

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

CASE NOS. OS 2006-0033 and OS 2006-0034

AGENCY DECISION

**IN THE MATTER OF THE COMPLAINT FILED BY CARL RUCH REGARDING
ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY JIM
MATCHETT, JUNE MATCHETT, TONY LUCAS, GARY PETERSON, TRISHA
PETERSON, JOHN AITKEN, NANCY AITKEN and JUDY LaCROSSE**

The above-referenced cases are before the Office of Administrative Courts on the complaints of Carl Ruch (“Complainant”) against Jim Matchett, June Matchett, Tony Lucas, Gary Peterson, Trisha Peterson, John Aitken, Nancy Aitken, and Judy LaCrosse (“Respondents”).¹ On November 2, 2006, Complainant electronically filed two complaints with the Colorado Secretary of State (“Secretary”). The Secretary’s office received the original signed complaints on November 6, 2006.² On November 7, 2006, the Secretary referred the complaints to the Office of Administrative Courts as required by Colo. Const. art. XXVIII, § 9(2)(a). These cases were referred to an Administrative Law Judge (“ALJ”) and a merits hearing was scheduled on November 21, 2006 in Denver, Colorado. Because both cases involve the same factual and legal issues and similar parties, the ALJ consolidated them for purposes of the hearing, and hereby issues this Agency Decision in both cases.

On November 21, 2006, the parties appeared before ALJ Michelle A. Norcross. Complainant represented himself. Respondents Jim Matchett, Tony Lucas, Gary Peterson, Trisha Peterson, and Nancy Aitken appeared in person and each represented him or herself. Due to health reasons, June Matchett and John Aitken were not present at the hearing and Judy LaCrosse was out-of-town. However, Ms. LaCrosse presented her testimony through an affidavit, which was introduced at the hearing by Mrs. Aitken. The ALJ admitted Complainant’s exhibits A through J and Respondents’ exhibits 1 through 3 into evidence. The proceedings were digitally recorded in courtroom 2.

¹ One complaint was filed against Jim Matchett, Tony Lucas, and Gary Peterson. The second complaint was filed against these same three individuals along with June Matchett, Trisha Peterson, John and Nancy Aitken and Judy LaCrosse.

² Per 8 CCR (Colorado Code of Regulations) 1505-6, § 6.3, “[a] complaint may be submitted by fax or electronic mail if a signed original is received by the secretary of state no later than five calendar days thereafter.”

Parties' Positions

Complainant: Complainant contends that Respondents, individually and collectively, violated §§ 1-45-108(1)(a) and (3), C.R.S. by not registering as candidate and/or political committees prior to accepting contributions or making any expenditures in connection with a May 2, 2006 special district election. Complainant also alleges that Respondents conspired to form and participate in an illegal political committee; that the "candidate" Respondents made illegal contributions to the committee; and that Respondents may have violated RICO laws.³

Respondents: Respondents assert that Complainant's complaints are time barred by the 180-day time limit in Colo. Const. art. XXVIII, § 9(2)(a) and should be dismissed. Time limits aside, Respondents Jim Matchett, Tony Lucas, Gary Peterson, Nancy Aitken, and Judy LaCrosse admit that they failed to register as candidate and/or political committees and failed to file reports of contributions and expenditures. However, Respondents contend that, any sanction, if imposed, should be minimal because Respondents had no intent to violate any of Colorado's campaign finance laws. Respondents June Matchett, Trisha Peterson, and John Aitken deny any involvement in activities alleged in the complaints and request that the charges filed against them be dismissed.

FINDINGS OF FACT

1. On May 2, 2006, Perry Park held a special district election to elect the Board of Directors of the Perry Park Water and Sanitation District ("Water Board"). Jim Matchett, Tony Lucas, and Gary Peterson were all candidates for the Water Board.

2. Through Self-Nomination and Acceptance forms, Mr. Matchett, Mr. Lucas, and Mr. Peterson declared their candidacies on February 3, 2006, February 12, 2006, and February 23, 2006, respectively. By signing the forms, the candidates acknowledged that they were familiar with the provision of the FCPA. All three self-nomination forms were received by Micki Wadhams, the designated election official for Perry Park Water and Sanitation District.

