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**CITY OF SANTA FE**  
**ETHICS AND CAMPAIGN REVIEW BOARD**

**February 18, 2015**

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**MINUTES OF THE  
CITY OF SANTA FE**

**ETHICS AND CAMPAIGN REVIEW BOARD**

**WEDNESDAY, FEBRUARY 18, 2015**

**1. PROCEDURES**

**a) ROLL CALL**

A regular meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order by Justin Miller, chair on this date at approximately 3:00 pm in the City Council Chambers, 1<sup>st</sup> floor, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

**Members Present:**

Justin Miller, Chair  
Roderick Thompson, Vice Chair (arrived later)  
Paul L. Biderman  
Ruth Kovnat  
Kristina Martinez  
Seth McMillan

**Members Absent:**

Tara Lujan (excused)

**Staff Present:**

Yolanda Vigil, City Clerk  
Zachary Shandler, Assistant City Attorney

**Others Present:**

Karen Heldmeyer, former City Councilor  
Jim Harrington, Common Cause  
Members of the Public  
Charmaine Clair, Stenographer

**b) APPROVAL OF THE AGENDA**

**Ms. Martinez moved to approve the agenda as presented. Mr. Biderman seconded the motion, which was passed by unanimous voice vote.**

**c) APPROVAL OF THE MINUTES- February 09, 2015**

Page 6, third paragraph from the bottom: "Mr. Biderman said the US Supreme Court has taken *socirority* on a case out of Florida where the judge was disciplined for personally soliciting contributions for her

campaign" was corrected to : "Mr. Biderman said the US Supreme Court has taken certiorari on a case out..."

**Mr. Biderman moved to approve the minutes of February 09, 2015 as amended. Ms. Martinez seconded the motion which passed by unanimous voice vote.**

Chair Miller said the meeting on February 9<sup>th</sup> was productive and the Board heard from four candidates who gave their perspectives on Public Campaign Financing in the last election. Councilors Lindell, Bushee and Dimas and candidate Jeff Green told the Board about their experience with public financing.

He said he thought it worth mentioning that the candidates' areas of concern were similar to what was heard from the public and the Board. In particular the concern about coordination and taking steps to address the concern of coordination between publically financed campaigns, outside groups and the influence of outside groups and what some call "dark money".

Chair Miller said the main subject of this meeting is to address coordination. The subcommittee worked in the interim on that subject and on independent expenditures. He turned the floor over to the Ms. Kovnat to share the subcommittee report.

## **2. DISCUSSION AND POSSIBLE ACTION**

- a) Coordination between Candidates and/or Their Campaigns and Independent Expenditure Groups or Individuals.
  - 1) Subcommittee Report (Commissioner Biderman, Commissioner Lujan and Commissioner Kovnat)
  - 2) Memo re: Coordination and Independent Expenditures.(Zachary Shandler)
  - 3) Proposals to Revise Ordinances.

Ms. Kovnat explained that the subcommittee report was included in the packet and she would summarize the report. A summary of the report follows:

- The subcommittee first wanted to develop rules to define coordination and/or independent expenditures. The rules suggested are not in a final statutory language and come from a combination of sources: House Bill 278 (HB 278); Senator Wirth's bill, which contains definitions of coordinated expenses and expended expenses. The Brennan Center Report was a source for ideas going beyond the proposed HB 278; and other jurisdictions, particularly from Philadelphia ethics. The ideas were put together in the form of proposals.
- Secondly, the subcommittee discussed how the rules should be promulgated; by an amendment to the Campaign Code and Public Finance Code and a recommendation to those codes to the governing body. Or promulgated by means of the Board's power to publish in the rules and regulations. The subcommittee asked direction from City Attorney Shandler as to whether the Board has the power to promulgate the rules, rather than by ordinance.
- The third discussion was that the Board should provide guidance and guidance scenarios training that will give further help to potential candidates and the public.

Ms. Kovnat said the report starts with the general definition of coordination: *an expenditure made by a so called independent group that was requested or directed by a campaign*. In addition, a coordination of an expenditure is an expenditure made in cooperation, consultation, concert (existing language in the code) with a campaign.

Ms. Kovnat said the rest of the ideas are intended to flesh out what is meant by cooperation, consultation, and concert and she provided examples. She said the example was used from HB 278: *'substantial includes, but is not limited to, the exchange of campaign strategy or information, etc. that would facilitate the election and the defeat of the identified candidate'*.

