

The Order of the Court is stated below:

Dated: May 05, 2017
12:48:08 PM

/s/ CHRISTINE JOHNSON
District Court Judge



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**IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH**

RAMON ALFREDO SOMOZA,
Petitioner,

v.

**STATE RECORDS COMMITTEE, AND
UTAH COUNTY,**
Respondent.

**ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS**

Case No. 150401904

Judge Christine Johnson

This matter came before the Court for a hearing April 18, 2017, on Respondent's Motion to Dismiss Petitioner's Amended Complaint seeking judicial review of the State Records Committee's November 12, 2015, decision as well as review of the September 24, 2015, Utah County Board of Commissioners' decision. The Court, having reviewed the memoranda and having heard the parties' arguments, and being fully advised, now hereby rules as follows:

PROCEDURAL HISTORY AND RELEVANT FACTS

On September 24, 2015, the Utah County Board of Commissioners issued a decision on the Petitioner's appeal, upholding the denial of some documents that were withheld by the Utah County Attorney's Office previously. Thereafter, on October 20, 2015, the Petitioner filed a letter to the State Record's Committee, requesting additional time to prepare a notice of appeal. The letter did not include a copy of the decision being appealed, nor did it state the relief being sought, as such the State Records Committee could not construe the letter as a notice of appeal pursuant to Utah Code Ann. § 63G-2-403(2).

On October 29, 2015, the Petitioner filed a notice of appeal, beyond the 30 days of the Utah County Board of Commissioner's determination. On November 12, 2015, the State Records Committee reviewed the notice of appeal and determined that they could not hear it based on the untimeliness of the notice of appeal. The Petitioner has thereafter appealed the decision of the State Records Committee as well as the Decision of the Utah County Board of Commissioners by filing the current Amended Complaint.

LEGAL ANALYSIS

Appeals under GRAMA are allowed under a couple of different scenarios. Following an agency's denial, the aggrieved party can appeal the decision directly to the State Records Committee or Petition for Judicial Review initially. In this case, the Petitioner elected to seek review by the State Records Committee. Pursuant to Utah Code Ann. § 63G-2-403(1)(a), such an appeal needs to be filed "no later than 30 days **after the date of issuance.**" The phrase, "date of issuance," is the triggering date of how much time can transpire for a timely appeal to be filed. While the Court recognizes other situations where the measurement of time can be extended, for example, Utah R. Civ. P. 6 time can be computed by adding additional days for mailing; certainly, the legislature is aware of mechanisms where time can be extended to account for the

time notice takes to get from point A to point B. However, the legislature did not adopt that kind of language in Utah Code § 63G-2-403(1)(1), thus the “date of issuance” is the date when the 30-day time limit begins to run.

It would be a violation of the separation of powers and unconstitutional for this Court to attempt to rewrite the statute with language that would permit the Petitioner’s late filing of the notice of appeal to be considered. While the Court understands the practical difficulties, the Petitioner faces in filing a timely petition, it notes that filing a notice of appeal is not a significant document and does not require an involved process.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Judicial Review of the Utah County Board of Commissioners’ Decision

1. The Utah County Board of Commissioners issued its decision on September 24, 2015.
2. Petitioner filed his notice of appeal to the State Records Committee on October 29, 2015.
3. The notice of appeal was untimely because it was filed beyond the 30-day limit stated in Utah Code § 63G-2-403(1)(a), thus the State Records Committee was deprived of jurisdiction to even consider the merits of the claim.
4. The petition in this case, initially filed December 10, 2015, sought judicial review of the Utah County Board of Commissioner’s September 24, 2015, decision.
5. Because the State Record’s Committee was deprived of jurisdiction, the petition seeking review of the Utah County Board of Commissioners’ Decision can only then relate back to the September 24, decision.
6. Thus, the petition is well beyond the 30-day limit set forth in Utah Code 63G-2-404(1)(a) seeking judicial review, therefore this Court lacks subject matter jurisdiction to hear the petition.

Judicial Review of the State Records Committee’s November 12, 2015 Decision

- 7. The State Records Committee issued a decision on November 12, 2015, denying Petitioner a hearing regarding his notice of appeal of the Utah County Board of Commissioners’ Decision because it was untimely.
- 8. The petition in this case, as it relates to Judicial Review of the November 12th decision was timely. Utah Code § 63G-2-404(1)(a).
- 9. In reviewing the November 12th Decision, the Court finds itself in the same issue of timeliness because the State Records Committee only had before it an untimely notice of appeal.
- 10. The Court is left with the same timeline as stated above, the Utah County Board of Commissioners issued its decision on September 24, 2015, and the Petitioner filed his notice of appeal on October 29, 2015.
- 11. The notice of appeal was untimely, beyond the 30 days, and the State Records Committee’s decision determining such was proper under Utah Code § 63G-2-403(1)(a).

ORDER

Now, therefore, IT IS HEREBY ORDERED that Respondent’s Motion to Dismiss shall be, and it is, GRANTED. IT IS HEREBY ORDERED that the complaint in this action shall be, and it is DISMISSED WITH PREJUDICE.

*****ENTERED AS OF THE DATE OF THE COURT’S ELECTRONIC*****
*****SIGNATURE AS SET FORTH AT THE TOP OF THE FIRST PAGE*****
*****END OF ORDER*****

CERTIFICATE OF SERVICE

I hereby certify that I delivered a true and correct copy of the foregoing **ORDER GRANTING RESPONDENT’S MOTION TO DISMISS**, this 21st day of April 2017, to the following:

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/s/ Poponatui M. Sitake _____
POPONATUI M. SITAKE