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BEFORE THE SECRETARY OF STATE**STATE OF COLORADO****CASE NO. OS 2007-0022**

ORDER DENYING REQUEST FOR SUMMARY JUDGMENT AND PROCEDURAL ORDER

IN THE MATTER OF THE COMPLAINT FILED BY BROOKS IMPERIAL REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY ELBERT COUNTY DEVELOPMENT COUNCIL, INC.

Complainant Brooks Imperial filed a Request for Summary Judgment in this matter on November 28, 2007. Elbert County Development Council, Inc. (ECDC) did not initially receive a copy of the motion. Upon receiving a copy, ECDC filed a response on January 10, 2008.

This action involves a complaint brought by Brooks Imperial alleging violations by ECDC of the Fair Campaign Practices Act (FCPA), Sections 1-45-101 through 1-45-118, C.R.S. Specifically, the complaint alleges that ECDC is "an entity serving in a government capacity," "is the recipient of public of public money," and "illegally influenced the 2007 election for the 1B referred tax measure in Elbert County, causing it to pass." Complainant seeks summary judgment, asserting these factors establish a violation of Section 1-45-117(1)(a)(I), C.R.S. ECDC opposes the motion, arguing there are issues of fact in dispute and further asserting that complainant is not entitled to judgment as a matter of law. For the reasons stated below, the ALJ denies the motion for summary judgment.

Legal Standard

As noted in a prior order, summary judgment is proper when the pleadings, affidavits, depositions, or admissions show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. C.R.C.P. 56(c). The burden of establishing the nonexistence of a genuine issue of material fact is on the moving party. *Continental Airlines, Inc. v. Keenan*, 731 P.2d 708 (Colo. 1987); *Schultz v. Wells*, 13 P.3d 846 (Colo. App. 2000). The movant may satisfy this burden by showing there is no record evidence supporting the nonmoving party's case. Once the movant has met the initial burden of production, the burden shifts to the nonmoving party to establish that there is a triable issue of fact. *Civil Service Commission v. Pinder*, 812 P.2d 645 (Colo. 1991); *Schultz v. Wells*, *supra*.

In ruling upon a motion for summary judgment, the nonmoving party is entitled to the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts. *Peterson v. Halsted*, 829 P.2d 373, 375 (Colo. 1992); *Van Alstyne v. Housing Authority of City of Pueblo*, 985 P.2d 97 (Colo. App. 1999). However, once a movant makes a convincing showing that genuine issues are lacking, C.R.C.P. 56(e) requires that the opposing party adequately demonstrate by relevant, receivable, and specific facts that a real controversy exists; reliance on allegations or denials in the pleadings will not suffice when the moving party has established by affidavit the absence of a triable issue of material fact. *Ginter v. Palmer & Company*, 585 P.2d 583, 585 (Colo. 1978); *Sullivan v. Davis*, 474 P.2d 218 (Colo. 1970).

Complainant's Motion

Complainant asserts summary judgment is appropriate because ECDC has violated Section 1-45-117(1)(a)(I). Section 1-45-117(1)(a)(I) provides:

1-45-117. State and political subdivisions - limitations on contributions.

(1) (a) (I) *No agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity expend any public moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:*

(A) State-wide ballot issue that has been submitted for the purpose of having a title designated and fixed pursuant to section 1-40-106 (1) or that has had a title designated and fixed pursuant to that section;

(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;

(C) Referred measure, as defined in section 1-1-104 (34.5);

(D) Measure for the recall of any officer that has been certified by the appropriate election official for submission to the electors for their approval or rejection.

[emphasis supplied]

Complainant asserts ECDC violated this section by making a contribution in 2007 to the Elbert County Transportation Initiative, an organization that supported


ballot issue 1B.¹ ECDC contests this allegation on several grounds, beginning with the factual assertion that it is not covered by the prohibitions of Section 1-45-117 because it is not a governmental entity covered by the FCPA.

The ALJ agrees that for the purposes of summary judgment, Complainant has failed to establish ECDC is an entity covered by the statute. ECDC contests that it is a covered governmental entity. Materials filed with the complaint and motion for summary judgment indicate that ECDC is a § 501(c)(6) not-for-profit organization and that ECDC has received money from Elbert County. However, the evidence does not establish either factually or as a matter of law that ECDC is an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof covered by the prohibitions of Section 1-45-117(1)(a)(I). Therefore, genuine issues of material fact exist and the record fails to establish Complainant is entitled to summary judgment. Consequently, the motion for summary judgment is denied.

