

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17 th Street, Suite 1300 Denver, Colorado 80202	
COLORADO ETHICS WATCH Complainant, vs. SAFE STREETS COLORADO Respondent.	▲ COURT USE ONLY ▲ CASE NUMBER: OS 20100032
AGENCY DECISION	

This matter is before the Office of Administrative Courts on the complaint of Colorado Ethics Watch (Complainant) against Safe Streets Colorado (Respondent). The complaint was filed with the Colorado Secretary of State (Secretary) on October 5, 2010. On October 7, 2010 the Secretary referred the complaint to the Office of Administrative Courts (OAC) as required by Colo. Const. art. XXVIII, sec. 9(2)(a). A hearing was held before Administrative Law Judge (ALJ), Laura A. Broniak, on December 10, 2010, in Denver, Colorado. Complainant was represented by Luis Toro, Esq. No one appeared on behalf of the Respondent.

SUMMARY

The Complainant alleges that Respondent violated the Fair Campaign Practices Act ("FCPA"), §1-45-101, C.R.S., *et seq.*, and Secretary of State rules¹ by: (1) failing to properly register with the Secretary as an issue committee prior to accepting contributions to circulate petitions for initiative 92 that became ballot proposition 102 in the November 2010 election; and (2) by failing to report contributions and expenditures as required by the FCPA. The Complainant originally sought only monetary penalties, but at the conclusion of the hearing requested that Respondent be required to file amended reports of contributions and expenditures. The ALJ agrees that Respondent violated the FCPA and imposes a monetary penalty of \$12,200, but declines to impose any other sanction.

FINDINGS OF FACT

Based upon the evidence presented at hearing, the ALJ makes the following findings of fact:

¹ The Secretary of State rules concerning campaign and political financing appear at 8 CCR 1505-6 and will be cited by rule number only

1. The Respondent registered as an issue committee with the Secretary on August 26, 2010. Respondent's registered agent is Matthew Duran. The sole declared purpose of Respondent is to "support Initiative 92 for the November general election."

2. The issue committee registration lists the physical and mailing address for Respondent as 2910 North Powers Boulevard, Colorado Springs, CO 80917. This address is the location of a UPS Store that engages in the business of leasing mailboxes.

3. The 2910 North Powers Boulevard address is the "last address furnished the agency" as described in Section 24-4-105(2)(a), C.R.S. The agency is the Secretary.

4. Initiative 92, later certified to the general election ballot as proposition 102 sought to eliminate the use of state or county funds for pre-trial services pertaining to individuals accused of crimes. Instead, initiative 92 sought to require such individuals to post bonds. The Ballot Title Setting Board approved the proposed initiative on April 21, 2010, with the title, "Criteria for Setting Bail and Type of Bond". The proponents of initiative 92 were listed as Matthew Duran and M. Paul Donovan. Exhibit 13.

5. On August 30, 2010, the Secretary issued a Statement of Sufficiency that stated, "On Monday, August 2, 2010, Matthew Duran and M. Paul Donovan, proponents of initiative 2009-2010 #92, "Criteria for Setting Bail and Type of Bond", submitted 5,849 petition sections to the Office of the Colorado Secretary of State." The Statement of Sufficiency further stated that a sufficient number of valid signatures had been submitted and that the initiative will be numbered "Proposition 102" on the November 2, 2010 general election ballot. Exhibit 15.

6. The Respondent filed its first Report of Contributions and Expenditures with the Secretary on September 22, 2010. The reporting period is from July 29, 2010, to September 1, 2010. Exhibit 2.

7. The Report states that the "Funds on Hand at the End of Reporting Period" were \$5,500.00. It indicates that the "Funds on Hand at the Beginning of Reporting Period" were \$0.00. The Report, however, contains no information pertaining to monetary or other contributions to explain the source of the \$5,500.00 on hand at the end of the reporting period. Further, the report contains no description of expenditures despite the apparent costs associated with the August 2, 2010, petition filing.

