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90 JUL 16 AM 11:11

Kenneth B. Kramer
1400 S. Joyce Street - #C801
Arlington, Virginia 22202-1812

July 11, 1990

Ms. Lee Ann Elliott
Chairperson
Federal Election Commission
PEPCO Building
999 E Street, N.W.
Washington, D.C. 20463

AOR 1990-15

Re: Ken Kramer '86 (Committee)

Dear Madam Chairperson:

I request an Advisory Opinion on the following questions:

1. Will the Federal Election Commission (Commission), on its own initiative, administratively terminate the Committee? or,
2. Should the Committee apply for administrative termination by the Commission?
3. What effect, if any, does Title 13, Chapter 80, Section 101(a), Colorado Revised Statutes have on administrative termination?

The Committee has been reporting as required by the Commission since its inception in 1985. It was formed for my 1986 U.S. Senate race and I am not now a candidate for office.

For at least two years, all creditor issues have been resolved except one disputed debt involving Kenneth D. Bailey d/b/a Direct Marketing Resources. It is my position that the Committee is not indebted to Mr. Bailey. Nevertheless, in order to close the Committee, numerous attempts have been made to resolve the matter through correspondence, telephone calls and personal meetings. In February, 1989, a campaign check for \$2,000.00 was tendered (without acknowledging liability) in hopes of settlement. The check was not cashed. All further efforts at settlement have been unsuccessful.

As the debt is still disputed, I am aware that the Committee cannot be terminated pursuant to the Commission's debt settlement regulations. However, not only does continued filing with the Commission impose significant difficulties on a defunct Committee, but as long as the Committee remains open, it is also necessary for it to pay federal income tax and file a return with the Internal

RECEIVED
FEDERAL ELECTION COMMISSION
90 JUL 13 PM 5:12

Ms. Lee Ann Elliott

Page 2

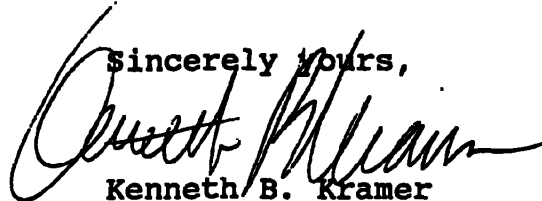
July 11, 1990

Revenue Service. Additionally, I believe that the Colorado Statute of Limitations has run on the matter in dispute.

Enclosed is documentation which provides more detailed information on all of the above.

Thank you for your consideration of my request for an advisory opinion. If you need additional information, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Kenneth B. Kramer", written in dark ink.

Kenneth B. Kramer

**Ken
Kramer**
U.S. SENATE

December 31, 1986

Mr. Ken Bailey
DIRECT MARKETING RESOURCES
500 Wall Street, #311
Seattle, Washington 98121

RE: Statement of Account - Ken Kramer '86

Dear Ken:

Enclosed herein please find an accounting sheet which indicates what our records show with respect to payments made by the Campaign for your services.

7 You will note that there are two reimbursements for which there is no back-up: the reimbursement of 5/29/86 in the amount of \$500.00 and the reimbursement of 10/22/86 in the amount of \$1,860.82. Likewise, there is no support for payments made 6/18, 8/14 and 9/05/1986 in the total amount of \$10,000.00.

Would you please produce the back-up and support for the payments listed.

I am also enclosing the accounting sheet for Ms. Nelson indicating expenses for which there is no back-up. She indicated that she had not received the payments indicated and I thought perhaps since your name is associated with the payments made, that they may have been placed on her account erroneously and, in fact, were made to you. Would you please let me know whether or not that is the case.

Please respond directly to me at 104 S. Cascade Avenue, Suite 105, Colorado Springs, Colorado 80903.

Very truly yours,



W. Bruce Koppes
Treasurer - Ken Kramer '86

WBK/dh
Enc.



Direct Marketing Resources

500 Wall Street, Suite 311 • Seattle, Washington 98121 • (206) 441-4665 (Main office)
3800 N Fairfax, #1702 • Arlington, Virginia 22203 • (703) 524-4613

March 29, 1988

Holly Roberts
U.S. Space Foundation
1525 Vapor Trail
Colorado Springs, Colorado 80916

Dear Ms. Roberts,

I've been able to track down all of Direct Marketing Resources' records dealing with the Kramer 86' Committee.

When we talked you mentioned you didn't have copies of my invoices and that they couldn't be found. In case you still haven't tracked them down, I've enclosed copies of invoices for all printing projects, expenses and for an Image Analysis for the campaign.

Fees due would be covered by the two contracts.

Summary sheets for all projects, expenses and fees, as well as, a summary of payments received from the campaign are attached.

