

## MEMORANDUM

**TO:** Commission on Strengthening Utah's Democracy

**FROM:** Stefan P. Brutsch of Parsons Behle & Latimer  
Doug Farr, Brigham Young University

**DATE:** June 2009

**SUBJECT:** Enforcement of Campaign Finance Laws

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The following law summary briefly analyzes laws relating to the enforcement of campaign finance laws. It sets forth Utah's current law, and gives an overview of the federal law and other states' laws.

### **I. UTAH'S CURRENT LAW**

Utah's campaign disclosure laws are enforced by the office of the Lieutenant Governor.<sup>1</sup> The Lieutenant Governor is responsible to verify that all candidates file the required interim campaign disclosure reports, and if such reports were not mailed, to inform election officials not to count votes for that candidate. Within thirty days after the filing deadline for a summary report, the Lieutenant Governor ensures that candidates have filed the required reports, and that the reports contain all information required by law.<sup>2</sup> If the report is not timely filed, or if it does not contain the information required by law, the Lieutenant Governor must direct the candidate to file a summary report correcting the problem within 5 days.

In addition, while the statute does not authorize the Lieutenant Governor to investigate complaints, it does state that if the Lieutenant Governor has received a written complaint alleging a violation of the law or the falsity of any summary report, he must notify the candidate of that complaint within five days of receiving it and direct the candidate to file a corrective summary report.

Any candidate who does not file a corrective report within fourteen days of being instructed to do so is guilty of class B misdemeanor, and the Lieutenant Governor must refer the candidate's report to the Attorney General's office.<sup>3</sup> However, according to recently reported

<sup>1</sup> Utah Code Ann. § 20A-11-206(1)(a).

<sup>2</sup> Utah Code Ann. § 20A-11-206(2)(a).

<sup>3</sup> Idaho's enforcement model closely resembles Utah's. Complaints may be received by the Secretary of State and initially investigated, but matters are usually then referred to the Attorney General. *See* Idaho Code §§ 67-6615, 67-6623.

statements from the Lieutenant Governor's office, the Lieutenant Governor's office may be reluctant to refer matters consistently to the Attorney General.<sup>4</sup>

## **II. STATISTICS CONCERNING STATE ENFORCEMENT PROVISIONS**

### **A. Enforcement Agencies**

- 27 states utilize the Secretary of State to monitor and enforce their campaign disclosure laws.
- 22 states have established election commissions, ethics commissions, or state elections boards to monitor and enforce their campaign disclosure laws.
- Only Utah requires the Lieutenant Governor to conduct this process.

### **B. Audit Procedures**

To identify campaign-finance disclosure violations, some states require their filing agencies to conduct mandatory and/or random audits. Thirty states require the filing agency to examine a candidate's or entity's filing. Twelve states require the filing agency to conduct a "field" audit by combing through some candidates' and entities' actual records.<sup>5</sup> Utah requires the Lieutenant Governor to verify that each state candidate files reports and that each report contains the required information.<sup>6</sup>

## **III. EXAMPLES OF AUTHORITIES' ENFORCEMENT PROCESSES**

### **A. Examples of Enforcement Processes of Independent Agencies**

#### **1. Federal Election Commission<sup>7</sup>**

The Federal Election Commission ("FEC") provides a well-developed model of an enforcement process. The FEC's enforcement process is entirely confidential after the initial complaint is filed. Documents related to an enforcement matter are not released to the public until the matter has been closed. Below is a brief step-by-step overview of the FEC's enforcement process.

##### **i. Initial Stage of a Complaint**

FEC enforcement matters are typically initiated when an individual or group files a complaint with the FEC's Office of General Counsel. Any individual or group may file a

<sup>4</sup> McFarland, Sheena, *Lieutenant Governor Won't Enforce Contributions Law*, Salt Lake Tribune, May 5, 2009.

<sup>5</sup> Campaign Disclosure Project, *Grading State Disclosures 2008*, Campaign Disclosure Laws, available at <http://www.campaigndisclosure.org/gradingstate/lawfindings.html>.

<sup>6</sup> Utah Code § 20A-11-206.

<sup>7</sup> Filing a Complaint, Federal Elections Commission at <http://www.fec.gov/pages/brochures/complain.shtml>

complaint. Enforcement proceedings originate in other ways as well. For example, other federal agencies sometimes refer an enforcement matter to the Commission. And the Commission itself may initiate enforcement proceedings based on information gathered in the normal course of its activities, such as reviewing reports or conducting field audits.

After a complaint is filed, the General Counsel reviews it to ensure that it meets certain format requirements (e.g., features a notary stamp; contains the complainant’s name, address, and signature; identifies alleged offenders and violations). If the format requirements are not met, the complainant may remedy the deficiencies and resubmit the complaint. If the General Counsel determines that the complaint format requirements are met, it notifies all respondents within 5 days. Respondents then have 15 days after they receive notice to explain in writing why the Commission should not take any action or investigate further (see overview table below).

Stage	Number of Days
Complaint Received	
Complaint Notification	5 Days
Response to Complaint	15 Days
Initial Vote to Proceed (Reason to Believe Finding)	
Investigation	
General Counsel’s Brief	
Response to General Counsel’s Brief	15 Days
Probable Cause to Believe	
Conciliation	30-90 Days
Disposition or Referral to Department of Justice	

ii. Commission Votes and Investigation

Once a complaint and response are received, a matter is placed on one of three tracks depending on the matter’s facts and circumstances: (1) the Alternative Dispute Resolution—a bilateral negotiation and/or mediation process meant to lower costs; (2) the Administrative Fine Program—a mechanically-applied civil fine program for late disclosure reports; (3) the regular enforcement process, reserved for matters that require additional legal and factual investigation by the General Counsel.