3. On February 24, 2006, Ms. Wadhams sent each candidate a letter explaining the process of selecting the names for the May 2 ballot, outlining some of the state's campaign requirements, and enclosed copies of Colorado's campaign finance laws, candidate committee registration forms and various other reporting forms. At the time Mr. Matchett, Mr. Lucas, and Mr. Peterson declared their candidacies, none of

³ In this proceeding, the ALJ has jurisdiction to hear complaints dealing with alleged violations of the Fair Campaign Practices Act ("FCPA") and Amendment 27 of the Colorado Constitution. The matters properly before the ALJ are not criminal in nature nor do they concern alleged violations of state or federal racketeering laws. Accordingly, in this Agency Decision the ALJ addresses only the allegations related to violations of the FCPA.

them intended to actively campaign for office. They did not register candidate committees or file reports of contributions and expenditures.

4. In addition to Mr. Matchett, Mr. Lucas, and Mr. Peterson, several other citizens (“other candidates”) also decided to run for the open Water Board seats, including the Complainant. The other candidates began to actively campaign, using yard signs, local advertising, and going door-to-door. As the election date approached, a group of local residents, who were supporting Mr. Matchett, Mr. Lucas, and Mr. Peterson, decided to join efforts and put together a flyer urging residents of Perry Park to vote for these three candidates. The group consisted of a handful of neighbors. Nancy Aitken and Judy LaCrosse took the lead in assembling the group and putting together the flyer.

5. Between April 25 and 27, 2006, Mrs. Aitken and Ms. LaCrosse worked on the flyer. The flyer contains a brief biography of all three candidates and lists several reasons why voters should vote for Mr. Matchett, Mr. Lucas and Mr. Peterson. All three candidates provided Mrs. Aitken with information about their backgrounds.

6. The flyer was printed on Ms. LaCrosse’s home computer. About 1,000 flyers were printed. With the help of neighborhood volunteers, on April 27, 2006, at the home of Mr. and Mrs. Aitken, the flyers were folded, placed in envelopes, and mailed to registered voters. The name the group chose to put on the return address of the envelopes was, “Committee to Elect Responsible Water Board Directors”. The total cost of the flyers, including postage and labels, was \$1,083. Mrs. Aitken personally paid for the labels and postage; she was later reimbursed by the other supporters.

7. In attendance at the Aitken’s home on April 27, 2006 were: Mrs. Aitken, her husband John, Ms. LaCrosse, Mrs. Peterson, Mr. and Mrs. Matchett, Mr. Lucas, and a few other unidentified individuals. Mr. Aitken and Mrs. Matchett were not well and did not participate in any of the volunteer activities. Mr. Matchett and Mr. Lucas, although present in the Aitken’s home, did not assist the group with the mailing. Mr. Peterson was not there; he was out-of-town. Mrs. Peterson volunteered some of her time that day folding and mailing flyers. The April 27 flyer was the only contribution and expenditure the group made to support the candidacies of Matchett, Lucas, and Peterson. The group did not register as a political committee nor did they file any reports of contributions and expenditures.

8. Prior to the May 2, 2006 election, Mr. Lucas created about 150 business cards, urging voters to vote for Matchett, Lucas and Peterson. Mr. Lucas printed the business cards on his home computer on blank business cards he had at home. Mr. Lucas gave some of the cards to Mr. Matchett and Mr. Peterson. Before the election, Mr. Lucas and Mr. Peterson handed out a few; Mr. Matchett did not hand out any. There is no evidence regarding the cost or the value of the business cards. Nor is there evidence establishing how many of the cards were actually distributed.

9. The April 27 flyer and the business cards were the only two pieces of campaign literature that were prepared and distributed in support the candidacies of Mr. Matchett, Mr. Lucas, and Mr. Peterson.

DISCUSSION

“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 contributions⁴ or expenditures⁵ in excess of \$200 to support or oppose the nomination or election of one or more candidates.” Colo. Const. art. XXVIII, § (2)(12)(a). The group called “Committee to Elect Responsible Water Board Directors” became a political committee on April 27, 2006, when they accepted contributions and made expenditures in excess of \$200 to support the nominations of Mr. Matchett, Mr. Lucas, and Mr. Peterson.

“Candidate committee” means, “a person, including the candidate, or person with the common purpose of receiving contributions or making expenditures under the authority of the candidate. A contribution to a candidate shall be deemed a contribution to a candidate’s committee.” Colo. Const. art. XXVIII, § 2(3). The group’s contribution to Matchett, Lucas and Peterson on April 27, 2006 is deemed a contribution to their candidate committee’s. There is insufficient evidence to establish that the business cards printed by Mr. Lucas were reportable contributions.

“Electioneering communication” includes any communication directly mailed to personal residences that: (1) unambiguously refers to any candidate; (2) is printed, mailed or distributed within thirty days before a primary election or sixty days before a general election; and (3) is distributed or mailed to an audience that includes members of the electorate for such public office. Colo. Const. art. XXVIII, § 2(7)(a). The April 27 flyer was not mailed or distributed within thirty days of a primary election or sixty days before a general election. The May 2, 2006 election was a special district election. Therefore, the April 27 flyer does not constitute an electioneering communication.

