

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

MUR: No. 14-006 TOM HORNE

STATEMENT OF REASONS OF THE EXECUTIVE DIRECTOR

On behalf of the Citizens Clean Elections Commission (“Commission”), the Executive Director hereby provides the Statement of Reasons showing reason to believe that violations of the Citizens Clean Elections Act and the Commission rules (collectively, the “Act”) may have occurred.

I. Procedural Background

On May 12, 2014, Sarah Beattie (“Complainant”) filed a complaint (“Complaint”) against Tom Horne (“Respondent Horne”), a nonparticipating candidate for the republican nomination for Attorney General, alleging that he and his staff at the Attorney General’s Office (“AGO”) were using state resources for the purpose of influencing the results of the Attorney General’s election.

Respondent Horne filed a response and a corrected response on June 2 and 11, 2014. I recommended that the Commission authorize an inquiry of the Complaint pursuant to Ariz. Admin. Code R2-20-206(C). The Commission authorized the inquiry on June 19, 2014.

The Commission staff filed public records requests with the AGO on July 3, 2014, with follow up correspondence on July 18, and August 22, 2014. Exhibit A.

The AGO partially responded on August 26, 2014, leaving a considerable part of the request unfulfilled to date.¹ Exhibit B. The Commission staff sent a subpoena duces tecum to Complainant on July 3, 2014, and responsive documents were provided on or about July 30 and August 14, 2014. Additionally, the Commission staff filed a public records request with the Arizona Department of Administration on August 28, 2014 and a received a response on September 3, 2014. Exhibit C. Finally, the Commission sent out litigation hold letters to the AGO, the Horne Reelection campaign and individuals affiliated with the campaign, and the Arizona Rock Products Association.

On July 3, 2014, Respondent Horne filed a lawsuit in Maricopa County Superior Court (No. CV 2014-9404) seeking to enjoin the inquiry. On August 20, 2014, the Superior Court denied the relief sought by Respondent Horne in that suit. Respondent Horne's motion for reconsideration was denied on September 9, 2014. Exhibits P, Q.

In reviewing much of the same evidence as was provided in the original Complaint by Ms. Beattie (but not the additional evidence the Commission has obtained from its public records requests and document subpoena), the Arizona Secretary of State's election director found reasonable cause that the entire AGO

¹ No subpoena has been issued to the AGO or any of the other people identified in the Campaign at this point.

Executive Office's conduct should be subject to review for violations of reporting requirements in Title 16, Chapter 6, Article 1. *See* Exhibit D.²

II. Alleged Violations

1. Contribution violations

The Clean Elections Act provides that “[n]otwithstanding any law to the contrary, a nonparticipating candidate shall not accept contributions in excess of an amount that is twenty per cent less than the limits specified in section 16-905, subsections A through E, as adjusted by the secretary of state pursuant to section 16-905, subsection H.” A.R.S. § 16-941(B).

The definition of contributions is “any gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing an election” and includes “the provision of goods or services without charge or at a charge that is less than the usual and normal charge for such goods and services,” but excludes the “value of services provided *without compensation* by any individual who volunteers on behalf of a candidate, a candidate’s campaign committee or any other political committee.” A.R.S. § 16-901(5) (emphasis added); *see also* A.R.S. § 16-961(A) (incorporating definition of “contribution”).

² It should be noted, however, that the reasonable cause letter did not reference violations of the contribution limits in § 16-941(B) and 16-905; nor did it reference the additional penalty for reporting violations in § 16-942(B).

Section 16-941(B) expressly prohibits candidates from taking any contributions other than those twenty percent less than the limits set forth in 16-905. The Act provides that the civil penalties and procedures set forth in § 16-905(J)-(M) and § 16-924 shall apply to any violation. A.R.S. § 16-941(B). The Act further expressly references a violation of § 16-941(B) in § 16-942(C), and it gives the Commission rulemaking authority to carry out the purposes of the Act. A.R.S. § 16-956(C). The Commission has enacted Arizona Administrative Code (“A.A.C.”) R2-20-109(G) to carry out its responsibilities to enforce the Act against nonparticipating candidates.

The allegations of the Complaint are that Respondent Horne accepted contributions from the employees of the AGO Executive Office in terms of their compensated time and in-kind contributions of state resources including the use of the Executive Offices of the AGO for the purpose of securing his election to a second term as Arizona Attorney General. Respondent Horne disputes the Complaint’s veracity on many points, which are detailed more specifically below.

