

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

**CASE NO. OS 2007-0019**

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**AGENCY DECISION**

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**IN THE MATTER OF THE COMPLAINT FILED BY COLORADO ETHICS WATCH  
REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY  
THE CITY AND COUNTY OF BROOMFIELD.**

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This matter is before Administrative Law Judge (ALJ) Robert Spencer upon the complaint of Colorado Ethics Watch (CEW). CEW alleges that the City and County of Broomfield (Broomfield) violated § 1-45-117(1), C.R.S. of the Fair Campaign Practices Act (FCPA) by providing answers to a candidate questionnaire to some, but not all, of the candidates for mayor and city council in advance of a candidate forum where the questionnaire was to be discussed.

The Secretary of State received CEW's complaint October 23, 2007.<sup>1</sup> Pursuant to Colo. Const. art. XXVIII, § 9, the Secretary forwarded the complaint to the Office of Administrative Courts for hearing. Hearing upon the complaint was held January 3, 2008. Kevin C. Paul, Esq. of Heizer|Paul LLP and City Attorney William A. Tuthill, III, represented Broomfield. CEW was represented by its Director, Chantell Taylor, Esq.

**Issue**

CEW alleges that Broomfield violated the law by devoting employee time to advance the interests of certain candidates for mayor and city council. In October 2007, FRIENDS, a nonprofit organization providing services to developmentally disabled citizens, sponsored a forum for all mayoral and council candidates to discuss the availability of public services to the developmentally disabled. Prior to the forum, FRIENDS distributed a questionnaire to each of the candidates that was designed to test the candidate's knowledge and position regarding issues of interest.

Several days before the forum, Clark Griep, a candidate for mayor, asked Broomfield City and County Manager George DiCiero for public information that would help him answer the questionnaire. Mr. DiCiero agreed to do so, and provided the questionnaire to Assistant City and County Manager Kevin Standbridge with instructions to provide such public information as Broomfield had available. Mr. Standbridge, in turn, e-mailed the questionnaire to three knowledgeable Broomfield employees. The

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<sup>1</sup> CEW initially named Broomfield City and County Manager George DiCiero and Assistant City and County Manager Kevin Standbridge as the sole respondents, but amended its complaint on November 2, 2007 to add the City and County of Broomfield as respondent. On November 20, 2007, CEW dismissed Mr. DiCiero and Mr. Standbridge as respondents.

staff's responses were assembled and provided to Mr. Griep. The following day, with permission from Mr. DiCiero, Mr. Standbridge also sent the staff responses to the mayor and each of the council members, including three members who were candidates for re-election. The staff responses, however, were not sent to any other candidate.

At the candidate forum, Mr. Griep and the incumbent candidates who had the staff responses appeared more knowledgeable about the issues than did the other candidates who had not received the information. CEW alleges that the assistance given by Broomfield to Mr. Griep and the incumbent candidates amounted to a contribution to their political campaigns, in violation of § 1-45-117(1)(a)(I), C.R.S. of the FCPA. Broomfield, on the other hand, contends that what it did in this case was consistent with its longstanding policy of providing public information to any citizen who asks for it, and the information was not intended to promote the election of any candidate.

Political subdivisions are prohibited from making contributions to the campaign of any candidate for public office. A contribution includes anything of value, including the time of public employees, given for the purpose of promoting a candidate's election to office. The issue in this case is whether providing staff responses to the FRIEND's questionnaire to some but not all of the candidates was a prohibited contribution. For the reasons explained below, the ALJ concludes that it was not.

### **Findings of Fact**

1. The City and County of Broomfield is a political subdivision of the state of Colorado, and is therefore subject to the provisions of § 1-45-117, C.R.S. of the FCPA.
2. In the fall of 2007, fourteen candidates were running for election in Broomfield, including three for mayor and eleven for council. Three of the eleven council member candidates were incumbents.
3. FRIENDS is a nonprofit organization providing services to developmentally disabled citizens. On October 10, 2007, FRIENDS held a forum for all Broomfield candidates to discuss issues of interest to the developmentally disabled. Prior to the forum, FRIENDS sent each candidate a questionnaire designed to test the candidate's knowledge and position regarding housing assistance, transportation and zoning for group and host homes. The questionnaire included a number of factual questions such as:

Section 8 – What is it?<sup>2</sup> What do you know about the list being opened? What is the procedure for getting on the list? How many are on it? Where are the properties?

