



CITY ATTORNEY'S OFFICE ADVISORY MEMO

FOR PUBLIC DISTRIBUTION  
ANALYSIS FOR THE 2014 MUNICIPAL ELECTIONS ONLY

TO: YOLANDA Y. VIGIL, CITY CLERK  
FROM: ZACHARY SHANDLER, ASSISTANT CITY ATTORNEY *ZS*  
SUBJECT: E-SIGNATURES ON QUALIFYING CONTRIBUTION FORMS  
DATE: NOVEMBER 4, 2013

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Question Presented: May a citizen use an electronic signature on a qualifying contribution form?

Answer: No.

Analysis: On November 9, 2011, the City Attorney's Office issued an advisory opinion regarding: "Whether qualifying contributions, as defined and used in the Public Campaign Finance Code in Article 9-3 SFCC 1987, may be solicited and collected by electronic means such as through email communications, websites, online payment programs or similar means." It is our understanding that there have been some questions about how to properly interpret the advisory opinion.

Santa Fe City Code states: "Each qualifying contribution shall be accompanied by a form signed by the contributor...." SFCC 1987, § 9-3.7(A). The 2011 advisory opinion also stated: "Candidates must turn in copies of the qualifying contribution form signed by the contributor." It is significant that the plain language of the Code talks about signing the form. See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n, 2009-NMSC-013, ¶ 9, 146 N.M. 24, 206 P.3d 135 (statutory and regulatory language should be read according to its plain meaning).<sup>1</sup> "It cannot be disputed that when the legislature used the terms 'signature' and 'sign' it contemplated that a handwritten name would satisfy the requirement." Anderson v. Bell, 234 P.3d 1147, 1151 (Utah S.C. 2010) (superseded by state law).

It is generally understood that the goal of requiring a written signature (a/k/a genuine signature, wet signature) is to "aid in preventing forgery and other potential abuse." Ni v. Slocum, 196 Cal. App. 4<sup>th</sup> 1636, 1646 (Cal. App. 1, Dist., 2011). Election officials, when investigating a complaint regarding a fraudulent signature on an election document, will usually compare it against a signature on a person's voter registration card to ascertain the validity of signature. This can be a powerful tool. "Accordingly, signatures must also be declared invalid if the election official concludes that some person other than the signer inscribed the signer's ...information...." Id.

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<sup>1</sup> We also note that the Code and 2011 advisory letter do not refer to or use the phrase "electronic" signatures.

It is our understanding that there are now a variety of products on the market that allow a citizen to make an electronic donation and electronic signature (i.e. Echo Sign).<sup>2</sup> These products ask a citizen to type his/her name (i.e. Zachary Shandler) and then the product electronically populates the form using a cursive type font that makes it look like a signature (i.e. *Zachary Shandler*).

As stated above, if there was a complaint made against a campaign for submitting fraudulent signatures on qualifying contribution forms, it would be largely fruitless for election officials to compare the electronic signature against a voter's signature on the voter registration card. Instead, the guiding proposition should be "[i]n interpreting the election laws, we must give 'the utmost importance' to 'ensuring the integrity of the electoral process and of interpreting and applying the applicable constitutional and statutory provisions in a manner that closely safeguards the integrity of the process.'" *Id.* at 1653(citations omitted).

Based on the above, we conclude Santa Fe City Code (and the 2011 advisory letter) does not authorize a citizen to use an electronic signature on a qualifying contribution form.<sup>3</sup>

This does not mean the 2011 advisory opinion barred candidates from using some technology in the qualifying contribution form process. The 2011 advisory opinion stated: "[C]andidates may email the form to potential contributors, make a copy of the form available for download for campaign websites...." It further stated: "Potential contributors may then [complete it by] hand filling it out or filling it out through the use of electronic means...." This sentence means a potential contributor may fill out the form by hand or fill out only the identifying information (i.e. name, address) by populating the form electronically. The advisory opinion, however, states the next step is "signing the form." A potential contributor can then send the completed form by "hand-delivery, US mail, email or other electronic means" to the candidate's headquarters.