8. The Respondent filed a second Report of Contributions and Expenditures with the Secretary on September 22, 2010. The reporting period is September 2, 2010, to September 15, 2010. Exhibit 3.

9. The second Report states that the "Funds on Hand at the Beginning of Reporting Period" were \$5,500.00 and "Funds on Hand at the End of Reporting Period" were \$4,200.00. The Report, however, contains no information pertaining to expenditures that would explain the reduction of funds by \$1,300.00 during the reporting period.

10. The Respondent began operating a website as early as May 13, 2010, and no later than May 18, 2010, as evidenced by the website's advertisement for Petition Circulator trainings that were scheduled to occur on May 18, 2010. Exhibit 6.

11. The Respondent issued a press release dated May 13, 2010, announcing its support for initiative 92. The press release information was found on the Respondent's website. Exhibit 5.

12. Respondent's website solicited volunteers for petitioner circulators and advertised circulator trainings to be conducted at the Hyatt Place Denver in Lone Tree, Colorado on May 18, 2010; on May 19, 2010, at Johnson's Corner Truckstop in Johnstown, Colorado; and on May 22, 2010, at the Hilton Garden Inn in Colorado Springs, Colorado. Exhibit 6.

13. Respondent's website also solicited monetary donations. Exhibit 24.

14. On June 1, 2010, Robert Millett, on behalf of Respondent, filed a Certificate of Petition Circulator Training with the Secretary indicating that he had completed training on May 12, 2010. The cost associated with filing this Certificate was \$100.00. Exhibit 7.

15. Also on June 1, 2010, Respondent, through Robert Millett, filed an Application for Petition Entity License, which cost \$100.00 to file. Exhibit 8.

16. The Secretary issued the Petition Entity License to the Respondent on June 2, 2010. Exhibit 9. A petition entity license is required pursuant to §1-40-135, C.R.S., before any person or committee may compensate a circulator to circulate a ballot petition.

17. On June 5, 2010, the Respondent ran a craigslist.com advertisement for petition circulators. The advertisement offered \$8.00 per hour plus a bonus if signature goals were met and requested interested people to send an email message to petitionentity@safestreetscolorado.com. Exhibit 10. The ALJ infers that Respondent had some funds in its possession with which to compensate the circulators.

18. On July 26, 2010, the Respondent filed a Licensed Petition Entity Registration Form with the Secretary. The Form indicated the entity would be circulating ballot petitions for Initiative 92. Exhibit 12.

19. In a website blog entitled "Fugitive Recovery Network" bail bond agent, David Platt, posted on June 20, 2010, that Mike Donovan had assisted bail agents in the State of Colorado with obtaining the Ballot Title Setting Board's approval of the proposed initiative. He wrote that the next step was to collect at least 75,000 signatures. Exhibit 14. Platt also posted that he had made contributions to support the legislation. He also referenced knowledge of individuals who had contributed between \$1500 and \$10,000.

20. Platt also posted that the "Costs thus far in organizing to get the petitions printed and distributed, among many other related tasks, has hit \$156,000 with more

expenses expected. Individual Colorado bail agents and a few surety companies have ponied up all of those funds and we will likely need to contribute again down the road." Other posters asked Platt how they could contribute. He responded to a poster named Luke that he should make his contribution through Americans for the Preservation of Bail.

21. Respondent created an advertisement video which displayed its logo for nearly the entire duration. The video depicted several individuals speaking in support of Proposition 102. One such individual was Mike D., which the ALJ infers was Mike Donavon. Some of the supporters discussed the amount of time and money spent in supporting Proposition 102. At the end, the video shows at least 20 individuals, many of whom were wearing shirts adorned with Respondent's logo, loading a cargo van with boxes also bearing the Respondent's logo. These same individuals then hand-delivered the boxes to the Secretary's office. The boxes contain the petitions obtained in support of Initiative 92, later certified as Proposition 102. At the conclusion of the video, viewers are directed to the Respondent's website for more information. Exhibit 25. These petitions were delivered to the Secretary's office on August 2, 2010.