What is the zoning allowance for group homes, PCA's or host homes?<sup>3</sup> How many group homes, host homes or PCA's are in

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<sup>2</sup> Section 8 is a rental assistance program administered by the U.S. Department of Housing and Urban Development to provide housing assistance to eligible low-income, elderly and disabled persons.

<sup>3</sup> PCA, or personal care assistance, is a reference to adult daycare provided in private homes.

Broomfield?

How do Call N Ride and Access-A Ride work in Broomfield, and how do they meet the needs of the developmentally disabled population?

The questionnaire also included a number of opinion questions, such as:

What will you do to encourage the establishment of more host homes in Broomfield?

Do you support the allocation of funds to FRIENDS and Imagine!?

Would you help ensure that Broomfield has appropriate representation on the Board of Directors for Imagine!?

Would you be interested in being on the board of FRIENDS?

4. On or about October 4, 2007, Clark Griep, a candidate for mayor, provided City and County Manager George DiCiero with a copy of the FRIENDS questionnaire and asked if Broomfield staff could provide information responsive to the questions. Mr. DiCiero agreed to see what could be done and provided the questionnaire to Assistant City and County Manager Kevin Standbridge to research and provide what public information was available.

5. Mr. Griep was a former council member and a friend of Mr. DiCiero.

6. On October 5, 2007, Mr. Standbridge e-mailed a copy of the questionnaire to three city employees knowledgeable in the areas of transportation, housing and zoning, and asked each employee to provide the factual information requested. In his e-mail, Mr. Standbridge informed the staff that, "Friends ... distributed the following questions to Broomfield candidates. I anticipate that we will receive questions on these questions ... So that we can have consistent answers I would like us to prepare a response now to a few of the questions ... "We are not looking for opinions on the questions, rather the facts of today as they apply to the topic." Exhibit 4.

7. Mr. Standbridge was aware that Mr. Griep requested the information to prepare for the October 10<sup>th</sup> candidate forum, and asked the staff to reply by noon on October 8<sup>th</sup>. Mr. Standbridge, however, did not advise the staff that the information was being assembled at Mr. Griep's request.

8. The staff prepared responses as requested and e-mailed the responses back to Mr. Standbridge. Mr. Standbridge assembled the responses and e-mailed the information to Mr. DiCiero. Mr. DiCiero, in turn, sent the information on to Mr. Griep.

9. The staff, Mr. Standbridge and Mr. DiCiero each spent on-the-job time responding to Mr. Griep's request. But for Mr. Griep's request, their time would have been spent on other official matters. In total, the staff, Mr. Standbridge and Mr. DiCiero spent approximately three hours to prepare, assemble and transmit the responses. All together, the cost to Broomfield in employee time was in the range of one to two hundred dollars.

10. At a council meeting on the evening of October 9, 2007, one of the council members running for re-election, Walter Spader, asked Mr. Standbridge if he had certain "material" Mr. Spader was seeking. Mr. Standbridge assumed Mr. Spader was referring to the staff responses and asked Mr. DiCiero for permission to provide it to Mr. Spader. Mr. DiCiero agreed and instructed Mr. Standbridge to provide it to the mayor, all the council members, and "anyone else who wanted it." Mr. Standbridge e-mailed it to the mayor and all council members that same evening.

11. Neither Mr. Standbridge nor any other Broomfield employee forwarded the staff responses to the remaining candidates. Broomfield had the e-mail addresses of all candidates, and the staff responses could have easily been sent to all candidates had either Mr. DiCiero or Mr. Standbridge chosen to do so.

12. The FRIENDS candidate forum was held the evening of October 10, 2007. Mr. Griep and the incumbent council candidates were better equipped to respond to the factual questions on the questionnaire as the result of having been provided the staff responses in advance. None of the candidates publicly acknowledged the source of their information.

13. One of the candidates for mayor, Patrick Quinn, had by chance received a copy of the staff responses from one of the council members shortly prior to the meeting. Mr. Quinn was therefore aware that some of the candidates had this information while others did not. The following day, Mr. Quinn complained to Mr. Standbridge that providing staff responses to the incumbent candidates but not to others showed a "bias of staff to reelect the current Council and candidates who have been on Council."<sup>4</sup> Exhibit 3.