We acknowledge that the intersection of technology and election law is rapidly changing. It may be prudent for the Ethics and Campaign Review Board to study this issue as part of its review of the municipal election process. *See SFCC 1987, § 6-16.2(E)*. The *Ni* court noted that there is technology that can "act like an electronic pen and paper, allowing the voter to inscribe" a signature that generally matches a written signature. *Ni v. Slocum*, 196 Cal. App. 4<sup>th</sup> 1636, 1649 (Cal. App. 1, Dist., 2011). This may mean that a signature drawn by a stylus or from some sort of electronic tablet device may have some equivalency to a hand-written signature. The ECRB's challenge may be to balance out that the "[s]tatutory interpretation must be prepared to accommodate technological innovation, if the technology is otherwise consistent with the statutory scheme." *Id.* at 1652.

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<sup>2</sup> This letter is only focused on the electronic signature process of these products.

<sup>3</sup> Candidates should seek their own legal advice regarding compliance with state and local election laws. This memorandum is an advisory opinion only, intended to provide guidance to the City Clerk. This memorandum is prepared to generally address the question presented and does not account for specific situations facing a candidate or their campaign.

**CITY ATTORNEY'S OFFICE ADVISORY OPINION**

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FOR PUBLIC DISTRIBUTION  
ANALYSIS FOR THE 2014 MUNICIPAL ELECTIONS ONLY

TO: YOLANDA VIGIL, CITY CLERK  
FROM: ZACHARY SHANDLER, ASSISTANT CITY ATTORNEY 38  
CC: GENO ZAMORA, CITY ATTORNEY  
SUBJECT: BUSINESS CAN MAKE SEED MONEY CONTRIBUTION  
DATE: SEPTEMBER 11, 2013

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Question Presented: Can a business make a seed money contribution?

Answer: Yes.

Analysis: A political “contributor” can be an “individual contributor” or a “business contributor.” See SFCC 1987, § 9-2.3(H). A “business contributor” is “an individual who uses the assets of a business, corporation, partnership or political committee as a contribution or any business, corporation or political committee which makes a contribution.” SFCC 1987, § 9-2-3(H)(2). A seed money contribution is “a contribution of no more than one hundred dollars (\$100) made and accepted in compliance with the provisions of Section 9-3.6 SFCC 1987 and used exclusively for the purposed specified in that section.” SFCC 1987, § 9-3.3(O). Therefore, since a business can be a contributor and a contributor can make a seed money contribution, a business can make a seed money contribution.

The seed money contribution form has a line for “name of contributor” and this would be the appropriate place to list the name of the business. The form also has a line for “home address” of contributor—because the form follows the language of Section 9-3.6—but this would be an appropriate place to list the physical address of the business.<sup>1</sup>

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<sup>1</sup> One canon of statutory construction is if there is uncertainty about the interpretation of a term, one can look to how the term is used in a similarly related section. See *State v. Smith*, 2004-NMSC-032, ¶ 10, 136 N.M. 372, 98 P.3d 1022. The term business address is referred to as a “physical address” in a similarly related section. See SFCC 1987, § 9-2.11(A)(3).

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**CITY ATTORNEY'S OFFICE ADVISORY MEMO**

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FOR PUBLIC DISTRIBUTION  
ANALYSIS FOR 2014 MUNICIPAL ELECTIONS ONLY

**TO:** YOLANDA VIGIL, CITY CLERK  
**FROM:** GENO ZAMORA, CITY ATTORNEY  
**SUBJECT:** IN-KIND SEED MONEY CONTRIBUTIONS  
**DATE:** JUNE 17, 2013

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**Question Presented:** Whether candidates seeking to qualify for public financing for the March 2014 Mayor and Councilor elections may receive in-kind seed money contributions pursuant to the Public Campaign Finance Code, Article 9-3 SFCC 1987 (PCFC)? This advisory memorandum provides guidance to the City Clerk's office regarding City of Santa Fe campaign codes.<sup>1</sup>

**Answer:** Yes, subject to limitations. The PCFC includes in the definition of contribution a "gift" and "the transfer of anything of value ... for less than full consideration". See 9-3.3(E) and (E)(1)(b). Therefore, under the PCFC, in-kind seed money contributions are campaign contributions and, as a result, are subject to the PCFC's limitations on collection and use of seed money contributions.

- **Contribution limits.** A candidate collecting seed money contributions may seek "a contribution of no more than one hundred dollars (\$100.) made and accepted in compliance with the provisions of Section 9-3.6 SFCC 1987 and used exclusively for the purposes specified in that section". See 9-3.3(O). No single contributor may contribute more than \$100 in the aggregate to a campaign and a candidate's total seed money collections shall not exceed 10% of the monies available for the office sought. See 9-3.6(B).
- **Contribution uses.** Seed money contributions shall only be used to defray expenses incurred in obtaining qualifying contributions and in seeking certification as a candidate participating in public financing. See 9-3.6(A) and (D).

