

<p>STATE OF COLORADO SECRETARY OF STATE Administrative Hearing Officer 1700 Broadway #550 Denver, CO 80290</p> <hr/> <p>BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, <i>in re</i> ED 2024-09</p> <p>ELECTIONS DIVISION OF THE SECRETARY OF STATE,</p> <p>Complainant,</p> <p>vs.</p> <p>DURANGO SCHOOL DISTRICT 9-R</p> <p>Respondents.</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>CASE NUMBER</p> <p>AHO 2024 _____</p>
<p>COMPLAINT</p>	

Pursuant to § 1-45-111.7, C.R.S. (2022) and Rule 24 of the Secretary’s Rules on Campaign and Political Finance, 8 CCR 1505-6, the Elections Division of the Secretary of State files this Complaint against Durango School District 9-R (“Respondent” or the “District”).

BACKGROUND

1. Colorado law prohibits state agencies or political subdivisions from providing anything of value to any candidate, directly or indirectly, for the purpose of promoting the candidate’s election.
2. The purpose of this provision is to prevent the government itself from engaging in electoral advocacy, instead requiring it to maintain as much neutrality as possible on electoral matters that are put to a vote.
3. Here, the District drafted a news blurb and a letter concerning the candidacy of one of the members of its school Board, Katie Stewart. The news blurb and the letter, signed by Stewart, were then posted on the District’s website and included in an email newsletter distributed to over 6,000 email addresses.

4. The purpose of the news blurb was to inform voters that Stewart—who was running for the General Assembly—was permitted by law to serve both on the Board and in the General Assembly at the same time. The letter was also intended to inform voters that Stewart could be effective while holding both offices.

5. Because the letter was a thing of value provided for the purpose of promoting Stewart’s candidacy to the General Assembly, it was a prohibited contribution.

6. Accordingly, the Division brings this complaint for appropriate relief.

PARTIES

7. Complainant is the Elections Division (“Division”) of the Colorado Secretary of State.

8. Respondent is the Durango School District 9-R, a political subdivision of Colorado.

JURISDICTION AND VENUE

9. The Division has jurisdiction under § 1-45-111.7.

10. The Division files this complaint with a hearing officer consistent with § 1-45-111.7(5)(a)(IV), (6).

11. This complaint is timely filed within thirty days of the Division’s March 7, 2024, Notice of Investigation according to § 1-45-111.7(5)(a)(IV).

12. Venue is proper before the hearing officer under § 1-45-111.7(5).

ALLEGATIONS

13. Katie Stewart is currently a candidate for House District 59, a seat in the Colorado General Assembly.

14. Stewart also serves on the Durango 9-R school board.

15. Earlier this year, concerns were raised about Stewart’s ability to serve both in the General Assembly and on the School Board, including whether it was legal for a single person to serve in both roles.

16. To address these concerns, the District’s Public Information Officer (“PIO”) drafted a short news blurb. That blurb noted that “[a]ccording to state statute, school board members may hold both offices at one time.” The Blurb also indicated that “Katie would like to share the following message with our staff and school families.”

17. During business hours, the PIO also drafted a letter intended to follow this blurb, signed by Stewart.

18. To draft the letter, the PIO used an Artificial Intelligence Large Language Model, Chat-GPT. The PIO’s prompt to Chat-GPT included the lines: “You are Katie Stewart, a current board member of Durango School District 9-R,” “[y]ou are announcing that you are a candidate for the state representative position,” and “your candidacy is legal and Colorado law doesn’t prohibit holding dual roles at the state and local level.”

19. The PIO and Stewart both made minimal edits to the letter generated by Chat-GPT. Among other things, the final version “assure[d] [readers] that [Stewart’s] candidacy for state representative will not in any way affect [her] ability to effectively govern on the school board.”

20. On information and belief, the purpose of the letter was to inform the voters that Stewart could be effective while holding both offices.

21. The blurb and letter were then posted on the District’s website.

22. The blurb and letter were also sent out as part of the District’s email newsletter to district parents, which is distributed to over 6,000 email addresses.

23. Finally, the blurb and letter were distributed to in an email newsletter to the District’s employees, which included over 1,000 unique email addresses.

24. On January 24, 2024, the Division received a campaign finance complaint against the District filed by Kelly Hegarty. The Hegarty Complaint alleged that the District was giving preference to one candidate for House District 59 over another.

25. The Division notified the District of the Complaint the same day. On January 30, 2024, 12 days after the letter had been posted to the District’s website and one day before the District received the Division’s Notice of Initial Review and Opportunity to Cure, the District removed the blurb and letter from its website.

26. The email newsletters were sent to district parents on January 19, 2024, and the District’s employees on January 18, 2024.

27. The District published a clarification in the editions of the two newsletters than ran during the first week of February 2024.

28. The PIO also reimbursed the District for the expense the District incurred in producing the letter.

COLORADO CAMPAIGN FINANCE LAW

29. Under Colorado law, government entities are prohibited from making “any contribution in campaigns involving the nomination, retention, or election of any person to any public office.” § 1-45-117(1)(a)(I) C.R.S. (2023).

30. A contribution is defined, in relevant part, as “[a]nything 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)(IV).

CLAIM ONE Prohibited Contribution (§ 1-45-117(1)(a)(I), C.R.S.)

31. All preceding allegations are incorporated.

32. In January 2024, the Durango School District 9-R used public time and resources to draft a letter on behalf of Katie Stewart, a candidate for the Colorado General Assembly.

33. That letter was then posted to the District’s website and distributed to the District’s email newsletters to both district parents and employees.

34. The purpose of the letter was to assuage growing concerns amongst the electorate that Stewart was unable to serve effectively both on the school board and in the General Assembly.

35. By attempting to assuage this concern, the District—a political subdivision—provided a thing of value to Stewart for the purpose of promoting her election to the General Assembly.

36. The Division is entitled to relief under Article XXVIII of the Colorado Constitution and the Fair Campaign Practices Act, § 1-45-101 et seq.

Respectfully submitted this 8th day of April, 2024.

PHILIP J. WEISER
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/s/ Peter G. Baumann

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CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served by mail and/or email this 8th day of April, 2024, addressed as follows:

Durango School District 9-R
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Respondent

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Third-Party Complainant

/s/ Peter G. Baumann