

BEFORE THE INDEPENDENT ETHICS COMMISSION
STATE OF COLORADO
CASE NO. 19-26

IN THE MATTER OF
JOSEPH SALAZAR

RESPONSE OF JOSEPH SALAZAR TO COMPLAINT

Joseph Salazar, by his counsel Martha M. Tierney of Tierney Lawrence LLC, hereby submits this Verified Response of Joseph Salazar to the December 11, 2019 Complaint filed by Suzanne Staiert on behalf of the Public Trust Institute (“PTI”).

INTRODUCTION

Mr. Salazar denies the allegations contained in the Complaint and asserts that at all times he complied with Colorado law, including Colo. Const., art. XXIX, §4 regarding restrictions on representation after leaving office.¹ The relevant evidence as set forth below will counter the assertions contained in the Complaint and will demonstrate that Mr. Salazar did not violate Colo. Const., art. XXIX §4 or engage in professional lobbying per CRS §24-6-301(6) (2019).

FACTS

1. Colorado Rising is a Colorado nonprofit corporation whose members are composed of a statewide grassroots coalition of people and organizations working together to protect Colorado communities from the dangers to public health and safety of fossil fuel operations – from extraction to combustion – to promote the transition off fossil fuels, and to protect the environment for future generations. *See* <https://corising.org>.
2. Colorado Rising engages in community empowerment, education, litigation and policy efforts to support the growing public demand for protection for Colorado communities from the serious impacts of fossil fuel activities on public health, safety, the environment and global climate. Colorado Rising does not work on immigration issues. *See* <https://corising.org>.
3. Mr. Salazar is the Executive Director and Chief Litigator for Colorado Rising. Colorado Rising pays Mr. Salazar a salary for his work on behalf of the organization.
4. Mr. Salazar is not a registered lobbyist.

¹ Notably, in violation of IEC Rule of Procedure 7.D.4, the Complaint fails to include a statement that, to the best of the complainant’s knowledge, information and belief, the facts and allegations set out in the complaint are true, which must be signed by the complainant. To the extent the IEC views this requirement as jurisdictional, the Complaint should be dismissed.

5. On January 4, 2019, Colorado Rising held a press conference on the steps of the state Capitol at approximately 7:30 am, at which Mr. Salazar stated that Colorado Rising would be watchdogging the Governor on a daily basis to remind him that the Governor's Office belongs to the people of Colorado. Mr. Salazar did not speak of specific legislation or policy. At the time of the press conference on January 4, 2019, SB 19-181 had not been introduced and Mr. Salazar and Colorado Rising did not know of any pending or potential bills on oil and gas regulation.
6. On March 1, 2019, SB 19-181 was introduced in the Colorado Senate.
7. On March 4, 2019, Mr. Salazar and two other members of Colorado Rising held an 80 minute Facebook Live event ("Facebook Live event") for friends of Colorado Rising's Facebook page at the state Capitol in an empty committee room to discuss the contents of SB 19-181, and to educate viewers on how the legislative process works. *See* <https://www.facebook.com/ColoradoRising/videos/989501411247289/>
8. Mr. Salazar was not involved in arranging for use of the committee room for the Facebook Live event, and PTI's Exhibit A does not indicate otherwise.
9. Aside from Mr. Salazar's time spent at the event, there was no cost to putting on the Facebook Live event.
10. The Complaint references some statements Mr. Salazar made during the Facebook Live event, but takes these statements out of context and does not acknowledge the remainder of the content of the Facebook Live discussion, which is reflected in full here: <https://www.facebook.com/ColoradoRising/videos/989501411247289/>
11. During the Facebook Live event, no legislators or legislative staff were present in the committee room nor was the governor or any of his staff present, nor were any of these individuals invited to view or listen to the Facebook Live event.
12. At the outset of the Facebook Live event, Mr. Salazar stated that Colorado Rising was involved in litigation before the Colorado Oil and Gas Conservation Commission ("Commission") and was suing the Commission in federal court. *See Wildgrass Oil and Gas Comm. v. State of Colorado, et al.*, 19-cv-00190-RBJ-NYW; *Wildgrass Oil and Gas Comm. v. Extraction Oil and Gas, Inc.*, COGCC Dkt. No. 181000799.
13. Also, at the outset of the Facebook Live event, Mr. Salazar stated that Colorado Rising had spent the previous few days studying the contents of SB 19-181, and after consideration, it had decided not to take a position in support or opposition to the bill. <https://www.facebook.com/ColoradoRising/videos/989501411247289/>, at 4.29 et seq.
14. During the Facebook Live event, Mr. Salazar explained the legislative process, including the number of committees at which the bill would be heard, and his prediction of how the oil and gas industry would try to influence legislators by bringing many oil and gas workers to the committee hearings and the floor votes. <https://www.facebook.com/ColoradoRising/videos/989501411247289/>, at 10.26 et seq.
15. Mr. Salazar also listed the names of the Senators on the first committee that would hear the bill, and stated that certain Senators would oppose the bill and that others (Senators Donovan, Foote, Winter and Pettersen) would need to hear from members of the audience to provide them support to stand up to the oil and gas companies. <https://www.facebook.com/ColoradoRising/videos/989501411247289/>, at 30.95 et seq.