She went on to review the report (a) through (g) of the definition of a coordinated expenditure.

Ms. Kovnat said the subcommittee also tried to address a problem raised by the public. They added a proviso that an expenditure would not be considered a coordinated expenditure if the spender of the campaign uses the same vendors, so long as there is a firewall prior to the expenditure. She defined firewall as a formal written policy that is distributed to all relevant people affected by the policy and prohibits the flow of information between the agents of the spender and the agents of the candidate and the campaign. She explained that the candidate has the obligation to ensure such a firewall exists.

She reviewed provisos of things that will not be considered a coordinated expense, including if a person/group introduces or endorses a candidate; obtained a biography, a press release, etc. that is publicly available material about a candidate; or has invited the candidate to make an appearance before the group.

Ms. Kovnat said regarding the problem raised of sharing space; the general rule of sharing a vendor and physical space in the absence of a firewall described previously would constitute coordination. The subcommittee wanted to be clear it is not a coordinated expenditure merely because a candidate and a group shared space for single events of limited duration.

She said the Board left open how the rules to the ordinance should be promulgated, whether by amendment to the ordinance or if the Board has the power to promulgate under their procedural rule-making powers.

Mr. Biderman emphasized that this is just a starting point to get the discussion started.

Chair Miller asked Mr. Shandler for his comments about the Board's authority or powers.

Mr. Shandler said some would think that the subcommittee report has a lot of words to put into the ordinance. He said if that is the case and they want to make a change, changes would have to go through the ordinance process again.

He suggested the Administrative Rule could have less formal language and provide examples; page 7, tab 2b in the state law provides examples of proof that expenditures were made. The following page states that the examples are illustrations. He said it is unusual language for a statute and that language is more commonly found in the Administrative Rules.

Mr. Shandler said the state level has a simple process where the legislature gives a body the power to make rules and there is a formal rule-making process. A branch of state government compiles the rules as the New Mexico Administrative Code and that can be found online.

Mr. Shandler said the City of Santa Fe does not usually grant a body broad rule-making power and Chapter 25 is an example of the process to change the rules to an ordinance.

He pointed out a possible exception in the Board's powers and duties. He read that City Council said: '*or shall establish reasonable rules of practice and procedure and are not in conflict with city code*'. He said an argument could be made that the Board has the powers to establish rules, but a counter argument could be that the power is only for *procedural* rules. He said some could say these are substantive, not procedural rules and the Board might want to do substantive-like rules should they be enshrined in the ordinance.

Ms. Kovnat said as cumbersome as the state language is, it is statutory language. She said the subcommittee could come up with explanatory rules, but she is worried that it is significant enough that it should get a full vetting and go through the governing body.

Mr. Biderman said the section 6-16.2(B) talks about establishing the Board's authority to establish rules of practice and procedure. He said the language after that states that the Board '*can also develop explanatory material designed to educate the public to encourage voluntary compliance and to ensure fair and prompt disposition of alleged violations*'. He thought if the Board is to develop materials to explain that, that authority might be broad enough to say that the Board's rules are setting violations or encouraging voluntary compliance. He said that said; he agrees with Ms. Kovnat anyway.

Ms. Kovnat said the other issue is the confusion about enforcement powers; if simply in the rule and not a part of the ordinance. She agreed there are a lot of words to put in the statute, but had concern about enforcement.

Mr. McMillan said he agrees with Ms. Kovnat's analysis.

Chair Miller said he also agrees. He sees the Board's role as to provide guidance after the Governing Body has put substantive provisions in the code. He said he would hesitate to enact rules or promulgate rules that differ from the code that would be binding on candidates.

Chair Miller asked where this will go in the code.

Ms. Kovnat said she sees this going to the definition of contribution, which is important in both the Public Campaign Finance Code and the Campaign Code. She said there are questions of limitation and of disclosure and this would be relevant to both.

Ms. Martinez asked how the subcommittee developed examples of what would be coordination.

Ms. Kovnat said the subcommittee was aware of the case law that precludes regulation of independent expenditures. Then the subcommittee started to look at the FEC (the Federal Election Commission) federal regulation of the issue and found that the FEC deadlocked on the question of what is coordination.

