



# Agenda

CITY CLERK'S OFFICE

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## ETHICS & CAMPAIGN REVIEW BOARD

Tuesday, April 19, 2017

3:00 p.m.

City Council Chambers

1<sup>st</sup> Floor, City Hall

200 Lincoln Avenue

### 1. PROCEDURES

- a. Roll Call
- b. Approval of Agenda
- c. Approval of Minutes—April 4, 2017
- d. Welcome new member—Judie Amer

### 2. DISCUSSION AND POSSIBLE ACTION

- a) Case #2017-4/4A. Complaint filed by Edward Stein Alleging Violation of SFCC 1987, Section 9-2 and 9-3; "Failure to Comply with City Ordinances Regarding Campaigning and Elections" against Rio Grande Foundation.
- b) Case #2017-5. Complaint filed by Edward Stein Alleging Violation of SFCC 1987, Section 9-2 and 9-3; "Failure to Comply with City Ordinances Regarding Campaigning and Elections" against Smart Progress New Mexico.  
--In Accordance with Section 6-16.4 SFCC 1987 "Determination of Legal Sufficiency; Setting a Hearing." Consideration of Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True, Show Probable Cause to Believe There Was a Violation. (The Board May Go Into Executive Session Under NMSA 1978, Section 10-15-1(H)(3) to Deliberate in Connection With an Administrative Adjudicatory Proceeding.)
  - 1) Action Regarding Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True, Show Probable Cause to Believe There Was a Violation.
  - 2) Action on Any Next Steps as Permitted Under Section 6-16
- c) Case #2017-1A/1B. Parties' Presentations on the Merits of Complaint filed by Karen Heldmeyer Alleging Violation of SFCC 1987, Section 9-2.5(B); (D); "Disseminating Campaign Material Without Identifying Source" against Pre-K for Santa Fe. (The Board May Go Into Executive Session Under NMSA 1978, Section 10-15-1(H)(3) to Deliberate in Connection With an Administrative Adjudicatory Proceeding.)
  - 1) Action on Determination on the Merits of Complaint.
    - i) Pre-K for Santa Fe "Waiver of Defense"
  - 2) Action on Sanctions, if There Was a Violation, as Permitted Under Section 6-16.7 SFCC 1987.
  - 3) Action on Any Next Steps as Permitted Under Section 6-16
- D) Presentation, Discussion and Possible Action on Advisory Opinion on Which Types of Groups Need to File Campaign Reports and Which Types of Groups Need to "Check the Box" under Sections 9-2.6 and 9-2.12.

3. UPDATE ON STATUS OF CAMPAIGN FINANCE LEGISLATION
4. BOARD MATTERS
5. PUBLIC COMMENT
6. CHEDULE NEXT MEETING (IF NEEDED)
7. ADJOURNMENT

**PERSONS WITH DISABILITIES IN NEED OF ACCOMMODATIONS, CONTACT THE CITY CLERK'S OFFICE AT 955-6520, FIVE (5) WORKING DAYS PRIOR TO MEETING DATE.**

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CITY OF SANTA FE  
ETHICS AND CAMPAIGN REVIEW BOARD**

**April 19, 2017**

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

**Tuesday, April 19, 2017**

**1. PROCEDURES**

**A. ROLL CALL**

A regular meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order on the above date by Justin Miller, Chair, on this date at approximately 3:00 p.m. 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  
Paul Bideman  
Judith Amer  
Tara Lujan  
Kristina Martinez  
Seth McMillan

**Members Absent:**

Ruth Kovnat (excused)

**Staff Present:**

Zachary Shandler, Assistant City Attorney

**Others Present:**

Jim Harrington, Common Cause  
Karen Heldmeyer, Former City Councilor  
Charmaine Clair, Stenographer

**B. APPROVAL OF THE AGENDA**

**Member Martinez moved to approve the agenda as published. Member McMillan seconded the motion, which passed by unanimous voice vote.**

**C. APPROVAL OF MINUTES      April 4, 2017**

**Member McMillan moved to approve the minutes of April 4, 2017 as presented. Member Martinez seconded the motion, which passed by unanimous voice vote.**

#### **D. WELCOME NEW MEMBER**

Chairman Miller welcomed Ms. Amer, a long time Santa Fe attorney. He said she has a wealth of public and government experience at the state and municipal level and a deep knowledge of legislation and will be of great assistance to the Board.

