

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

CASE NO. OS 98-27

AGENCY DECISION

**IN THE MATTER OF THE COMPLAINT FILED BY JUDITH PATTERSON REGARDING
ALLEGED VIOLATIONS OF THE FAIR CAMPAIGN PRACTICES ACT BY JOANNE
REITINGER, GUNNISON COUNTY CLERK AND RECORDER**

On September 27, 1998, Complainant Judith Patterson ("Patterson") filed a complaint with the Colorado Secretary of State against Respondent Joanne Reitingger ("Reitingger"). The complaint alleges that the Respondent had committed a violation of the Fair Campaign Practices Act, Section 1-45-101 *et seq.*, C.R.S. (1998) ("the Act"). At the request of the Secretary of State Patterson filed additional information relative to the complaint on October 2, 1998. The Secretary of State then transmitted the complaint to the Colorado Division of Administrative Hearings for the purpose of conducting a hearing pursuant to Section 1-45-111(2)(a), C.R.S. (1998).

The hearing in this matter was held in Denver, Colorado, on October 16, 1998, before Administrative Law Judge Marshall A. Snider. Patterson appeared without counsel. Reitingger was present at the hearing and was represented by Timothy M. Tymkovich, Esq. The Administrative Law Judge issues this Agency Decision pursuant to Section 1-45-111(2)(a), C.R.S. (1998) and Section 24-4-105 (14)(a), C.R.S. (1998).

STATEMENT OF THE ISSUE

Reitingger is the Clerk and Recorder of Gunnison County, Colorado and is a candidate for reelection. The issue to be determined is whether Reitingger violated the Fair Campaign Practices Act by delivering a campaign yard sign to a Reitingger supporter on the premises of the Gunnison County courthouse.

FINDINGS OF FACT

1. Reitingger currently holds public office as the Clerk and Recorder of Gunnison County, Colorado. Reitingger is a candidate for reelection to that office in the general election to be held on November 3, 1998. Reitingger announced her candidacy in April, 1998.

2. Patterson is an employee of the Gunnison County Clerk and Recorder's office. In April, 1998, Patterson announced that she would be a candidate for the office

of Clerk and Recorder of Gunnison County in the November 3, 1998, general election. Both Reitingner and Patterson have campaigned for the office of Clerk and Recorder since April, 1998.

3. On the afternoon of September 25, 1998, an individual asked Reitingner if he could obtain a yard sign supporting Reitingner's candidacy. This conversation with Reitingner occurred at the Gunnison County courthouse. Reitingner's office is located in this courthouse. Reitingner and her staff perform the duties of the office of Clerk and Recorder in space provided in the Gunnison County courthouse.

4. Reitingner told the person who requested the sign that Reitingner would attempt to obtain a yard sign for him. This individual was to return to the courthouse later in the day to pick up the sign.

5. Reitingner called her husband and asked him to bring a campaign yard sign to the courthouse. Her husband brought a sign to the courthouse and placed the sign in a storage room in the courthouse. Employees of the Clerk and Recorder's office keep supplies, forms, and other materials related to the functioning of the Clerk and Recorder's office in this storeroom.

6. The sign which Reitingner's husband brought to the courthouse was not visible to public view when it was brought to the courthouse or while it was kept in the storage room.

7. The individual to whom Reitingner promised to deliver the yard sign did not return to pick up the sign before the end of business on September 25, 1998. The Clerk and Recorder's office closes at 5:00 p.m.

8. Patsy Wood is an employee of the Clerk and Recorder's office who works in an area near the storage room. Wood saw the yard sign and asked Reitingner if Wood could take the yard sign home. Wood intended to display the sign in her yard.

9. Wood asked Reitingner about the yard sign at approximately 5:00 p.m. on September 25, either just prior to the closing of the office or after the office was closed. Reitingner told Wood that Wood could have the sign.

10. Wood left the courthouse with the sign after 5:00 p.m. Wood did not display the sign within the courthouse.

11. Stella Dominguez, an employee of the Clerk and Recorder's office, offered to give Wood a ride home. Wood and Dominguez placed the sign in Dominguez' car and left the vicinity of the courthouse.

12. When Wood and Dominguez left the courthouse with the yard sign and placed it in the car the sign was identifiable as a Reitingger campaign sign.

13. No yard signs supporting the Reitingger candidacy have been brought inside the courthouse, other than the yard sign described above. The yard sign involved in this case was not displayed in the courthouse or kept in any public part of the courthouse.

14. The yard sign described above was kept on the premises of the Gunnison County courthouse for no more than three hours.

15. Reitingger failed to consider the implications of storing and delivering a campaign sign on county property. However, she did not intentionally use county facilities in support of her candidacy.

16. No evidence was presented regarding the salaries paid to employees of the Gunnison County Clerk and Recorder's office or of the value of the space used by the Gunnison County Clerk and Recorder's office.

DISCUSSION

Patterson maintains that Reitingger violated Section 117 of the Act by using public funds or property in support of her campaign, because the sign was stored and delivered to Wood in the county courthouse. Patterson does not specifically argue that the time of Reitingger and Wood involved in delivery of the sign was time paid for by the county. However, that position is implied in Patterson's complaint.