She said Senator Wirth's proposal is the primary source of the ideas of what constitutes coordination and independent expenditures. The subcommittee then looked at the Brennan Center Report that goes beyond Senator Wirth's proposal and also was guided from proposals from Philadelphia.

Mr. McMillan said the use of the term "firewall" resonates from the Board's deliberations and struggles last year with the complaint filed against now- Mayor Gonzales.

Ms. Kovnat explained that the Brennan Center Report surveyed the state laws and chose the most powerfully enforced laws. They identified the firewall feature as the most present and strongest in the state laws.

Ms. Kovnat said the general idea is that the candidate establishes a PAC, then any expenditures made by that PAC are coordinated. A candidate or an agent of the candidate that requests that a PAC spend money is coordination. She said trickier is the overlap of employees and leaders and that is present in many state laws and is a recommendation of the Brennan Center. She said that is just to limit the use of people who work for a candidate and right away go to a leadership role in the PAC and is where the twelve month period came from; some have shorter periods of one hundred twenty days.

Mr. McMillan asked if the "cooling off" period had been challenged in courts in other states.

Ms. Kovnat said she was not aware of any. She said Mr. Shandler pointed out the Tenth Circuit court King case (*Republican Party v. King*) in his memo and that gives pause, but enough have put that into their systems that the Board should at least think about the cooling off period.

Mr. Biderman said the overall approach taken by the subcommittee was to provide detail and specific examples. He said the problems that have been arising come from different interpretations and different perspectives on the ordinance and in the fast pace of an election, the last thing they want is uncertainty.

He said in this case the subcommittee wants a lot of the detail that gives guidance in advance so people know exactly what to do and not to do. That gives people confidence if they know that they are complying with the explicit rules. He said he would not mind adding more restrictions given the circumstances, because the issue is not helped if resolved after the fact. The issues need to be decided in advance so people are clear about the limits.

Mr. Biderman said since the subcommittee will be looking at what coordination is and is not; if the standard is not precise it will be hard to expect others to make a decision on the fly. The approach the subcommittee is taking is for that reason.

Mr. McMillan agreed. He said having been part of the body that deliberated the complaint against now-Mayor Gonzales; something like this would have been nice to have as they worked through a very tricky issue. He said he appreciated the level of detail and thought more detail is probably better.

Ms. Kovnat said she recalled in a past meeting that Ms. Martinez suggested that training is also part of the Board's responsibilities to ward off problems. She said it is not just to have the provisions enforced, but to have training and provide examples and scenarios that are available to the candidates.

Ms. Kovnat said the problem is that if there is a complaint, the Board is an adjudicatory body and would need to afford people due process. They do not want to interfere with the people's right to choose. She said there is a delicate balance between guarding against violation and unduly affecting an election, instead of letting voters make their decision based on facts.

Chair Miller said that raised a question about the adjudication of a complaint under one of these points. The subcommittee report suggests that it is *presumed* to be coordinated if these conditions prevail. He asked how a public candidate could rebut the presumption if there is a complaint alleging coordination; is this structured as a rebuttable presumption.

Ms. Kovnat said the Connecticut law provides nine rebuttable presumptions of coordination in the definition of independent expenditures. Their general language is already present in Santa Fe's ordinance about expenditures made in '*cooperation, consultation or concert at the request, suggestion or direction of, or pursuant with general or particular understanding*' is not a dependent expenditure presumption. She said the subcommittee also thought along those lines.

Chair Miller asked Mr. Shandler to talk about the memo he prepared and the Case Law Authorities.

Mr. Shandler said starting with the memo dated February 12, 2015 in the packet regarding what is coordination. He said the Board was asked to research two issues; 1) should the ECRB be a watchdog body or an investigative body on coordination issues. He said his advice is that he prefers this be a policy decision. He said Ms. Kovnat has talked about policy considerations and perhaps when the Board determines substantively what they want the law to read, they can look at the Administrative Procedures.

He said simple things encountered at the staff level could speed things up, such as when there is a complaint having to file by certified mail rather than email. Small changes could speed up the process, streamline and possibly alleviate the gap of when a complaint is filed and the time that a ruling is made. He deferred to the Board as a policymaking body to decide what they want their role to be.