Note that on the final mailing projects, which were combined efforts of the campaign and the Colorado GOP, some payment was paid to DMR by the Colorado GOP and some payment was made directly to the a subcontractor, Management Information Support. This is summarized on the attached sheets.

These records and accountings should clearly outline, what was contracted to and purchased by the Kramer Campaign from D.M.R., what was paid and the balance due. Further, I expect prompt payment on the amount due.

Sincerely,



Kenneth D. Bailey, President
Direct Marketing Resources

KB/th

Note: New Address for DMR
(Temporary)
1930 6th. Ave So. #101
Seattle, Washington 98134
(206) 447-9771

4988

27 May 1988

River House West B1708
1400 S. Joyce Street
Arlington, Virginia 22202

Mr. Kenneth E. Bailey
President
Direct Marketing Resources
1930 6 Avenue South
Suite 101
Seattle, Washington 98134

Dear Ken:

I have just received your letter and enclosures of March 29. Holly Roberts, because of other time commitments, is no longer able to do accounting work for our campaign. Connie Lewis has kindly agreed to undertake the remaining fiscal responsibilities that must be addressed.

All creditor issues have been resolved and finalized other than that relating to your claim. While we may have copies of your contracts somewhere in our files, these files have changed hands so many times that it might greatly expedite matters if you could supply us with copies of all written agreements that you executed with your brother regarding our campaign. I note in passing that you allege that over \$15,000 is due in fees for special services and project management in excess of your monthly retainers. It would be helpful if you could further advise if the \$89,000 paid to you by the Republican State Central Committee and the \$30,000 paid directly to MIS also had management fees charged against them. In regard to your claim for interest and attorneys fees, I would also note that no other campaign vendor has ever taken this position.

Ken, I would like to put this campaign behind me as soon as possible. But I simply cannot let the last sentence of your letter go without comment. What is especially painful in this process is that the campaign was left \$150,000 in debt and an accounting nightmare; and after those in charge were paid, collectively, some hundreds of thousands of dollars, they have, in essence, become the claimant, which, bar none, has been the most difficult to deal with.

I have neither the inclination nor the time to litigate this matter, but I can assure you that if such a course of action were to ensue, it would be an extraordinary unpleasant experience for all concerned. I would be put into a position where I would have to avail myself to all the remedies which the law permits. Let us hope that this does not become necessary.

While we are attempting to find your contracts, your furnishing of them directly to me would greatly expedite things. Hopefully, we can conclude this matter in the near future.

Sincerely,



Kenneth B. Kramer

CC:
Mr. Chuck Bailey
3800 N. Fairfax
#1702
Arlington, VA 22203

Ms. Connie Lewis
810 Bayfield Way #301
Colorado Springs, Colorado 80906

6 June 1988

River House West B1708
1400 S. Joyce Street
Arlington, Virginia 22202

Mr. Kenneth E. Bailey
President
Direct Marketing Resources
1930 6 Avenue South
Suite 101
Seattle, Washington 98134

Dear Ken:

As a follow up to my letter of May 27th, we have looked everywhere and are unable to find copies of the two contracts referred to in your March 29th letter.

Your assistance in sending them to me as soon as possible would be appreciated.

Sincerely,



Kenneth B. Kramer

June 29, 1988

River House West B1708
1400 S. Joyce Street
Arlington, Virginia 22202

Mr. Chuck Bailey
3800 N. Fairfax
#1702
Arlington, Virginia 22203

Dear Chuck:

I spoke to Roger on the phone today and he suggested that you might be able to help obtain copies of Ken's contracts with the campaign.

Enclosed is a copy of a letter I sent him on June 6. Any help you can provide in expediting this matter would be appreciated.

I hope things are going well with you.

Sincerely,



Kenneth B. Kramer

KK:btu
Enclosure



Direct Marketing Resources

500 Wall Street, Suite 311 • Seattle, Washington 98121 • (206) 441-4665 (Main office)
3800 N. Fairfax, #1702 • Arlington, Virginia 22203 • (703) 524-4613

July 26, 1988

Mr. Ken Kramer
River House West B1708
Arlington, Virginia 22202

Dear Ken:

Enclosed are the copies of the two contracts Direct Marketing Resources, Inc. had with the Kramer 86' Committee.

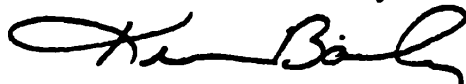
You need to note that I agreed to accept a fee of \$500 per project, to be paid by the Kramer Committee, for letters I wrote and produced in cooperation with the Senate Campaign Committee in lieu of standard production (17%) fees. There were nine letters that fell under this.