16. During the question and answer portion of the Facebook Live event, Mr. Salazar is asked to explain the neutrality of Colorado Rising and he does so, describing how while the bill is a step in the right direction, it does not go far enough and Colorado Rising still has concerns so it will remain neutral and will not urge passage of SB 19-181. <https://www.com/ColoradoRising/videos/989501411247289/>, at 35.56 et seq.
17. At no time prior to its passage and signature by the Governor did Mr. Salazar communicate directly with legislators, their staff, or the Governor or his staff regarding SB 19-181.
18. On April 16, 2019, Governor Polis signed SB 19-181 into law.
19. On August 8, 2019, Mr. Salazar sent a text to several legislators as reflected in Exhibit C to the Complaint. Mr. Salazar sent this text in his personal capacity, not at the behest of a paying client or employer. The content of this text pertained largely to federal immigration policy and the situation at the southern border of the United States where the federal policy was to detain immigrants and separate children from their families.
20. On August 8, 2019, the Colorado Legislature was not in session and there was no pending or proposed legislation, or any other matter pending or proposed in writing for consideration by the General Assembly on the immigration issues Mr. Salazar references in his text.
21. Mr. Salazar was not paid by any entity for his time or his statements in the August 8, 2019 text.
22. On August 14, 2019, Mr. Salazar, in his role as legal counsel for, and on behalf of, Colorado Rising, held a press conference in a committee room of the state Capitol to announce litigation that Colorado Rising was commencing for its client, Our Longmont, to revive a fracking ban in the city of Longmont based on new legal authority contained in SB 19-181. Representative Jonathan Singer is a member of Our Longmont and arranged for the committee room and appeared at the press conference in his capacity as a member of Our Longmont.
23. On August 14, 2019, the Colorado Legislature was not in session and SB 19-181 had already been signed into law by Governor Polis, and Mr. Salazar and Colorado Rising did not know of any pending or forthcoming bills on oil and gas regulation.

LEGAL ANALYSIS

These facts, when viewed in light of the relevant constitutional, statutory, advisory opinion, and position statement guidance, demonstrate that Mr. Salazar did not violate Article XXIX because he did engage in professional lobbying as claimed in the Complaint.

The Independent Ethics Commission (“IEC”) is charged with interpreting Article XXIX and other ethics rules as they apply to “covered individuals.” Art. XXIX, § 4 states:

No statewide elected officeholder or member of the general assembly shall personally represent another person or entity for compensation before any other statewide elected officeholder or member of the general assembly for a period of two years following vacation of office.

As the IEC stated in Position 09-01 (Gifts from Lobbyists), the definition of professional lobbyist found in Article XXIX is substantially the same as that found in C.R.S. §26-6301(6), and “[r]egulations and opinions relating to lobbyists, as promulgated and issued by the Secretary of State’s office, should be highly persuasive in applying and interpreting who is a ‘professional lobbyist,’ as defined in Article XXIX Sec. 2(5).” See Position Statement 09-01, pp. 4-5; Position Statement 09-02 (Restrictions on Representation after Leaving Office), pp. 3-4.

Under Colorado statute:

"Lobbying" means communicating directly, or soliciting others to communicate, with a covered official for the purpose of aiding in or influencing:

(I) The drafting, introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, or veto by any covered official on:

(A) Any bill, resolution, amendment, nomination, appointment, or report, whether or not in writing, pending or proposed for consideration by either house of the general assembly or committee thereof, whether or not the general assembly is in session;

(B) Any other matter pending or proposed in writing by any covered official for consideration by either house of the general assembly or a committee thereof, whether or not the general assembly is in session;

C.R.S. §24-6-301(3.5)(a). Pursuant to CRS. §24-6-301(6) "Professional lobbyist" means, in relevant part, a person, business entity, including a sole proprietorship, or an employee of a client, who is compensated by a client or another professional lobbyist for lobbying.

When viewed in the light of the applicable law and guidance from the Secretary of State’s office, the facts, even those taken out of context in the Complaint, clearly show that Mr. Salazar did not engage in activity prohibited by Article XXIX.

JANUARY 4, 2019 EVENT

On January 4, 2019, Mr. Salazar spoke on the steps of the Capitol to announce that Colorado Rising would be watchdogging the Governor – not on any pending or proposed legislation or any other matter pending or proposed in writing – but just on a general basis. This activity was not lobbying by a professional lobbyist that would require registration and reporting under Colorado law, *see* C.R.S. §24-6-301(3.5)(a) and (6), and, therefore, does not violate Article XXIX.

MARCH 4, 2019 FACEBOOK LIVE EVENT

On March 4, 2019, Mr. Salazar and two other Colorado Rising members participated in a Facebook Live video to explain the provisions of SB 19-181, to explain the legislative process in general, to urge members to get involved in the legislative process, and to make clear that Colorado Rising was not taking a position in support or opposition to SB 19-181. This activity on the whole was not lobbying by a professional lobbyist that would require registration and

reporting under Colorado law, *see* C.R.S. §24-6-301(3.5)(a) and (6), and, therefore, does not violate Article XXIX. To the extent that Mr. Salazar's listing off the Senate committee members and telling viewers which members would be opposed and which might need their public support to counter the oil and gas industry, such actions might be considered grassroots lobbying, but under Secretary of State advisory opinions, such actions would not be considered professional lobbying or require Mr. Salazar to register and report as a lobbyist.