22. Donovan appeared as a guest on the show, Face the State where he was interviewed by the host about his support for Proposition 102. He disclosed that half of signature requisition was done by volunteers and half by paid petition circulators. He also disclosed that many people have donated time, money and energy to support Proposition 102. He disclosed that his co-proponent was Matthew Duran. Exhibit 16.

23. Respondent also sent e-mails soliciting contributions and support for Proposition 102. In an e-mail dated October 29, 2010, the Respondent reported that it had released a new advertisement. Exhibit 23.

24. Based on the foregoing, the ALJ finds that Respondent had a major purpose in supporting proposition 102. The ALJ based this finding on the Respondent's application for a petition entity license on June 1, 2010; its active participation in circulating petitions, whether through volunteers or through paid circulators; its website content; and ultimate registration as an issue committee on August 26, 2010. No credible or persuasive evidence indicated that Respondent had any other major purpose.

25. Ballot proposition 102 was a "ballot issue" for purposes of Colo. Const. art. XXVIII, sec. 2(10) in that its title was designated and fixed in accordance with law on April 21, 2010. Section 1-45-108(7), C.R.S.

26. The cost of renting the UPS Store mailbox was \$85 for September 1, 2010, through December 1, 2010. Exhibit 22. The Respondent, however, had been using the address for the UPS Store as early as May 2010. The ALJ infers that the Respondent had been renting the mailbox as of mid-May 2010, and that the costs associated with renting such box exceeded \$85.

27. The domain name, "Safe Streets Colorado" was created on April 10, 2010, which requires payment of a fee. In addition, the image templates used by the Respondent's website cost no less than \$66. Exhibits 18 and 19.

28. Respondent paid no less than \$200 in filing fees to the Secretary as of June 1, 2010.

29. The ALJ infers that Respondent incurred expenses that far exceeded \$20 associated with the following activities: renting a cargo van, producing a video, purchasing shirts adorned with Respondent's logo, purchasing boxes, printing labels for boxes, circulating petitions, conducting training sessions, printing petition sections and advertisement. Such expenses, which amounted to no less than \$351, were incurred prior to August 26, 2010, as evidenced by the date on which the signed petitions were delivered to the Secretary.

30. The ALJ also infers that the Respondent accepted contributions prior to August 26, 2010. The ALJ makes this inference based upon the Respondent's expenses as described in paragraph 29 above. Given the Respondent's failure to accurately report its source of funding, the ALJ finds that the Respondent relied upon contributions to fund its campaign activities. No evidence was introduced to the contrary plus Respondent's website solicited contributions.

31. Complainant filed a complaint against Respondent with the Secretary on October 5, 2010, alleging registering and reporting violations and requesting penalties of \$50 per day for each day for each of three violations as set forth the complaint. The Complainant identified Respondent's address as 2950 N. Powers Boulevard, Colorado Springs, Colorado, in the complaint, but the complaint's exhibits identified the address as 2910 N. Powers Boulevard.

32. As of the date of the hearing, the Respondent had not filed amended reports of contributions and expenditures for the periods described herein.

33. On October 7, 2010, the Secretary referred the matter to the OAC per the procedure set out at Colo. Const. art. XXVIII, sec. 9(2)(a). On October 8, 2010, the OAC sent the parties notice of hearing for October 20, 2010. The OAC used 2950 N. Powers Boulevard, Colorado Springs, Colorado.

34. At the outset of the hearing scheduled for October 20, 2010, the ALJ realized the address error and continued the hearing, *sua sponte*.

35. The OAC sent a second notice of hearing on October 20, 2010, for a hearing on November 1, 2010. Initially, no one appeared on behalf of Respondent. At approximately 9:09 a.m., a representative of Safe Streets Colorado contacted the OAC and reported that he had just learned about the hearing through the media, that their attorney was unavailable and that the attorney would like a continuance of the hearing.