I regret I was unable to immediately comply with your request to send these to you. Many of my records are in storage (I'm in temporary offices) and I have not had time to had time to search for them. I would add that this is the third time since the end of the campaign I've send copies of these to some one who was going to put this thing to bed.

I hope these contracts will take care of what you need and I hope there will not be any further delays in making full payment.

DMR's invoice for March 31, 1988 was for \$22,427.72 not including attorney's fees. Four additional months of interest at 1.5%/month is 876.24. With attorney's fees of \$500.00, the amount now due DMR is \$24,303.96.

Best wishes,



Kenneth D. Bailey, President
Direct Marketing Resources, Inc.

February 17, 1989

Mr. Kenneth D. Bailey
c/o Mr. Chuck Bailey
3800 N. Fairfax #1702
Arlington, Virginia 22203

Dear Ken:

Since you sent me copies of your contracts last July, I have spoken with both Roger and your father in hopes of reaching a prompt conclusion. In fact, I had a lunch arranged with Chuck before the election that he had to cancel because of other commitments. I have tried to reschedule but have not yet been successful.

Without presenting a thorough legal analysis, this is my perspective:

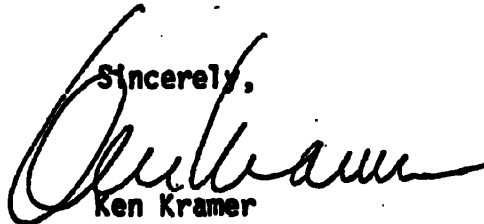
1. A well known industry professional has advised that it is highly unusual for compensation to be based on both a substantial monthly retainer and a substantial production fee.
2. The agreement dated January 2, 1986 covers brochures. An additional charge of \$1000 for a brochure prepared after the agreement's effective date is inconsistent with this agreement.
3. The agreement dated July 20, 1986 covers direct mail. An additional charge of \$4,500 for nine direct mail letters is inconsistent with this agreement.
4. There is no contract for image analysis for which you billed the campaign \$3,655.
5. At least one of your projects was never used and the total cost was lost to the campaign. While I do not think it would be helpful at this time to rehash the subject, I'm enclosing a copy of the piece in question which the campaign withheld from distribution.
6. No creditor has ever been paid interest or attorneys fees for which you claim \$6,625.
7. A typical settlement was the one made with Freeman Decorating. The campaign owed Freeman an undisputed \$18,366.34 and settled for \$3,000, about 16%. A copy of the relevant material is inclosed for your perusal.

8. The campaign has very limited resources. The only creditor issue now remaining unresolved is yours. Because the campaign is incorporated and because your contracts were executed by two related parties, even if it was determined after litigation that the campaign owed you money, I would not be held personally liable.
9. The campaign does not acknowledge that any sums are owing to you. In fact, if sued, it will make a substantial counterclaim for damages based upon, among other things, paragraphs 1 through 6 and 8.
10. Consider the following:

Latest Invoice:	\$24,303.96
Less: 1,000 (para 2)	
4,500 (para 3)	
3,655 (para 4)	
<u>6,265 (para 6)</u>	
	-15,420.00
Sub Total:	<u>8,883.96</u>
at 16 % (para 7)	<u>x .16</u>
Adjusted Invoice:	1,421.43

11. I would like to resolve this matter once and for all. Based on the foregoing, without in anyway acknowledging liability, enclosed is a check for \$ 2,000.00, your endorsement on which constitutes your acceptance of settlement and full release of liability. To your benefit, no adjustments have been made based on paragraphs 1 and 5.

Sincerely,



Ken Kramer

KK:btu
Enclosure



Direct Marketing Resources

2001 Western Avenue #311 • Seattle, Washington 98121 • (206) 441-4665 (Main office)
500 Wall Street, Suite 311 • Seattle, Washington 98121 • (206) 441-4665 (Main office)
3800 N. Fairfax, #1702 • Arlington, Virginia 22203 • (703) 524-4613

April 6, 1989

Mr. Kenneth B. Kramer
1400 S. Joyce Street C801
Arlington, VA 22202

Dear Ken,

I too would like to resolve this matter between us. However, your recent offer is far from acceptable.