In 2003, former Deputy Secretary of State William A. Hobbs issued an advisory opinion that considered whether under § 24-6-301(3.5)(a), "lobbying includes activities by corporate employees to encourage other persons to contact public officials to support or oppose official action, such as when a corporation sends letter to customers urging them to contact their legislator to support or oppose pending legislation." *See* Exhibit 1. Deputy Secretary Hobbs concluded that "[i]f a corporation directs an employee to use paid work time to carry out activities that fall under the definition of 'lobbying,' then it would appear that the employee is, at least technically, a professional lobbyist, and therefore subject to registration and reporting." *Id.* In the same opinion, however, Deputy Secretary Hobbs noted that "[i]f such corporate 'lobbying' is sufficiently minimal, it could be argued that it would not be reasonable to expect registration and reporting. An example might be a one-time occurrence, where a corporate newsletter includes a small item encouraging readers to contact legislators urging them to support or oppose a particular bill." *Id.* The advisory opinion closed by noting that the Secretary "encourage[s] people to err on the side of registration and reporting" when there is any doubt and provided suggestions on how compliance could best be achieved. *Id.*

The Hobbs 2003 Advisory Opinion was followed on at least two occasions in 2015 and 2017 by former Deputy Secretary of State Suzanne Staiert when she twice dismissed lobbying complaints alleging grassroots lobbying by a corporation under similar facts showing *de minimus* activity. *See* Exhibits 2 and 3.

The facts here are remarkably similar to the scenarios outlined in the 2003 advisory opinion and the 2015 and 2017 dismissals. The complaints were based on single, brief communications that "encourage[ed] readers [here viewers] to contact legislators urging them to support or oppose a particular bill." As Deputy Secretary Hobbs concluded in 2003, and Deputy Secretary Staiert concluded in 2015 and 2017, "it would not be reasonable to expect registration and reporting" where the communications in question are "sufficiently minimal." The facts here establish both that minimal resources were put into Colorado Rising's Facebook Live event and that the video was not part of a larger pattern of grassroots communications that were intended to indirectly influence legislation.

Given that the Secretary of State's office does not view a one-time *de minimus* grassroots lobbying action by a corporation (under facts that are demonstrably similar to those alleged in the Complaint regarding the March 4th event) as professional lobbying, and given that the IEC views "opinions relating to lobbyists, as promulgated and issued by the Secretary of State's office, [to] be highly persuasive in applying and interpreting who is a 'professional lobbyist,' as defined in Article XXIX Sec. 2(5)," the IEC should find no violation of Article XXIX by Mr.

Salazar in the instant case. See Position Statement 09-01, pp. 4-5; Position Statement 09-02, pp. 3-4.

AUGUST 8, 2019 EMAIL

On August 8, 2019, Mr. Salazar sent an email to several legislators to urge them to review existing federal immigration policy and find a way to give states more control over immigration policy. Mr. Salazar sent this email in his personal capacity, not at the behest of a paying client or employer. There was no pending or proposed legislation, or any other matter pending or proposed in writing at the time that related to the contents of Mr. Salazar's email. This activity was not professional lobbying that would require registration and reporting under Colorado law and did not violate Article XXIX.

AUGUST 14, 2019 EVENT

On August 14, 2019, Mr. Salazar, in his role as legal counsel for, and on behalf of, Colorado Rising, held a press conference in a committee room of the state Capitol to announce litigation that Colorado Rising was commencing for its client, Our Longmont, to revive a fracking ban in the city of Longmont based on new legal authority contained in SB 19-181. As a member of Our Longmont, Representative Jonathan Singer arranged for the committee room and appeared at the press conference. On August 14, 2019, the Colorado Legislature was not in session and SB 19-181 had already been signed into law by Governor Polis. There was no other pending or proposed legislation, or any other matter pending or proposed in writing related to the matters discussed at the press conference at the time. Mr. Salazar's activity at the August 14, 2019 event was not professional lobbying that would require registration and reporting under Colorado law and did not violate Article XXIX.

CONCLUSION

Because the allegations of the Complaint and the underlying facts are insufficient to establish that Mr. Salazar violated Article XXIX, the IEC should dismiss the complaint.

Respectfully submitted March 20, 2020.

s/ Martha M. Tierney

Martha M. Tierney, #27521

Tierney Lawrence LLC

225 E. 16th Ave, Suite 350

Denver, CO 80203

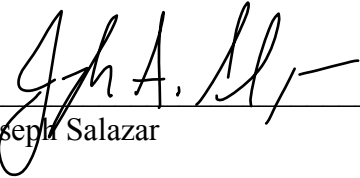
mtierney@tierneylawrence.com

720-242-7577

ATTORNEYS FOR JOSEPH SALAZAR

Affirmation of Joseph Salazar

I, Joseph Salazar, hereby affirm that the facts set forth in this Response of Joseph Salazar to Complaint are true to the best of my knowledge, information and belief.



