

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

CASE NO. OS 20050032

AGENCY DECISION

**IN THE MATTER OF THE COMPLAINT FILED BY JEFF TIPPETT REGARDING
ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY THE TOWN OF
SNOWMASS VILLAGE**

Hearing in this matter was held by telephone on January 27, 2006. Jeff Tippett ("complainant") appeared on his own behalf. John C. Dresser, Esq., represented the Town of Snowmass Village. The ALJ appeared at the Office of Administrative Courts in Denver. The parties appeared from a conference room in the Town of Snowmass Village.

ISSUE PRESENTED

Whether the Town of Snowmass Village expended public money to urge voters to support three local ballot issues as proscribed by §1-45-117(1)(a)(I)(B), C.R.S. (2005) of the Fair Campaign Practices Act.

FINDINGS OF FACT

Based upon the stipulations of the parties and the evidence presented at the hearing in this matter, the ALJ makes the following findings of fact:

1. On August 15, 2005 the Snowmass Village Town Council passed Resolution Nos. 33, 34, and 35, Series of 2005 calling for a special election on three issues to be submitted to the electorate on November 1, 2005. These resolutions, respectively, pertained to the following: (1) a town hall bond issue; (2) a recreation center bond issue; and (3) the imposition of a lodging tax. The resolutions constituted local ballot issues.

The All About Town Circular

2. On August 29, 2005 the Town of Snowmass Village (TOSV) placed a circular entitled "All About Town" *The Aspen Times* newspaper. On August 30, 2005 the TOSV placed the same circular in *The Snowmass Sun* newspaper. The circular was captioned as "A semi-annual progress report brought to you by the Town of Snowmass Village." The circular was eight pages in length and contained a number of articles relevant to local issues including: promotional materials, an events calendar,

revitalization of the TOSV, an update on finances in the TOSV, and a listing of the members of various boards and commissions in the TOSV.

3. The TOSV incurred the following costs in placing the circulars in the newspapers: (1) \$1,000 in employee salaries; (2) \$580 for the design work on the circular; and (3) \$5,247 in advertising costs.

4. One of the articles in the circular was entitled "Building a Town Hall Worthy of Snowmass." The article described the design plans for a new town hall and how the design would compliment the mountain character of the TOSV. The article detailed the site of the new town hall, its central location, and its accessibility. The article also listed the departments that would occupy the building and the energy efficiency of the new structure. The article did not address the town hall ballot issue.

5. The record does not disclose the specific costs of the "Building a Town Hall Worthy of Snowmass" article.

The Town Talk Video

6. In October 2005 the TOSV produced an approximately 20-25 minute video entitled *Town Talk*. The video was shown a number of times on local public access television during October 2005. The host of *Town Talk* stated that the show would discuss the recreation center and lodging tax ballot issues. The TOSV town manager and two council members were guests on the show. The host questioned the guests about the recreation center and lodging tax issues.

7. Throughout the video, the guests presented the positive aspects of the recreation center and lodging tax issues. The guests did not merely inform the viewers about the issues, but effectively presented arguments in support of the proposed ballot issues. The guests did not present any arguments against the proposed ballot issues.

8. The TOSV paid the public access television station \$200 to air the *Town Talk* video. The TOSV also incurred approximately \$23.00 in employee salary expenses to produce the video.

Resolution No. 39

9. On October 19, 2005 the TOSV placed Resolution No. 39 in *The Snowmass Sun*, a weekly newspaper of general circulation in Snowmass Village. Resolution No. 39 was an advertisement that urged electors to support all three ballot measures in the November 1, 2005 election.

10. The TOSV originally intended to pay for the publication of Resolution No. 39, but complainant cautioned the Mayor of the TOSV about the legality of using public funds to pay for the advertisement. Based on the complainant's concerns, a private issues committee paid the costs of placing Resolution No. 39 in *The Snowmass Sun*. The TOSV spent \$3.83 on employee time to prepare the resolution.

CONCLUSIONS OF LAW

1. By enacting the Fair Campaign Practices Act (FCPA), the general assembly sought to prevent state or political subdivisions from devoting public resources toward persuading voters during an election. Coffman v. Common Cause, 102 P.3d 999, 1006 (Colo. 2004). The FCPA seeks to control campaign expenditures of public monies to prevent the state machinery from thwarting the electoral process. Id.

2. Section 1-45-117(1)(a)(I), C.R.S. (2005) of the FCPA provides, in relevant part:

No . . . political subdivision [of the state] 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.

