

COLORADO SECRETARY OF STATE
1700 Broadway, Suite 200
Denver, Colorado 80290

Case Number: L2019-02

IN THE MATTER OF JOSEPH SALAZAR

ORDER OF DISMISSAL

This matter is before Ian Rayder, Colorado Deputy Secretary of State (“Deputy Secretary”), concerning the Elections Division’s Motion to Dismiss a complaint filed by Suzanne Staiert, Public Trust Institute (“Complainant”) against Joseph Salazar (“Respondent”). Having reviewed the Motion and the file in this matter, the Deputy Secretary issues this Order granting the Motion and dismissing the Complaint.

LOBBYIST COMPLAINT PROCEDURES

Regulation of lobbyists is governed by Part 3 of the Colorado Sunshine Act¹ and the Secretary of State’s Rules Concerning Lobbyist Regulations.² These laws require lobbyists to register with the Secretary of State before lobbying and to file certain disclosures and reports.³ Section 24-6-305, C.R.S., and Rule 4.3 set forth the complaint process for alleged violations of lobbying regulations, in accordance with the State Administrative Procedure Act.⁴

¹ § 24-6-301, C.R.S., et seq.

² 8 Code of Colo. Reg. § 1505-8 (2019).

³ §§ 24-6-302 through 24-6-303, C.R.S.

⁴ 8 Code of Colo. Reg. § 1505-8, Rule 4.3.

PROCEDURAL AND FACTUAL BACKGROUND

Respondent is the Executive Director and Chief Litigator for Colorado Rising, a Colorado nonprofit organization. Respondent is not registered to engage in lobbying. On December 11, 2019, Complainant filed a Complaint⁵ against Respondent with the Secretary of State under § 24-6-305. The Complaint alleges that, on four instances in 2019, Respondent engaged in lobbying without registering as a professional lobbyist and without disclosing lobbying income.

Specifically, the Complaint alleges that Respondent's conduct constituted lobbying on the following occasions: (1) by making statements at a press conference on January 4, 2019; (2) by promoting and participating in a Facebook Live event on March 4, 2019; (3) by sending an email, subject line "GEO Facility Update," to legislators on August 8, 2019; and (4) making statements at a press conference in a Capitol committee room on August 14, 2019.⁶

The Complaint further alleged, as an aggravating factor, that Respondent violated a constitutional lobbying prohibition,⁷ the determination of which is outside the scope of § 24-6-305, C.R.S., and therefore not addressed here.

The Elections Division sent Respondent notice of the Complaint and Notice of Initial Review.⁸ Respondent submitted his Verified Response to the Complaint,

⁵ Ex. A to Motion to Dismiss.

⁶ *See id.*

⁷ Colo. Const. art. XXIX, §§ 4-5.

⁸ Ex. B to Motion to Dismiss.

denying that he engaged in lobbying under § 24-6-301(3.5).⁹ As authorized under § 24-6-305(2)(c), C.R.S., the Division investigated the allegations in the Complaint and filed its Motion to Dismiss on grounds that there is no factual or legal basis to establish violation of the lobbying regulation.

For the reasons stated below, the Deputy Secretary grants the Division’s Motion to Dismiss.

ANALYSIS

“Lobbying” means communicating directly, or soliciting others to communicate, with a “covered official” for the purpose of aiding in or influencing certain of the covered official’s activities—including drafting, introduction, sponsorship, consideration, passage, defeat, or approval—on any bill, resolution, amendment, or report, whether or not in writing, pending or proposed for consideration by the General Assembly, whether or not in session.¹⁰ Members of the General Assembly are covered officials.¹¹

Exclusions from this definition are found under the statute and rules. An attorney’s communications that constitute the practice of law on behalf of an identified client are excluded from the definition of lobbying.¹² Also excluded is activity, which might otherwise be considered lobbying, if the activity occurs once a year or less and if performed by an organization’s employee, not paid solely to lobby.

⁹ Ex. C to Motion to Dismiss.

¹⁰ § 24-6-301(3.5)(a)(I)(A); 8 Code of Colo. Reg. § 1505-8, Rule 1.3.1.

¹¹ § 24-6-301(1.7)(a).

¹² § 24-6-301(3.5)(e); 8 Code of Colo. Reg. § 1505-8, Rule 1.3.2(d).

Grassroots lobbying falls within this exclusion when an organization’s employee contacts its members in response to specific legislation.¹³

A “professional lobbyist” is a person compensated for lobbying by a client or another professional lobbyist.¹⁴ A professional lobbyist is required to register and file periodic disclosure statements.¹⁵

I. The Complaint’s First Allegation Does Not Constitute a Violation.

The Complaint first alleges that Respondent engaged in lobbying on January 4, 2019, by making the following statements at a press conference at the state Capitol: “The Governor’s Office doesn’t belong to one individual no matter how much he paid for it. It doesn’t belong to him. It belongs to the people of the state of Colorado. And Colorado Rising is here to give them that reminder on a daily basis if we need to.”¹⁶ At that time, the Complaint alleges, neither Respondent nor Colorado Rising was listed as a lobbyist, lobbying firm, or lobbying client, respectively, as to Senate Bill 19-181.¹⁷

In his Verified Response, Respondent attested that (a) Senate Bill 19-181 had not yet been introduced, (b) his comments were not specific to any legislation or policy, and (c) at that time, neither he nor Colorado Rising had knowledge of any pending or potential bills on oil and gas regulation.¹⁸

¹³ 8 Code of Colo. Reg. § 1505-8, Rule 1.3.2(g).

¹⁴ § 24-6-301(6); 8 Code of Colo. Reg. § 1505-8, Rule 1.6.

¹⁵ § 24-6-302.

¹⁶ Ex. A to Motion to Dismiss, p.4.