⁴ “Contribution” is defined as (I) 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; (II) any payment made to a third party for the benefit of any candidate committee, issue committee, political committee, small donor committee, or political party; (III) the fair market value of any gift or loan of property made to any candidate, issue, political, small donor committee or political party; or (IV) anything of value given, directly or indirectly, to a candidate for the purpose of promoting the candidate’s nomination, retention, recall or election. Colo. Const. art. XXVIII, § 2(5)(a) (I) – (IV). “Contribution” does not include services provided without compensation by individuals volunteering their time on behalf of a candidate or political committee. § 2(5)(b).

⁵ “Expenditure” means any purchase, payment distribution, loan, advance, deposit, or gift of money by any person for the purpose of expressly advocating the election or defeat of a candidate. An expenditure is made when the actual spending occurs or when there is a contractual agreement requiring such spending and the amount is determined. Colo. Const. art. XXVIII, § 2(8)(a).

Committee Registration and Reporting Requirements

Under § 1-45-108(3), C.R.S., all political and candidate committees must register with the appropriate officer before accepting or making any contributions. In this case, the appropriate officer is the clerk and recorder of the county in which the district court having jurisdiction over the special district pursuant to section 32-1-303, C.R.S., is located. § 1-45-109(1), C.R.S. Such registrations must include the organization's full name, the name of the committee's registered agent, the street address and telephone number for the principal place of operations, all affiliated candidates and committees, and the purpose or nature of the committee. The candidate Respondents and the Respondent committee had a duty to register before making and accepting the April 27 contribution(s).

All political and candidate committees must also report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made, and obligations entered into by the committee. Section 1-45-108(1)(a)(I), C.R.S. Reports that are required to be filed with the county clerk and recorder are required to be filed on the twenty-first day and on the Friday before and thirty days after the major election in elections years. § 1-45-108(2)(a)(II), C.R.S.; 8 CCR 1505-6 § 5.8. "Election year" means every even numbered year for political committees; and "major election" means the election that elects a person to the public office sought by the candidate. § 1-45-108(2)(a)(III), C.R.S.

In the instant case, the Committee to Elect Responsible Water Board Directors did not become a political committee until April 27, 2006, when it accepted its first contribution and made its first expenditure. Likewise, the candidates did not receive a reportable contribution until April 27, 2006. Pursuant to § 1-45-108(2)(a)(II), the committees' first reports were due on April 28, 2006, the Friday before the May 2, 2006 election. The committees' final reports were due on Thursday, June 1, 2006, the thirtieth day after the election.

Complaint Filing Requirements

It is undisputed that the group did not register as a political committee prior to April 27, 2006. It also did not file reports of contributions and expenditures on April 28 or June 1, 2006. The candidates also did not register candidate committees or file reports of contributions and expenditures. Respondents' failure to register candidate and political committees are violations of the FCPA as are their failures to file reports of contributions and expenditures. However, all violations occurring before May 6, 2006 are time barred and must be dismissed.

Under Colo. Const. art. XXVIII, § 9(2)(a), any person who believes that a violation of sections 3, 4, 5, 6, 7, or 9(1)(e) of Article XXVIII or of sections 1-45-108, 1-45-114, 1-45-115, or 1-45-117, C.R.S. has occurred must file a written complaint with the Secretary no later than one hundred eighty (180) days after the date of the alleged violation. Complainant filed his complaints against Respondents on November 2, 2006.

One hundred and eighty days prior to November 2, 2006 is May 6, 2006. The only violations occurring after May 6, 2006, are Respondents' failures to file their final reports of contributions and expenditures on June 1, 2006.

The June 1, 2006 reports should have included the balance of the funds at the beginning of the reporting period, the total of contributions received, the total of expenditures made during the reporting period, and the name of the financial institution used by the committees. § 1-45-108(2)(b). In accordance with § 1-45-108(2)(e), C.R.S., the reporting period for all reports to be filed with the county clerk and recorder close five calendar days prior to the effective date of filing. The reporting period for the June 1, 2006 report is: April 29 - May 27, 2006. During this period, the committees made no expenditures and had no balance of funds to report; however, they had received aggregate contributions, which were not reported and should have been.