The All About Town Circular

3. The “Building a Town Hall Worthy of Snowmass” article emphasized the virtues of the design and location of a new town hall. The article was informative in the context of a larger informative publication. The article did not refer to the town hall ballot issue and did not implicitly or explicitly advocate the passage of the ballot issue. The article thus did not urge electors to vote in favor of the town hall ballot measure.

4. In concluding that the article did not urge voters to support the town hall ballot issue, the ALJ has considered Skruich v. Highlands Ranch Metropolitan Dists., 107 P.3d 1140 (Colo. App. 2004). In Skruich, 107 P.3d at 1143 the court of appeals concluded that a brochure urged electors to vote in favor of a proposed local ballot measure. The court reasoned that:

when read in its entirety [the brochure] did not present arguments for and against the issue. In fact, it took a position exclusively in favor of the issue, presented no contrary argument, and expressly advocated the passage of the bond initiative that was titled only days after mailing the brochure. Thus, it urged voters to vote for the initiative.

Id.

5. Skruich is distinguishable from the present case because the “Building a Town Hall Worthy of Snowmass” article does not address the town hall ballot measure. Instead, the article primarily informed readers of the design and location of a new town hall. Accordingly, the article did not constitute a violation of §1-45-117(1)(a)(I)(B).

The Town Talk Video

6. The TOSV spent a total of \$223.00 in public funds to produce and air the *Town Talk* video. Throughout the video, two TOSV council members and the town manager presented the positive aspects of the recreation center and lodging tax issues. The guests did not merely inform the viewers about the issues, but effectively presented arguments in support of the proposed ballot issues. The guests did not present any arguments against the proposed recreation center and lodging tax ballot issues.

7. The specific language of §1-45-117(1)(a)(I)(B) provides that a political subdivision shall not expend public moneys to urge electors to vote in favor of or against any local ballot issue. Here, Skruch is dispositive because the TOSV spent public funds that urged the electorate to support the recreation center and lodging tax ballot issues. Contrary to the position of the TOSV, there is no exception in §1-45-117 that permits political subdivisions to urge electors to support a ballot measure if the forum is public access television. Accordingly, the TOSV violated §1-45-117(1)(a)(I)(B) by airing the *Town Talk* video.

Resolution No. 39

8. Resolution No. 39 was an advertisement that urged electors to support all three ballot measures in the November 1, 2005 election. Although a private issues committee paid the costs of placing the advertisement in a newspaper, the TOSV spent \$3.83 on employee time to report the passage of the resolution.

9. Section 1-45-117(1)(a)(III)(A), C.R.S. (2005) provides an exception to the general prohibition on expenditures in §1-45-117(1)(a)(I)(B). A political subdivision may pass a resolution or take a position of advocacy on an issue. §1-45-117(1)(a)(III)(A). However, the passage of a resolution may not be reported or distributed through paid advertising. §1-45-117(1)(a)(III)(B).

10. Here, the \$3.83 that the TOSV spent on reporting the passage of the resolution is covered by the exception in 1-45-117(1)(a)(III)(A) because the costs involved employee time to prepare the resolution. Furthermore, the TOSV did not violate §1-45-117(1)(a)(III)(B) because it did not pay the costs for reporting or distributing the resolution through paid advertising. Accordingly, Resolution No. 39 did not constitute a violation of §1-45-117(1)(a)(I)(B).

Sanction

11. Section 1-45-117(4), C.R.S. (2005) provides, in relevant part, that “[a]ny violation of this section shall be subject to the sanctions authorized in section 1-45-113 or any appropriate order or relief.” However, §1-45-113 has been repealed.

12. In determining an appropriate sanction in this matter, Art. XXVIII, §10(1) of the Colorado Constitution is instructive. Article XXVIII governs campaigns and political finance. Section 10(1) provides for a civil penalty of at least double and up to five times the amount of the violation.

13. Guided by Article XXVIII, §10(1) the ALJ concludes that appropriate relief in this matter is a civil penalty of double the amount that the TOSV spent on the *Town Talk* video or a total of \$446. A larger sanction is inappropriate and would merely aggravate the violation because the citizens of the TOSV would ultimately be responsible for paying the civil penalty.

AGENCY DECISION

For the preceding reasons, the ALJ imposes a civil penalty against the TOSV in the amount of \$446. This amount shall be paid to the Secretary of State. This Agency Decision is subject to review by the Colorado Court of Appeals, pursuant to § 24-4-106(11), C.R.S. (2005). See §1-45-111(2)(a), C.R.S. (2005).

DONE AND SIGNED

February 8, 2006

PETER J. CANNICI
Administrative Law Judge

Tape No. 9341
Exhibits Admitted for Complainant: 1-7.
Exhibits Admitted for Respondent: A-D.