Joseph Salazar

03/20/2020

Date

STATE OF COLORADO

Department of State

Civic Center Plaza
1560 Broadway, Suite 200
Denver, CO 80202-5169



Donetta Davidson

Secretary of State

William A. Hobbs

Deputy Secretary of State

August 11, 2003

Mr. Steven A. Burk
Attorney at Law
Quarles & Brady, LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497

RE: Grassroots lobbying

Dear Mr. Burk:

Thank you for your inquiry concerning grassroots lobbying. Also, please accept my apologies for taking so long to respond to your inquiry.

As you noted in your letter, the statutory definition of "lobbying" in Colorado includes "soliciting others to communicate with a covered official for the purpose of aiding in or influencing" legislative or regulatory actions. (Section 24-6-301 (3.5) (a), Colorado Revised Statutes) Thus, I believe that you are correct that lobbying includes activities by corporate employees to encourage other persons to contact public officials to support or oppose official action, such as when a corporation sends letters to customers urging them to contact their legislators to support or oppose pending legislation.

However, an individual who carries out such activities would be required to register and report only if the individual qualifies as a "professional lobbyist". (Sections 24-6-303 (1) and 24-6-302 (2.5), C.R.S.) A professional lobbyist is defined as "any individual who engages himself or is engaged by any other person for pay or for any consideration for lobbying". (Section 24-6-301 (6), C.R.S.) If a corporation directs an employee to use paid work time to carry out activities that fall under the definition of "lobbying", then it would appear that the employee is, at least technically, a professional lobbyist, and therefore subject to registration and reporting.

If such corporate "lobbying" is sufficiently minimal, it could be argued that it would not be reasonable to expect registration and reporting. An example might be a one-time occurrence, where a corporate newsletter includes a small item encouraging readers to contact legislators urging them to support or oppose a particular bill.

When there is any doubt, however, we encourage people to err on the side of registration and reporting. Full disclosure furthers the purposes of the lobbyist law. Furthermore, legislators have expressed a strong desire to know who is behind any organized effort that results in phone calls, letters, and e-mails to them about particular legislation.

If a corporation is engaging in the activity you described in your letter, compliance with the lobbyist regulation law might be achieved by having one individual register and report on behalf of the corporation (presumably, a person who is directing the communications), and then having that person report all of the corporation's activities and expenses in his or her reports. In other words, the activities undertaken by support personnel and other persons acting at the request of the principal "lobbyist" would be reported on the principal's report. See section 24-6-301 (3.5) (b), C.R.S., which provides as follows:

24-6-301. Definitions. As used in this part 3, unless the context otherwise requires:

(3.5) (b) Subject to the exclusions and provisions of this paragraph (b), for the purpose of determining when contributions and expenditures become reportable in disclosure statements, "lobbying" includes activities undertaken by the person engaging in lobbying and persons acting at his request to prepare for lobbying which in fact ultimately occurs, . . . (Emphasis added.)

I hope this is helpful. We appreciate your interest in compliance with Colorado law on lobbying activities.

If we can be of further assistance, please contact us again. Our program lead in the area of lobbyist registration is Dorothy Ferranti, who may be reached at 303-894-2200, extension 6304.

Very truly yours,



William A. Hobbs
Deputy Secretary of State



411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497
Tel 414.277.5000
Fax 414.271.3552
www.quarles.com

*Attorneys at Law in:
Phoenix and Tucson, Arizona
Naples and Boca Raton, Florida
Chicago, Illinois (Quarles & Brady LLC)
Milwaukee and Madison, Wisconsin*

Writer's Direct Dial: 414.277.5403
E-Mail: sburk@quarles.com

April 9, 2003

RECEIVED

JUN 26 2003

**ELECTIONS / LICENSING
SECRETARY OF STATE**

Colorado Secretary of State
1560 Broadway, Suite 200
Denver, CO 80202-5169

RE: Grassroots Lobbying

Dear Secretary Davidson:

I am compliance counsel for a corporation that is both authorized to do business in Colorado and that employs registered professional lobbyists. To ensure full compliance with Colorado's Sunshine Law, I am writing to request that you clarify for me any registration or reporting requirements that apply to non-lobbyist corporate employees who engage in grassroots lobbying.

By "grassroots lobbying," I mean activities undertaken on behalf of the corporation which are meant to encourage other persons to contact public officials to support or oppose an official action. An example of such grassroots lobbying activities would be where the corporation sends letters to its customers encouraging them to contact their legislators to oppose a pending matter.

From my analysis of Colorado law, it appears that grassroots lobbying as I have described it falls within the definition of lobbying because the definition includes "soliciting others to communicate" with a covered official. Colo. Rev. Stat. § 24-6-301(3.5)(a). From this, it would appear that any individual who receives compensation for conducting grassroots lobbying must register as a professional lobbyist and report accordingly. However, my discussion with an information specialist in the Election Division indicated that this may not be the case.

It is clear to me that the expenditures a professional lobbyist makes for grassroots lobbying are reportable on the lobbyist's monthly and annual disclosure reports. What is not clear, however, is how to treat the activities of a non-lobbyist corporate employee who is involved in the preparation and distribution of a grassroots lobbying communication in the situation when a lobbyist is not involved. More specifically, is a non-lobbyist corporate employee who distributes a letter to customers (or suppliers, distributors, etc.) required to register and report as a professional lobbyist?

