

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

February 09, 2015

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**MINUTES OF THE
CITY OF SANTA FE**

ETHICS AND CAMPAIGN REVIEW BOARD

FEBRUARY 09, 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, 1st 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
Paul L. Biderman
Tara Lujan

Members Absent:

Ruth Kovnat (excused)
Kristina Martinez (excused)
Seth McMillan (excused)

Staff Present:

Yolanda Vigil, City Clerk
Zachary Shandler, Assistant City Attorney

Others Present:

Councilor Signe Lindell,
Councilor Patti Bushee
Councilor Bill Dimas
Karen Heldmeyer, former City Councilor
Jeff Green, former candidate
Jim Harrington, Common Cause
Charmaine Clair, Stenographer

b) APPROVAL OF THE AGENDA

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

c) APPROVAL OF THE MINUTES- January 21, 2015

Page 2, Item 2 (a), last sentence: "The subcommittee recommended that the focus for the Board" should be corrected to: *The subcommittee recommended that be the focus of the Board.*

Page 10, paragraph number four, second line: "He added that he strongly supports (rank? - inaudible) - the word in question was *choice* and should read: "...he strongly supports Rank Choice voting."

Mr. Biderman moved to approve the minutes of January 21, 2015 as amended. Mr. Thompson seconded the motion which passed by unanimous voice vote.

2. DISCUSSION AND POSSIBLE ACTION

a) Candidate Experiences and Recommendations Regarding Public Financing of Campaigns.

Chair Miller explained that the Ethics and Campaign Review Board (ECRB) is charged with reviewing and making recommendations to the Governing Body on improvements to the ethics and campaign-related laws in the Municipal Code.

He said the Board has had a few meetings geared toward that purpose and recently met on the 21st of January. He said at that time the Board heard public comment on issues, concerns and thoughts moving forward.

Chair Miller summarized the public comments and areas of interest to the public:

- There is significant focus on the question of outside money, particularly in publicly financed campaigns and the coordination between candidates and campaign committees and outside sources.
- A disclosure of PAC expenditures and contributions.
- The appropriate authority of the ECRB regarding budget, subpoena powers and the ability to act promptly and proactively and to issue advisory opinions.
- Concerns regarding whether public money should be provided to unopposed candidates; an interest in making public financing more attractive; and to allow publicly financed candidates to raise additional money that would be matched by the public campaign funds.
- An interest in the implementation of Rank Choice voting.
- Questions regarding the appropriate use of public finance money, such as payment to a candidate (himself/herself).
- Issues such as house party exception and if appropriate to maintain that in the code.

- The theft of campaign material for appropriate enforcement and if the code could be improved to address similar issues.
- A question of whether publicly financed candidates should be required to participate in public forums as a condition of receiving public money.

Chair Miller said the Board discussed this would be a process to develop recommendations for the Governing Body and the intent is to prepare recommendations to present to the Governing Body by June. Chair Miller said the Board has adopted a schedule and will meet every third Wednesday of the month between now and June, with additional meetings as necessary. The meeting schedule is posted on the city website and has been announced in a press release. The Board would like as many as possible to participate in the process and feels a series of meetings will allow people time to prepare and participate.

He said the Board also thought it would be invaluable to hear from candidates who chose to participate in public funding and those who did not. He said candidates were invited to present their views, thoughts and experiences with campaigning and campaign laws and particularly public funding. Candidates unable to attend were extended an invitation to submit their thoughts in writing at any time or to express their views at any of the meetings.

Chair Miller thanked candidates for participating today. He asked Councilor Signe Lindell to start.

Councilor Lindell thanked the chair and the Board for their work. She said what the Board is working on is a "tough nut to crack"; it hasn't been done on the national level and is hard to do locally. She said she thought when people voted for public financing, the thought was that public financing would somehow allow them to keep large amounts of outside money out of their campaigns. She said whether a person is publicly financed or raises their own money, there is no mechanism to keep large outside influence from coming in if they choose to.

She said another part of that is enforcement. She said the timeframe for enforcement is always quick and if something happens how soon could the Board meet; how soon could they make a decision and how soon could that be implemented and how would that really affect that cycle of campaigning.