Member Amer said she was honored to be a member and looks forward to serving her community.

Chair Miller provided an overview of the first two complaints alleging Rio Grande Foundation and Smart Progress New Mexico had disseminated campaign material without filing a campaign statement. The third complaint is a scheduled hearing against Pre-K for Santa Fe and the respondent waived their right for a hearing. The complaint would still be discussed by the Board with possible action.

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

a) Case #2017-4/4A. Complaint filed by Edward Stein Alleging Violation of SFCC 1987, Section 9-2 and 9-3; "Failure to Comply with City Ordinances Regarding Campaigning and Elections" against Rio Grande Foundation.

Chair Miller invited Mr. Stein to address the substance of the complaint.

Mr. Edward Stein, complainant, was sworn.

Mr. Stein said he and his wife have owned their home in Santa Fe since 1990. He is a retired attorney who has practiced for almost 50 years in Chicago concentrating on civil rights. He and his wife are active in the community. He has done community work throughout the city in political campaigns with issues such as this.

Mr. Stein said he did not challenge Rio Grande or Mr. Loveless, Mr. Gessing, or their organizations. Nor did he take issue with their message or right to oppose the tax, just as he has the right to support the tax. He said he *does* take issue when both organizations do not prepare and file timely reports, as required. Rio Grande filed a response to his complaint that they would consider what to do by April 14, but he has not seen any paperwork submitted on that response.

He noted that their YouTube video is an animation possibly costing in-kind or out-of-pocket over \$3,000, which more than meets the 9.2-6 threshold of a \$250 expenditure.

Mr. Stein said the thrust of his complaint is that Rio Grande has met and exceeded the expenditures that require them to file and they have not filed the amount of money received or from whom. He has an affidavit from Glenn Silber, a documentary film maker who estimates the cost of the video is at least \$3,000 to produce (Exhibit 1). He said Mr. Silber agreed to be available for cross-examination should this go to hearing. He would be available at their convenience through Tuesday, April 24 for interview or deposition.

There were no questions from the Board for Mr. Stein.

Chair Miller asked if there was representation for the Rio Grande Foundation present.

Mr. Shandler said the foundation submitted two letters, one is in the packet and the other was passed out ( Exhibit 2). The letters indicated the Foundation does not believe they have met the threshold under the city code yet. The next reporting date is Tuesday, April 25, 2017.

Chair Miller asked if there was public comment on the complaint.

Mr. Jim Harrington with Common Cause was sworn.

Mr. Harrington said the Board and Mr. Shandler may not be aware of a legal issue that was implicated. The position of the Rio Grande Foundation appeared to implicate the clearest constitutional vulnerability in the city's campaign reporting law. There appears to be a problem with the spending thresholds.

The McIntyre case was cited by the Pre-K counsel and took the stance that there is an amount of spending below which the reporting rules could be imposed. The event driven reporting threshold like section 9.26 regarding advertising expenditures and where donations came from, could be considerably lower than political committee reporting where a committee is required to register and report every dime they spend or take in.

A court decision last March created a safe harbor for 9.26 reporting of a threshold of \$1,000 or more and if Rio Grande spent between \$350 and \$1,000 there is a constitutional vulnerability.

Mr. Stein wanted to add that he had been reminded a video with more than 100 views would also trigger reporting. The current YouTube video indicates 122 views to date.

Board members viewed the video and the audience was then shown the video.