Mr. Shandler said the second issue was what is coordination. He said he provided examples of when something is considered coordination and when it is not. He also provided a recent newspaper article on a case where someone was criminally convicted of not having a firewall. He said he would point out so the public could trace the thinking that the Brennan Center for Justice on page five of the material, fourth bullet point uses the word "firewall".

Chair Miller said he is struck by the simplicity of the Brennan Report versus the detailed Connecticut approach. He asked if this was the test that the FEC follows to determine under federal law whether candidates are coordinated.

Mr. Shandler said yes, but it is a summarized version of the FEC webpage, which is many pages and equally complex.

Mr. Shandler said on page 13, the Connecticut law is another source of material and has nine examples; and page 17 of the packet is from Philadelphia. The 1.39 (a-f) and the House Bill [278] are sources for the public to read to see how the subcommittee arrived at where they are. He said he also has a handout of relevant Case Law Authorities (Exhibit 1) dealing largely with coordination and a few matching issues.

Mr. Shandler said two cases caught his eye: the *Republican Party v. King* case out of New Mexico, which was largely about New Mexico's law on contributions. He said at the end of the opinion it referenced the overlap of a treasurer of an independent group who was also chairman of the Bernalillo County Republican Party. The court did not rule on whether that was coordination or not.

He said the most recent was the *Democratic Governors Association v. Brandi*, a US District Court case out of Connecticut. The governor was raising money in 2011 for the Democratic Governor Association and in 2014 the Association wanted to use some of the money for expenditures on the governor's behalf. The Connecticut law withstood legal challenge.

Mr. Biderman suggested the Board hear from the public before taking action.

## **PUBLIC COMMENT**

*Mr. Jim Harrington* said he had a comment that is substantive and complicated. His comment applies to the last paragraph of the first page of the subcommittee's memo describing the kind of communications capable of being coordinated. He said the statement of the standard does not go as far as those cases allow.

He said Citizens United made the contention that since their communications were not unambiguously campaign related they did not have to disclose. He said the Supreme Court rejected their contention and said it is sufficient. He said later the Seventh Circuit departed from all other circuits and said part of Citizens United was confined to broadcast communications and did not apply to newspapers and internet communication, etc. He said there is no suggestion that Citizens United intended to define their communications like that. The Tenth Circuit went the other direction in a different case.

Mr. Harrington said the best case Vermont Right to Life, 2014 Second Circuit opinion discusses the Seventh Circuit case and explains why that was wrong. The case also departs from the Tenth Circuit on whether you can have the same PAC engage in independent spending and coordinated spending. He said with respect to independent expenditures, the law seems to be that you can cover expressed advocacy at any time or electioneering communications; things that mention a candidate.

He said in all those cases establishing limits of whether you can regulate required disclosure, they make clear they are talking about independent expenditures. The scope would be much broader if coordinated. He said when putting together HB 278 a suggestion was made to broaden the definition of coordinated expenditure. He said a coordinated expenditure does not have to expressly advocate.

Mr. Harrington said currently as it stands a candidate would be able to coordinate with a PAC for a publication a week before the election of an ad that said "*Mayor Gonzales is doing a terrible job*", because it does not unambiguously urge people to vote against him or mention the election.

Mr. Harrington suggested the Board look at HB 278 and the definition of coordinated expenditure.

*Mr. Fred Rowe* said he is speaking as the president of the Neighborhood Law Center. The Center is pleased that the Board and the subcommittee has come forth with concrete proposals that wrestle the primary issue tainting the last election; namely the "double dipping" by candidates taking public funds and benefiting from PAC or other outside private funds and the unfairness that causes competitors.

He said some candidates expressed their concern about the unfairness of the process and lamented the entire public financing process; including the Mayor who was the prime beneficiary of the double expenditures. He said public financing is included in the Santa Fe City Charter and the city is stuck with the system. They must do the best they can to establish a public financing system.

Mr. Rowe said similarly of great concern is the Supreme Court and its tilt under the First Amendment to allow Campaign Financing expenditures that may or may not be prejudicial under the system. He asked the Board to keep in mind that the decision does not specifically address the kind of expenditures being considered to reform the city's existing system.

He said with regard to the reforms, he would suggest that apart from the concept of coordination, the Board should stress more the concept of *concert* as distinct from coordination. He said the word concert permits a broader reach into activities opposed to coordination, which indicates some requirement of affirmative integrities.