Regarding the questions you raised:

1. There are many methods that can be used to pay for services. The one we came to agreement on is quite common and used by many mail and media agencies. The amounts and percentage that was agreed to was lower than the mail agency (Odell Roper) I replaced. Jack Carter and Doug Watts directed the change in agencies and I was accepted, in part, because my retainer and percentage was quite a bit lower than Odell Roper and other agencies who bid on the job. I was also willing to accept a flexible payment plan. And, as I recall, you were quite pleased with the savings. Further, many parts to the printing and mail products I produced were purchased at wholesale and sold to your campaign below what your campaign could have bought them for directly from the vendor.
2. I didn't originally want to write your brochures, because I don't like the headaches one has to go through with brochures, but I agreed to write them for \$500/ brochure. \$500 of this figure was for spending a few days taking photographs of you. This wasn't called for in the contract and was by a verbal agreement. Remember the day I spent with you and your kids. Then I went with you and Rodger to by plane to Southwest Colorado. The other session was with you in DC right after the Challenger accident. You had paid a lot of money for other photographers who's photos didn't turn out. The photographs I took were used. \$500 for a couple days of photo work is quite cheap. In any case the invoices covering these were paid and are not of issue to me.
3. By verbal agreement with Rodger, I agreed to write these letters that were produced by the Senate Committee and to waive rights to production and production fees so the Senate Committee could produce and mail these using their non-profit postage permit. This was done to save the campaign money and to get the most out of your fundraising effort. If you prefer we can apply the 17% percentage on production mark-up to these mailings. Without

spending time to figure this out, I suspect it would amount to to a sum of over fifteen thousand dollars. In any regard, this figure was agreed to by the campaign.

4. Doug Watts originally wanted to do Image Analysis early in the campaign, but because money was short it was put off until later in the campaign. The Steering Committee later agreed that it should be done. Image Analysis was paid for and you participated in the process. This was also a verbal agreement. I prefer not to make your Image Analysis report part of a public record with what was involved with Image Analysis and I don't think you would either. Part of Image Analysis was the use of Voice Stress Analysis on Tim Wirth. Voice Stress Analysis is also known as a form of lie detection and would undoubtedly be described as such by the media.

On this re-occurring issue of non contractual items, there is nothing unusual about purchasing items or services without contracts or to reach agreement on service or product purchased outside of established contracts. To establish additional formal contracts or contract changes during the heat of a campaign would be pointless and waste time when there is no time to waste. I would suspect there were dozens of non-contractual expenditures and commitments made each week in your campaign (as well as every campaign).

Also many of these items such as Image Analysis were paid for by a specific dollar amount for a specific invoice. It wasn't until the very last of the campaign that items weren't paid. Those are the dollar figures I'm attempting to collect.

5. The brochure in question was used and, was even reordered. As far as any problems involved, the artwork and copy was approved. There was a question when it was delivered regarding print quality. The pieces people at that time were referring to were "gearing-up" pieces. Those are pieces where the printer is adjusting ink and aren't intended to be used. Also with this brochure, a gun was put to my head and the campaign was strongly requested by Sherry Manning to use the services of Pat Bueyer and her printer.
6. The contract called for this and it is quite common.
- 7,8, and 9. I would expect #9. I have witnesses, non related, who are willing to make statements saying you directed Rodger to sign the second contract. The pre-primary contract was reviewed by Jack Carter and Doug Watts and without going through my files, I think that was paid in full.

I'm not an attorney, but when I remember incorporating I was told that incorporation can't be used to escape liability.

As far as other creditors who've settled for whatever percentage, that is their business. I also recall that some people were paid their contracts after being fired to make them happy.

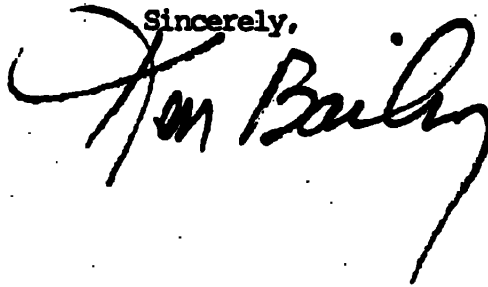
I realize these secondary issues come up. This works both ways. You turned down offers for help to eliminate your debt and instead choose to run for Congress while maintaining Senate debt. In my mind this doesn't show a good intent to resolve this matter.

I don't wish to spend the time it will take to go through litigation. As far as any claims regarding I damaged you and your campaign some how is absurd.

Ken, there were several times in the campaign where I acted as banker and paid suppliers with my money when the campaign had none (We all know printers rarely extend credit to campaigns) in order to get things, like fundraising mail, done. I did this in part out of loyalty. I did expect, however, to be paid in full and to have contracts honored.

Ken, I realize you may want to discuss this over the phone. I have an attorney who is handling this for me, please call him. His name is Peter Nichols and his phone number is: (206) 522-8334.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Bailey". The signature is fluid and cursive, with a large, sweeping initial "T" and a long, trailing flourish at the end.

