

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

CASE NO. OS 2001-015

AGENCY DECISION

**IN THE MATTER OF THE COMPLAINT FILED BY RHODA SCHNEIDERMAN
REGARDING ALLEGED VIOLATIONS OF THE FAIR CAMPAIGN PRACTICES ACT
ON THE PART OF THE TOWN OF GYPSUM, THE TOWN OF GYPSUM TOWN
COUNCIL AND THE TOWN OF GYPSUM PLANNING COMMISSION**

Hearing was held before Administrative Law Judge Kathleen T. Muramoto on December 19, 2001, regarding a complaint filed with the Secretary of State on October 12, 2001, by Rhoda Schneiderman (Complainant) against the Town of Gypsum, the Town of Gypsum Town Council and the Town of Gypsum Planning Commission (collectively the Respondents) pursuant to the Fair Campaign Practices Act, Section 1-45-117, C.R.S. (2001) (FCPA). Complainant appeared *pro se*. Respondents were represented by Timothy J. Flynn, Esq. The Administrative Law Judge issues this Agency Decision pursuant to Section 1-45-111(2)(a), C.R.S. (2001) and Section 24-4-105(14)(a), C.R.S. (2001).

STATEMENT OF THE ISSUE

The issue to be determined is whether Respondents violated the Fair Campaign Practices Act when an article written by Town Councilman Tom Edwards appeared in the September 2001 issue of the Gypsum Chronicles and was then reprinted in the Vail Daily newspaper on October 11, 2001.

FINDINGS OF FACT

1. The Town of Gypsum is a home rule municipal corporation and political subdivision of the State of Colorado.
2. To communicate regularly with town residents, the Town of Gypsum Town Council routinely prepares and distributes to the residents of the Town a quarterly newsletter called the "Gypsum Chronicles".
3. The September 2001 issue of the Gypsum Chronicles contained an article written by Town Councilman Tom Edwards at his own expense and on his own time entitled "Chatfield Corners Letter to Residents". The article was written in the form of a

letter to Gypsum residents from and using the names of all Gypsum Town Council members and all Gypsum Town Planning Commission members (except Bill Fisher).

4. All of the articles in the September 2001 issue of the Gypsum Chronicles were prepared on or before August 29, 2001.

5. On August 29, 2001, the September 2001 issue of the Gypsum Chronicles was delivered by the Gypsum Town Clerk to Eagle Valley Printing, the printing company that prints the newsletter for the Town.

6. On August 31, 2001, Petitioner filed three Petitions with the Gypsum Town Clerk consisting of a Referendum Petition on Town Ordinance 2001-08, a Petition for Initiated Ordinance 2001-13, and a Petition for Initiated Ordinance 2001-14.

7. Proposed Initiated Ordinance 2001-13 would have required new zoning and rezoning plats submitted after November 15, 2001, to comply with the Town of Gypsum's Master Development Plan. Proposed Initiated Ordinance 2001-14 would have required new annexation proposals submitted after November 15, 2001, to be subject to approval by Gypsum voters. The Referendum Petition called for Town Ordinance 2001-08 adopted July 24, 2001, annexing Chatfield Corners to the Town of Gypsum to be repealed.

8. On September 5, 2001, all three Petitions were certified by the Gypsum Town Clerk as containing a sufficient number of valid signatures to require the Gypsum Town Council within not more than sixty (60) days pursuant to Section 3.5 of Article III of the Town of Gypsum Home Rule Charter, to either: a) adopt the initiated Ordinances and repeal Ordinance 2001-08, or b) call a special election for the purpose of submitting said initiated and referred matters to the eligible electors of the Town.

9. On September 7, 2001, the Town of Gypsum mailed the September 2001 issue of the Gypsum Chronicles, to the Town residents by delivering the copies of said newsletter to be mailed to the Town's residents to the U.S. Post Office in the Town of Gypsum.

10. At a regular Town of Gypsum Town Council meeting held on September 11, 2001, the Gypsum Town Council decided not to repeal Ordinance 2001-08 and not to adopt proposed initiated Ordinances 2001-13 and 2001-14 as submitted by Petitioner. At the same September 11, 2001 Town of Gypsum Town Council meeting, the Town Council adopted Resolution 2001-30, which Resolution called a special election to be held on Tuesday, November 6, 2001, within the Town of Gypsum, Colorado, on the questions of a) repealing Gypsum Town Ordinance No. 8, Series 2001, and b) adopting proposed Town of Gypsum Ordinance No. 13, Series 2001 and proposed Ordinance No. 14, Series 2001.

11. On September 11, 2001, the ballot content for the Town's November 6, 2001 special election on the Referendum and Initiated Ordinances was certified to the Eagle County Clerk and Recorder.

12. On October 11, 2001, the Vail Daily reprinted the "Chatfield Corners Letter to Residents" article exactly as it appeared in the September 2001 issue of the Gypsum Chronicles except for the closing that used the names of all Gypsum Town Council members and all Town of Gypsum Planning Commission members (except Bill Fisher). The "Chatfield Corners Letter to Residents" was submitted to the Vail Daily by Gypsum Town Council member Tom Edwards acting on his own behalf, on his own time and at his own expense. Mr. Edwards did so without the knowledge or approval of the other Councilmembers or Planning Commission members.