2. Reporting Violations

The Citizens Clean Elections Act provides that any candidate that fails to report campaign contributions and expenditures as required by Chapter 6 of Title 16 is subject to a daily civil penalty for a candidate for statewide office. A.R.S.

§ 16-942(B). This penalty is expressly “[i]n addition to any other penalties imposed by law.” *Id.*

The amount of the penalty is doubled if the amount of the unreported contributions and expenditures exceeds ten percent of the adjusted primary or general election spending limit for the particular office (\$19,528 for Attorney General). *See Clean Elections Commission Participating Candidate Guide* at p. i.³ The penalty is capped at twice the amount of expenditures or contributions not reported, and the candidate and the candidate’s campaign account are jointly and severally liable. A.R.S. § 16-942(B).

The Complaint alleges that in-kind contributions in the form of goods, services and other resources were provided to Respondent Horne’s campaign through the activities of AGO Executive Office employees but were not reported in campaign finance reports. Respondent Horne disputes the veracity of the Complaint on many points, which are detailed more specifically below.

III. Analysis

By August 2013, the Horne Campaign was setting up a parallel organizational structure where the responsibilities of campaign staff reflected the Executive Office of the Attorney General’s Office, according to campaign documents provided by Sarah Beattie under subpoena. *See Exhibit E, Campaign*

³ Available at <http://www.azcleelections.gov/docs/default-source/helpful-links-documents/2014-participating-candidate-guide.pdf?sfvrsn=2>.

Agenda of Tom Horne For Attorney General. For example, the campaign manager Margaret Dugan was the chief of staff for the Attorney General, the chief strategist Brett Mecum was the legislative liaison for the Attorney General, the spokeswoman for the campaign was the spokeswoman for the office. *Id.* Kathleen Winn, director of community outreach, was the field organizer, while Debra Scordato, Horne's secretary in the AGO was in charge of scheduling and financial paper work. Sarah Beattie was responsible for fundraising. Garrett Archer was the "master of dark arts" and responsible for technology. *Id.* Horne actively managed his own campaign. *See* Exhibit F, Minutes of Campaign Meeting 3/27/14.

Hiring Beattie and Archer was Mecum's plan for creating a "dream team" for Respondent Horne's reelection. Exhibit G, Complaint at ¶ 28. Sometime prior to August 1, 2013, Mecum recruited Beattie to come work with him in the AGO. *Id.* at ¶ 4. Mecum and Winn met with Beattie before a position opened in the AGO and reviewed campaign matters with her. *Id.* When the job was posted, Beattie was assured an interview was a formality. *Id.* at ¶ 5. The campaign was discussed during the interview with Winn. *Id.* Beattie was assigned to work for Winn. During the time Beattie worked for Winn she was required to work on campaign related projects during her working hours. *Id.* at ¶ 7.

Within a short time after beginning work for Winn, Beattie decided she wanted to leave the AGO. According to her sworn Complaint, she directly

confronted Respondent Horne about her desire to leave to take on other political clients. Respondent Horne, according to Beattie, directly told her employment was necessary through the election cycle and that he would take care of moving her position and getting her a raise. *Id.* at ¶¶ 9-10. Both of those commitments were met and Beattie received both a raise and a reassignment for the purpose of keeping her working on the campaign. *Id.* In her new position, Beattie testifies, she worked two hours a day on state work and the remainder on campaign related work. *Id.* at ¶ 10. Respondent Horne denies these allegations. Exhibit H, June 11, 2014 Response by Horne at 3-5.

As noted above, a person does not serve as a campaign “volunteer” when that person is compensated. A.R.S. § 16-901(5). Consequently, both Beattie’s direct work on the campaign during work hours and her work on the campaign after hours in exchange for her state salary were compensated.⁴ Similarly, Mecum and Archer, part of the “dream team,” are both political professionals.⁵ The

⁴ Beattie received a total of \$13,000 in raises in her annual pay from the time of hire until she left, including a \$3,000 pay increase in September and a \$10,000 pay increase one month later. Nevertheless, Respondent Horne now claims she was not a good employee and that he relied on her representations (which he does not document) that she was a “volunteer.”