**PETER J. NICHOLS
ATTORNEY AT LAW**

**MAILING ADDRESS:
9500 ROOSEVELT WAY N.E.
SUITE 302
SEATTLE, WA 98115**

**TELEPHONE:
(206) 522-8334**

June 27, 1989

**Mr. Kenneth Kramer
1400 S. Joyce Street C801
Arlington, VA 22202**

RE: Direct Marketing Resources Inc. v. Kramer

Dear Mr. Kramer,

In our last phone conversation my client offered to settle this matter with you for \$17,938.95. This was approximately a \$7,000.00 discount on what is owed to my client.

I have been authorized to extend the offer to July 10, 1989 in a good faith effort to settle this matter.

Should you choose not to settle the matter I have enclosed a copy of our Summons and Complaint to be filed in King County Superior Court. We believe that there are ample contacts with the State of Washington to allow us jurisdiction by virtue of the Washington "Long-Arm" Statute.

Further, I am enclosing a copy of your campaign's letterhead. I find no wording that the Kramer Campaign is incorporated or in any way has limited liability, which as you know is a requirement for notifying people that they are dealing with an entity with limited liability.

Please send a cashier's check for \$17,938.95 by July 10, 1989 or in the alternative send the Acceptance of Service and Consent to Jurisdiction form to me and we will let the judge decide this matter.

Very Truly Yours,


**Peter J. Nichols
Attorney At Law**

cc: Mr. Ken Bailey

KENNETH B. KRAMER
1400 S. JOYCE STREET C801
ARLINGTON, VIRGINIA 22202

July 18, 1989

Mr. Chuck Bailey
3800 N. Fairfax #1702
Arlington, VA 22203

Dear Chuck:

It was good to meet with you last week. Your weight reduction program was very evident. Congratulations, you look great.

Enclosed is a copy of the contract, dated February 3, which Bruce Kopper located and which I mentioned at our meeting. As you will note, there are some inconsistencies with the contracts dated January 2 and July 20 forwarded by Ken, copies of which are also enclosed.

Given the circumstances of this case, I believe that a judge would conclude that the February 3 document, the only contract approved by campaign counsel who was also an unrelated third party, would govern.

Among the most noteworthy consequences of such governance is a contract that is effective for both the primary and general, thereby invalidating the other contracts which, in sum, provide more for DMR and less for the campaign:

1. The Feb. 3 agreement calls for only 16% production fees, not 17%.
2. It calls for a monthly retainer of \$2000 per month for the duration of the campaign with no increase to \$4000 per month for the general.
3. It does not provide for attorneys fees.
4. It provides for the development of all letters and brochures without permitting separate charges for additional projects.

Additionally Chuck, the Washington Secretary of State advises that Direct Marketing Resources is not now, nor has ever been, a Washington corporation. DMR never held itself out to be a corporation in any of the enclosed agreements. Therefore, because both your address as well as Ken's are on the letterhead, the most reasonable conclusion is that DMR is a partnership between you and your son. Especially because of this issue, and the one concerning which contract governs, any suit would likely have to include both you and Roger as parties.

It is my hope that we can still settle this matter on a reasonable basis. While I understand Ken's feeling that he cannot simply walk away, from our perspective, \$18,000 is just not in the ballpark. We are prepared to treat Ken as favorably as all other creditors have been treated since I began settling these debts. Given the less than clear nature of this matter, I believe that most people would conclude that this is fair.

It would be nice to get this matter behind all of us so we can go on to more productive activities. I agree with you totally that this is really old history that needs to be resolved without thousands of dollars in legal fees. Please let me hear from you.

Sincerely,



Ken Kramer

KK:btu

Enclosure

Hope to see you again soon.

BC - Bruce Kopper

OF ACTIONS

CLE 80

Personal Actions

ns of this article were repealed and reenacted in elimination of sections as well as subject matter. o 1986, see this article as contained in the original including amendments thereto through L. 85 as 3 volume.)

inations, although barring the use of a claim for has run, is not a bar to asserting that claim as & Trust Corp., 645 P.2d 7 (Colo. 1982) and Dawe 16 (Colo. 1984).

ourt of Appeals that for purposes of the statute vil rights claims are to be generally and uniformly lved, as actions for injury to personal rights, see 84), aff'd, 471 U.S. 261, 105 S. Ct. 1938, 85 L. with the statute of limitations in actions brought School Dist. No. 49, 655 P.2d 422 (Colo. App. 167 (10th Cir. 1984). For article, "Civil Rights", dealing with the applicable statute of limitations 62 Den. U.L. Rev. 67 (1985).

ropriation of trade secrets, see § 7-74-107.

