

BUTLER | SNOW

PUBLIC FINANCE ALERT

Recent Fair Campaign Practices Act Developments

Two recent administrative law judge decisions reflect that a Colorado government may violate the Fair Campaign Practices Act ("FCPA") prohibition on spending public funds to urge voters to vote for or against a ballot measure even if the government does not expressly advocate passage or defeat. Of significance to government officials and employees is that in one of the cases a county commissioner was ordered to reimburse the county general fund \$1,000 as a result of the FCPA violation.

Section 1-45-117, C.R.S., provides that a Colorado government may not "expend any moneys from any source, or make any contributions, to urge electors to vote in favor of or against" most ballot measures. The statute contains some limited exceptions to the prohibition including an exception for dispensing "a factual summary, which shall include arguments both for and against the proposal." Some governments attempt to provide voters information about a ballot measure without arguments for and against the measure. Some administrative law judge decisions have held those efforts do not violate the FCPA prohibition because the government is not urging voters to vote for or against a measure. However, recent decisions from both administrative law judges and the Court of Appeals indicate that a communication may be so slanted as to violate the prohibition even if the government does not expressly advocate a yes or no vote.

One of the recent cases involved Elbert County. The county hired a consultant to present information at four town hall meetings regarding the county's financial state. The county commissioners had also submitted to the voters a question of increasing the county property tax levy. The consultant's contract was approved at the same meeting as the commissioners approved a resolution submitting the tax increase question to the voters. At each town hall meeting one of the county commissioners read a statement that the property tax increase was not a topic of discussion for the meeting. The judge found that there was no convincing evidence that the consultant or any county official who spoke at the meetings overtly asked the voters to approve the tax increase. But based upon all of the evidence presented the judge determined that the town hall meetings were intended to advocate for the passage of the tax increase. The decision said "Given that the town hall meetings painted a dire one-sided picture of the county's financial condition and were held just before the election, the proposed tax increase was 'clearly the elephant in the room.'" The judge decided that it was not appropriate to impose a penalty against the county as it would only penalize the taxpayers. But the judge did order

OUR FIRM

OUR ATTORNEYS

LATEST NEWS

CONTACT US

[PUBLIC FINANCE, TAX](#)

[INCENTIVES & CREDIT](#)

[MARKETS GROUP](#)

Butler Snow LLP, is a full-service law firm with over 275 attorneys representing local, regional, national and international clients from offices in Atlanta and Macon, Georgia; Montgomery and Birmingham, Alabama; Bay St. Louis, Gulfport, Jackson and Oxford, Mississippi; Memphis and Nashville, Tennessee; Baton Rouge and New Orleans, Louisiana; Fort Washington and Philadelphia, Pennsylvania; Denver, Colorado; New York, New York; and London, England. For more information, visit www.butlersnow.com.

Copyright © 2014 Butler Snow LLP. All Rights Reserved.

PUBLIC FINANCE ALERT is published by the **Public Finance, Tax Incentives & Credit Markets Group** of Butler Snow on selected issues. The content of PUBLIC FINANCE ALERT is intended for general informational purposes only, it is not intended to be comprehensive with respect to the subject matter, and is not intended to create an attorney-client relationship with any user. PUBLIC FINANCE ALERT is not designed or intended to provide legal or other professional advice, as any such advice requires the consideration of the facts of the specific situation. The invitation to contact firm attorneys should not be construed as a statement of availability

one of the county commissioners to reimburse the county \$1,000 as reimbursement for the estimated amount of the consultant's time spent on the town hall meetings.

The other recent case involved the Denver Public Schools. The superintendent sent emails to DPS employees and residents concerning Amendment 66, a proposed statewide tax increase to fund education which was on the November 5, 2013, ballot. The emails contained no language expressly urging voters to vote for Amendment 66. The judge concluded that the emails "in effect urged voters to support Amendment 66 because they provided only a one-sided picture of Amendment 66, stressing its beneficial effects while paying virtually no attention to the opposing point of view." But the judge also found no FCPA violation occurred because there was no evidence that DPS spent any more money than it otherwise would have if the emails were not sent. The judge noted that the superintendent and chief information officer were both salaried employees and that there was no additional cost to DPS in sending the emails. The judge also noted that both of the following statutory exceptions to the general FCPA prohibition applied: (1) a public employee may respond to unsolicited questions about a ballot measure, and (2) an employee with policy making responsibility may spend \$50 of public money in the form of letters, phone calls and other activities to express his or her opinion on a ballot measure.

Compliance with the FCPA prohibition against spending public funds to urge voters to take a position on ballot measures remains a challenge for Colorado governments and their officials and employees. There are clear statutory exceptions to the prohibition, but those involved in ballot measure elections should be cautious in spending public funds to prepare information which is too one sided in its message even if the information never advocates for a yes or no vote. Feel free to contact the following Butler Snow lawyers for information about these cases and FCPA compliance generally.

Copies of these decisions are available below.

[In re: alleged campaign and political finance violations by Denver Public Schools](#)

[In re: alleged campaign and political finance violations by Elbert County Board](#)

[Back to Top](#)

[Contact Us](#)

to perform legal services in any jurisdiction in which such attorneys are not permitted to practice. No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.


FREE BACKGROUND INFORMATION AVAILABLE UPON REQUEST.

ADVERTISING MATERIAL

 Share

 Tweet

 Share

 Forward to Friend



[Dee P. Wisor](#)

720.330.2357

[Email](#)



[Kimberley K. Crawford](#)

720.330.2354

[Email](#)



**[Maria Prevedel
Harwood](#)**

720.330.2353

[Email](#)



[Sarah P. Tasker](#)

720.330.2352

[Email](#)



Monica A. Rosenbluth

720.330.2358

Email

ADVERTISING MATERIAL

Unsubscribe from this list.

Forward this email to a friend.

This ad is authorized by Donald Clark, Jr. Chairman, 1020 Highland Colony Parkway, Suite 1400, Ridgeland, MS 39157.