**Exception:** The term contribution specifically does not include "[a] volunteer's personal services provided without compensation". See 9-3.3(E)(2)(a). This exclusion is limited to the provision of services and it permits volunteers to provide any services to a candidate without any compensation. If some compensation is provided for services but paid at an amount that represents less than full consideration, then the difference between the amount paid and full value of the services shall be considered a contribution.

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<sup>1</sup> Candidates are responsible for understanding and complying with City of Santa campaign ordinances and should seek their own legal advice regarding compliance with state and local election laws. This memorandum is advisory only, intended to provide guidance to the City Clerk. This memorandum is prepared to generally address the questions presented and does not account for specific situations facing a candidate or their campaign.

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**CITY ATTORNEY'S OFFICE ADVISORY OPINION**

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FOR PUBLIC DISTRIBUTION  
ANALYSIS FOR 2012 MUNICIPAL ELECTIONS ONLY

**TO:** YOLANDA VIGIL, CITY CLERK

**FROM:** GENO ZAMORA, CITY ATTORNEY 

**SUBJECT:** ADVISORY OPINION REGARDING ELECTION AND CAMPAIGN CODES DEPOSIT OF QUALIFYING CONTRIBUTIONS AND UNUSED SEED MONEY WITH THE CITY OF SANTA FE.<sup>1</sup>

**DATE:** NOVEMBER 15, 2011

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**QUESTION**

Whether a candidate who has attempted to qualify for funding under the Public Finance Code (Article 9-3 SFCC 1987) by collecting qualifying contributions and seed money, but has ultimately not obtained public financing is required to: a) return the contributions to each contributor or b) deposit the qualifying contributions and remaining seed money with the City?

**ANSWER**

A candidate who collected qualifying contributions and seed money, but ultimately did not apply for public financing or otherwise failed to qualify for public funding is required to deposit all qualifying contributions and any unspent seed money contributions with the City either at the time of application (prior to the end of the qualifying period) or when the qualifying period ends.

**ANALYSIS**

§9-3.4 of the Public Campaign Finance Code (PCFC) creates the Public Campaign Finance Fund (the Fund) which is "[a] dedicated public campaign finance fund...established to be administered by the municipal clerk for the purpose of providing public financing for the election campaigns of participating candidates." §9-3.4(A). In addition to budgetary appropriations of monies into the Fund, the PCFC requires in §9-3.4(D) the deposit of the following into the Fund:

- (1) All seed money contributions received by candidates *seeking* to become certified as participating candidates which remain unspent;
- (2) All qualifying contributions received by candidates *seeking* to become certified as participating candidates; ....

(Emphasis added) As the code clearly specifies, monies required to be deposited with the City and into the Fund are to be obtained from candidates who seek certification as a participating candidate, regardless of whether they ultimately achieve certification.

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<sup>1</sup> Candidates should seek their own legal advice regarding compliance with state and local election laws. This memorandum is an advisory opinion only, intended to provide guidance to the City Clerk. This memorandum is prepared to generally address the question presented and does not account for specific situations facing a candidate or their campaign.

Two other provisions of the PCFC clearly demonstrate that unspent seed money contributions and all qualifying contributions must be deposited with the City. §9-3.6(E) relating to seed money contributions clearly states that "...all seed money contributions that have not been spent or used for such purposes [of defraying expenses incurred in obtaining qualifying contributions and seeking certification as a participating candidate] by the time the candidate applies for certification as a participating candidate or by the end of the qualifying period, whichever is sooner, *shall then be paid over to the municipal clerk for deposit in the fund.*" (Emphasis added) Very similar language is contained in §9-3.7(D) relating to qualifying contributions which clearly states that all qualifying contributions "...*shall be paid over to the municipal clerk for deposit in the fund* when the candidate applies for certification as a participating candidate or when the qualifying period ends, whichever is sooner." (Emphasis added)

Finally, candidates should read and familiarize themselves the PCFC in its entirety and should analyze the above guidance in full context with the City's election and political campaign codes and applicable state election law.