Colorado Secretary of State
April 9, 2003
Page 2

I would appreciate any guidance you could provide so that I may ensure full compliance with Colorado's law.

Please feel free to contact me if you have any questions.

Sincerely,

QUARLES & BRADY LLP

A handwritten signature in black ink, appearing to read 'S.A. Burk', with a horizontal flourish extending to the right.

Steven A. Burk

SAB:mjp

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

FINAL AGENCY DECISION

**RE: LOBBYIST COMPLAINT FILED BY COLORADO ETHICS WATCH AGAINST
AMERICAN LANDS COUNCIL**

THIS MATTER came before Suzanne Staiert, Deputy Secretary of State, pursuant to § 24-4-105, C.R.S. (2015), after complainant Colorado Ethics Watch (“Ethics Watch”) filed a complaint with the Secretary of State (“the Secretary”) alleging that Respondent American Lands Council (“ALC”) or one or more of its employees had violated Colorado laws and regulations governing lobbyist registration and disclosure.

The complaint alleged in pertinent part that ALC had engaged in lobbying via a “professional lobbyist,” as defined by § 24-4-301(6), C.R.S. (2015), without first registering with the Secretary and complying with various disclosure requirements. The communication that gave rise to this allegation was an “email action alert” that ALC sent to a large distribution list with information about an upcoming hearing on Senate Bill 15-232. The email encouraged its recipients to “consider attending the hearing to show ... support for the bill” and, for those unable to attend in person, urged them to “send [the] Committee Members an email letting them know that you support SB 15-232 and the study of the transfer of Public Lands in Colorado....” It identified the members of the Senate Agriculture, Natural Resources, and Energy Committee and listed their contact information.

As authorized by § 24-6-305(2)(c), C.R.S. (2015), Department of State staff investigated the allegations in Ethics Watch’s complaint. ALC responded to the Department’s initial inquiries but not to several follow-up questions sent in August 2015. However, in an email dated October 30, 2015, ALC’s president, Ken Ivory, did respond to the Notice of Hearing that I issued on October 14, 2015. That correspondence addressed some of the follow-up questions transmitted during the investigative phase.

Applicable law

As relevant here, Colorado’s broad definition of “lobbying” includes “communicating directly, or soliciting others to communicate with a covered official for the purpose of aiding in or influencing ... [t]he drafting, introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, or veto by any covered official on ... [a]ny bill, resolution, amendment, nomination, appointment or report[.]” § 24-6-301(3.5)(a), C.R.S. (2015). An individual “who is compensated by a client or another professional lobbyist for lobbying” is a “professional lobbyist.” § 24-6-301(6), C.R.S. (2015). Colorado law requires professional lobbyists to register with the Secretary “before lobbying,” 24-6-303(1), C.R.S. (2015), and to file

periodic disclosure statements identifying their lobbying income and expenditures. §§ 24-6-302(2.5), C.R.S. (2015).

On the organizational level, § 24-6-307, C.R.S. (2015), makes it “unlawful for any person to employ for pay or any consideration ... an individual to engage in lobbying who is not registered expect upon condition that such individual register forthwith.”

The Secretary has authority to investigate complaints concerning lobbying activities, and where he “has reasonable grounds to believe that any person is in violation of section 24-6-302 or 24-6-303,” the Secretary may conduct a hearing under the Colorado Administrative Procedure Act. § 24-6-305(3), C.R.S. (2015). Following such a hearing, if a violation is found, the Secretary may “issue a cease-and desist order.” *Id.*

Summary of investigation and factual findings

Based on the Department’s investigation and my review of the complaint, the attachments, correspondence, and other materials cited below, I make the following findings of fact:

1. ALC is a Utah-based § 501(c)(4) organization whose stated mission “is to secure local control of western public lands by transferring federal public lands to willing States.” See http://www.americanlandscouncil.org/our_mission.
2. ALC is supported by donations given by individuals, members, businesses, and others.
3. ALC maintains a distribution list for email communications with its members and other interested parties. Some of the email addresses on that distribution list belong to Colorado residents.
4. During the 2015 legislative session, Senator Jerry Sonnenberg co-sponsored S.B. 15-232, which would create a commission to study the transfer of public lands in Colorado from the federal government to the state, if authorized by Congress.
5. At some point during the legislative process, Senator Sonnenberg contacted ALC to request that ALC “help [him] with contacting the other legislators on the Senate Ag Committee” concerning the bill.
6. Aside from Sen. Sonnenberg, ALC did not communicate directly with any Colorado legislators concerning S.B. 15-232.
7. On April 22, 2015, an ALC office assistant sent the email that gave rise to this complaint. It was sent to ALC’s “list of those in Colorado who had requested public lands updates.”

8. The email stated that the committee hearing on S.B. 15-232 would take place the next day, and urged its recipients to “consider attending the hearing to show your support for the bill and of the Transfer of Public Lands.”