Mr. Rowe said likewise there was discussion about the process by which the Board should express its suggestions for reform, whether by rule making or by City Council action. He suggests that the reforms proposed by the Board go to City Council for approval. He said if City Council approval is not sought then during a critical time in the next election campaign at the Board's suggestion of improper activity, some could say the "Council has not decided this". He would advise that the Board seek council approval for its reforms whether expressed by rules approved by the City Council, or in the form of code amendments made by the Council.

He said he would also suggest that the Board consider at the same time a rule that provides 24-7 intervention by the Board the week before the election; lest it be like the last election that was said it was too late and nothing could be done. He said the public would benefit by a fairer process if the Board has a process in place to provide expeditious emergency-type handing of these situations.

Mr. Rowe said finally in addition to the reform indicated by the subcommittee report, he suggests the Board consider the concept incorporated in the proposal made by Councilor Ives: *as a condition for receiving public funds, the candidate should refund any PAC contribution amount by way of giving back part of the sixty thousand dollars.* He said if couched as a voluntary suggestion made by the Board/Council to candidates to voluntarily as they accept public funds; indicate that they do not wish to accept/disapprove of PAC contributions and consider giving back some of the money to the city. He said if done on a voluntary basis this would not offend against the Supreme Court and the candidates, as a matter of public relations to voters, may volunteer as opposed to double dipping.

*Ms. Chris Furlanetto* Action Advocacy Chairperson for the League of Women Voters in Santa Fe County said the League wrote the Board in January to express their support for publicly financed campaigns. She said she would expand on a couple of those points today.

She said the League has officially supported public financing of campaigns since 1974; however, their position is a general one and does not address the particular problems that occurred with the publicly financed campaigns during the last city election. She said the League is reviewing its positions and hopes to have specific recommendations in a year or two.

*Ms. Furlanetto* said they support HB 278 and feels it would update current law to comply with recent court rulings and defines *independent expenditure* and *coordination* and increased penalties for violations-all positive changes for the voters. The League encouraged the Board to consider and recommend to the governing body similar legislative remedies to strengthen Santa Fe's Public Campaign Finance Ordinance.

She said the League hopes that Santa Fe will seek stronger ordinance and Campaign Finance rules including increased disclosure; increased penalties for violations and the information up front to candidates regarding what is and what is not allowed. She said the League urges the Board to improve the existing legislation as they move forward.

*Ms. Karen Heldmeyer* clarified that she is speaking as a citizen. She thanked the Board for including the material on line. She said there are several good reasons for Public Campaign Financing; one is that it allows candidates to run who are not as financially well off as other candidates; and as pointed out by Mr. Green, allows candidates to run whose supporters may not be as financially well off. She said most who voted for the Charter Review Amendment for Public Campaign Financing wanted to take the corrupting influence of money out of the campaign.

Ms. Heldmeyer passed out copies of the Journal editorial (Exhibit 2) from last week that was against public financing and said there is no hope. She said that is also the view of many people she has talked to in the community.

Ms. Heldmeyer said looking at the information provided by Mr. Shandler and in the Brennan Report, there are good ideas, but enforcement may be a problem. She said it is easy to change the nameplates around and have figure heads while others are talking about what is really happening in the back room.

She said a firewall is not a bad idea to remind people of what they should be doing, but again, most of the activity considered coordination would take place in the campaign itself and the backrooms. She said information would probably come mostly from whistleblowers or accidental disclosures. She said it is frightening to her that this might be going on while someone takes public money and also takes a huge chunk of money from others and no one knows.

Ms. Heldmeyer said she would recommend an ordinance, but whatever the Board does should have teeth. She said it is good to put out rules, suggestions and examples, but there must be the threat of enforcement or it will not work.

She thanked the Board for spending time on the issue and for a very thorough subcommittee report. She said she hopes they will get to a place where the public has more faith in the public finance system.

Mr. Harrington said the Journal will publish the Common Cause response to the editorial on Friday. He said the Board is just beginning to determine how to improve the public financing system and address problems with the PAC. He was shocked that the Journal and a former Councilor said that what the Board is undertaking is hopeless and the system is a complete failure and should be repealed.

He said besides being premature, the statement is wrong; what failed in the last election was not public financing. He said that was Santa Fe's unique attempt to do a public financing system in which the publically financed candidates have no means to respond when they found themselves facing serious spending from PACs and other candidates.