Chair Miller said the Board's task is to determine if the complaint is legally sufficient. He thought the Executive Session was needed, but the Board had that option.

**Member Martinez moved that the Board finds the complaint against Rio Grande Foundation meets the requirements and a hearing should be set. Member Amer seconded the motion and the motion passed by unanimous voice vote.**

Mr. Shandler reminded the Board the final Election Day is two Tuesdays away and there are some campaign filings due after the election. He offered to research the code if needed.

Chair Miller postponed the determination of the hearing date until the second complaint was heard.

Case #2017-5. Complaint filed by Edward Stein Alleging Violation of SFCC 1987, Section 9-2 and 9-3; "Failure to Comply with City Ordinances Regarding Campaigning and Elections" against Smart Progress New Mexico.

Chair Miller asked Mr. Stein as complainant, if he had comments on Item 2(b) different than in his previous complaint.

Mr. Stein said Smart Progress Santa Fe filed a report indicating they raised \$11,000 in cash and \$200 in-kind. However, their representative Loveless Johnson in reported news said, "*Smart Progress New Mexico raised at least \$11,000, but less than \$15,000.... \$10,000 was from the Coca-Cola Bottling Company of Santa Fe and another \$1,000 from the Boxcar Bar and Grill.* (Exhibit 3)

Mr. Stein said the language attributed to Mr. Johnson shows more than \$11,000 was raised in cash, which they have not reported or identified the other donors. He said Mr. Johnson went on to say "*the rest of the donors*" and he concluded that Smart Progress is not reporting the other donor contributions.

Loveless Johnson with Smart Progress New Mexico was sworn.

Mr. Johnson said he represents Smart Progress in the responses and they respectfully request the Board dismiss the complaint without prejudice as the basis of the complaint no longer exists. He met with the City Attorney and City Clerk by the deadline and explained their letter had erroneously designated Smart Progress as a 501(c) 3 and they are actually a 501(c) 4 and therefore subject to federal laws protecting the anonymity of their donors. However, Smart Progress chose to comply with the ordinance at that time and was given until close on Monday to file without penalty, which they did.

The assertion that Smart Progress had not disclosed fully is a misinterpretation. It is not a legal basis to use a mis-quote taken from the newspaper against a certified document notarized as accurate under law. Every dime Smart Progress raised and spent and the remaining cash has been accurately recorded on the day they filed. Additional money has been raised since that filing and will be reflected in the report by the Tuesday, April 25<sup>th</sup> deadline.

Mr. Johnson said Smart Progress will continue to comply with city regulations as long as they campaign, now and in years to come in Santa Fe. They respectfully requested the Board find no probable cause for an additional hearing and close the case without prejudice.

Member Biderman said he was confused by a Boxcar contribution on 2/16 of \$250, and another Boxcar contribution on 2/22 of \$750; a Coca-Cola Bottling Company contribution on 2/28 of \$5,000 and another Coca-Cola on 3/22 of \$10,000 that totaled 11,000 dollars.

Mr. Johnson said the cumulative totals are populated based on the cumulative at the time of the donation. The addition of \$5,000 plus \$5,000 is a cumulative total to date of \$10,000. He noted that the report is accurate and complied with specific instructions by the City Clerk. He said since it was their first report, Ms. Vigil reviewed and approved the report for accuracy before they had it notarized.

Member Amer said the same page shows a Boxcar contribution on 2/16 of \$250 and another Boxcar on 2/22 of \$750 and she calculated the contributor cumulative total as \$1,000, rather than 750 dollars.

Mr. Johnson agreed. He apologized and said he would file an amended report. He appreciated that she pointed out the error.

Chair Miller asked if the quote in the newspaper was incorrect or a mistake in statement.

Mr. Johnson explained the quote was a paraphrase rather than verbatim. He did not recall using those precise words but had claimed that Smart Progress raised 11,000 dollars. He said he would not have stated an absolute number because they had not yet filed an official report.