⁵ Notably emails that have been provided by Beattie indicated that some of Mecum’s emails, for example, are from a mecum.us address which in turn is registered to Mecum and Associates. *See* Exhibit O; *see also* <http://www.whois.net/whois/mecum.us>. Mecum and Associates was at least at one time the name of Mecum’s political consulting business. <http://www.linkedin.com/in/brettmecum> (last checked September 8, 2013). Likewise, press aide Grisham’s non-work emails indicated they come from her as

evidence supports the inference they were given titles and responsibilities with the AGO and in return served as “campaign volunteers” providing the very professional services for which they otherwise would have charged campaigns directly. *See* Exhibit G, Complaint at ¶¶ 28-32 (sworn testimony that Mecum and Archer worked on campaign matters during state time); *see also* Exhibit I, Complaint Exhibits 25-30 (emails sent during the work day from private accounts); Exhibit M, Complaint Exhibits 3,4, 8, 11-24, Exhibit O. Dugan, Scordato, Winn, and Archer all were assigned duties that correlated to their “official” AGO duties and mixed campaign and AGO work in the state office. *See, e.g.*, Exhibit G, Complaint at ¶¶ 15 (“Tom Horne routinely walked around and pulled members of the executive staff into meetings regarding the Brnovich and Rotellini campaigns”); 17, 18 (stating that Dugan routinely “blurred the lines between the two roles” and reviewed campaign data in office and that “Ms. Dugan would often stop by my desk to talk to me about the status of campaign fundraisers I was working on, the status of invite flyers, Tom Horne’s twitter account, the Tom Horne 2014 Facebook page, and so forth.”); 21-23 (Winn directed immediate campaign work and was a “frequent participant in the campaign discussions and

president of Sound Bite PR. *See* Exhibit O, Exhibit J. Neither of these entities appears on Respondent Horne’s campaign finance reports. *See* A.R.S. § 16-905(5) (defining contribution as the contribution of goods or services at less than the professional charge).

activities of the Executive Office.”); 26-28 (Scordato “heavily involved in the day-to-day campaigning activities to reelect Tom Horne”).

Indeed, it is not clear that there were any actual volunteers in the Horne campaign. In an e-mail to campaign staff and Respondent Horne, provided by Beattie under subpoena, spokeswoman Stephanie Grisham described the effort “[a]s a campaign of just ‘volunteers,’” indicating she was using the term sarcastically and asked “Who ARE our volunteers? I keep hearing about them but no idea who they are (except who attends meetings) or what they are wanting to do. Is there a list somewhere in case we needed to reach out to them on the fly?” Exhibit J.

Grisham’s email complaint reflects concern about the nature of the campaign’s personnel’s employment. Respondent Horne, for example, recognizes that her complaints raised concerns. In response to the e-mail, Respondent Horne urged campaign personnel not to make their complaints in writing because “[w]ritten comments sometimes end up in bad places.” Exhibit K. At least two campaign meetings were held over the next week. Exhibit F, Exhibit L. At a campaign meeting on April 1, 2014, Respondent Horne, according to minutes created by Scordato, said that Dugan could not discipline the campaign personnel because of her role at the AGO. Exhibit L. This statement does not make sense unless Horne personally recognized that his “volunteers” were not truly volunteers, but rather Attorney General’s employees whom Dugan supervised. Additionally,

Horne said that he personally would “step in and do what others would not.” Dugan, in turn, apparently told personnel “[i]f you cannot volunteer, not a problem. It’s a volunteer position.” With the exception of Larry Weitzner, the Campaign’s paid, out-of-state media consultant, it appears that all of the meeting attendees were employees of the AGO Executive Office. This evidence further supports the inference that “volunteer” work was performed in exchange for compensation and that employees agreed to provide their services free of charge to the campaign because they were employees of the Attorney General. There were seamless operations between the AGO Executive Office and the Horne campaign at the highest levels including management, strategy, technology, communications, field work, and fundraising. There is no evidence refuting what Beattie characterizes as ongoing work and that Respondent Horne characterizes as water cooler talk. There is no evidence that any controls were in place to document the duration or location of breaks and personal time and no evidence that policies intended to safeguard employees and the State from the misuse of resources were relied upon.

Complainant testified that, during her work for the AGO, she witnessed Horne make fundraising calls from his state office, worked with Horne and other AGO staff members to coordinate a fundraiser, discussed state and campaign business interchangeably at AGO staff meetings, and attended consistent, if ad hoc, meetings about the status of campaign work. Documentary evidence provided by

Beattie supports her claims. Her affidavit and the documents produced under subpoena include numerous emails sent during normal business hours by AGO staff to other staff members and to Respondent Horne himself. Exhibits I, M, O.