He said all full public financing systems were forced into that by Arizona Free Enterprise, but Santa Fe was the only city that tried to do it that way. He said everywhere else addressed the problem by giving candidates a way to get access to additional funds. Common Cause proposes small scale private fundraising and a match from the city.

Mr. Harrington said the important point is that what failed was not public financing.

*Judy Klinger* said she agreed with Ms. Heldmeyer and she agrees that enforcement is a huge problem. She asked who will be the enforcer and will an entity be assigned to prove this. She said one document on line asked if there would be a proactive investigation or a reaction to a private complaint. She said that is a huge question.

She said the subcommittee report says "evidence of substantial discussion". She asked how do you define or quantify that; that is vague. She asked how you would define "at the request or suggestion of a candidate". She said the "cooling off" period also raises questions for her and she is not sure about the 12 month period either; some states have no time frame.

Ms. Klinger said she has a concern about someone who is actively working for a campaign and his partner was in charge of an entity who was giving the candidate money on the side. She said were they

having discussion; who knows. Ms. Klinger said they were living together and it is hard to believe the two were not coordinating.

Ms. Klinger said she is also concerned about the attitudes of individuals that said that it is "not illegal for PACs to give money", so it is okay if certain people accept the money. She said that denigrates the entire political process and legal system and it is not playing by the rules. She said it feels "sleazy" and does not make it right just because someone tweaks the rules to meet their own needs.

Ms. Klinger asked when someone is supposedly guilty of coordination; what happens then; what is the timeframe if that happens within an election campaign and how will that be addressed.

*Elizabeth West* said she is impressed that the Board is attempting this and she personally finds it fascinating. She said when talking with her family about this, it occurred to her that when things are fuzzy the public is forced to do a lot of the work to bring problems to everyone's attention. She said timing and enforcement are tricky and enforcement is easier if the terms are understandable.

*Mr. Thompson* entered the meeting at 4:24 p.m.

Ms. West said she wondered about the training and if that would be public. She said when the Board discussed *explicit* rules; that is another word that is tricky. She asked exactly what is "explicit". She said there is a lot of vagueness. She said Councilor Lindell talked about the need to be 'very explicit' about what people have done with their money or who was helping them. She said that would be one avenue she thought would be good to look at.

Mr. Biderman said one thing that came up was to get this before the City Council. He said the Board has already set a June deadline as their goal so City Council would have time to act and ultimately adopt an ordinance. He said this particular item might be so sensitive and difficult it might be worth one more attempt to open up written public comment for suggestions, between now and the next meeting. He said the Board could then come up with a final decision on this at the next meeting and move forward with the other items.

Chair Miller said that is important. He said after hearing a lot of positive feedback on the subcommittee's report, the next charge of the subcommittee and Mr. Shandler would be to take the ideas and translate them into ordinance language. The discussion could then continue with words on paper that ultimately would have Board recommendations. He said that will allow continued public comment now and also at the next meeting. Mr. Biderman agreed.

Ms. Kovnat thought it would be useful if Mr. Shandler would pick up on Mr. Harrington's suggestion to broaden the language with respect to communications when putting into statutory language. She said the subcommittee had discussed that and she thought agrees with Mr. Harrington's comments.

Mr. Shandler said he would be happy to work with his coworker Melissa Byers on the legislative language and have that available with a link for the public to review. He said the idea is that nothing would be written in stone on the language.

Ms. Kovnat said she wanted to respond to public comment. She said they all have the desire and the need for specificity and certainty, but that is not possible to put into a law code in every instance. She said if people are worried that there may be law breakers that is not an argument for having no law; and is an argument for *having* law. She hopes that the Board can combat cynicism by coming up with principles that the public has confidence in within the realm of possibilities.

Mr. Biderman said he has taught Ethics to quite a few public officials; some who really caught on and some who went to jail. He said there will be people who stretch rules as far as they can, but the more rules the Board can put in, especially in this case, the more likely those who want to comply will have guidance on how to comply. The few who want to ignore the advice and break the laws will and should be caught.

He said a number of people appropriately raised questions about enforcement and how to initiate an investigation and inquiries. He said that is not in the list of topics that the subcommittee presented; although it could go into "Additional Issues" at the end.