13. On November 6, 2001, the proposed initiated Ordinances 2001-13 and 2001-14 and the proposed Referendum Ordinance that would have repealed Ordinance 2001-08 were defeated by the Town's voters.

DISCUSSION

Petitioner has asserted that Respondents are in violation of Section 1-45-117 C.R.S., a provision of the FCPA which provides, in pertinent part, that "No agency, department, board, division, bureau, commission or council of the state or any political subdivision thereof shall...expend any public moneys, from any source, or make any contributions, to urge electors to vote in favor of or against any: (B) Local ballot issue that has been submitted for the purpose of having a title fixed pursuant to section 31-11-111 or that has had a title fixed pursuant to that section [or] (C) Referred measure, as defined in section 1-1-104(34.5)". Petitioner alleges that the article written by Town Council member Tom Edwards entitled "Chatfield Corners Letter to Residents" which appeared in the September 2001 issue of the Gypsum Chronicles (and which was subsequently reprinted in the Vail Daily), took a position in opposition to proposed Initiated Ordinances 2001-13 and 2001-14, and the Referendum Petition on Town Ordinance 2001-08, which appeared on the Town's November 6, 2001 special election ballot.

Petitioner argues that when she filed Referendum Petition on Town Ordinance 2001-08 and the Petitions for Initiated Ordinances 2001-13 and 2001-14 to the Town Clerk on August 31, 2001, on that date they were submitted for the purpose of having a title fixed. The ALJ disagrees.

Section 1-45-117(1)(a)(I)(B) C.R.S., in pertinent part, precludes the expenditure of public money to urge electors to vote in favor of or against any local ballot issue only where the ballot issue has been submitted for the purpose of having a title fixed pursuant to Section 31-11-111 C.R.S. That section provides that the legislative body of the municipality or its designee shall promptly fix a ballot title for each initiative or

referendum after an election has been ordered pursuant to Section 31-11-104 or 31-11-105. Here, the special election for the ballot issues in question was not ordered until the Town Council meeting on ~~September 11, 2001~~, which is therefore the trigger date for application of the FCPA. Because the article in the September 2001 issue of Gypsum Chronicles was delivered to the Post Office for mailing on September 7, 2001, the ALJ concludes that no violation of Section 1-45-117(1)(a)(I)(B) C.R.S. occurred.

Further, Section 1-45-117(1)(b)(I) C.R.S., permits that expenditure of public monies to dispense a factual summary, which includes arguments both for and against a proposal, on any issue of official concern before the electorate of the Town. Petitioner argues that the article printed in the Gypsum Chronicles, and reprinted in the Vail Daily, is biased, that it did not promote pros and cons, and that by its tone it gave tacit endorsement to the annexation and development of Chatfield Corners. The ALJ disagrees. The article clearly presents arguments for and against in roughly equivalent lengths, and it states "The answer is something you will have to decide for yourself", and it encourages readers to "Please give all of these thoughts consideration and do what you feel is right." The article also offers "The suggestion of the Town Council would be to vote for Council members at the next election that you feel represent your desires." Therefore, the ALJ concludes that the content and tone of the article are clearly permissible under Section 1-45-117(1)(b)(I).

Section 1-45-117(1)(b) C.R.S., permits an elected official of the Town to express a personal opinion on any issue that has been placed before the electorate. As found, Council member Tom Edward's submission of the article for reprinting in the Vail Daily was the action of an individual, without the knowledge or approval of the Town of Gypsum or the other Council members or Planning Commission members. Mr. Edwards did so at his own expense. Therefore, the ALJ concludes that the reprinting in the Vail Daily is not in violation of Section 1-45-117 C.R.S.

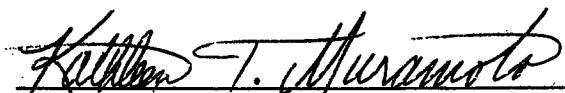
CONCLUSIONS OF LAW

1. The Secretary of State and the Administrative Law Judge have jurisdiction over Respondents and the subject matter of the complaint filed against them by Rhoda Schneiderman.
2. No violation of the FCPA has been established in relation to the article written by Town Council member Tom Edwards and entitled "Chatfield Corners Letter to Residents", printed in the September 2001 issue of the Gypsum Chronicles and subsequently reprinted in the Vail Daily newspaper on October 11, 2001.

AGENCY DECISION

It is the Agency Decision in this matter that the complaint of Rhoda Schneiderman regarding the conduct of Respondents is dismissed.

DONE AND SIGNED: February 28, 2002


Kathleen T. Muramoto
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above **AGENCY DECISION** was placed in the U.S. Mail, postage prepaid, at Denver, Colorado to: Rhoda Schneiderman, 925 Mayne Street, Gypsum, Colorado 81637; Timothy J. Flynn, Esq., 390 Union Blvd., Ste. 400, Denver, Colorado 80228; and Donetta Davidson, Colorado Secretary of State, 1560 Broadway #200, Denver, CO 80202 on ~~February 4~~, 2002.

March