If an enforcement matter is referred down the regular enforcement process track, the General Counsel will superficially investigate the facts surrounding the matter and report to the full Commission. The Commission will then take an initial vote on whether to proceed with an investigation, based on whether there is “reason to believe” that a legal violation occurred. At this stage, the Commission takes one of the following actions:

- Find reason to believe that a violation occurred and continue investigation;
- Dismiss the matter;
- Dismiss the matter, but send an admonishment letter; and
- Find no reason to believe that a violation occurred and dismiss the matter.

Four of six Commissioners must vote to take any action. If the Commission votes to continue an investigation, the General Counsel will gather facts and issue a formal report to the Commission. The respondent is sent a copy of the General Counsel’s report and has 15 days to reply in writing. The respondent may also request an oral hearing before the Commission.

### iii. Resolution

After the Commission reviews the General Counsel’s report and respondent’s reply, it votes on whether there is “probable cause to believe” that a legal violation occurred. If four Commissioners vote to find “probable cause,” the General Counsel attempts for 30 to 90 days to draw the respondent into a conciliation agreement (i.e. a settlement agreement). If those attempts fail, the Commission may file suit against the respondent in federal district court or refer the matter to the Department of Justice. Please note that for most enforcement matters, the Commission does not have the authority to unilaterally impose a fine on a respondent.

## 2. **Texas Ethics Commission**

The Texas Ethics Commission (“TEC”) is an eight-member body (four members are appointed by the governor, two members by the lieutenant governor, and two members by the Speaker of the Texas House of Representatives) with four members from each major political party serving overlapping four-year terms.<sup>8</sup> It administers and enforces important Texas statutes regarding:

- Campaign finance limits and disclosure requirements;
- Lobbyist registration, reporting, and activities;
- Personal financial disclosure requirements for state officers; and
- Ethics rules for state officers and employees, including “revolving door” and conflict of interest provisions.<sup>9</sup>

The TEC’s enforcement process largely resembles the FEC’s.<sup>10</sup> Complaints may be internally or externally generated. The TEC also takes an initial vote on whether to continue investigation and then takes a later vote on whether to find a violation occurred under Texas state law. Like the FEC, two-thirds of the TEC commissioners must vote to move forward on a complaint. The

<sup>8</sup> Tex. Const. Art. 3, § 24a.

<sup>9</sup> Texas Ethics Commission, Constitutional and Statutory Duties (2008), <http://www.ethics.state.tx.us/tec/duties.htm>.

<sup>10</sup> Many states, including Alaska, California, Connecticut, Florida, Georgia and South Carolina, use a two-stage complaint resolution process that closely resembles the FEC’s process.

main difference between the TEC's enforcement process and the FEC's is that the TEC may unilaterally impose civil penalties.<sup>11</sup>

The TEC does not accept anonymous complaints, but some states, like California, offer an anonymous tip hotline that allows an individual to make a complaint without disclosing his or her identity.<sup>12</sup>

## **B. Examples of Enforcement Processes through Elected Officials' Offices**

### **1. Colorado Secretary of State**

Any individual or group that believes a violation of Colorado's campaign finance laws occurred may file a written complaint with the Secretary of State within 180 days of the alleged violation.<sup>13</sup> The Secretary must refer the complaint to an administrative law judge ("ALJ") within three days. Unless the respondent is granted an extension, the ALJ must then hold a hearing within 15 days of the referral and issue a decision 15 days after the hearing. The ALJ's decision is subject to review by the Colorado Court of Appeals and enforced by the Secretary of State. (If the Secretary does not file an enforcement action within 30 days of the decision, the complainant is granted a private right of action to sue the respondent in state court.)<sup>14</sup> Two-hundred and forty complaints have been filed using this process since 2000.<sup>15</sup>

### **2. Arizona Attorney General**

Any Arizona voter may file a sworn complaint with the Attorney General and the Attorney General must investigate the complaint for possible action.<sup>16</sup> If the Attorney General fails to institute an action within 45 working days after receiving a complaint, the complainant is granted a private right of action to sue the respondent in state court.<sup>17</sup>

<sup>11</sup> Tex. Gov't Code § 571.121 et. seq. Washington State's enforcement authority offers the additional remedy of election cancellation. See Rev. Code of Wash. §§ 42.17.350 – 42.17.471.

<sup>12</sup> California Fair Political Practices Commission, *FPPC Complaint Process* at <http://www.fppc.ca.gov/index.html?id=498>.

<sup>13</sup> Colo. Rev. Stat. § 1-45-1111.5(1.5)(a).

<sup>14</sup> Colo. Const. Art. XXVIII § 9(2)(a).

<sup>15</sup> For a log of complaints, see [http://www.elections.colorado.gov/WWW/default/Campaign%20Finance/fcpa\\_log.pdf](http://www.elections.colorado.gov/WWW/default/Campaign%20Finance/fcpa_log.pdf)

<sup>16</sup> Ariz. Rev. Stat. § 16-905(M).

<sup>17</sup> Ariz. Rev. Stat. § 16-905(N).

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