

March 24, 2009

Wanda M. Krajicek  
City Clerk  
PO Box 580  
Fort Collins, CO 80522-0580

Re: Apparent Violation of Fort Collins Campaign Finance Law

**VIA FACSIMILE 970-221-6295 AND U.S. MAIL**

Dear Ms. Krajicek:

Colorado Ethics Watch (“Ethics Watch”) is a watchdog group organized under Section 501(c)(3) of the Internal Revenue Code that holds public officials and organizations accountable for unethical activities that undermine the integrity of state and local government. We are writing to request that, pursuant to your authority under Section 7-140(6) and (7) of the Fort Collins City Code, you notify candidate Andrew Boucher and his campaign committee, Andrew Boucher for City Council, of a possible failure to fully comply with the City Code’s campaign finance provisions, and submit a report of an apparent campaign finance violation to the City Manager.

The facts of the apparent violation are as follows: Andrew Boucher, a candidate for City Council in District 5, sent a fundraising appeal dated February 18, 2009 to voters in Fort Collins. A copy of the letter is enclosed. In addition to asking for contributions and promoting his own campaign, Mr. Boucher also asked recipients of the letter to support Aislinn Kottwitz, a candidate for City Council in District 3. Specifically, the letter stated:

I’m also going to include the name of Aislinn Kottwitz’s campaign committee on my reply card. She’s running in District 3 and she’ll need our support. So please consider writing her a \$75 check as well. We must hold Diggs’ seat.

The contribution card enclosed with the letter included a solicitation for checks to Aislinn Kottwitz’s campaign committee as well as for Mr. Boucher’s committee. The card indicates that the mailing was paid for by “Andrew Boucher for Council.”

The March 17, 2009 campaign report filed by Andrew Boucher for City Council reflects a payment of \$2,455.10 to Jamestown Associates for printing, a reimbursement

of \$131.48 to the candidate for mail supplies, and a payment of \$882 to the United States Postmaster for postage. It appears that Mr. Boucher's campaign spent over \$3,000 for a mass mailing that promoted not only his own campaign, but also Ms. Kottwitz's campaign. This mailing was effectively a contribution in kind to Ms. Kottwitz's campaign well in excess of the city's \$75 contribution limit.

Mr. Boucher's fundraising appeal on behalf of Ms. Boucher appears to violate Section 7-135(e)(a) of the Fort Collins City Code, which states that "No candidate committee shall make a contribution or contribution in kind to, or accept a contribution or contribution in kind from, a candidate committee of another candidate.." A "contribution" is defined in Section 7-132 of the City Code as including "[a]ny payment made to a third party for the benefit of any candidate committee" and "Anything of value given, directly or indirectly, to a candidate committee for the purpose of promoting the candidate's nomination, retention, recall or election." The same section of the City Code defines a "contribution in kind" as including "the fair market value of a gift or loan of any item of real or personal property, other than money, made to or for any candidate committee, issue committee or political committee for the purpose of influencing the passage or defeat of any issue or the nomination, retention, election or defeat of any candidate."

Mr. Boucher's committee's payment for a mailing that solicited funds for Ms. Kottwitz's campaign and advised voters that "she'll need our support" and "[w]e must hold Diggs' seat" is clearly a contribution or contribution in kind to Ms. Kottwitz's campaign committee because it was made for the purpose of influencing the election.

Mr. Boucher and his committee may contend that they are permitted to spend money to support Ms. Kottwitz's campaign under City Code provisions that permit independent expenditures. However, the City Code defines an independent expenditure as an expenditure that "is not controlled by, or coordinated with, any candidate." "Any candidate" means "any candidate," and this language makes plain that a candidate committee cannot circumvent the law's prohibition of candidate spending to help other candidates by attempting to make an independent expenditure on behalf of another candidate.

Because a campaign committee cannot lawfully make a contribution to another campaign committee or an independent expenditure on behalf of another candidate, we ask that you advise Mr. Boucher's committee of the apparent violation and report this matter to the City Manager for appropriate further action.

At this time, we are unaware whether Ms. Kottwitz or her campaign were aware of the Boucher campaign's actions on her behalf; thus, we cannot say that Ms. Kottwitz's campaign "accepted" a contribution from the Boucher campaign in violation of the City Code. However, should it emerge that the expenditure was coordinated between the two campaigns, you should consider reporting that possible violation to the City Manager as well.

Thank you for your prompt and courteous attention to this matter.

Sincerely,

Luis Toro  
Senior Counsel

Enclosure