9. ALC’s email also noted that “[i]f you can’t make it in person, you still have the ability to substantially affect the outcome of the hearing.” To that end, it listed the committee members and their email addresses, and stated: “Will you please send these Committee Members an email letting them know that you support SB 15-232 and the study of the Transfer of Public Lands in Colorado?”

10. Finally, the email included links to various studies and similar information that ALC relies on to support its policy positions.

11. The email was sent by an ALC office assistant, who has since left ALC to attend college.

12. It is unknown whether the office assistant was paid or unpaid. If paid, the rate at which the office assistant was paid is likewise unknown.

13. The office assistant was not registered as a professional lobbyist at the time that the email was sent.

Analysis and ruling

The evidence before me is insufficient to establish that the individual who sent the communication in question was a “professional lobbyist.” To qualify as a professional lobbyist, an individual must be “compensated by a client or another professional lobbyist for lobbying.” § 24-6-301(6). As noted above, it is unknown whether the office assistant was paid or unpaid. Absent such information, I am unable to conclude that the office assistant was being paid “for lobbying” when she distributed the email in question.

Moreover, even if the evidence before me had established that the office assistant who sent the email was paid “for lobbying,” I would conclude that any such expenditure was *de minimis*, and thus did not implicate either the professional lobbyist registration requirements or the prohibition in § 24-6-307 against employment of unregistered persons.

The email in question was not directed to Colorado legislators, but instead urged its *recipients* to contact their legislators to express support for S.B. 15-232. Although Colorado lobbying law generally covers both direct and indirect communications with members of the General Assembly, the type of communication at issue here is commonly understood as “grassroots lobbying.” The IRS defines a “grass roots lobbying communication” as “any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof.” 26 C.F.R. 56.4911-2(b)(1)(i). In order to qualify, the communication must refer to specific legislation, reflect a view on that legislation, and “encourage the recipient ... to take action with respect to such legislation” by, for example, urging him or her to contact legislators. 26 C.F.R. 56.4911-2(b)(1)(ii).

In 2003, former Deputy Secretary of State William A. Hobbs issued an advisory opinion that considered whether under § 24-6-301(3.5)(a), “lobbying includes activities by corporate employees to encourage other persons to contact public officials to support or oppose official action, such as when a corporation sends letter to customers urging them to contact their legislators to support or oppose pending legislation.” Exhibit A. Deputy Secretary Hobbs concluded that “[i]f a corporation directs an employee to use paid work time to carry out activities that fall under the definition of ‘lobbying,’ then it would appear that the employee is, at least technically, a professional lobbyist, and therefore subject to registration and reporting.” *Id.*

In the same opinion, however, Deputy Secretary Hobbs noted that “[i]f such corporate ‘lobbying’ is sufficiently minimal, it could be argued that it would not be reasonable to expect registration and reporting. An example might be a one-time occurrence, where a corporate newsletter includes a small item encouraging readers to contact legislators urging them to support or oppose a particular bill.” *Id.* The advisory opinion closed by noting that the Secretary “encourage[s] people to err on the side of registration and reporting” when there is any doubt, and provided suggestions on how compliance could best be achieved. *Id.*

The facts before me are remarkably similar to the scenario outlined in the 2003 advisory opinion. The complaint is based on a single, brief communication that “encourage[ed] readers to contact legislators urging them to support or oppose a particular bill.” Exhibit A. As Deputy Secretary Hobbs concluded in 2003, I also find that “it would not be reasonable to expect registration and reporting” where the communications in question are “sufficiently minimal.” The facts before me establish both that minimal resources were put into ALC’s email and that the email was not part of a larger pattern of grassroots communications that were intended to indirectly influence legislation.

Conclusion

Because the evidence before me is insufficient to establish that ALC or its office manager violated Colorado’s laws governing lobbying and professional lobbyists, I hereby DENY the relief requested in the complaint. This Decision constitutes final agency action subject to judicial review pursuant to C.R.S. §24-4-106(2).

Dated this 23rd day of December, 2015.



Suzanne Staiert
Deputy Secretary of State
1700 Broadway, Suite 200
Denver, CO 80290
(303) 894-2200

STATE OF COLORADO

Department of State

Civic Center Plaza
1560 Broadway, Suite 200
Denver, CO 80202-5169



Donetta Davidson

Secretary of State

William A. Hobbs

Deputy Secretary of State

Exhibit A

August 11, 2003

Mr. Steven A. Burk
Attorney at Law
Quarles & Brady, LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497

RE: Grassroots lobbying

Dear Mr. Burk:

Thank you for your inquiry concerning grassroots lobbying. Also, please accept my apologies for taking so long to respond to your inquiry.

As you noted in your letter, the statutory definition of "lobbying" in Colorado includes "soliciting others to communicate with a covered official for the purpose of aiding in or influencing" legislative or regulatory actions. (Section 24-6-301 (3.5) (a), Colorado Revised Statutes) Thus, I believe that you are correct that lobbying includes activities by corporate employees to encourage other persons to contact public officials to support or oppose official action, such as when a corporation sends letters to customers urging them to contact their legislators to support or oppose pending legislation.