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, Complainant is the proponent of an order seeking civil penalties against Respondents for violations of the FCPA. Accordingly, Complainant has the burden of proof.
4. The ALJ concludes that Complainant has not established by a preponderance of the evidence that Respondents June Matchett and John Aitken had any involvement in any activities alleged in his November 2, 2006 complaints or that these Respondents violated any of Colorado's campaign finance laws. The complaints filed against Respondents June Matchett and John Aitken are dismissed.
5. The ALJ concludes that Complainant has not established by a preponderance of the evidence that Respondent Trisha Peterson violated any of Colorado's campaign finance laws. Mrs. Peterson's involvement in the April 27, 2006 event was purely as a volunteer. The complaint filed against Respondent Trisha Peterson is dismissed.
6. The ALJ concludes that Complainant has established by a preponderance of the evidence that candidate Respondents Jim Matchett, Tony Lucas and Gary Peterson violated the FCPA by failing to register as candidate committees before April

27, 2006, when they first received their first reportable contributions. However, these violations are dismissed because they are time barred.

7. The ALJ concludes that Complainant has established by a preponderance of the evidence that the Respondent committee violated the FCPA by failing to register as a political committee before April 27, 2006, when it received contributions and made expenditures in excess of \$200 to support three Water Board candidates. However, this violation is dismissed because it is time barred.

8. The ALJ concludes that Complainant has established by a preponderance of the evidence that candidate Respondents Jim Matchett, Tony Lucas and Gary Peterson violated the FCPA by failing to file reports of contributions and expenditures on April 28, 2006 and June 1, 2006. However the violations related to the filing of the April 28 reports are dismissed because they are time barred.

9. The ALJ concludes that Complainant has established by a preponderance of the evidence that the Respondent committee violated the FCPA by failing to file reports of contributions and expenditures on April 28, 2006 and June 1, 2006. However the violation related to the filing of the April 28 report is dismissed because it is time barred.

AGENCY DECISION

It is the Agency Decision of the ALJ that the Respondent committee and the candidate Respondents did not comply with the requirement to file their final reports of contributions and expenditures on June 1, 2006. 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). In accordance with § 10(2)(a), “[t]he appropriate officer shall impose a penalty of fifty dollars per day for each day that a statement or other information required to be filed pursuant to . . . sections 1-45-108, 1-45-109 or 1-45-110, C.R.S., or any successor sections, is not filed by the close of business on the day due.” The ALJ is not “the appropriate officer” for purposes of this section and is therefore not required to impose a \$50 per day sanction. Moreover, the Colorado Constitution permits the ALJ to set aside or reduce a penalty upon a showing of good cause. Colo. Const. art. XXVIII, § 10(2)(b)(I).

In this case, a strict application of the \$50 per day sanction in § 10(2)(a) would result in individual fines exceeding \$23,000. Under the circumstances of this case, the ALJ finds such a penalty excessive. The people of the state of Colorado passed Amendment 27 in an effort to limit large campaign contributions to political candidates; eliminate the potential for corruption and the appearance of corruption; reduce the influence of election outcomes by wealthy individuals, corporations and special interest

groups; and keep the cost of elections down allowing qualified citizens to run for political office. To this end, Colorado's election laws are designed to limit campaign contributions, encourage voluntary spending limits, provide for full and timely disclosure of campaign contributions as well as independent expenditures and electioneering communications. See Article XXVIII, § 1.

Although the ALJ finds that the Respondent candidates and the Respondent committee violated the letter of law, it is difficult to imagine that this is the type of campaign offense that voters were concerned about when they passed Amendment 27. Indeed, a strict application of the \$50-per-day fine in this case could bring about an opposite effect. That is, discouraging qualified citizens from running for political office and neighborhood groups gathering together to volunteer their time in support candidates of their choosing. Accordingly, the ALJ is imposing only a minimum penalty on each Respondent candidate and the Respondent committee. Each candidate Respondent is assessed a fine in the amount of \$50. And the Respondent committee is assessed a fine in the amount of \$50. The penalties are to 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

December 6, 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:

Carl Ruch
P.O. Box 391
Larkspur, CO 80118

Jim and June Matchett
6273 Torrey Pines Drive
Larkspur, CO 80118

Tony Lucas
4945 W. Delaware Drive
Larkspur, CO 80118

Gary and Trisha Peterson
6440 Perry Park Blvd.
Larkspur, CO 80118

Nancy and John Aitken
6035 Apache Drive
Larkspur, CO 80118

Judy LaCrosse
6570 S. Pike Drive
Larkspur, CO 80118

and

William Hobbs
Secretary of State's Office
1700 Broadway, Suite 250
Denver, CO 80290

on this ____ day of December 2006