concerning real property, see part 1 of article 41

reme Court Review of Tenth Circuit Decisions", ing with the applicable statute of limitations for 3 Den. U.L. Rev. 473 (1986). For article, "Legal by and Dangerous Industry", see 15 Colo. Law, it Reform Legislation", see 15 Colo. Law. 1363

- 13-80-109. Limitations apply to noncompulsory counter-claims and setoffs.
- 13-80-110. Causes barred in state of origin.
- 13-80-111. Commencement of new action upon involuntary dismissal.
- 13-80-112. When action survives death.
- 13-80-113. New promise - effect of payment.
- 13-80-114. Promise by one of parties in joint interest.
- 13-80-115. Endorsement by payee - effect.
- 13-80-116. Action against joint debtors or obligors.
- 13-80-117. No dismissal for nonjoinder.
- 13-80-118. Absence or concealment of a party subject to suit.
- 13-80-119. Injury sustained while in commission of a felonious act or in flight from the commission of a felonious act.

13-80-101. General limitation of actions - three years. (1) The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, shall be commenced within three years after the cause of action accrues, and not thereafter:

(a) All contract actions, including personal contracts and actions under the "Uniform Commercial Code", except section 4-6-111, C.R.S., and except as otherwise provided in section 13-80-103.5;

(b) Repealed, L. 86, p. 708, § 5, effective July 1, 1986.

(c) All actions for fraud, misrepresentation, concealment, or deceit except those in section 13-80-102 (1) (f) or section 13-80-103 (1) (f) or (1) (g);

(d) All actions for restraint of trade;

(e) Repealed, L. 87, p. 600, § 38, effective July 10, 1987.

(f) All actions for breach of trust or breach of fiduciary duty;

(g) All claims under the "Uniform Consumer Credit Code", except section 5-5-202 (6), C.R.S.;

(h) All actions of replevin or for taking, detaining, or converting goods or chattels, except as otherwise provided in section 13-80-103.5;

(i) All actions under the "Motor Vehicle Financial Responsibility Act", article 7 of title 42, C.R.S.;

(j) All actions under the "Colorado Auto Accident Reparations Act", part 7 of article 4 of title 10, C.R.S.;

(k) All actions accruing outside this state if the limitation of actions of the place where the cause of action accrued is greater than that of this state;

(l) All actions of debt under section 40-30-102, C.R.S.;

(m) All actions for recovery of erroneous or excessive refunds of any tax under section 39-21-102, C.R.S.

Source: L. 86, p. 695, § 1; L. 86, pp. 707, 708, § § 1, 4; L. 87, pp. 538, 567, 600, § § 10, 1, 38.

Editor's note: Subsection (1)(k) is amended and subsection (1)(l) and (1)(m) are enacted by chapter 108, Session Laws of Colorado 1987, subsection (1)(k) is amended by chapters 108 and 94, and subsection (1)(k) is repealed by chapter 113, Session Laws of Colorado 1987. Section 9 of chapter 108 provides that the act set out in that chapter is effective July 1, 1987, and applies to claims for relief arising on or after said date and also provides that any action commenced on or after July 1, 1987, to assert a claim for relief arising before July 1, 1987, shall be commenced within the time limits applicable to such claim when it arose. Section 12 of chapter 94, Session Laws of Colorado 1987, provides that the act set out in that chapter is effective July 1, 1987, and applies to any recovery fund application filed or any administrative fine imposed on or after said date.

- I. General Consideration.
- II. Paragraph (a).
- A. Applicability.
- B. Nonapplicability.
- III. Paragraph (c).
- A. In General.
- B. Applicability.
- IV. Paragraph (f).
- V. Paragraph (k).
- I. GENERAL CONSIDERATION.
- Annotation's note. For cases concerning when a cause of action accrues under this section, see the annotations to § 13-80-108.
- Law review. For article, "Federal Practice and Procedure", see 56 Den. L.J. 491 (1979). For article, "Securities", see 59 Den. L.J. 367 (1982). For article, "Will Contests - Some Procedural Aspects", see 15 Colo. Law. 787 (1986). For article, "Tort Reform's Impact on Contract Law", see 15 Colo. Law. 2206 (1986).
- Purpose of statute of limitations is to promote justice, discourage unnecessary delay and forestall the prosecution of stale claims. Colorado State Bd. of Medical Exmrs. v. Jorgensen, 198 Colo. 275, 599 P.2d 869 (1979).

action for the recovery of a penalty of a penal statute within the interment of the one year limitation period of this section. *Palmer v. A.H. Robins Co., Inc.*, 684 P.2d 187 (Colo. 1984).