Ms. Lindell said she was the only candidate in the last election that did not take public financing; she raised her own money. She said one proposal she read in terms of the amount of money for public financing, matched four to one. She calculated in the last election cycle a cost to the city could be \$660k (thousand) per election cycle. She said she does not see that in the city budget.

She said she would like to see all campaigns turning in receipts. She stressed she did not think there is a need for the city clerk to audit those, but receipts should be there for public record. She said it is a big deal to her how the money was actually spent, particularly money that comes from the city.

Ms. Lindell said the code should have a mechanism for candidates to go back and forth; a candidate who starts out with public financing and whose opponent is privately financing, can change back to private financing or vice versa. She said that can be problematic for a candidate to start out with public financing and have someone come late into the race with large sums of money.

Ms. Lindell stood for questions.

Mr. Thompson asked is there a change in the public financing law that could have made her reconsider the use of the public financing system when she was a candidate.

Councilor Lindell said if she had been assured that outside money was not going to come in to an opponent. She said she was a first time candidate and if she had taken public financing and had an opponent who suddenly had vast amounts of outside money come in, that would have been disastrous. Councilor Lindell said she had no way of knowing. She decided to raise her own money; no small effort for a first time candidate.

Councilor Lindell thanked the Board again for their service and said this is very important.

Councilor Patti Bushee thanked the Board for their continued attention to this critical matter. She said she felt like she was part of a grand experiment that failed miserably. She has been in many elections and has always felt that the election started out as a fair fight. She said she was a big fan of the idea of public financing of campaigns.

She said when the first PAC formed and favored one candidate, she felt as though one hand was tied behind her back. She said by the third and fourth PAC she felt she was a target and her campaign and candidacy was targeted. She said it was not a fair fight with the first PAC and by the time she was exposed to dark outside money with no remedies offered through the city code or this Board or the City Attorney's interpretation of the code; there was no race left and it was not a fair fight.

Councilor Bushee said money was not the issue in the campaign. She said it was unbelievable that both she and Mr. Dimas were capped and they just had volunteer campaigns in the old fashion way and on a shoestring. She said they made the effort to raise many multiple five dollar contributions and follow the letter of the law and it was to say the least, disheartening.

She said she has served the community for some time and has run quite a few elections, but things changed at the Council level elections after former Councilor Wurzberger raised huge sums. She said former Mayor Coss upped the ante in the mayoral race, but that still did not involve outside dark money that would not admit they were there just for one candidate.

Councilor Bushee said she knows the Board is not allowed to impose a limit, but if there could be a way to have candidates say they will only spend \$15,000 and for mayoral races she thought \$75k would be plenty. She said then everyone is on a fair playing field.

She said as the system is now, she thought good candidates will be discouraged from considering a run for local offices. She had thought the answer was public financing and had high hopes. She said within a short time frame there was no stopping the influence of the outside money. She said there was no way to refute that and she had no way to respond and it was not a fair fight. She said the Campaign Code could use a top to bottom review.

She said this is the first time that she had participated in a campaign where candidates were subject "machine politics". She said it was a serious web that was not going to allow a fair electoral process.

Councilor Bushee said she is sorry to say that now she does not think that financing of public campaigns is all that it was meant to be. She said she is not sure she would encourage candidates in the future to consider public financing if there is not a way to limit the influence of outside money.

Councilor Bushee thanked the Board for their time. She stood for questions.

Mr. Biderman asked Councilor Bushee if one approach is to make as expansive a definition of coordination as they can legally, given that the Citizens' United "firewall", which seems to break at the point where there is coordination. He said as long as there is no coordination there seems nothing anyone can do legally.

Councilor Bushee said there needs to be an expanded definition and an enforcement mechanism; a strong penalty. A penalty like the candidate receiving the benefit of the coordination and/or outside money would lose all of the funding or have to pay it back. It is public money that is misused.

Mr. Biderman asked if Councilor Bushee would go so far as to call an end to the public financing rules if the system cannot be fixed.

