

STATE OF COLORADO

Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Bernie Buescher
Secretary of State

William A. Hobbs
Deputy Secretary of State

May 22, 2009

Ms. Chantell Taylor
Colorado Ethics Watch
1630 Welton Street, Suite 415
Denver, CO 80202

Re: Letters dated May 7 and May 18, 2009

Dear Ms. Taylor:

This office is in receipt of your letters dated May 7 and May 18, 2009 requesting that the Secretary of State "initiate an inquiry" into potential campaign activities by Mr. Scott McInnis.

As stated by this office in previous correspondence with you, the Secretary of State does not have the authority to conduct investigations into alleged campaign finance violations. Article XXVIII Section 9(2) of the Colorado Constitution declares that "any person who believes that a violation of the campaign finance laws 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 secretary of state shall refer the complaint to an administrative law judge within three days of the filing of the complaint for review."

The wisdom of the people in establishing a citizen complaint process to be heard by an independent administrative law judge is self-evident. Such a process helps ensure public confidence in campaign finance enforcement by insulating the process from political motivations. Citizens would be justifiably suspicious of a process by which a Democrat Secretary of State is in a position to decide whether to investigate and prosecute a Republican (or Democrat) candidate for office.

Rule 6 of the Secretary of State's Rules Concerning Campaign and Political Finance does not require or authorize the Secretary of State to conduct an investigation. This rule allows the Secretary of State, upon an internal discovery of a possible violation, to notify the person who may have committed the violation and provide an opportunity for that person to correct or explain the possible violation. The Secretary of State does not "discover" a possible violation when a third party submits an allegation of a violation to the Secretary of State. Rule 6 was not intended to, and does not create a means for third parties to side-step the enforcement process set forth in the Colorado Constitution. Such an interpretation is inconsistent with the Colorado Constitution and ALJ decisions on this issue.

The rule was originally adopted as an emergency rule (Rule 27) in November 1999, prior to the passage of Amendment 27, but pursuant to similar language then contained in the FCPA. Both the "Statement of Emergency Justification" and the "Statement of Basis, Specific Statutory Authority, and Purpose" describe the purpose of the rule to be clarification of "what action the

Secretary of State may take when he discovers a possible violation in the ordinary course of receiving and accepting committee reports.”

If you wish to file a complaint in accordance with the campaign finance law, this office will transmit it to an administrative law judge in accordance with Article XXVIII.

Please feel free to contact me with any questions, concerns or clarifications to your request.

Sincerely,

A handwritten signature in cursive script that reads "William A. Hobbs".

William A. Hobbs
Deputy Secretary of State