Claim must sustain cause independent of tort action. Where plaintiff's claim for exemplary damages was incapable of sustaining an independent cause of action but instead was dependent upon the underlying tort claim, plaintiff's claim for punitive damages was not a suit or action for a penalty or forfeiture. *Dorney v. Harris*, 482 F. Supp. 323 (D. Colo. 1980).

Claim alleging violation of fiduciary duties not action for penalty or forfeiture. Plaintiff's claim for relief alleging violation of fiduciary duties by the defendant, and seeking punitive damages for actions allegedly attended by circumstances of fraud, insult, and wanton and reckless disregard of the plaintiff's rights was not an action for a penalty or forfeiture within the meaning of this section. *Resource Exploration & Mining, Inc. v. Irel Corp.*, 492 F. Supp. 515 (D. Colo. 1980).

Nor claim based upon § 13-21-102. This section does not apply to exemplary damage claims. *Moore v. Platte Valley Bank*, 634 P.2d 1036 (Colo. App. 1981).

Punitive damages. Claims for punitive damages under § 13-21-102, being ancillary to an independent civil claim for actual damages, is not an action for the recovery of a penalty of a penal statute within the interment of the limitation period of this section. *Palmer v. A.H. Robins Co., Inc.*, 684 P.2d 187 (Colo. 1984).

Penalty may be provided for in separate statute. Where the general assembly has selected a one-year limitation period for statutes providing for penalties, it is inconsequential whether the penalty is provided for within the statute establishing the underlying cause of action, or in a separate statute which is parasitic to the existence of the underlying cause of action. The legislative intent to penalize and the legislative intent to limit the time within which such penalty actions may be brought remain the same. *Sherwood v. Graco, Inc.*, 427 F. Supp. 155 (D. Colo. 1977).

While this section has been applied to statutes which contain both a substantive cause of action and a penalty provision for noncompliance, there is no indication that it is limited to such applications. *Sherwood v. Graco, Inc.*, 427 F. Supp. 155 (D. Colo. 1977).

This section applies to recovery of penalty for unjust discrimination in freight charges. Section 40-31-102 providing for the recovery

this section. *Goodridge v. Union Pac. Ry.*, 35 F.35 (8th Cir. 1888).

For inapplicability of this section to a private treble damage suit under federal antitrust laws, see *Wolf Sales Co. v. Rudolph Wurlitzer Co.*, 105 F. Supp. 506 (D. Colo. 1952).

This section does not apply to proceedings before public utilities commission seeking reparation for excessive charges for service. *Bonfills v. Public Util. Comm'n*, 67 Colo. 563, 189 P. 773 (1920).

This section does not apply to penalties for nonpayment of taxes. Penalties that are added to taxes as damages or interest on account of nonpayment are not such penalties as are contemplated by this section. *Pinnacle Gold Mining Co. v. People*, 38 Colo. 86, 143 P. 837 (1914).

Statute is not suspended by institution of suit by foreign corporation which failed to pay privilege tax. The attempted institution of an action in the courts of Colorado by a corporation organized under the laws of another state, which has not paid the privilege fee imposed by the statute, has not the effect to stay the statute of the statute of limitations. When the statutory period has elapsed the action is barred even though during the whole of that period the action appeared upon the docket of the court as a pending action, and the corpora-

tion afterwards paid the tax. *Western Elec. Co. v. Pickett*, 51 Colo. 415, 118 P. 988 (1911).

A general denial presents the defense of the limitation prescribed by this section. *Western Elec. Co. v. Pickett*, 51 Colo. 415, 118 P. 988 (1911).

Rule that statute is deemed waived if not pleaded does not apply. The general rule in civil actions that the statute of limitations is a special privilege, and must be pleaded in apt time, or is deemed waived, does not apply to penal actions. *Atchison, T. & S. F. R. R. v. Tanner*, 19 Colo. 559, 36 P. 541 (1894).

If plaintiff fails to bring suit in a year, he has no cause of action. When a penal statute gives plaintiff the right to recover a penalty by suing for it, this section makes his cause of action dependent upon his bringing suit within a certain period; so that if he fails to bring his suit within such period he has no cause of action remaining. *Atchison, T. & S. F. R. R. v. Tanner*, 19 Colo. 559, 36 P. 541 (1894).

The treble damages provision of § 38-12-103, being penal in nature, is governed by the one-year statute of limitations; however, the recovery of the actual security deposit and the award of attorney's fees, being remedial in nature, are limited by the six-year statute of limitations. *Carlson v. McCoy*, 193 Colo. 391, 566 P.2d 1073 (1977).

13-80-103.5. General limitation of actions - six years. (1) The following actions shall be commenced within six years after the cause of action accrues, and not thereafter.