The merger of the campaign staff with the AGO as well as the ongoing work-hour campaign emails, meetings and work likewise support the conclusion that the Executive Office of the AGO served as a de facto campaign headquarters for the campaign. No campaign finance report for the periods covered by the Complaint identifies any campaign headquarters and no report indicates ongoing usage of the Arizona Rock Products Association offices for campaign activities. *Compare* Horne June 11 Response at 9-10 & Exhibit 5 (statement of Rock Products President Steve Trussel that “[w]hen one of our conference rooms is free, they are available to Tom Horne to have meetings with his campaign volunteers, and for him to make phone calls raising funds for his campaign.”); *with* Tom Horne 2014 January 31, 2014 Campaign Finance Report at 56 (showing single \$100 April 12, 2013 payment for “use of space and phone”).⁶

Respondent Horne’s effort to undermine these conclusions is unavailing. For example, Horne attacks Beattie’s credibility. *See* Horne June 11 Response at 1-3. However, he provides no alternative explanation for how or why she was

⁶ Hourly Board Room Spaces in Phoenix can cost between 38 and 72 dollars an hour. *See* <http://www.regus.com/meeting-rooms/united-states/united-states/phoenix?q=Phoenix,-AZ,-United-States,United-States> (Last checked September 9, 2014).

transferred or given a raise. Likewise, while he claims that Beattie texted him she was available after her work hours to work on campaign activities, that service was not voluntary, but rather compensated under the terms of the employment arrangement Horne himself facilitated. Horne argues that Beattie's state time sheets, which are apparently filed under penalty of prosecution, showed that she noted when she took time off without pay. *Id.* at 3-5. But this does not undermine the central point that Beattie was hired and given raises for campaign purposes.⁷ As noted in the June recommendation for an inquiry, the remaining unsworn statements from Horne and his allies often confirm events and minimize activities but never specifically deny the allegations in the Complaint.

Likewise, Horne's legal arguments are incorrect. He maintains that under state law employees are entitled to work on political work "off duty and not at public expense." But when a state employee's position with the State is expressly tied to campaign work that is done interchangeably during work and after work hours, there is no distinction to be drawn. Just because AGO staff may have been free to volunteer after hours, doesn't mean their campaign work during and after hours wasn't part of their compensated employment. When the AGO hired personnel for their campaign services – even if services were provided after hours,

⁷ Horne notes that all other employees are required to provide time sheets. Staff requested these time sheets for all employees in the Complaint. They still have not been provided despite the fact that Beattie's timesheets were apparently available to Respondent Horne for his response in June. *Compare* Exhibit B with Exhibit H.

staffed the Executive Office so that the structure of the office paralleled the structure of the “volunteer” campaign, and further conducted what appears to be substantial campaign work during normal work hours without following the established protocol, then the services provided by Executive Office employees to the campaign were not “provided without compensation” within the meaning of A.R.S. § 16-901(5). Rather there was a quid pro quo of “volunteer” hours for paid hours. The same situation could arise where any vendor provides services to a campaign while compensated though they claim to be a “volunteer.”

Respondent Horne’s argument to the contrary, if accepted, would turn the exception for work provided “without compensation” on its head by allowing state officials to hire employees for expressly political purposes so long as they make a claim that they are “volunteering” and requiring administrative agencies to look the other way whenever a respondent characterized ongoing campaign activity as not “significant.” Here, the weight of evidence is that there were few if any “volunteers” and campaign activity in the office was ongoing during the time period covered by the Complaint.

For example, Respondent Horne’s claim that any emails during work time must have occurred while employees were on “personal breaks” loses whatever force it had in light of the documentary evidence confirming the campaign and the AGO Executive Office were seamless. Exhibit H, Horne June 11 Response at 6-7. And, even if the unsworn claim (without any supporting documentation) of one

employee that the employee happened to be “on a break” when she wrote campaign emails does not change the fact that the evidence shows that Mr. Horne and his employees freely used the Executive Office suite as the base of operations for these campaign activities during regular work hours. *Id.* Nothing in the law requires the Commission to accept that an employee’s self-declared, undocumented breaks, taken at any time (apparently) the employee deemed appropriate, in the very state office where the employee works (albeit on Respondent Horne’s “personal” computer), and on that basis reject claims that contributions were made.⁸

Similarly, whatever First Amendment right AGO employees have, the employees do not enjoy the right to use resources of the state as they see fit, nor to accept compensation of state dollars in return for campaign work. To be sure, nothing prevented these employees from working for the campaign as volunteers, just as nothing prevented Respondent Horne from accepting legal contributions. *See, e.g.,* A.R.S. § 16-941(B) (applying to candidates). But contributions must be properly reported and are subject to legal limits.