Councilor Bushee said it is voluntary and people can choose to participate. She said it is an illusion that public finance creates a level playing field. She would let people know the potential to fall into that pit if coordination occurs. She said the saddest part in the process for her was that she knew it was coordination and she knew the players. She said it was too little too late built into the ordinance to do anything and the legal interpretation was not there either to stop the "steam rolling". She said no one would even call it "coordination" but it was hard from her vantage point to not describe it as that.

Councilor Bill Dimas thanked Ms. Vigil and Mr. Shandler. He said the city staff did an outstanding job in the last election and tried to keep things on the up and up as much as possible. He said he owes them a great deal of gratitude and was always treated well during the election.

He said he was on the board when City Councilors were on the Ethics Board and they had no answers then either. He said they didn't have public financing, but they also didn't seem to have the problems of today. He said when public financing came into play it seemed the problems started to evolve.

Councilor Dimas said in his experience public financing did not work at all. He knew there would be a lot of outside dark money coming in and money wins elections. He said out of the six elections he has been in he has never used public campaign financing. He said the job ahead for the Board will be difficult, because PACs are not illegal and as long as they are not, there is not much that can be done.

He said he was approached by two organizations that wanted to form PACs for him and he refused. He said the idea of public campaign financing was to level the playing field and once PACs came in the playing field was one-sided. He said during the election outside groups from Albuquerque approached people who displayed his signs in front of their homes. The PACs tried several times to talk them into supporting the other candidate.

Councilor Dimas said he was attacked a lot on Face Book, Twitter etc. He said social media was new to him and was utilized a lot during the campaign. There were some hurtful and nasty things said about him. He said he will never forget those things and is still hurt by that.

Councilor Dimas said he and Mr. Biderman go back a ways; he was in the judiciary. He said if the same judicial code of ethics were in the city and local elections, the city would not have these problems. He thought incorporating some of the judicial standards and things done in judicial elections would make more of a level playing field.

Councilor Dimas said as judges they were never allowed to know who was giving them money and that way could not show favoritism in court for those who it contributed to their campaign. He liked the judicial elections because they ran on who they were and what they represented and most of the time honesty and integrity meant the most to people. He said people who know him know that he has always brought those things forward and he always will.

Council Dimas said he did not attend the forums, it wasn't mandatory. He said he advertised his meetings and in fact, he told people why he would not be a part of the forums. He said he met with people at his campaign headquarters for two hours every morning and they could ask any question and he met with the Chamber of Commerce. He said he had strongly suggested that organizations and special interest groups meet with the candidates individually and ask their questions and he was more than willing to do that.

He said he will not run for any other city office and based on what he has learned from the last election, has changed his mind about running for city politics. He said he chose not to use public campaign financing when he ran for City Council. He did not want to use taxpayer money and thought the city was spending way too much on elections. He said he didn't need \$15k and raised only \$8k and that was done the old-fashioned way going door to door. He said he was naïve to think \$60k would cover the campaign, but he did not use the full \$60k and turned money back in.

Councilor Dimas said he would never recommend a candidate use public campaign financing, because there would be other candidates who use PACs or anything else they need to win.

Councilor Dimas thanked the Board for their efforts and said their job will not be easy.

Mr. Biderman said he has often been tempted by the judicial rules and the hope that those could be adapted. He said the US Supreme Court has taken solicitor (?) on a case out of Florida where the judge was disciplined for personally soliciting contributions for her campaign. He said a judge is not supposed to do that. He said that is not a good sign given it is much the same court that decided Citizens United. He said was not sure they could continue to look to the judiciary as a model much longer.

Chair Miller asked if the problems Mr. Dimas mentioned in terms of outside money and PACs is made worse by public financing or it is just not adequate to address the problem.

Councilor Dimas said the temptation will always be there when using public campaign financing. He said the temptation is very great for outside money to come in; especially if a candidate knows another candidate is using public campaign financing. He said in a sense that did exacerbate the problem.

Mr. Jeff Green thanked Councilor Dimas for his service and Councilors Bushee and Lindell for coming to this forum. He said he brought up items last time that are in the minutes and would not talk about that again.