¹⁷ *Id.*

¹⁸ Ex. C to Motion to Dismiss, ¶5.

The Division's investigation found that: the event was titled "We Won't Back Down: Action to Halt New Fracking Permits"; it was scheduled for two hours while legislators arrived for opening session; the purpose was to demand legislators put a halt to all new permits and to make sure legislators were aware that Colorado Rising would hold them accountable.¹⁹

The Division viewed Respondent's communication as an announcement of general intention and position, not a request for action on specific pending or proposed legislation and that, even assuming without concluding that the communication related to specific legislation, it was directed generically to entrants of the Capitol, and not specifically to a covered official. The Division noted the potential chilling effect of regulating this type of speech at the Capitol.

The Deputy Secretary finds that the facts upon investigation do not support a basis to establish that Respondent's conduct met the definition of lobbying under § 24-6-301(3.5), and concludes there is no basis to proceed thereon. The Deputy Secretary further concludes it is unnecessary to address registration and disclosure requirements in relation to this allegation.

II. The Second Allegation Does Not Constitute a Violation.

The Complaint next alleges that Respondent engaged in lobbying at a press conference on March 4, 2019, by soliciting the public to contact legislators to influence passage of Senate Bill 19-181. In his Verified Response, Respondent summarized his

¹⁹ Motion to Dismiss, pp.2-3.

statements at the press conference; stated that the communication was part of Colorado Rising’s Facebook Live event to educate viewers on the legislative process, including committees that would hear the bill; and stated that he made clear Colorado Rising took no position in support of or opposition to the bill.²⁰

Upon investigation, the Division found the event was titled “SB 19-181 Breakdown with Joe Salazar and Dan Leftwich.” During the 78-minute video of the event, Respondent addressed different aspects of the bill, provided a list of legislators to contact, listed member names of the Senate Committee on Transportation and Energy, and identified the position of certain Senators.²¹

The Division found that, on this one occasion, Respondent solicited others to communicate with specific senators to aid or influence passage of Senate Bill 19-181. Because it found Respondent was not paid solely to lobby, the Division viewed Respondent’s conduct under the grassroots provision of Rule 1.3.2(g), excepting Respondent from reporting or registration required for professional lobbyists.

The Deputy Secretary finds that Respondent’s conduct is grassroots lobbying outside the scope of the Colorado Sunshine Act. The Deputy Secretary finds this conduct, which could otherwise be considered lobbying, is expressly excluded from the definition of lobbying under Rule 1.3.2(g). In reaching this conclusion, the Deputy Secretary need not and therefore declines to address whether, as suggested by the

²⁰ Ex. C to Motion to Dismiss, ¶¶7-18; p.4.

²¹ Motion to Dismiss, pp.3-4.

Division, an organization's voluntary and transparent dissemination of information to the public might impact the technical requirements for professional lobbyist regulation when occurrences of grassroots lobbying exceeds the limitation in Rule 1.3.2(g). The Deputy Secretary expresses no current position on the legal effect of prior advisory opinions as applied to the conduct at issue here.

III. The Complaint's Third Allegation Does Not Constitute a Violation.

The Complaint next alleges that Respondent engaged in lobbying on March 4, 2019, by sending an email directly to legislators to urge their introduction and support for legislation.

In his Verified Response, Respondent affirmed that he sent the email in his individual and personal capacity on the subject of federal immigration policy, that he sought the recipients' review of possible state involvement in immigration issues, and that he referred to no pending or proposed legislation.²² The Division found that, because Respondent acted in his personal capacity and because federal immigration policy is outside Respondent's work for Colorado Rising, Respondent was not acting as a professional lobbyist.

The Deputy Secretary agrees and concludes there is no basis to proceed on this third allegation.

IV. The Complaint's Fourth Allegation Does Not Constitute a Violation.

Lastly, the Complaint alleges that Respondent engaged in lobbying on August

²² Ex. C to Motion to Dismiss, ¶¶19-20; p.5.

14, 2019, by making statements about actions taken “in response to the passing of SB-181” at a press conference and coordinating with a member of the General Assembly to use a Capitol committee room for this purpose.²³ In his Verified Response, Respondent affirmed that Senate Bill 19-181 had already been signed into law; that in his capacity as legal counsel for Colorado Rising, Respondent announced litigation for Colorado Rising’s client, Our Longmont, under the newly enacted legal authority of Senate Bill 19-181; and that the member of the General Assembly was also a member of Our Longmont, appeared with Respondent at the press conference, and reserved the committee room.²⁴

The Division’s investigation found that Respondent’s communications, relating to litigation for an identified client, constituted the practice of law, and that the General Assembly member’s related actions were in his capacity as a member of Our Longmont, not as legislator.

The Deputy Secretary agrees that a bill enacted into law is no longer pending or proposed for consideration by the general assembly, and thus cannot be the subject of lobbying. *See* § 24-6-301(3.5)(a)(I)-(B). In light of this conclusion, the Deputy Secretary need not and therefore declines to address the remaining issues and concludes there is no basis to proceed on this allegation.

CONCLUSION

Because the allegations of the Complaint, upon investigation, do not establish

²³ Ex. A to Motion to Dismiss, p.4.

²⁴ Ex. C to Motion to Dismiss, ¶¶21-22; p.5.

violations of the lobbying regulations, the Deputy Secretary grants the Division's Motion to Dismiss and dismisses the Complaint.

DONE and **ORDERED** this 3rd day of August, 2020.

IAN RAYDER

/s/ Ian Rayder
Deputy Secretary of State

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **ORDER OF DISMISSAL** was served on the following parties via electronic mail on this 3rd day of August, 2020.

Complainant – Suzanne Staiert, Public Trust Institute
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Respondent – Joseph Salazar
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/s/ Ian Rayder