

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

CASE NO. OS 2006-0011

CORRECTED ORDER GRANTING MOTION TO DISMISS AND AGENCY DECISION

**IN THE MATTER OF THE COMPLAINT FILED BY CAROL STRUBLE REGARDING
ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY HOLLY
WILLIAMS**

This matter is before the Administrative Law Judge (ALJ) upon Respondent's Motions to Dismiss the complaint. Both Robert S. Gardner, Esq., and special counsel, William H. Louis, County Attorney, Office of the County Attorney, El Paso County, Colorado, joined in filing Motions to Dismiss on behalf of Respondent Holly Williams (Williams or Respondent). Having considered the Motions to Dismiss and the response thereto by Complainant, Carol Struble (Struble), the motions are granted.

Procedural Background

Struble, who is *pro se*, filed a complaint against Williams alleging violations of Colorado's Fair Campaign Practices Act (the FCPA) with the Secretary of State on May 17, 2006, followed by an amended complaint on May 22, 2006. On May 22, 2006, as required by Colo. Const. Art. XXVIII, § 9(2)(a), the Secretary of State referred the complaint to the ALJ for hearing and issuance of a final decision. Hearing in the matter was initially scheduled for June 6, 2006. Upon Respondent's Motion for Extension of the Hearing Date, the ALJ vacated the June 6th trial date in favor of a setting conference on June 16, 2006. The hearing date was reset for July 18, 2006. The Motions to Dismiss are now ripe for decision.

Discussion

Struble brings two claims against Holly Williams, for all times relevant the Public Trustee for El Paso County, Colorado. Struble's first claim alleges violations of the FCPA, C.R.S. Section 1-45-117(1)(a)(I) occurring from January 2004 through November 2004 during the campaign to elect Dan May as District Attorney in and for the Fourth Judicial District. Struble alleges Williams acted as May's full-time campaign manager from her office in the Office of the Public Trustee during that period, and that she had a separate telephone line installed in that office in order to use her own personal computer to run May's campaign and make campaign related calls. Struble alleges that in this way Williams expended public moneys to urge electors to vote in favor of Dan May for District Attorney, and that she did so while on the county's time and payroll.

Struble was employed under Respondent for a period of seven years and alleges she became aware of William's involvement in the May campaign during the time period it allegedly occurred. (Dan May was not a successful candidate in the August 2004 Republican Primary Election, and thus Mr. May did not appear as a candidate in the November 2004 General Election.)

In addition to alleging violations of § 1-45-117(1)(a)(I), C.R.S., Struble also alleges Holly Williams is not qualified to be a Public Trustee, and that a Public Trustee must have a four-year degree as well as five years of supervisory/business experience. Struble concedes Williams has a four-year degree, but questions when and where she received five years of supervisory/business experience prior to her appointment by the Governor to the office of Public Trustee for El Paso County.

Respondent moves that the complaint filed against her be dismissed pursuant to C.R.C.P. 12(b)(1) and (5) for "lack of jurisdiction over the subject matter" and "failure to state a claim upon which relief can be granted." The ALJ applies the Colorado Rules of Civil Procedure to the extent practicable, including C.R.C.P. 12. See § 24-4-105(4), C.R.S. and Office of Administrative Courts Rules of Procedure 10(G) and 15.

The Colorado Office of the Secretary of State derives its authority to hear certain types of cases through its sovereign, the Constitution of the State of Colorado. Complainant brought this action pursuant to the Colo. Const. Art. XXVIII, § 9(2)(a), which provides precise criteria for filing complaints with the Secretary of State under the FCPA. That section requires that any person who believes that a violation of section 3, section 4, section 5, section 6, section 7 or section 9(1)(e) of Article XXVIII or of sections 1-45-108, 114, 115 or 117, C.R.S., has occurred may file a written complaint with the Secretary of State no later than one hundred eighty (180) days after the date of the alleged violation.

The one hundred eighty (180) day requirement for filing a claim under Art. XXVIII, § 9(2)(a) is unambiguous. Any failure to submit a complaint within the one hundred eighty (180) day filing requirement would be untimely. In this matter, Appellant filed her initial complaint on May 17, 2006, followed by an amended complaint on May 22, 2006. With regard to the first claim of the complaint, even if November 30, 2004 is considered the last day a violation allegedly occurred, Complainant's complaint would have had to have been filed no later than May 30, 2005 in order to meet the one hundred eighty (180) day deadline. By filing on May 17, 2006, Complainant's complaint was filed approximately 353 days late.

Failure to timely file a claim as required by the Colorado Constitution removes the authority of this forum to consider a matter. Subject matter jurisdiction concerns the authority and power of a forum to decide a particular matter. A forum has subject matter jurisdiction when it has been empowered by the sovereign from which the forum derives its authority to entertain the type of case at issue. Pursuant to the Colo. Const. Art. XXVIII, § 9(2)(a), the Secretary of State has the authority to review violations of "section 3, section 4, section 5, section 6, section 7, or section 9(1)(e), of this article, or of sections 1-45-108, 1-45-114, 1-45-115, or 1-45-117 C.R.S., or any successor

sections." Thus, as a matter of law it is not possible for this forum to lawfully assert subject matter jurisdiction. Further, Complainant's first claim should be dismissed for failure to state a claim upon which relief can be granted because the Colorado Constitution does not allow a Complainant to seek relief for alleged violations that are not filed within the prescribed one hundred eighty (180) day period.

Pursuant to the Colo. Const. Art. XXVIII, § 9(2)(a), the Secretary of State has jurisdiction to hear complaints concerning campaign and political finance violations. No article of the Colorado Constitution or section of the Colorado Revised Statutes gives the Secretary of State or the Office of Administrative Courts jurisdiction to review matters pertaining to employment qualifications of appointed officials in Colorado, including the qualifications of a person appointed by the Governor to the office of Public Trustee. See C.R.S. §38-37-101 *et seq.* Therefore, Complainant's second claim should also be dismissed based on lack of subject matter jurisdiction and failure to state a claim.

WHEREFORE Respondent's Motions to Dismiss are GRANTED. Case Number OS 2006-0011 is dismissed in its entirety and with prejudice. The hearing scheduled for July 18, 2006 is hereby VACATED.

This decision is subject to review by the Colorado Court of Appeals, pursuant to Section 24-4-106(11), C.R.S. Colo. Const., art. XXVII, sec. 9(2)(a).

DONE AND SIGNED

July 13, 2006.

KATHLEEN T. MURAMOTO
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above **ORDER GRANTING MOTION TO DISMISS** was placed in the U.S. Mail, postage prepaid, at Denver, Colorado to:

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on this ____ day of February, 2007.

Technician IV