Mr. Green said he thinks candidates who receive public [financing] should be required to participate in public forums. He said he supports Councilor Lindell's idea that receipts should be turned in and has no problem with that not being audited. He said he agrees with Councilor Dimas that public financing did not work for him; he did not qualify. The qualification process is difficult and onerous especially if a candidate does not have a base of supporters and people to get the \$5 for the candidate. Mr. Green said his idea is to increase the signatures and that would decrease the concern about someone who does not have five dollars to give.

Mr. Green said when a candidate's goal is to talk to people and listen to their concerns and to present themselves in the best possible way; it is uncomfortable to ask for money, whether it is \$5 or 1000 dollars. He said the law should be reformed to make it easier for all candidates to qualify and that is important to implement as soon as possible.

Chair Miller asked if there are effective ways that a candidate could limit the impact of outside groups either by disavowing PACs or stating that they will not accept that type of contribution. He said it strikes him as difficult because the very definition of outside money is tied to the independence of those activities.

Mr. Green said that could be asked of Councilor Dimas who was able to do that and who dissuaded outside groups from supporting his campaign. He said the "winner of the election" commented that he did not support or accept that support, but the groups were still very active.

Mr. Thompson asked Mr. Green if he ran again if he would attempt to use public financing. Mr. Green replied since he has run he thought he could now raise the money more effectively and efficiently. He said he does not enjoy spending his time getting 300 \$5 donations and in that sense would have serious doubts about running.

Councilor Bushee said she thought they had the candidate that had the outside money (though they publicly disavowed that), but it is back to the definition of coordination and enforcement of that. She said even if you had a people's pledge program; how can they stop the outside money and the influences. She said she would love to hear from Assistant City Attorney Shandler how the city could conceivably enforce that.

Mr. Shandler said he would not make comments at this time. He said Councilor Bushee has raised a very good question and he will do some research.

Chair Miller thanked all of the candidates for addressing the Board. He said if something else comes to mind they can either let the Board know at the meeting or put that in writing. The Board would be happy to hear their thoughts.

He asked the Board members if they wanted to comment on anything the candidates mentioned.

Mr. Thompson said this is a serious indictment of the Public Campaign Finance system, to the point that he has changed his mind on the issue. He said it is bad when there is an intractable situation; if the Supreme Court says PACs and money-raising schemes are legal, how is a person able to fight "with one arm tied behind their back".

Mr. Thompson said he can see the good in the system if one where everyone could be forced to use the system. He said he had supported this [public financing] and now wonders how a great intentioned candidate can come out of a situation where clearly this is the "fault of the people and money rules the day". Mr. Thompson said people are not voting for well informed and well-intentioned reasons and if they were, then shame would work.

Mr. Thompson said shame will not work, especially regarding what Councilor Dimas said that 'from his perspective using the system was taking money from the city'. He said how many other people think that. He said this is a bad situation and he could not see what enforcement or auditing will do other than bring things out publicly to be reported by the newspapers. He said Public Campaign Financing should be repealed.

Mr. Biderman said the Board needs to realize that they are faced with a tough job, but an important one. He would not rule out any option at this point. He said there are ways to improve the public financing system; even if they do not end up with a level playing field. The system could be improved and some of the abuses could be removed and the public confidence in general would be retained and give a stronger opportunity to candidates. He said that is not perfect but might be better than not having the system at all. He said he is open-minded and the Board has a lot more work to do.

Ms. Lujan said she shared the same thoughts as Mr. Biderman. She said the Board is charged with doing their best and improving what the city has and it took a lot to get where they are. She thought some things can be improved and that is what the Board is working on.

She said there are many things the Board can continue to do and many things where Santa Fe can set a good example. She said she understands Mr. Thompson's perspective. She said she wanted to apologize to past candidates who had such a hard time with the elections. She said this is a new system and part of growing and they should keep the challenge and an open mind and keep moving forward.

Mr. Biderman said they should also keep in mind that the Supreme Court's decision behind the problems being confronted does not have to be permanent. He said so much is at stake and it is important and a fundamental issue for our democracy that pressure continues to come from states and cities in the way that it has. He said Santa Fe is not alone, many other places are trying to do the same thing and the message could keep percolating up. He said he hopes they can continue to develop models to set an example that will ultimately straighten this horrible situation out.

Chair Miller thanked the candidates for their thoughts as the Board moves forward.