Chair Miller said the Board could discuss that under Item (c). He said the Board has been focusing on coordination and independent expenditure issues and should bring that to final product. He said they should begin to stagger and develop their work on other issues.

He asked to clarify the direction to the subcommittee and staff: to translate the recommendations from the subcommittee into ordinance language, with consideration to view the definition of expenditures to attempt to bring in Mr. Harrington's suggestions. He asked if there are other points on the subcommittee report that members wanted to tweak, change or provide more direction.

Mr. Biderman said he would like to see options in the draft of what it would look like to talk about coordination and "acting in concert".

Ms. Martinez thanked the subcommittee for the report. She said it was very good and she knew the report was hard work.

#### b) Update on Status of Campaign Laws at the State Legislature

Mr. Biderman said he looked at the status of some of the bills that stood out in both elections and ethics. He gave a brief status report as follows:

- Senator Wirth's Bill (Senate Bill #58 Campaign Public Financing Changes: received a 'do pass' from Senate Rules as amended and is awaiting hearing in Senate Judiciary.
- House Bill #205 (Representative Garcia) to add legislators to the publicly financed state races (currently 15 judges and 5 PRC Commissioners) has a 'do pass' as amended from House Government Elections and Indian Affairs and is scheduled in the House Judiciary Committee.
- House Bill #278 (Senator Wirth/Jim Smith) on Campaign Finance reform will be getting its first hearing tomorrow in the House Safety and Civil Affairs Committee and then referred to House Government Elections and Indian Affairs followed by the House Judiciary.
- House Bill #115 (Representative Egolf) is a State Ethics Commission bill set for hearing in House Government Elections and Indian Affairs on Friday.
- House Bill #289 (Senator Wirth) public financing of legislative races is in Senate Rules and appears to be the parallel bill to Representative Garcia's bill.

#### c) Next Meeting and Topics for Consideration

Chair Miller said he thought two issues appropriate to start work on. He said as Mr. Harrington spoke of, there is not an opportunity for publicly financed candidates to have access to further money. He added that the matching issue, disclosure and transparency issues are big issues and the enforcement issue he could see down the road.

Ms. Kovnat said coordination had been bumped to first place because of the public comment. She said the big question is the reform of the Public Finance Code. She noted that the subcommittee has not yet looked at the proposal from Mr. Harrington or the alternatives. She suggested the Board address that issue first, because of the impact on so many other things and the other issues will be taken up accordingly.

Mr. Biderman said one of the items at the January meeting was disincentives to participation in public financing, such as independent groups to spend unlimited money. He said another item was a proposal to make public financing attractive to future candidates. He thought those could be merged to discuss jointly at the next meeting. He said the flip side to what they have been talking about in terms of coordination is the concern about driving people away from public financing; either because the rules were too complex or too restrictive.

### **3. BOARD MATTERS**

Mr. Thompson apologized for being late. Chair Miller confirmed that the Board did receive his notice and everyone understood he was held up because court ran late.

### **4. PUBLIC COMMENT**

Mr. Harrington said in reference to HB 278 on coordination, the Bill can be confusing because there is a new section with examples at the beginning and the definition later. He said it was the definition on page 13 that he was calling attention to and comparing on pages 15 and 16 with the definition on independent expenditure.

He said on the subcommittee's draft on the second page, paragraph (f) the word *advertising* is used and was from HB 278, but the bill has a definition that excludes media articles. He said there is no definition in the city's code. He said if the Board intends to preserve a media exemption they should clarify that the paragraph is not talking about the New Mexican quoting a candidate's statement, etc. and is about republishing campaign statements/materials.

Mr. Harrington said he agrees with Mr. Rowe that making the proposal voluntary to give back money is constitutionally fine, but he is not sure that will work.

Mr. Biderman said he welcomes additional comments from the public before the next meeting, so the Board could incorporate other ideas they may have missed into their work.

### **5. ADJOURNMENT**

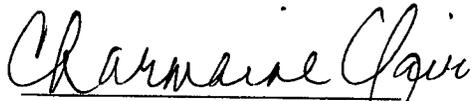
*There being no further matters to discuss and the agenda having been completed, the meeting adjourned at 4:45 p.m.*

Approved by:

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Justin Miller, Chair

Submitted by:

  
Charmaine Clair, Stenographer