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**CITY ATTORNEY'S OFFICE ADVISORY OPINION**

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FOR PUBLIC DISTRIBUTION  
ANALYSIS FOR 2012 MUNICIPAL ELECTIONS ONLY

**TO:** YOLANDA VIGIL, CITY CLERK

**FROM:** GENO ZAMORA, CITY ATTORNEY *GZ*

**SUBJECT:** ADVISORY OPINION REGARDING ELECTION AND CAMPAIGN CODES  
COLLECTION OF QUALIFYING CONTRIBUTIONS BY ELECTRONIC  
MEANS

**DATE:** NOVEMBER 9, 2011

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**QUESTION**

Whether qualifying contributions, as defined and used in the Public Campaign Finance Code in Article 9-3 SFCC 1987, may be solicited and collected by electronic means such as through email communications, websites, online payment programs or similar means?

**ANSWER**

Yes, however candidates are responsible for ensuring that collected qualifying contributions comply with the requirements of the City Ordinances including the Public Campaign Finance Code (PCFC).

**ANALYSIS**

Two stated purposes of §9-3.2(B) of the PCFC include:

- (3) To restrain the escalating costs of elections and reduce the impact of access to large contributions as a determinant of whether a person becomes a candidate.
- and
- (4) To provide candidates with sufficient resources to communicate with voters without the need to resort to private fund-raising.

Inherent in the purposes of the PCFC are the notions that candidates engaging in public campaign financing should not be penalized for choosing public financing and that all candidates, publicly or privately financed, should be able to effectively and efficiently interact with voters. To allow privately funded candidates to solicit contributions electronically while prohibiting publicly funded candidates from doing the same would create an inequity among campaigns and deny "sufficient resources to communicate with voters."

Publicly funded candidates, however, must take great care to fully comply with the PCFC or risk having qualifying contributions disqualified, which may in turn disqualify a candidate from receiving public funding.<sup>1</sup> The following are some of the important sections of the PCFC to consider when

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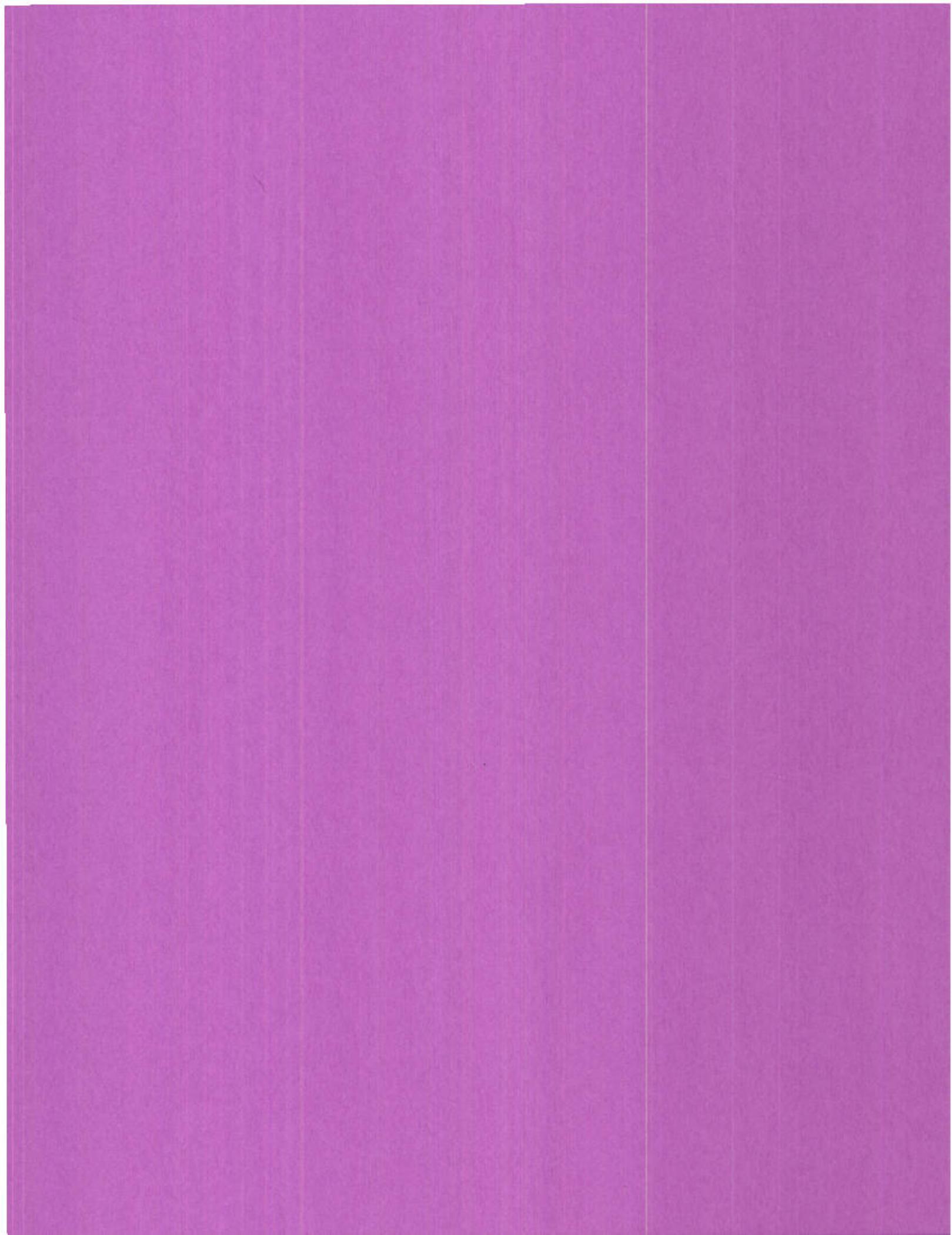
<sup>1</sup> Candidates should seek their own legal advice regarding compliance with state and local election laws. This memorandum is an advisory opinion only, intended to provide guidance to the City Clerk. This memorandum is prepared to generally address the question presented and does not account for specific situations facing a candidate or their campaign.