A. Section 1-45-117(1)(a)(I) of the Act provides that no political subdivision of the state of Colorado shall make any contribution in campaigns involving the election of any person to any public office. Gunnison County is a political subdivision of the state of Colorado. *Board of County Commissioners of Douglas County v. Bainbridge*, 929 P.2d 691, 699 (Colo. 1996). Accordingly, the issue raised by this complaint is whether Reitingger caused the county to make a "contribution" to Reitingger's reelection campaign within the meaning of the Act. As relevant to the present case a contribution is defined 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". Section 1-45-103(4)(a)(IV), C.R.S. (1998).

Reitingger discussed the delivery of the yard sign with the individual described in Finding of Fact, Paragraph 3 during business hours. Reitingger and Wood also discussed giving the sign to Wood. The evidence was not clear if this latter conversation was during business hours or immediately thereafter (see Findings of Fact, Paragraph 9). For the purpose of this discussion, the Administrative Law Judge assumes that the conversation

between Reitingger and Wood took place prior to 5:00 p.m. The yard sign was stored on county property for no more than three hours.

A "thing of value" means anything to which an economic, monetary or exchange value can be attributed. *People v. Becker*, 759 P.2d 26 (Colo. 1988). Under some circumstances the use of storage space in the courthouse and the time of a county employee may be things of value within the meaning of Section 103(4)(a)(IV). No evidence was presented regarding the value of the space used by the Gunnison County Clerk and Recorder's office or the value of the storage room in which the sign was placed for a few hours. Nevertheless, the Gunnison County Courthouse is a building provided at county expense [Section 30-11-104(1), C.R.S. (1998)]. The county therefore incurs an expense in providing space in the courthouse for the operation of the Clerk and Recorder's office, and an economic or exchange value can be attributed to the use of that space.

Similarly, no evidence was presented regarding the salaries paid to employees of the Gunnison County Clerk and Recorder's office. However, as a matter of law some salary is paid to both Reitingger and Wood. Sections 30-2-102(2) and 30-2-104(1)(a), C.R.S. Thus, an economic, monetary or exchange value can be attributed to the time of Reitingger and Wood while on the job, which they exchange as work for a salary. Accordingly, under some circumstances the time of Reitingger and Wood may be a "thing of value".¹

Nevertheless, the value of the use of a small part of a storage space for less than three hours, and the value of the time of Reitingger and Wood spent in momentary discussions regarding the sign, are so minor that they do not constitute things of value under the Act. The value of these items is minuscule compared to the value of all of the services provided by Reitingger or Wood or the value of the Clerk and Recorder's office space in the Gunnison County courthouse. Such insignificant items are considered to be *de minimis* and are disregarded by the law. See *City of Bozeman v. Vaniman*, 898 P.2d 1208 (Mont. 1995); *People v. National American Insurance Co.*, 38 Cal. Rptr. 2d 569 (Cal. App. 1995). The trivial involvement of county employees and facilities in this matter imposed no burden on the taxpayers of the county and conferred no meaningful benefit to Reitingger. This involvement is too trifling to be considered a contribution of anything of value by the county. See *City of Pueblo v. Flanders*, 225 P.2d 832 (Colo. 1950).

Accordingly, the Administrative Law Judge concludes that the brief conversations involved in this case, to the extent they occurred on county time, and the brief use of a small area in a storage room did not constitute things of value contributed by Gunnison County to promote Reitingger's candidacy. While Reitingger's actions in this case might be considered imprudent, they did not violate the Act.

B. Patterson also claims that Reitingger violated Section 117(3) of the Act. Section 117(3) provides that if a candidate who is an incumbent inadvertently or unavoidably makes an expenditure which involves campaign expenses and official expenses, that expenditure will be deemed to be solely a campaign expense. This section is inapplicable to the present case. An expenditure is defined as a payment, distribution or advance of money. Section 1-45-103(6), C.R.S. (1998). The time of Reitingger and Wood and the use of the storage area involved in this case did not involve a payment, distribution or advance of money.

CONCLUSIONS OF LAW

1. The Secretary of State and the Administrative Law Judge have jurisdiction over this complaint.

2. Reitingger has not violated Section 1-45-117(1)(a)(l) or (3) of the Act.

AGENCY DECISION

It is the Agency Decision of the Administrative Law Judge that the complaint by Judith Patterson against Joanne Reitingger is dismissed.

Dated: October 21, 1998.



MARSHALL A. SNIDER
Administrative Law Judge

FOOTNOTE

1. Other authorities support the conclusion that the services of an employee are considered a "thing of value". See Section 18-1-901(3)(r), C.R.S. (1997) (definition of the term "thing of value" for purposes of the criminal code includes "services"); *United States v. Croft*, 750 F.2d 1354 (7th Cir. 1984) (services of a government employee constitute a thing of value which can be unlawfully converted).

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: Judith Patterson, P.O. Box 929, Gunnison, CO 81230; to Timothy M. Tymkovich, Esq. 1675 Broadway, Suite 2000, Denver, CO 80202; and by personal service on Victoria Buckley, Secretary of State, 1560 Broadway, Suite 200, Denver, CO 80202, on this 22 day of October, 1998.



Secretary to Administrative Law Judge

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