3. BOARD MATTERS

Chair Miller said there are at least two issues he would like Mr. Biderman's comment on: one is the work the subcommittee is preparing for the next meeting on Wednesday, February 18th; and an update on what is happening regarding the campaign laws at the state legislature.

Mr. Biderman said regarding the legislature, the bills are just getting underway. He asked Mr. Harrington if he knew anything further.

Mr. Harrington replied there was a hearing on Senator Wirth's bills on the public financing proposal, but that was all.

Mr. Biderman said in regards to the subcommittee: they decided to break up the work they were assigned and present by topic to the full Board. The subcommittee will frame the issues and present proposals with options so the Board can consider alternatives. This will help to organize the work of the Board and be more efficient and gives the public advance notice and a chance to comment.

Chair Miller said his understanding is that the focus will be on coordination between campaigns and candidates and independent expenditure groups.

Ms. Lujan said that was correct. She said the subcommittee discussed how notifications of the meetings and getting the report and information out should be done. She asked how they should proceed.

Chair Miller said knowing the focus will make it easier to prepare the agenda and inform the public of what the next discussion will be.

4. PUBLIC COMMENT

Mr. Harrington said a grim picture was painted of the PAC activity in the last election and what that has done to the public financing in Santa Fe. He said he agrees something should be done, but the idea to simply repeal the public financing is to surrender to the big money system that has taken over the country and gradually at the city and state legislative level.

He said other than disclosure; public financing is the only thing the US Supreme Court has left them to try to combat the corrosive effect of big money politics. He said officials become dependent on big money; they know they need the favor of those interests to stay in office. Officials cannot offend the bankers and certain things will be off limits because it would cost them money they need to run for reelection.

He said in light of the Arizona Free Enterprise decision, the only way to make public financing effective against PAC activity is to get more money into it. That could be done by loosening the restrictions on private fundraising by a publicly financed candidate or by offering more public money. Common Cause thought it should be a combination of both.

Mr. Harrington said the only other way is, as Mr. Thompson said "to forget it". He said the evil is in the state legislature and city officials are dependent on wealthy private interests. He said if you want to put

a stop to that, the only way is to give candidates who do not want to be part of that enough money to run an effective campaign.

He said the system proposed by Common Cause would be more expensive, but not more than the system designed for the financing. He said he asked Councilor Lindell where she got her \$660k figure. He said it was by assuming that all three mayoral candidates and all 10 City Council candidates including one, who was unopposed, would have raised the maximum amount of private money and then would have received the maximum additional matching payment from the city.

Mr. Harrington said that is nonsense. He said as Councilor Dimas said, candidates have turned funds back in that they did not use. He said that scenario would never happen.

Ms. Heldmeyer said she had two points of clarification; one was if the subcommittee reports to be discussed would be available to the public before the meetings. Chair Miller replied if there is a report from the subcommittee the report will be made available.

Ms. Heldmeyer said the other is that neither this body nor the City Council could get rid of public financing. She said it is a charter amendment and that would take a change to the charter. She said the charter amendment passed with very strong support and it would be interesting to know if the support still exists or the public is willing to wash their hands of the whole thing.

Ms. Heldmeyer said also several candidates were asked if public financing has changed the way a candidate campaigns. She said there has always been dark money, but that has always been illegal and if it is illegal you can go after it. She noted that the Board was formed because of a dark money organization that did not register with the city.

She said the Board should consider that they would not suddenly turn every person in the city into a paragon of morality, but most of them are and want the law followed. She said there needs to be laws to protect people and their interests. She said when the charter was passed the majority really believed in public financing and if it continues, there has to be not just strong laws, but strong enforcement of the laws.

Chair Miller thanked Ms. Heldmeyer for her point reminding them about the city charter.

5. ADJOURNMENT

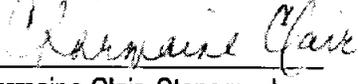
Mr. Thompson moved to adjourn the meeting. Ms. Lujan seconded the motion and the motion passed by unanimous voice vote.

There being no further matters to discuss and the agenda having been completed, the meeting adjourned at 4:12 p.m.

Approved by:

Justin Miller, Chair

Submitted by:



Charmaine Clair, Stenographer