36. The ALJ then conducted a telephone conference with Mike Paul Donovan and Luis Toro. Donovan represented that he was appearing on behalf of Respondent

because Respondent's attorney, Brandon Marinoff, was unavailable to appear. He asked that the hearing be continued to allow Marinoff to enter his appearance. Donavon further represented that Respondent's correct address was 2910 N. Powers Blvd, Suite 606, Colorado Springs, Colorado 80917.

37. The motion to continue was granted and the OAC issued a Notice of Setting conference for November 9, 2010, to allow the parties to participate in the selection of the date for the merits hearing.

38. The hearing was rescheduled for December 10, 2010. Notice of this new hearing date was sent to Respondent at 2910 North Powers Boulevard, Suite 606, Colorado Springs, CO 80917. None of the notices sent to 2910 North Powers Boulevard by the OAC were returned by the post office. No attorney ever entered an appearance on behalf of Respondent.

39. By its failure to attend the hearing, the Respondent has not disputed that it failed to register as an issue committee prior to accepting contributions nor has it disputed that it failed to file accurate reports of contributions and expenditures with the Secretary.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the ALJ enters the following conclusions of law:

1. Persons who believe there has been a violation of § 1-45-108 may file a written complaint with the Secretary of State. Colo. Const. art. XXVIII, sec. 9(2)(a). The Secretary of State is then required to refer the matter for a hearing before an ALJ.

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 §§ 1-45-108, 114, 115, or 117, C.R.S. (2010). Colo. Const. art. XXVIII, sec. 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, sec. 9(2)(a).

3. Colo. Const. art. XXVIII, sec. 9(1)(f) provides that the hearing is conducted in accordance with the Colorado Administrative Procedure Act (APA)². Section 24-4-105(2)(a) provides that notice may be made by mail to the last address furnished the agency.³ Notice to the Respondent of the hearing was made in conformance with this authority. In addition, a notice containing a more detailed address as indicated by Respondent's representative was also mailed. Because the Notice of Hearing was not returned, it is presumed that it was received. *Olsen v. Davidson*, 142 Colo. 205, 350 P.2d 338 (1960).

² Section 24-4-101, et seq., C.R.S. (2010)

³ The requirement for 30 days' notice is reduced to 15 days by Colo. Const. art. XXVIII, sec. 9(2), see the "[u]nless otherwise provided by law" language of Section 24-4-105(2)(a).

4. 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 penalties against the Respondents for violations of the FCPA. Accordingly, Complainant has the burden of proof.

5. Complainant alleged that Respondent failed to comply with §1-45-108(3), C.R.S., which requires all candidate committees, political committees, small donor committees, and political parties to register with the appropriate officer before accepting or making contributions. Complainant alleged the Respondent became an issue committee as of June 1, 2010, rather than on August 26, 2010..

6. Colo. Const. art. XXVIII, sec. 2(10) provides in pertinent part:

(10)(a) "Issue committee" means any person, other than a natural person, or any group of two or more persons, including natural persons:

(I) That has a major purpose of supporting or opposing any ballot issue or ballot question; or⁴

(II) That has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question.

7. A group such as the Respondent is a "person." Colo. Const. art. XXVIII, sec. 2(11).

8. As found, the Respondent had a major purpose of supporting statewide ballot proposition 102. An organization has a "major purpose" of supporting a ballot issue if such support "constitutes a considerable or principal portion of the organization's total activities." *Cerbo v. Protect Colorado Jobs, Inc.*, 240 P.3d 495, 501 (Colo. App. 2010), *quoting North Carolina Right to Life, Inc. v. Leake*, 525 F.3d 274 at 329 (4th Cir. 2008) (Michael, J., dissenting). Also, general statements as to an organizations purposes are not really helpful; what an organization actually does must carry more weight. *Cerbo* at 502, *quoting League of Women Voters v. Davidson*, 23 P.3d 1266, 1275 (Colo. App. 2001).