obtaining qualifying contributions by electronic means. First, a qualifying contribution is defined as “a contribution of no more or no less than five dollars (\$5.00) that is received from a qualified elector during the qualifying period by a candidate seeking to become a participating candidate.” §9-3.3(L). Second, “[e]ach qualifying contribution shall be accompanied by a form signed by the contributor, which shall include the contributor’s name, home address and telephone number.” §9-3.7(A). Furthermore, a candidate’s application to be certified as a candidate participating in public financing shall provide with the application, among other items, “[c]opies of forms signed by contributors for all seed money contributions and qualifying contributions received by the candidate.” §9-3.8(C)(2).

To comply with the sections cited in the previous paragraph, candidates seeking electronic contributions at a minimum need to ensure that:

1. \$5.00 must be collected as a contribution. Any service charges or finance charges for electronic transactions are separate from the \$5.00 contribution. For example, if the service charge for a transaction through electronic means is 25 cents, then the amount to be collected by electronic means is the \$5.00 contribution plus the 25 cent transaction fee for a total of \$5.25. The PCFC requires that the candidate provide a check to the City “for the amount of all qualifying contributions received by the candidate...”, §9-3.8(C)(3), and as noted above, qualifying contributions must be \$5.00—no more, no less.
2. Candidates must turn in copies of the qualifying contribution form signed by the contributor. Because the PCFC allows for candidates to submit to the City Clerk copies of the form with copies of the signatures, candidates may email the form to potential contributors, make a copy of the form available for download from campaign websites, or otherwise make copies of the form available to potential contributors by electronic means. It is recommended that the candidate obtain a PDF copy of the contribution form from the City Clerk, or that the candidate utilize a digitally scanned version of the printed form provided by the City Clerk. Potential contributors may then return completed forms to the candidate by electronic means including by printing or electronically opening the form, hand filling it out or filling it out through the use of electronic means, signing the form, scanning it or otherwise converting the completed form into an electronic file and returning the form to the candidate by hand-delivery, US mail, email or other electronic means. It is important to note that the more a candidate or potential contributor electronically manipulates the form, the more susceptible the qualifying contribution is to disqualification or allegations of fraud by members of the public. Therefore, it is strongly recommended that electronically obtained contribution forms mimic and simulate contribution forms obtained in person. No single electronic method guarantees qualification of a contribution.
3. When the candidate turns in to the City Clerk the copies of forms signed by contributors, those copies of forms shall be printed “hard-copies”, and not submitted as digital files on computer media, so that the City Clerk may maintain a physical file of the forms for review and qualification.

