COLORADO
MUNICIPAL
LEAGUE

303 831 6411 / 866 578 0936
303 860 8175
www.cml.org
1144 Sherman St., Denver, CO 80203

The following comments are submitted by the Colorado Municipal League (CML) in regard the proposed rulemaking by the Officer of the Secretary of State dated June 15, 2020—**Rules Concerning Campaign and Political Finance 8 CCR 1505-6.**

These comments relate solely to the proposed definition of the term "***municipal campaign finance matter***" in Rule 1.12 and the proposed change to Rule 17.6 mirroring language in SB 19-232 to provide that any filing of a complaint under the FCPA ***"related to a municipal campaign finance matter must be filed with the municipal clerk."***

In 2019, for the first time since the original adoption of Amendment 27 in 2002, SB 19-232 assigned to municipal clerks the responsibility to receive and adjudicate campaign finance complaints related to municipal campaigns, C.R.S. 1-45-111.7(9)(b). As reflected in the proposed Rule 1.12, this devolution of responsibility is apparently intended to apply regardless of whether the municipality has adopted its own campaign finance laws or complaint procedures. In contrast, SB 19-232 did not assign to counties, special districts, or other political subdivisions of the state the responsibility to adjudicate FCPA complaints locally. Apparently, the Secretary of State will continue to exercise jurisdiction over FCPA complaints related to candidate and issue campaigns in other units of local government, but not municipalities.

CML understands that one rationale for treating municipalities differently was that the FCPA had been previously amended to make municipal clerks the repository for campaign finance filings in municipal elections.

CML appreciates that one purpose of the proposed rulemaking is to provide meaning and clarity to the undefined term "municipal campaign finance matter" in SB 19-232. This clarity will be helpful going forward.

However, based upon feedback CML has received from some of its members since the adoption of SB 19-232, CML is offering the following comments for the record in this rulemaking.

Notwithstanding the provisions of SB 19-232 or the language of the proposed rule, some municipalities and some complainants may continue to assert that the Secretary of State has a constitutional obligation to administer FCPA complaints involving an election in any statutory municipality and in any home rule municipality that has not adopted its own campaign finance laws. This assertion may be based on the following language in Art. XXVIII, Sec. 9(2)(a), Colo. Const.:

> "Any person who believes that a violation of . . . this article, or of sections 1-45-108, 1-45-114, 1-45-115, or 1-45-117, C.R.S., or any successor sections, has occurred may file a written complaint with the secretary of state no later than one hundred eighty days after the date of the alleged violation."

In other words, there may be future legal disputes similar to the one adjudicated last year in the case of *Simpson v. Griswold*, 2019 CV 31295, in which the Denver District Court held that the Secretary of

State could not require municipal clerks to handle FCPA complaints by rule. Even though SB 19-232 now provides statutory authority for this assignment of responsibility to municipal clerks, a complainant may still attempt to invoke Secretary of State jurisdiction under the language of the constitution. For example, a complainant may be particularly motivated to have the Secretary of State hear his or her complaint under the following circumstances:

- If the campaign finance complaint is against an incumbent member of a municipal governing body who is running for reelection, the complainant may feel that the municipal clerk cannot provide a fair and unbiased forum, because most municipal clerks are appointed by the governing body.

- As in the *Simpson* case, if the complaint involves an alleged violation of C.R.S. 1-45-117 by municipal officers and employees (*i.e.* unlawful use of city money and resources in a campaign), the complainant may prefer to invoke the Office of the Secretary of State as a more appropriate forum to adjudicate the complaint rather than the city that will be defending the accusations.

In conclusion, CML recognizes that the proposed rule is merely intended to reflect the statute, and the language in SB 19-232 is a *fait accompli* that will stand unless and until the General Assembly decides to revisit the issue. Nevertheless, it may be important to recognize that the adoption of the statute and rule may not settle the question of whether devolution of responsibility for FCPA complaints to all municipalities comports with the constitution.