

Salient correspondence with Pat Wegner of the District Attorney's Office:

From: 19ranger57@earthlink.net [mailto:19ranger57@earthlink.net]
Sent: Wednesday, February 14, 2007 4:54 AM
To: Pat Wegner
Cc: 19ranger57
Subject: Writ of quo warrantor

Re: Smith v. Mullarkey, et al. (criminal complaint):

Dear Ms. Wegner:

Before I can initiate a proceeding in the nature of quo warranto, the appropriate district attorney's office must either formally or implicitly decline to bring the action. Would you kindly indicate in your correspondence that you have considered this remedy, so that I can include it in my Motion for Relief pursuant to CRS 16-5-209?

Quick and dirty research:

Where by statute authority is given to a particular officer, its exercise by any other officer is forbidden by implication. *Atchison, T. & S. F. R. R. v. People*, 5 Colo. 60 (1879). [As such, a judge from a court that doesn't have jurisdiction as a matter of statutory law cannot exercise the authority of the judge that does.]

District attorney is proper officer to determine whether public interest is involved. Under subsection (a)(3), the district attorney is the proper officer to determine in the first instance whether the public interest is involved, and whether or not a franchise, as contemplated by that provision, is properly an issue. *People v. Painless Parker Dentist*, 85 Colo. 304, 275 P. 928, cert. denied, 280 U.S. 566, 50 S. Ct. 25, 74 L. Ed. 620 (1929).

Refusal of district attorney to bring action is sufficient to authorize action by private parties. It was alleged and proven that the district attorney upon request made by relators and their attorneys and upon complaint being submitted to him, refused to prosecute the proceedings, and under the circumstances in this case such refusal was sufficient to authorize the court to permit the prosecution upon the relation of such private parties without the aid or sanction of the district attorney. *Canon City Labor Club v. People ex rel. Jamieson*, 21 Colo. App. 37, 121 P. 120 (1912). [Court permission is no longer required by statute, however.]

A plaintiff must have some interest in the matter before he would be entitled to institute such proceedings. *People ex rel. Byers v. Grand River Bridge Co.*, 13 Colo. 11, 21 P. 898 (1899); *People ex rel. Weisbrod v. Lockhard*, 26 Colo. App. 439, 143 P. 273 (1914), aff'd, 65 Colo. 558, 178 P. 565 (1919). [Clearly, I meet this test.]

Rule 106(a)(3): When any person usurps, intrudes into, or unlawfully holds or exercises any office or franchise, the district attorney of the proper district may and, when directed by the governor so to do, shall bring an action against such person in the name of the people of the state, but if the district attorney declines so to do, it may be brought upon the relation and complaint of any person. The Rule heretofore existing requiring leave of

court to institute such proceedings is hereby abolished. When such an action is brought against a defendant alleged to have usurped, intruded into, or who allegedly unlawfully holds or exercises any public office, civil or military, or any franchise it shall be given precedence over other civil actions except similar actions previously commenced. The judgment may determine the rightful holder of the office or franchise; [The key phrase, of course, is "intrudes into."]

Rule 106(b) Limitations as to Time. Where a statute provides for review of the acts of any governmental body or officer or judicial body by certiorari or other writ, or for a proceeding in quo warranto, relief therein provided may be had under this Rule. If no time within which review may be sought is provided by any statute, a complaint seeking review under subsection (a)(4) of this Rule shall be filed in the district court not later than thirty days after the final decision of the body or officer. A timely complaint may be amended at any time with leave of the court, for good cause shown, to add, dismiss or substitute parties, and such amendment shall relate back to the date of filing of the original complaint. [No statute of limitations problem here.]

Thank you for your prompt attention to this matter.

Ken Smith (19ranger57@earthlink.net)

Ms. Wegner's response:

From: [Pat Wegner](mailto:Pat.Wegner@earthlink.net)
To: 19ranger57@earthlink.net
Sent: 2/14/2007 8:40:53 AM
Subject: RE: Writ of quo warrantor

We have not received the Economic Crime complaint and documents or transactions showing allegations of theft or securities fraud, the areas which our unit prosecutes.

My befuddled reply:

From: 19ranger57@earthlink.net [mailto:19ranger57@earthlink.net]
Sent: Wednesday, February 14, 2007 9:09 AM
To: Pat Wegner; Lynn Kimbrough
Subject: RE: Writ of quo warrantor

With all respect, Pat, as I pointed that out to Ms(?) Kimbrough, it was not a matter logically prosecuted by your Economic Crimes unit. I presumed that your people would see that immediately, and refer the matter to the proper unit.

What happened to the documents? I am sending the pdf files again; please advise me as soon as possible if you do not receive them and I will fax them.

Time is of the essence in this matter, as I will be testifying before the Judiciary Committee next week.

Thank you for your attention to this matter.
Regards, Ken Smith

Ms. Wegner's response:

From: [Pat Wegner](#)

To: 19ranger57@earthlink.net

Sent: 2/14/2007 9:26:00 AM

Subject: RE: Writ of quo warrantor

The files you sent were received. There is no appropriate unit at our office for your issues, as we have no regulatory authority over the named principals or the actions in question.

My astonished reply:

Pat:

Wait a minute! Are you telling me that you **do not** have jurisdiction over acts of criminal misconduct committed by public officials entirely within the City and County of Denver?!? Can you give me a citation to the Colorado Revised Statutes to that effect? If you can't -- and can't identify the state agency which would have lawful jurisdiction -- then I would cordially suggest that you run this opinion by Mr. Morrissey, as no one is supposed to be above the law. In England, they even chopped off the King's head! -- are our judges even higher than they are?!? With all respect, what you have told me makes precisely no sense.

Thank you for your prompt attention to this matter.

Regards, Ken Smith

(Although she is normally quite prompt, she has not responded.)