(a) All actions to recover a liquidated debt or an unliquidated, determinable amount of money due to the person bringing the action, all actions for the enforcement of rights set forth in any instrument securing the payment of or evidencing any debt, and all actions of replevin to recover the possession of personal property encumbered under any instrument securing any debt.

(b) All actions for arrears of rent.

Source: R & RE, L. 86, p. 697, § 1; L. 87, p. 568, § 4.

Editor's note: Section 9 of chapter 108, Session Laws of Colorado 1987, provides that the act amending subsection (1)(a) is effective July 1, 1987, and applies to claims for relief arising on or after said date and also provides that any action commenced on or after July 1, 1987, to assert a claim for relief arising before July 1, 1987, shall be commenced within the time limits applicable to such claim when it arose.

- I. General Consideration.
- II. Applicable Actions.
- I. GENERAL CONSIDERATION.

Annotation's notes. (1) Since § 13-80-103.5 is similar to former § 13-80-110 as it existed

this article, relevant cases construing that provision have been included in the annotations of this section.

(2) For cases concerning when a cause of action accrues under this section, see the annotations to § 13-80-108.
Law reviews. For article, "State Statutes of

Bulk Transfers

4-6-111

the auctioneer to perform any of these duties does not, of the sale or the title of the purchasers, but if the auctioneer, he auction constitutes a bulk transfer such failure renders him liable to the creditors of the transferor as a class for the sums on the transferor up to but not exceeding the net proceeds of the auctioneer consists of several persons their liability.

p. 1405, § 1; C.R.S. 1963, § 155-6-108.

-Colorado legislative change: Colorado did not adopt the optional paragraph of this section and reference to said paragraph has been deleted from the

OFFICIAL COMMENT

-y Provisions: None.

live so far as they are concerned whether or not the section is complied with. Subsection (4) therefore states a sanction which does not affect the purchasers. Notice that the sanction applies only "if the auctioneer knows that the auction constitutes a bulk transfer." No doubt in some cases, as for instance when goods are simply received on consignment for sale, he may not know.

Cross References:
Point 1: Sections 4-6-104 through 4-6-107.
Point 2: Sections 4-6-104 through 4-6-107.

Definitional Cross References:
"Bulk transfer", Section 4-6-102.
"Creditor", Sections 4-1-201 and 4-6-109.
"Person", Section 4-1-201.
"Purchaser", Section 4-1-201.

ANNOTATION

to creditors and notice,
ch 4-6-107.
m. Jur.2d, Fraudulent
.. 271.

creditors protected - credit for payment to particular creditors of the transferor mentioned in this article are those held by the transferor in transactions or events occurring before the bulk transfer; 6) become such after notice to creditors is given (sections 23-27) are not entitled to notice.

p. 1406, § 1; C.R.S. 1963, § 155-6-109.

Colorado legislative change: Colorado did not adopt the optional subsection reference to said subsection has been deleted from the official comment.

Uniform Statutory Provision: None.

Subsection (1) identifies the creditors who may have rights under the various provisions of this Article. The claims referred to of course include unliquidated claims.

Cross References:

ANNOTATION

Cross reference. As to creditors and notice, see § § 4-6-104 through 4-6-108.
7 Am. Jur. See 37 Am. Jur.2d, **Fraudulent Conveyances**, § § 270, 271.

C.J.S. See 37 C.J.S., Fraudulent Conveyances, § 479.

4.6-110. Subsequent transfers. When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this article, then:

(2) A purchaser for value in good faith and without such notice takes freed of such defect.

Source: L. 65, p. 1406, § 1; C.R.S. 1963, § 155-6-110

OFFICIAL COMMENT

Prior Uniform Statutory Provision: None.

1. The section deals with subsequent transfers by the transferee.

7. The second transfer may of course itself be a "bulk transfer" subject to this Article. Whether it is or not will depend on its own character under Sections 6-102 and 6-103.

ANNOTATION

Crossreference. As to "bulk transfers" and transfers excepted from this article, see §§ 4-6-102 and 4-6-103.
Am. Jur. See 37 Am. Jur.2d, *Fraudulent Conveyances*, § 275.

C.J.S. See 37 C.J.S., Fraudulent Conveyances, § 486.

4-6-111. Limitation of actions and levies. No action under this article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery.

Source: L. 65, p. 1406, § 1; C.R.S. 1963, § 155-6-111.

OFFICIAL COMMENT

Prior Uniform Statutory Provision: None

1. This Article imposes unusual obligations on buyers of property. A short statute of limitations is therefore appropriate.
2. The main sanction for non-compliance with the Article is that the transfer "is ineffective against any creditor of the trans-