14. In an exchange of e-mail, Mr. Standbridge defended his actions by saying that part of his job was to respond to inquiries from city council and others, and that the information was provided to the mayor and council as was customary in his role. He also said that "The information was not requested by anyone else, therefore, I did not provide the information to anyone else." This last statement was false in that Mr. Standbridge knew that Mr. Griep had requested the information and that it was prepared for him.

15. Although the facts stated above may give rise to an appearance that Mr. DiCiero and Mr. Standbridge intended to provide political advantage to Mr. Griep and the incumbent council candidates, the evidence when viewed as a whole is not sufficient to meet CEW's burden of proof. Rather, the ALJ finds that Broomfield has a policy of providing public information to any citizen that requests it, and the staff responses were prepared for that reason and not to promote Mr. Griep's or any other candidate's election. The following evidence supports this finding:

a. Broomfield has a long-standing policy of making information regarding government operations available to the public. Information that is not unduly burdensome to prepare or copy is provided free of charge. Staff are

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<sup>4</sup> Despite the alleged bias, Mr. Quinn was elected Mayor of Broomfield.

instructed to provide requested information without regard to why the requester wants it. This policy has become known as the "Broomfield Way."

b. Mr. DiCiero testified that it would be improper to spend public money to promote a candidate's campaign, and that he did not do so in this case. Rather, he provided the public information Mr. Griep requested because it was Broomfield's policy to answer the questions of any of its citizens. He would have provided the staff responses to anyone who requested it.

c. Although Mr. DiCiero was aware that Mr. Griep intended to use the information during the candidate forum and hoped he would find it helpful, Mr. DiCiero denied providing the information for the purpose of promoting Mr. Griep's campaign. The ALJ finds this explanation credible.

d. Mr. Standbridge forwarded the candidate questionnaire to staff with instructions to provide only factual information, and not opinions. Staff did not address any of the policy questions on the questionnaire. This is consistent with Broomfield's policy of making factual information freely available to anyone who wants it.

e. There is no evidence that Broomfield has ever denied any candidate or other citizen's reasonable request for factual information.

f. There is affirmative evidence that Broomfield employees, consistent with the open access policy, were also responsive to requests for information from candidates who were not incumbents. For example, on the day of the candidate forum, Broomfield's Housing Program Manager provided information regarding housing to Kevin Jacobs, a challenger for election to the council. Exhibit 18. Another challenger for election to council, Judy Enderle, testified that prior to the election she spent approximately an hour and a half with Mr. Standbridge regarding issues raised by residents in her district. According to Ms. Enderle, Broomfield staff actively encouraged her to ask questions. Similarly, Mr. Quinn testified that in August 2007 he met with Broomfield's Transportation Manager for about an hour to discuss transportation issues he considered important to the election and she answered his questions without reservation. These instances show that Broomfield exercised an even-handed approach in responding to requests for information from any candidate, and not just incumbents.

g. In June 2007, Mr. DiCiero met with all the mayoral candidates to explain the workings of the mayor's office, and offered to answer any questions they might have.

h. Mr. Standbridge provided the staff responses to the mayor and council because he believed council member Spader had asked for them, and because Mr. DiCiero directed him to provide the responses to the entire council. The ALJ finds nothing sinister in Mr. DiCiero's decision to provide public information of interest to the council. As representatives of Broomfield, it was the council's duty to be informed about issues in the public eye, and it was well within

Mr. DiCiero and Mr. Standbridge's responsibility to share such information with them.

i. Although Mr. Standbridge concealed from Mr. Quinn the fact that the staff responses were prepared at Mr. Griep's request, the ALJ does not infer from that fact that the responses were prepared for the purpose of promoting Mr. Griep's campaign. Speculation about Mr. Standbridge's motivation is insufficient to meet CEW's burden of proof.

j. Though Mr. DiCiero, Mr. Griep, and the incumbent candidates for council are all members of the Republican Party, Broomfield council elections are non-partisan and there is no evidence that any employee's actions were motivated by party affiliation.

