

Colorado's Top Scandals Of 2009



Colorado's Top 5 Scandals of 2009

Gubernatorial Quasi-Candidate Leaves Damning Voice Mail

As early as May 2009, former Congressman Scott McInnis (R-Grand Junction) was rumored to be considering a run for governor, but had not publicly announced his candidacy. In May, CompleteColorado.com posted an audio clip and transcript of a voicemail allegedly left by Mr. McInnis to a potential donor. On the tape, Mr. McInnis is heard to state that he was going to run for governor and already had a team in place, and that Sean Tonner was "doing our 5 a (cough) our, ah 527." The voice mail message, which Mr. McInnis did not deny was authentic, raised serious questions about his compliance with election laws.

Under Colorado law, a person becomes a candidate when he or she announces his candidacy and either accepts a contribution or spends money in support of the campaign. Candidates must also register a committee to file disclosures of their contributions and spending, so that they are available to the public. At the time of the voice mail, Mr. McInnis had not filed any required paperwork to legally begin his campaign.

On May 7, 2009, Ethics Watch asked the Secretary of State's office to launch a formal inquiry into whether Mr. McInnis violated election laws by soliciting contributions or spending money on his campaign before filing as a candidate or registering a campaign committee. Under pressure, Mr. McInnis quietly filed the paperwork for candidacy on May 19. The nature of the filing raised suspicions that the filing was intended to pre-empt the investigation Ethics Watch had requested of the Secretary of State. The next day, Mr. McInnis was in New York and unavailable for comment. But when he returned he sought to allay these suspicions by saying that he filed when he did because "it was time."

Colorado law also prohibits campaigns from coordinating their activities with so-called "527" independent organizations. Mr. McInnis's statement that Sean Tonner was "doing . . . our . . . 527" could be interpreted as a statement of intent to create a "527" group that would be independent in name only as a way to circumvent contribution restrictions that apply to official candidate committees.

CSU Board of Governors Hands Plum Job to One of Their Own in Secret Meeting

As vice president of the Colorado State University (CSU) Board of Governors, Joe Blake participated in a decision to create a chancellor position separate from the president position. Mr. Blake formally submitted his application for the chancellor position on April 29, the same day he attended a closed meeting with the head of the board.

On May 5, shortly after the state legislature began considering a bill to change the CSU hiring process, the CSU Board of Governors had a closed-door executive session meeting to discuss candidates for the chancellor position. During this meeting, they decided that Mr. Blake would be the sole finalist. That decision was promptly challenged as a

violation of Colorado sunshine laws in a lawsuit filed by *The Fort Collins Coloradoan*, *The Colorado Independent* and *Pueblo Chieftain* newspapers.

The board at first refused to release the tapes of the May 5 meeting, but changed their minds after the suit was filed. After reviewing the executive session tape, a Larimer County District Court judge ruled on June 19 that the May 5 executive session violated the state's Open Meetings Law and ordered portions of the recording of that session to be made public. On July 23, Colorado State University agreed to pay \$19,000 in legal fees to the three media outlets that filed suit. Apparently as a way to protect the selection of Mr. Blake from further legal challenges, the Board of Governors held a second meeting, in public, to re-designate Mr. Blake as the sole finalist.

The Independent Ethics Commission's Troubles with Transparency

The Independent Ethics Commission (IEC) was created to be the premier ethics body in Colorado. Instead of setting an example of how a state commission should act, the IEC spent much of 2009 unsuccessfully defending itself from allegations that it was illegally operating in secret.

In the fall of 2008, the IEC responded to an open records request from Ethics Watch by filing a Denver District Court lawsuit for an order that would allow the IEC to ignore state Open Meetings Laws. Ethics Watch filed a countersuit claiming that the IEC's failure to release documents under the Colorado Open Records Act was illegal. On May 14, a Denver District Court Judge ruled in favor of Ethics Watch, ordering the IEC to release records subject to Ethics Watch's open records request and to pay Ethics Watch's attorneys' fees.

An investigation by *The Colorado Independent* found that the IEC spent 85% of its time meeting in secret over the course of a year. In May of 2009, *The Independent* filed a request for recordings of secret meetings, which the IEC also denied. Two weeks later, *The Independent* sued the IEC, alleging that the IEC had illegally gone into executive session 16 times, and sought an order barring it from continuing to do so. On September 2, a Denver District Court judge found that the IEC was in violation of Colorado's Open Meetings Laws, and ordered the IEC to release records from the meetings as well as pay legal fees for *The Independent*. Comic relief was provided when one of the tapes revealed an executive session discussion in which the members of the IEC said that they did not want the Commission to act as a "star chamber." Less humorous was the fact that the Commission failed to tape the secret sessions during which it deliberated on Ethics Watch's 2008 complaint against former Secretary of State Mike Coffman. This meant that *The Colorado Independent's* court win did not result in any new light being shed on the Commission's perplexing ruling in that case.

Also in May, Ethics Watch sued the IEC over an advisory opinion that allowed a legislator to accept a trip to Turkey from a nonprofit group. In December, a Denver District Court judge ruled that the IEC violated Open Meetings Laws when it debated the advisory opinion in secret.

Fortunately, the IEC appears to have learned its lesson. Policy debates now occur in open session, and the IEC did not receive any new legal complaints over transparency issues in the second half of 2009.

Gale Norton's Questionable Oil Industry Work

In September 2009 the Department of Justice issued subpoenas as part of an investigation into Bush administration Interior Secretary and former Colorado Attorney General Gale Norton. The Department of Justice is reportedly investigating whether Gale Norton used her position in the Interior Department to benefit Royal Dutch Shell.

While Ms. Norton was Secretary of the Interior, the department entered into three potentially lucrative oil leases with Royal Dutch Shell on federal land in Colorado. After resigning her position with the Interior Department, Ms. Norton took a job with the oil-shale division of Royal Dutch Shell. The Justice Department together with the Interior Department is examining whether Royal Dutch Shell received advantages from the Interior Department in the granting of the oil leases.

The investigation focuses on whether Ms. Norton violated law that prohibits federal employees from discussing potential employment with a company if they are involved in dealings with the government that could directly benefit the organization.

Representative Pommer's Campaign Finance Violations and "Bad at Paperwork" Defense

Representative Jack Pommer (D-Boulder) was a candidate in the 2008 general election for the Colorado House of Representatives. Colorado state law requires candidate committees to file contribution and expenditure reports, starting on the first Monday in September and biweekly on Mondays thereafter until the major election. Additionally, the candidate committee must file a report 30 days after the major election.

Rep. Pommer's committee only filed a report on September 30 - failing to report on October 14, October 27, and December 4 of 2008. Rep. Pommer's committee also failed to file the post-election report, which was due on January 15, 2009.

On January 16, the Secretary of State sent the committee a notice of delinquency for failure to file a year-end report. This notice was actually in error; because Rep. Pommer was an active candidate, the Secretary of State's office should have placed his committee on the calendar for active committees, but instead kept the committee on the inactive committee filing calendar. It is unknown whether this oversight contributed to Rep. Pommer's delinquency.

After media exposure of the delinquency, Rep. Pommer filed his report on April 6, 2009.

On April 9, 2009 the Secretary of State's office imposed fines of more than \$4,000 on Rep. Pommer for his committee's failures to file reports. Had the Secretary of State's office placed Rep. Pommer's committee on the right schedule, the potential liability for late filings could have been much higher. Still, Rep. Pommer's defense that he is simply "bad at paperwork" was disturbing coming from a member of the powerful Joint Budget Committee.

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