Order

1. Complainant's motion for summary judgment is denied.
2. The hearing on the merits in this matter will proceed as scheduled on January 14, 2007.
3. ECDC has raised the issue of whether it may be represented by a non-attorney. The parties are advised that entities may be represented by non-attorneys if such representation is in compliance with Section 13-1-127(2), C.R.S. A copy of that provision is enclosed with this order.

DONE AND SIGNED
January 11, 2008


JUDITH F. SCHULMAN
Administrative Law Judge

¹ Issue 1B was apparently a measure on the 2007 ballot in Elbert County. The precise nature or genesis of the measure is not clearly established by the record.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above **ORDER DENYING REQUEST FOR SUMMARY JUDGMENT AND PROCEDURAL ORDER** was served by facsimile transmission and by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado addressed to:

Brooks Imperial
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Kiowa, CO 80117
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via facsimile only

Charles Groesbeek, Director
Elbert County Development Council, Inc.
P.O. Box 432
Kiowa, CO 80117
Fax number: 303 694-6836

on this ___ day of January, 2008.

Technician IV

13-1-127**Statutes and Session Law****TITLE 13 COURTS AND COURT PROCEDURE****ARTICLE 1 General Provisions****13-1-127 Entities - school districts - legislative declaration - representation.****13-1-127. Entities - school districts - legislative declaration - representation.****PART 1 ADMINISTRATIVE PROVISIONS**

(1) As used in this section, unless the context otherwise requires:

(a) "Closely held entity" means an entity, as defined in section 7-90-102 (20), C.R.S., with no more than three owners.

(a.2) "Cooperative" shall have the same meaning as set forth in section 7-90-102 (9), C.R.S.

(a.5) "Corporate licensed child placement agency" means an entity that places, or arranges for placement of, the care of any child with any family, person, or institution other than persons related to said child and that is licensed by the department of human services pursuant to section 26-6-104, C.R.S., as a child placement agency.

(b) "Corporation" shall have the same meaning as set forth in section 7-90-102 (10), C.R.S.

(c) "Entity" shall have the same meaning as set forth in section 7-90-102 (20), C.R.S.

(d) "Limited liability company" shall have the same meaning as set forth in section 7-90-102 (32), C.R.S.

(e) "Limited partnership" shall have the same meaning as set forth in section 7-90-102 (34), C.R.S.

(f) "Limited partnership association" shall have the same meaning as set forth in section 7-90-102 (35), C.R.S.

(g) "Nonprofit association" shall have the same meaning as set forth in section 7-90-102 (38), C.R.S.

(h) "Nonprofit corporation" shall have the same meaning as set forth in section 7-90-102 (39), C.R.S.

(i) "Officer" means a person generally or specifically authorized by an entity to take any action contemplated by this section.

(j) "Owner" shall have the same meaning as set forth in section 7-90-102 (43), C.R.S.

(k) "School district" means a school district organized and existing pursuant to law but does not include a junior college district.

(l) "Truancy proceedings" means judicial proceedings for the enforcement of the "School Attendance Law of 1963", article 33 of title 22, C.R.S., brought pursuant to section 22-33-108, C.R.S.

(2) Except as otherwise provided in section 13-6-407, a closely held entity may be represented before any court of record or any administrative agency by an officer of such closely held entity if:

(a) The amount at issue in the controversy or matter before the court or agency does not exceed ten thousand dollars, exclusive of costs, interest, or statutory penalties, on and after January 1, 1991; and

(b) The officer provides the court or agency, at or prior to the trial or hearing, with evidence satisfactory to the court or agency of the authority of the officer to appear on behalf of the closely held entity in all matters within the jurisdictional limits set forth in this section.

(2.3) For the purposes of this section, each of the following persons shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person's holding the specified office or status:

(a) An officer of a cooperative, corporation, or nonprofit corporation;

(b) A general partner of a partnership or of a limited partnership;

(c) A person in whom the management of a limited liability company is vested or reserved; and

(d) A member of a limited partnership association.

