const. art. XXVIII, § 9(2)(a). If an ALJ determines that a violation of one of these provisions has occurred, the ALJ's decision must include the appropriate order, sanction or relief authorized by Article XXVIII. Colo. Const. art. XXVIII, § 9(2)(a).

3. Colo. Const. art. XXVIII, § 9(1)(f) provides that the hearing is conducted in accordance with the Colorado Administrative Procedure Act (APA)³. Under the APA, the proponent of an order has the burden of proof. Section 24-4-105(7), C.R.S. In this instance, Complainant is the proponent of an order seeking civil penalties against Respondent for violations of the Colorado Constitution and the FCPA. Accordingly, Complainant has the burden of proof.

4. Complainant has established, by a preponderance of the evidence, that Respondent violated the provisions of Colo. Const. art. XXVIII, § 3(4)(a) by making expenditures expressly advocating the election of a candidate prior to registering as a small donor committee.

5. Complainant has established, by a preponderance of the evidence, that Respondent violated the provisions of Colo. Const. art. XXVIII, § 5(1) by failing to deliver notice in writing to the Secretary of State of its independent expenditure and by failing to make the necessary disclosures required by § 5(2) in the ads.

³ Section 24-4-101, *et seq.*, C.R.S. (2004)

AGENCY DECISION

It is the Agency Decision of the Administrative Law Judge that Respondent failed to comply with the requirements of Article XXVIII, § 3(4)(a) and § 5 (1) and (2).

Once a violation has been established, the Administrative Law Judge must include in the Agency Decision the appropriate order, sanction or relief authorized by the FCPA. Colo. Const. art. XXVIII, § 9(2)(a). Accordingly, an 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 XXVIII of the Colorado Constitution.

Respondent's failure to register as a small donor committee prior to paying for the ads expressly advocating the election of candidates Bonato, Santistevan Hill, and Velasquez violated Article XXVIII, § 3(4)(a). Respondent paid for the ads on October 16. Yet, it did not register as a small donor committee until October 26, 2006. One sanction authorized by Article XXVIII is the imposing of a \$50 penalty for each day that a statement or other information required to be filed pursuant to section 5, section 6, or section 7 of Article XXVIII or sections 1-45-108, 109 and 110, C.R.S. is not filed by the close of business on the day due. If the ALJ were to assess a \$50 per day penalty for this violation, Respondent would owe \$500 (10 days × \$50).

Respondent's failure to file a report with the Secretary of State concerning the independent expenditure also violated Article XXVIII. Since the expenditure was made within thirty days of a general election, the report was required to be filed within forty-eight hours after obligating the funds. See, § 5(1), Article XXVIII. The funds were obligated on October 16, making the report due by the close of business on October 18, 2005. As of the date of the hearing (December 20, 2005), Respondent had not yet filed this report. A \$50 per day assessment for this violation amounts to \$3,150 penalty (63 days × \$50).

Respondent's failure to include in its ads a specific statement that the advertisement of material is not authorized by any candidate violated § 5(2), Article XXVIII. The ads ran a total of six days. A \$50 per day assessment for this violation is \$300.

In considering the appropriate sanctions the ALJ is guided by the monetary penalty provision in the constitution; however, the \$50 per day assessment is not a mandatory sanction. Rather, under § 9(2)(a), the ALJ has jurisdiction to impose appropriate sanctions authorized by Article XXVIII. Under the facts of this case, the ALJ finds a penalty assessment of \$3,950 excessive. The ALJ concludes that Respondent should be assessed one-half that amount because Respondent immediately registered as a small donor committee when it received notice from the City Clerk of the need to register and that Respondent acted in good faith and promptly corrected the noted deficiencies. Further, the ALJ finds that Respondent made repeated good faith attempts to provide Ms. Fatur with the requested information and to comply with all the

requests made in her letters. For these reasons, the ALJ assess a penalty of \$1,975 against Respondent for violations of §§ 3(4)(a) and 5 of Article XXVIII.

This decision 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

February 3, 2006

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:

Eugene A. Duran
City Attorney, City of Trinidad
135 N. Animas
Trinidad, CO 81082

and

Mark Schwane, Esq.
AFSCME Council 76
3401 Quebec Street, Ste. 7500
Denver, CO 80207

on this ____ day of February 2006