In conclusion, candidates shall read and familiarize themselves the PCFC in its entirety and shall analyze the above guidance in full context with the City’s election and political campaign codes and applicable state election law.



**CITY ATTORNEY'S OFFICE ADVISORY MEMO**

**FOR PUBLIC DISTRIBUTION**  
**ANALYSIS FOR THE 2014 MUNICIPAL ELECTIONS ONLY**

TO: YOLANDA Y. VIGIL, CITY CLERK

FROM: ZACHARY SHANDLER, ASSISTANT CITY ATTORNEY 

SUBJECT: POLITICAL COMMITTEE & LIVING WAGE

DATE: JANUARY 27, 2014

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Question Presented: Is a candidate's political committee required to pay the City's living wage amount to its campaign workers?

Answer: No.<sup>1</sup>

Analysis: The Santa Fe City Council has adopted a Living Wage Ordinance, which has set a minimum hourly wage to be paid to certain workers in the City's jurisdiction. See SFCC 1987, § 28-1. The ordinance applies to four categories of employers/employees: (a) City workers; (b) City contractors with contracts greater than \$30,000; (c) businesses with economic development grants greater than \$25,000 and (d) businesses that are subject to business licensure/registration or non-profit organizations. See SFCC 1987, § 28-1.5

On or about January 23, 2014, Mr. Michael Segura's political committee filed a campaign expenditure report. Mr. Segura is a publicly funded candidate for city council. There were several expenditures on the report that recorded a payment to a campaign worker at \$10/hour. This is less than the current living wage amount.

However, Mr. Segura's political committee is not a business that is subject to business licensure/registration and is not a non-profit organization. Therefore, his political committee is not subject to the ordinance and is not required to pay the City's living wage amount to its campaign workers.

We note that the living wage ordinance includes as a general purpose having organizations which receive payments from the City abide by its requirements. See SFCC 1987, Section 28-1.4. While this provision governs economic development and large dollar projects, a candidate who receives funding from the Public Campaign Finance Fund may nevertheless wish to comply with the provision, remaining mindful of the public's expectations regarding the fair and effective implementation of Santa Fe's public financing process.

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**CITY ATTORNEY'S OFFICE ADVISORY MEMO**

**FOR PUBLIC DISTRIBUTION**  
**ANALYSIS FOR THE 2014 MUNICIPAL ELECTIONS ONLY**

TO: BRIAN SNYDER, CITY MANAGER, YOLANDA Y. VIGIL, CITY CLERK AND CITY SENIOR STAFF

FROM: ZACHARY SHANDLER, ASSISTANT CITY ATTORNEY *ZS*

SUBJECT: CODE OF ETHICS & MEETING WITH CANDIDATES

DATE: SEPTEMBER 24, 2013

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Question Presented: Does the Santa Fe Code of Ethics ("Ethics Code") permit a senior staff member to meet with a political candidate when that candidate has requested a meeting during work hours to discuss (or learn about) city business?<sup>1</sup>

Answer: Yes, the Ethics Code permits these actions, subject to limitations.

Analysis: The Ethics Code states the "proper operation of a democratic government requires that political officials and public employees be ... responsible to the people." SFCC 1987, § 1-7.2. This means that if a member of the public requests a meeting to discuss city business, a public employee should be responsive to that request (within reasonable limits). This would also apply if a member of the public is also a political candidate.

If a meeting occurs, a public employee must be mindful of the following limitations:

- "[P]ublic employees [must] be independent, impartial..." SFCC 1987, § 1-7.2
- "[A] public employee shall not use or disclose confidential information when he or she knows or reasonably should know that the use or disclosure will or may result in a financial gain or the avoidance of a financial loss on the part of any person or entity other than the city." SFCC 1987, § 1-7.7(D).
- "[A] public employee shall not knowingly request or authorize another person to request [a] ... subordinate... [to] provide services to a political campaign. SFCC 1987, § 1-7.7(H).
- "[A] public employee ... shall not engage in political campaigning while on duty for the city...." SFCC 1987, § 1-7.7(H).
- "[A] public employee shall not promise an appointment or the use of his or her influence to obtain an appointment to any position with the city as a reward for any political activity or contribution." SFCC 1987, § 1-7.7(I)

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<sup>1</sup> If a candidate wants to take the public employee out for lunch during the workday, the public employee should review the "gift" provisions of the Ethics Code. See SFCC 1987, § 1-7.7(A).