However, an individual who carries out such activities would be required to register and report only if the individual qualifies as a "professional lobbyist". (Sections 24-6-303 (1) and 24-6-302 (2.5), C.R.S.) A professional lobbyist is defined as "any individual who engages himself or is engaged by any other person for pay or for any consideration for lobbying". (Section 24-6-301 (6), C.R.S.) If a corporation directs an employee to use paid work time to carry out activities that fall under the definition of "lobbying", then it would appear that the employee is, at least technically, a professional lobbyist, and therefore subject to registration and reporting.

If such corporate "lobbying" is sufficiently minimal, it could be argued that it would not be reasonable to expect registration and reporting. An example might be a one-time occurrence, where a corporate newsletter includes a small item encouraging readers to contact legislators urging them to support or oppose a particular bill.

When there is any doubt, however, we encourage people to err on the side of registration and reporting. Full disclosure furthers the purposes of the lobbyist law. Furthermore, legislators have expressed a strong desire to know who is behind any organized effort that results in phone calls, letters, and e-mails to them about particular legislation.

Main Number (303) 894-2200
Administration (303) 860-6900
Fax - Administration (303) 869-4860

TDD
Web Site
E-mail - Administration

(303) 869-4867
www.sos.state.co.us
sos.admin1@sos.state.co.us

If a corporation is engaging in the activity you described in your letter, compliance with the lobbyist regulation law might be achieved by having one individual register and report on behalf of the corporation (presumably, a person who is directing the communications), and then having that person report all of the corporation's activities and expenses in his or her reports. In other words, the activities undertaken by support personnel and other persons acting at the request of the principal "lobbyist" would be reported on the principal's report. See section 24-6-301 (3.5) (b), C.R.S., which provides as follows:

24-6-301. Definitions. As used in this part 3, unless the context otherwise requires:

(3.5) (b) Subject to the exclusions and provisions of this paragraph (b), for the purpose of determining when contributions and expenditures become reportable in disclosure statements, "lobbying" includes activities undertaken by the person engaging in lobbying and persons acting at his request to prepare for lobbying which in fact ultimately occurs, . . . (Emphasis added.)

I hope this is helpful. We appreciate your interest in compliance with Colorado law on lobbying activities.

If we can be of further assistance, please contact us again. Our program lead in the area of lobbyist registration is Dorothy Ferranti, who may be reached at 303-894-2200, extension 6304.

Very truly yours,



William A. Hobbs
Deputy Secretary of State

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

FINAL AGENCY DECISION

**RE: LOBBYIST COMPLAINT FILED BY ROBERT CORRY
AGAINST CITIZENS ADVOCATING FOR OUR STATE/BOOT
THE BLACK MARKET**

THIS MATTER came before Suzanne Staiert, Deputy Secretary of State, in accordance with section 24-4-105, C.R.S., after complainant Robert Corry filed a complaint with the Secretary of State (“the Secretary”) alleging that Respondent Citizens Advocating for Our State/Boot the Black Market (“CAFOS”) had violated Colorado laws and regulations governing lobbyist registration and disclosure.

The complaint alleged that CAFOS engaged in lobbying activities without first registering as a lobbyist with the Secretary as required by section 24-6-303 (1), C.R.S., and failed to comply with various disclosure requirements. The communications that gave rise to this were (1) a website posting at www.BoottheBlackMarket.com and (2) “email action alerts” that CAFOS sent to Colorado residents. The email alerts and website encouraged readers and recipients to “call or email their state lawmaker and ask them to support legislation to help boot the black market, House Bills 17-1220 and 17-1221. The complaint also alleges that the email alerts contained false and misleading information concerning HB 17-1220, and therefor violated section 24-6-308 (1) (n), C.R.S., which prohibits a person engaged in lobbying from “engaging in any other practice that discredits the practice of lobbying.”

As authorized by section 24-6-305 (2) (c), C.R.S., Department of State staff investigated the allegations in Robert Corry’s complaint. Thomas M. Rogers of Lewis Roca Rothgerber Christie responded as legal counsel to CAFOS to the Secretary’s inquiries. Mr. Rogers indicated that CAFOS did not meet the statutory definition of a “professional lobbyist” found in section 24-6-301 (6), C.R.S., and that it was a principal of professional lobbyist Dieter Raemdonck.

Applicable law

Colorado's broad definition of "lobbying" includes "communicating directly, or soliciting others to communicate with a covered official for the purpose of aiding in or influencing ... [t]he drafting, introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, or veto by any covered official on ... [a]ny bill, resolution, amendment, nomination, appointment or report."¹ An individual "who is compensated by a client or another professional lobbyist for lobbying" is a "professional lobbyist."² Colorado law requires professional lobbyists to register with the Secretary "before lobbying," and to file periodic disclosure statements identifying their lobbying income and expenditures.³

On the organizational level, section 24-6-307, C.R.S., makes it "unlawful for any person to employ for pay or any consideration ... an individual to engage in lobbying who is not registered except upon condition that such individual register forthwith."