Chair Miller asked for further comments from the Board. Seeing none, he opened the floor to public comment.

Mr. Stein said the report is completely wrong and incomprehensible even with Mr. Johnson's explanation. He said he totals the second column and gets \$16,000 not 11,000 dollars.

Chair Miller explained that the Board had just discussed that the contributor cumulative total is an accumulation of contributions and the figures cannot be added up. Coca-Cola contributed \$5000, followed by another \$5000 with a cumulative total of 10,000 dollars.

Mr. Stein said he understood Mr. Johnson's explanation, but Mr. Johnson went on to challenge or attack the reporter that wrote the article. He said the reporter had written: *"the rest of the donors he said, are local business owners or citizens of those opposed to the tax"*. Then Mr. Johnson said he had a conversation with counsel and *"everything is kosher"*. Mr. Stein said he has not seen a letter from counsel or from Mr. Johnson saying thank you for resolving this, or giving an explanation and did not think Mr. Johnson's explanation was credible.

Mr. Shandler confirmed the conversations with Smart Progress New Mexico as represented by Mr. Johnson were accurate.

Member Martinez asked Mr. Shandler if he had reason to believe the content in the report filed was inaccurate.

Mr. Shandler replied he had just been focused on getting Smart Progress to file.

Member McMillan asked if there was reason to believe the report was untimely; did the City accept the report for filing.

Mr. Shandler explained the deadline was Friday. He said he and the City Clerk met with Mr. Johnson and another representative. Mr. Johnson at that point said Smart Progress had decided to file even though they reserved their legal objections, but would need time to get the filing together. Mr. Johnson had asked if possible to file the next business day (Monday).

Mr. Shandler said after he and the City Clerk reviewed City Code 9.210(g), allowing assessment of a \$100 fine for unexcused late filing, he made a judgment call. He felt this was not unexcused, it was a legal dispute that resolved in a settlement or agreement that the Mr. Johnson would file. Therefore the City Clerk did not administer the \$100 fine for the one day.

Chair Miller asked to confirm that communications with Smart Progress New Mexico began between the City Attorney's office and the City Clerk before the complaint was filed.



Mr. Shandler said they did, but only a few days before. He learned from the media about the group and their activity and sent them a letter (in the Board packet) about 48 hours prior to the filing deadline. He thought the letter could be another argument why the City did not think this was an unexcused late delay. The events happened quickly and Smart Progress responded quickly to the letter.

**Member Biderman moved that the Board dismiss the complaint and not proceed.**

Member Biderman said there was a question in the minds of the parties and that was resolved through discussion and they came forward in good faith. Although there is an error in the form, Smart Progress has agreed to correct that. He said the Board does not want to second-guess the work of the City Attorney and Clerk staff. They made a good faith effort to allow an extra day that was sound and the Board should not oversee that.

He added they should be careful not to get too dependent on news reports. What is contained in the form filed should be the lodestar, opposed to what is reported in the media.

**Member Martinez seconded the motion and the motion was passed by unanimous voice vote.**

Chair Miller announced the dismissal of the complaint Case #2017-5.

Chair Miller returned to scheduling the meeting for complaint 2017-2(a). After discussion, the Board decided to meet Monday, April 24<sup>th</sup> at 3 p.m. Mr. Shandler confirmed both parties would be notified the next day and the board would be notified if there were objections or a motion for postponement. He confirmed the city practice for the chair to have authority for one postponement.

- c) Case #2017-1A/1B. Parties' Presentations on the Merits of Complaint filed by Karen Heldmeyer Alleging Violation of SFCC 1987, Section 9-2.5(B); (D); "Disseminating Campaign Material Without Identifying Source" against Pre-K for Santa Fe.

Chair Miller explained that Pre-K for Santa Fe had waived their right to a hearing and their letter was in the packet. He noted Mr. Biderman had recused himself during the hearing and would do so now.