(2.5) (a) The general assembly hereby finds and determines that the practice of law should not include the representation of a corporation in workers' compensation proceedings by an authorized employee of such corporation. While the general assembly respectfully recognizes the jurisdiction of the supreme court with respect to the regulation of the practice of law, it hereby finds and declares that the representation of a corporation in workers' compensation cases by an authorized employee of that corporation does not constitute the unauthorized practice of law. The general assembly has determined that the decision of a president or secretary of a corporation to have a corporate employee represent the corporation in a workers' compensation case is a business decision made voluntarily and knowingly by persons who are qualified and accustomed to making business decisions. The general assembly has further determined that allowing such representation will not hamper the orderly and proper disposition of workers' compensation cases and may expedite and facilitate such disposition. An employee of a defendant corporation with experience in the operations of such corporation and knowledge of the necessary facts and law can afford a defendant corporation with representation which is the substantial equivalent to, and may in some cases, be more effective than, a licensed attorney. The general assembly hereby declares that the protections afforded by the restrictions set forth by the supreme court with respect to the unauthorized practice of law are unnecessary for the described form of representation because the general public is not likely to be harmed by such representation. Further, the general assembly respectfully recommends that the supreme court adopt rules which permit and regulate such representation in which event the general assembly may choose to repeal this statute in deference to the supreme court's rules.

(b) Notwithstanding the provisions of paragraph (a) of subsection (2) of this section concerning the amount at issue, any corporation which is in compliance with the requirements otherwise imposed on corporations by law may be represented by any employee of the corporation who is so authorized by the president or secretary of such corporation, in proceedings authorized under the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., exclusive of proceedings before the industrial claim appeals office under part 3 of article 43 of title 8, C.R.S., appeals to the court of appeals under section 8-43-307, C.R.S., and summary reviews by the supreme court under section 8-43-313, C.R.S.

(3) The court may rely upon a written resolution of a closely held entity that allows a named officer to appear in the closely held entity's behalf.

(4) A closely held entity's exercise of the option authorized by this section to be represented by an officer shall not alone be construed to establish personal liability of the representing officer or any other officer, director, owner, or shareholder for action taken by that closely held entity.

(5) A corporate licensed child placement agency, as defined in paragraph (a.5) of subsection (1) of this section, that is in compliance with the requirements otherwise imposed on closely held entities by law, may be represented by any named officer or designated agent of the agency in any proceeding involving the termination of the parent-child relationship pursuant to the "Colorado Children's Code", title 19, C.R.S., or in any proceeding involving a petition for adoption pursuant to section 19-5-208, C.R.S.

(6) Nothing in this section shall be interpreted to restrict the classes of persons who, or circumstances in which persons, may be represented by other persons, or may appear in person, before Colorado courts or administrative agencies.

(7) (a) A school district board of education may authorize, by resolution, one or more employees of the school district to represent the school district in truancy proceedings in any court of competent jurisdiction; except that the authorization of the board of education shall not extend to representation of the school district before a court of appeals or before the Colorado supreme court.

(b) A court may rely on the written resolution of the school district board of education that authorizes the named employee to represent the school district in truancy proceedings.

(c) An authorized employee who represents a school district in truancy proceedings pursuant to the provisions of this subsection (7) shall not be subject to the provisions of section 12-5-112, C.R.S.

(d) A school district board of education's exercise of the option authorized by this section to be represented in truancy proceedings by an employee shall not alone be construed to establish personal liability of the representing employee or any other employee or a school director of the school district for action taken by the school district.

Source: L. 83: Entire section added, p. 598, § 1, effective May 25. L. 84: (1)(c) amended, p. 450, § 1, effective March 16. L. 90: IP(2) and (2)(a) amended, p. 849, § 3, effective May 31; (2)(a) amended, p. 854, § 1, effective July 1. L. 91: (2.5) added, p. 1285, § 1, effective April 14. L. 92: (1)(a.5) and (5) added, pp. 179, 180, §§ 2, 3, effective March 20; (2.5) amended, p. 276, § 1, effective April 14. L. 94: (1)(a.5) amended, p. 2639, § 85, effective July 1. L. 98: (1), (2), (3), (4), and (5) amended and (2.3) and (6) added, p. 489, § 1, effective February 1, 1999. L. 2007: (1)(k), (1)(l), and (7) added, pp. 165, 164, §§ 2, 1, effective March 22.

Cross references: (1) For representation of corporations in the small claims division of county court, see § 13-6-407.

(2) For the legislative declaration contained in the 1990 act amending the introductory portion to subsection (2) and subsection (2)(a), see section 1 of chapter 100, Session Laws of Colorado 1990. For the legislative declaration contained in the 1994 act amending subsection (1)(a.5), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Assuming that defendant church existed as a de facto corporation, if the pastor were recognized as a corporate officer, the pastor could represent the defendant in court. Where there was no showing that the pastor was a corporate officer, however, the pastor could not represent the defendant church. *People v. LaPorte Church of Christ*, 830 P.2d 1150 (Colo. App. 1992).

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