## **Discussion and Conclusions of Law**

### *Colorado's Campaign Finance Laws*

The FCPA, §§ 1-45-101 to 118, C.R.S., was originally enacted in 1971, repealed and reenacted by initiative in 1996, substantially amended in 2000, and again revised by initiative in 2002 as the result of the adoption of Article XXVIII of the Colorado Constitution. The purpose of the FCPA is to avoid the potential for, and the appearance of, corruption in the political process. Section 1-45-102.

The section of the FCPA at issue is § 1-45-117(1)(a)(I). That section prevents government agencies and political subdivisions from, among other things, making "any contribution in campaigns involving the ... election of any person to any public office." Its purpose is to promote confidence in government by prohibiting the use of money authorized for public purposes to advance the personal viewpoint of one group over another, *Denver Area Labor Federation v. Buckley*, 924 P.2d 524, 528 (Colo. 1996); and to prevent state agencies or political subdivisions from devoting public resources to persuade voters during an election. *Coffman v. Colorado Common Cause*, 102 P.3d 999, 1006 (Colo. 2004). Violations subject the agency or political subdivision to fines, injunctive relief, restraining orders and other "appropriate" relief. Section 1-45-117(4).

### *The Elements of a § 1-45-117(1)(a)(I) Violation*

The elements necessary to prove a violation of § 1-45-117(1)(a)(I) are:

- 1) That Broomfield is a political subdivision of the state;
- 2) Which made "any contribution;"
- 3) In a campaign involving the election of any person to public office.

There is no dispute that Broomfield is a political subdivision of the state, or that Mr. Griep and the incumbent council members were involved in a campaign for public office. The primary issue, therefore, is whether providing the staff responses to Mr. Griep and the incumbent council members amounted to a "contribution" to their campaigns. As the complainant, CEW bears the burden of proof. Section 24-4-105(7),

C.R.S., as applied by Colo. Const. art. XXVIII, § 9(1)(f).

*Broomfield Made No Contribution*

Key to this issue is the definition of the term "contribution." "Contribution" is defined by FCPA § 1-45-103(6)(a) to have the meaning set forth in Colo. Const. art. XXVIII, § 2(5). That section reads, in pertinent part:

"Contribution" means ... (IV) *Anything of value* given, directly or indirectly, to a candidate *for the purpose of promoting* the candidate's nomination, retention, recall, or election.

*Italics added.* Thus, "anything of value" given "for the purpose of promoting" a candidate's election is a "contribution."

Both the FCPA and the case law interpreting it support the conclusion that the value of a government employee's time can be a "thing of value." This conclusion is drawn from § 1-45-103(6)(b), which states that a contribution includes the value of "services" that exceeds the consideration paid for those services; and from *Coffman, supra*, in which the Colorado Supreme Court held that a supervisor who directs his staff to spend on-the-job time preparing materials for a political campaign makes a contribution within the meaning of the campaign finance law. *Coffman*, 102 P.3d at 1012 (state treasurer made a contribution in kind to the campaign opposing Amendment 23 when he directed his staff to prepare press releases opposing the amendment).

The ALJ therefore has little trouble finding that the value of on-the-job time spent by Mr. DiCiero, Mr. Standbridge, and the three Broomfield employees to prepare, assemble and transmit the staff responses was a "thing of value." Moreover, the time spent was specific to responding to Mr. Griep's request, and would have been spent on other official duties but for that request. Thus, this case is unlike other cases that found no "thing of value" where no extra expense could be identified. *See, for example, Regents of Univ. of Colorado v. Meyer*, 899 P.2d 316, 319 (Colo. App. 1995), where the Court concluded there was no violation of the FCPA in the absence of evidence the University incurred additional cost to include an offending paragraph in a regularly published newsletter.

The ALJ is not, however, convinced that the time spent in this case was "for the purpose of promoting" the election of Mr. Griep or anyone else. The fact that a government employee provides a service that assists a candidate's campaign, even with the hope that the assistance will be helpful to the candidate, is not enough to prove the assistance was provided "for the purpose of promoting the campaign." Were it otherwise, any government employee providing public information to a candidate knowing that it might be useful to the candidate's campaign would be guilty of violating the law. Such an interpretation of the FCPA would place an unburden upon employees to correctly ascertain whether the requester is a candidate for public office, whether the requester intends to use the information to promote his or her campaign, and then to make a subjective determination as to how much information is too much for the FCPA. To interpret the law in such a manner would be absurd. Statutes are not to be

construed in a manner that defeats legislative intent or that leads to absurd results. *Hall v. Walter*, 969 P.2d 224, 229 (Colo. 1998); see also *Colo. Water Conservation Bd. v. Upper Gunnison River Water Conservancy Dist.*, 109 P.3d 585, 593 (Colo. 2005)(a statutory interpretation leading to an illogical or absurd result will not be followed).