⁸ Notably, although Respondent Horne provides a copy of the AGO alleged policies on the use of resources for political activities. Whatever the meaning of this document, Horne does not suggest that any of his staff relied upon this policy in determining their actions, nor that any staff documented the frequency of these alleged breaks, which appear to have occurred in the office. *See* Exhibit H at 6, and Exhibit 11.

IV. Conclusion Regarding Reason to Believe and Procedure After Reason to Believe Finding

If the Commission determines by an affirmative vote of at least three (3) of its members that it has reason to believe a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding setting forth: (i) the sections of the statute or rule alleged to have been violated; (ii) the alleged factual basis supporting the finding; and (iii) an order requiring compliance within fourteen (14) days. A.R.S. § 16-957(A) & A.A.C. R2-20-208(A).

The additional documentary evidence obtained through public records requests to the AGO and the document subpoena to Complainant, in addition to the materials provided in the Complaint and Respondent Horne's responses, provide reason to believe that there were contributions to Mr. Horne's campaign of state employee's time that were not provided "without compensation" and use of state resources . These amounts represent violations of A.R.S. §§ 16-941(B), -942(B), and R2-20-109(F).

Specifically, the Complaint and other evidence support the conclusion that there is reason to believe that the following employees' salaries, prorated for eight months between August 2013 and April 2014, the time period covered by the Complaint, were contributions to Respondent Horne, accepted by him.

Employee	Salary*	Prorated
Margaret Dugan	\$125,547	\$83,698
Brett Mecum	\$70,000	\$46,666.67
Debra Scordato	\$68,250	\$24,818.18
Kathleen Winn	\$103,040	\$68,693.33
Garrett Archer	\$60,000	\$40,000
Sarah Beattie	\$32,000 \$35,000 \$45,000	\$5,333.33 \$2,916.67 \$15,000 GT: \$23,250

***May require adjustment for other compensation such as health care employer contributions.**

In addition, the apportioned, prorated rent on the AGO Executive Suite is: \$25,113.60. To achieve compliance with the Act, Mr. Horne must amend his campaign finance reports to accurately account for these contributions to his campaign and also pay back any such contributions that were accepted in violation of A.R.S. § 16-941(B).

During the fourteen (14) days after a finding of reason to believe a person has violated the Act, the Respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.

If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, the Commission shall

conduct an investigation. A.A.C. R2-20-209(A). The Commission may authorize the Executive Director to subpoena all of the Respondent's records documenting disbursements, debts, or obligations to the present, and may authorize an audit. Upon completion of the investigation conducted pursuant to A.A.C. R2-20-209, the Executive Director shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur. The Executive Director shall notify each respondent of the recommendation and enclose a copy of his or her brief. Within 5 days from receipt of the Executive Director's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case. After reviewing the respondent's brief, the Executive Director shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration. A.A.C. R2-20-214.

Upon expiration of the fourteen (14) days, if the Commission finds that the alleged violator remains out of compliance, the Commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with A.R.S. § 16-942, unless the Commission publishes findings of fact and conclusions

of law expressing good cause for reducing or excusing the penalty. A.R.S. § 16-957(B).

After fourteen (14) days and upon completion of the investigation, the Executive Director will recommend whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred. A.A.C. R2-20-214(A). Upon a finding of probable cause that the alleged violator remains out of compliance, by an affirmative vote of at least three (3) of its members, the Commission may issue of an order and assess civil penalties pursuant to A.R.S. § 16-957(B). A.A.C. R2-20-217.

Dated this 9th day of September, 2014.

By
:



Thomas M. Collins, Executive Director

Statement of Reasons
List of Exhibits

- Exhibit A – Public Records Requests to AGO
- Exhibit B – AGO Response to Public Records Requests
- Exhibit C – Public Records Request to ADOA and ADOA Response
- Exhibit D – Secretary of State’s Reasonable Cause Notice
- Exhibit E - Horne Campaign Meeting Agenda/Minutes 8/21/13
- Exhibit F – Horne Campaign Meeting Minutes 3/27/14
- Exhibit G – Beattie Complaint
- Exhibit H – Horne Response (Corrected) 6/11/14
- Exhibit I – Complaint Exhibits 25-30
- Exhibit J – Grisham E-mail 3/25/14
- Exhibit K – Horne E-mail 3/26/14
- Exhibit L – Horne Campaign Meeting Minutes 4/1/14
- Exhibit M – Complaint Exhibits 3, 4, 8, 11-24
- Exhibit N – Horne January 31st Campaign Finance Report
- Exhibit O – Various Horne Campaign E-mails
- Exhibit P – Minute Entry 8-19-14
- Exhibit Q – Minute Entry 9-9-14