9. The Respondent had also made expenditures in excess of \$200 as of June 1, 2010. Accordingly, it was required to register as an issue committee as of June 1, 2010. Pursuant to §1-45-108(3), C.R.S., Respondent was not permitted to accept contributions until it registered as an issue committee.

10. Under §1-45-108 (1)(a)(I), C.R.S., "[a]ll candidate committees, political committees, issue committees, small donor committees, and political parties shall report to the appropriate officer their contributions received, including the name and address of

⁴ The Secretary of State has interpreted this "or" to mean "and." Rule 1.7 b.

each person who has contributed twenty dollars or more; expenditures made, and obligations entered into by the committee or party.”

11. Rules 4.4.1 and 4.4.4 provide a detailed explanation of concerning committees’ obligations to keep a record of all contributions, expenditures and donations. Rule 4.4.4 requires that all expenditures made by a committee of \$20 or more during a reporting period shall be listed individually on the contribution and expenditure report.

12. Here, the reports filed by Respondents with the Secretary failed to comply with §1-45-108(1)(a), C.R.S., and Rules 4.4.1 and 4.4.4. The report for the period July 29, 2010 through September 1, 2010, fails to disclose expenditures despite the apparent expenses associated with filing the signed petitions on August 2, 2010. The report for the period of September 2, 2010, through September 15, 2010, fails to account for the reduction in funds in the amount of \$1300.

13. Complainant has established, by a preponderance of the evidence, that Respondent violated the provisions of §1-45-108(3), C.R.S., by failing to register as an issue committee prior to accepting contributions. Complainant has also established, by a preponderance of the evidence that Respondent violated § 1-45-108(1)(a)(I), C.R.S., and Rules §§ 4.4.1 and 4.4.4 by failing to disclose contributions accepted and expenditures made in its reports.

14. If the ALJ finds that a violation has occurred, the ALJ is to render a decision including “any appropriate order, sanction, or relief authorized by this article.” Colo. Const. art. XXVIII, sec. 9(2)(a).

15. The relevant “relief authorized by this article” is found at Section 10 of article XXVIII. Section 10(2)(a) provides:

(2)(a) The 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 section 5, section 6, or section 7 of this article, or 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.

16. June 1, 2010 (exclusive), through August 26, 2010, is 86 days. Fifty dollars per day multiplied by 86 days results in a penalty of \$4300. September 22, 2010 (exclusive) to December 10, 2010, the day of the hearing and the last day there was evidence of the Respondent’s failure to report, is 79 days. Fifty dollars per day multiplied by 79 produces a penalty of \$3950. A representative of Respondent did not participate in the hearing thus no mitigating evidence that would result in reduction of the penalty was presented.

AGENCY DECISION

It is therefore the Agency Decision that the Respondent Safe Streets Colorado shall pay a penalty of \$12,200. The penalty shall be deposited in the Department of State cash fund created in Section 24-21-104(3), C.R.S.

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, sec. 9(2)(a).

DONE and SIGNED: December 27, 2010



Laura A. Broniak
Administrative Law Judge

Exhibits admitted:

For the Complainant: Exhibits 1-25.

For Respondent: none.

CERTIFICATE OF SERVICE

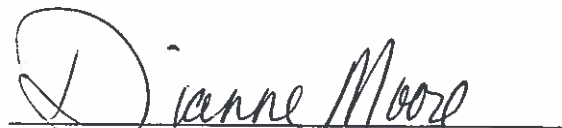
I hereby certify that a true and correct copy of the above **AGENCY DECISION** was served by e-mailing and placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Luis Toro, Esq.
Colorado Ethics Watch
1630 Welton Street, Suite 415
Denver, CO 80202

Safe Streets Colorado
2910 North Powers Boulevard, Suite 606
Colorado Springs, CO 80917

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

DATED: 1/4/11


Court Clerk