Instead, the determination of whether Broomfield spent employee time "for the purpose of promoting" a candidate's election must turn upon Mr. DiCiero's motive for directing Mr. Standbridge and his staff to assemble the information requested by Mr. Griep, and his motive for directing Mr. Standbridge to pass it along to the council.<sup>5</sup> The evidence is admittedly in conflict as to this issue, but it is CEW that bears the burden of proof and the evidence is simply not sufficient to meet that burden.

Broomfield has a policy of openness in responding to requests for information from its citizenry. The ALJ is unable to conclude from the evidence as a whole that the information sought by Mr. Griep was provided for any other reason. Mr. DiCiero credibly testified that he would have provided the same information to anyone that asked, and this was supported both by the actions of Broomfield staff in responding to the requests of non-incumbent candidates, and in Mr. DiCiero's own conduct in offering to answer any questions the mayoral candidates might have. Moreover, once the information had been generated, there was no reason why the mayor and staff should not also have access to the information its staff had prepared regarding issues of public interest. The ALJ therefore concludes that the staff responses were not generated for the purpose of promoting Mr. Griep or anyone else's election to office. Although the "state machinery" may have been activated as a result of Mr. Griep's request, as long as it was not activated for the purpose of influencing the election, there is no violation of the FCPA. *Coffman, supra* at 1010 (citing *Colorado Taxpayers Union, Inc. v. Romer*, 750 F.Supp. 1041 (D. Colo. 1990)).

Although Broomfield's open access policy may lead to inefficient use of staff time in some instances, or may lead to an appearance of favoritism when information is provided to one candidate and not to others, those are issues of policy to be resolved by the mayor and council, not the ALJ. The ALJ may decide this case only upon the requirements of the law. Having found no violation of the FCPA, judgment must be entered in Broomfield's favor.

### Summary

Broomfield did not violate § 1-45-117(1)(a) of the FCPA by spending staff time to prepare responses to a questionnaire at one candidate's request. Nor did it violate the FCPA by sharing the responses with incumbent candidates on its council. The evidence is not sufficient to prove that the information was provided for the purpose of

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<sup>5</sup> CEW urges the ALJ to adopt an objective standard in deciding whether a thing of value was given "for the purpose" of promoting a candidate's election. In support, CEW cites *Kungys v. United States*, 485 U.S. 759 (1988), wherein the concurring opinion favored an objective test in deciding whether Kungys had given false testimony "for the purpose of" obtaining naturalization. The plurality opinion, however, preferred a literal reading of the statute, and therefore opted for a requirement of subjective intent. *Id.* at 779-80. Similarly, the ALJ believes a literal reading of the FCPA requires a subjective intent standard.

promoting any candidate's election, and therefore is not a contribution within the meaning of the FCPA.

### Agency Decision

The City of Broomfield did not violate § 1-45-117(1), C.R.S. of the Fair Campaign Practices Act. This decision is subject to review by 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**  
January 16, 2008



ROBERT N. SPENCER  
Administrative Law Judge

Digitally recorded in CR #2  
Exhibits admitted:<sup>6</sup>  
Joint exhibits 1 through 25

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<sup>6</sup> In addition to the exhibits, the parties also entered 28 stipulations of fact.

## 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:

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

Kevin C. Paul, Esq.  
Dean C. Heizer, Esq.  
Heizer|Paul LLP  
2401 15<sup>th</sup> Street, Suite 300  
Denver, CO 80202

William A. Tuthill, III, Esq.  
Broomfield City and County Attorney  
One Des Combes Drive  
Broomfield, CO 80020

and

William Hobbs  
Secretary of State's Office  
1700 Broadway, Suite 270  
Denver, CO 80290

on this <sup>5<sup>th</sup></sup> 17 day of January 2008.

  
Court Clerk