The Secretary has the authority to investigate complaints concerning lobbying activities, and where he "has reasonable grounds to believe that any person is in violation of section 24-6-302 or 24-6-303," the Secretary may conduct a hearing under the Colorado Administrative Procedure Act.⁴ Following such a hearing, if a violation is found, the Secretary may "issue a cease- and desist order."⁵

Summary of investigation and factual findings

Based on the Department's investigation and my review of the complaint, the attachments, correspondence, and other materials cited below, I make the following findings of fact:

1. "Citizens Advocating for Our State" is the registered trade name for Coalition Against Outrageous Subsidies, a Colorado nonprofit corporation formed in 2013.
2. CAFOS's Statement of Trade name of a Reporting Entity filed April 17, 2016, indicates that the business transacted is "advocating for Colorado community interests."
3. On January 4, 2013, Dieter Raemdonck first registered as a professional lobbyist with the Colorado Department of State.
4. On April 18, 2016, Dieter Raemdonck updated his registration with the Department of State by adding CAFOS as a client.

¹ Section 24-6-301 (3.5) (a), C.R.S.

² Section 24-6-301 (6), C.R.S.

³ Sections 24-6-301 (1) and 24-6-302(2.5), C.R.S.

⁴ Section 24-6-305(3), C.R.S.

⁵ *Id.*

5. On July 11, 2016, Dieter Raemdonck renewed his professional lobbyist registration, which covers lobbying activities through June 30, 2017.
6. On March 2, 2017, HB 17-1220 and HB 17-1221 were introduced. HB 17-1220 purported to impose limits on residential marijuana cultivation in Colorado, while HB 17-1221 would create the gray and black market marijuana enforcement program.
7. On or about March 7, 2017, CAFOS sent an email to Colorado residents stating: “Call or email your state lawmaker and ask them to support legislation to help boot the black market. House Bills 1220 and 1221.” The email also contained a link to assist email recipients to look up and find their legislator.
8. CAFOS sent another email to Colorado residents after HB 17-1220 passed out of the House of Representatives on March 13, 2017. This email contained the same language and links as the previous email.
9. Mr. Raemdonck timely filed a Disclosure Report with the Secretary of State’s office covering the lobbying activities for March 2017 on April 10, 2017. The Disclosure Report indicated that he had lobbied on behalf of CAFOS in support of HB 17-1220 and HB 17-1221.
10. In Mr. Raemdonck’s April 10, 2017, Disclosure Report, he disclosed the amount, nature, and purpose of total expenses spent on lobbying activities with HB 17-1220 and HB 17-1221. Expenses were paid to Onsite Public Affairs and Audience Partners, LLC, to cover the outreach and media campaigns “to encourage support for legislation to limit residential marijuana grows.”

Analysis and ruling

The evidence before me is insufficient to establish that the entity who sent the communications in question was a “professional lobbyist.” To qualify as a professional lobbyist an individual or entity must be “compensated by a client or another professional lobbyist for lobbying.”⁶ CAFOS does not meet this definition, and the evidence shows that it is not organized as a lobbying firm. Instead it appears CAFOS is the client of a registered professional lobbyist. Mr. Raemdonck was engaged to lobby on behalf of CAFOS and disclosed such engagement in his filing with the Secretary on April 18, 2016. In his disclosure covering March 2017 lobbying activities, Mr. Raemdonck included his work lobbying in support of HB 17-1220 and HB 17-1221. Additionally, he included the expenses incurred during March for his work lobbying on the two bills, and his total income from lobbying.

The email action alerts were not sent to legislators, but instead to Colorado residents. Although Colorado lobbying law generally covers both direct and indirect communications and members of the General Assembly, the type of communication at issue here commonly understood as

⁶ Section 24-6-301 (6), C.R.S.

“grassroots lobbying.” In 2003, former Deputy Secretary of State William A. Hobbs issued an advisory opinion concerning grass roots lobbying. He stated that a one-time occurrence of grassroots lobbying may be “sufficiently minimal” so as to not require registration and reporting. I find that the communications at here were sufficiently minimal. In regard to the second allegation in the complaint, CAFOS’s statement addressing patients and caregivers continuing to grow at elevated levels regardless of HB 17-1220 is subject to interpretation. I do not find that CAFOS’s email alerts were “obviously false statements” nor did they discredit the practice of lobbying under section 24-6-308 (1) (n), C.R.S.

Conclusion

Because the evidence before me is insufficient to establish that CAFOS or Mr. Raemdonck violated Colorado’s laws governing lobbying and professional lobbyists, I hereby DENY the relief requested in the complaint. This Decision constitutes final agency action subject to judicial review in accordance with section 24-4-106 (2), C.R.S.

Dated this 31 day of July, 2017.



Suzanne Staiert
Deputy Secretary of State
Colorado Secretary of State’s Office
1700 Broadway, Suite 200
Denver, CO 80290
(303) 894-2200

CERTIFICATE OF MAILING

This is to certify that I have duly mailed the within **FINAL AGENCY DECISION** to the addresses below by depositing copies of the same in the United States mail, first class postage paid, at Denver, Colorado, **Tuesday, August 1, 2017** addressed as follows:

Trey Rogers
Lewis Roca Rothgerber Christie LLP
1200 17th Street, Suite 3000
Denver, Colorado 80202

Attorney for Citizens Advocating For Our State (CAFOS)

Robert Corry
437 W. Colfax, Suite 300
Denver, Colorado 80204

Complainant



Andrea Gyger
Administrative Division
Colorado Department of State