*Member Biderman recused himself. He said he has discussed with the City Attorney and would observe from the audience because this relates to the opinion letter worked on by the subcommittee.*

Chair Miller opened the floor for comment by the parties or any members of the public.

Karen Heldmeyer was sworn.

Ms. Heldmeyer said she appreciated Pre-K had waived all their defenses, but for the record they had offered many different defenses. She said both Ms. Wexler and Mr. Li are seasoned political operatives and in the heat of a campaign things are sometimes overlooked, however they came with a number of different defenses.

Ms. Heldmeyer suggested that even though Pre-K was not asserting them at this time, the Board should consider some of the things they said. The issues may well come up in other campaigns. Questions need to be asked: whether reprinting an editorial is covered by the press exception in the code; whether in an election on issues rather than candidates, they have to do anything. Then there is the issue about what the Board needs to do in terms of making advisory opinions; if they need to be asked for an advisory opinion. Or specifically, could they take it upon themselves to do advisory opinions for issues that come before them. The language in the code is open to interpretation.

She suggested the Board make a list when they hear problems and act quickly. The election is almost over and another is on its heels and the Board needs to expeditiously deal with the questions before them.

Mr. Harrington said there had been a request on authority regarding the press exemption and he inquired at the Campaign Legal Center. They told him there is no authority and they attributed that to the fact that many of the press exemption's statutes/ordinances, including the federal election campaign reporting, are excluded from the press exemption when a participant in the campaign paid for recirculation of material.

He urged the Board to adopt the interpretation that a political committee or candidate paying for mailers, etc. to be sent out is not a press exemption and should not be claimed as an exemption.

*Eli Li was sworn.*

Mr. Li said they apologize for their mistake both in the media and before the Board and accept the Board's determination on sanctions they wish to impose. He added that he also supports former Councilor Heldmeyer's proposal to discuss and resolve the questions before the next election, because they probably would come up again.

Member Lujan confirmed that Mr. Li spoke on the behalf of Pre-K Santa Fe.

Mr. Shandler said the Board packet includes research. He contacted newspapers and asked about their policies. He would be happy to answer any questions.

(The Board May Go Into Executive Session Under NMSA 1978, Section 10-15-1(H) (3) to Deliberate in Connection With an Administrative Adjudicatory Proceeding.)

1) Action on Determination on the Merits of Complaint.

1) Pre-K for Santa Fe "Waiver of Defense"

Chair Miller said it was incumbent upon the Board to make a determination if there had been a violation of code or not, and if so, whether to impose a sanction. The question, if there had been a violation of code is whether the reprinting of an editorial and distribution of that falls within the press exception.

Member McMillan thanked Mr. Harrington for following up on his request for additional authority. He said the question is troubling without the exemption and thought they should look at other codes and

consider adding a similar exemption. He was not sure the Board was ready to read such an exemption into the current code for this case.

Member McMillan said he believed a reprinted editorial that someone paid to reproduce and disseminate is not the same as an editorial in the newspaper and should not be subject to a press exemption.

**Member Martinez moved that the Board finds that Pre-K for Santa Fe violated the campaign code by distribution of an editorial without identifying themselves as the group disseminating the material. Member McMillan seconded the motion.**

Member Lujan said Pre-K Santa Fe did acknowledge the violation and accepted responsibility.

Chair Miller clarified with Pre-K that by waving their defenses it did not mean necessarily an admission of wrong doing. Pre-K had commented on their position and said they would let the Board decide.

Member McMillan asked if statements by representatives of Pre-K for Santa Fe at the last meeting would also be incorporated into the Board's analysis. Chairman Miller replied they would.

**The motion finding Pre-K for Santa Fe in violation was passed by unanimous voice vote.**

2) Action on Sanctions, if There Was a Violation, as Permitted Under Section 6-16.7 SFCC 1987.

Chair Miller said the Board determined a violation of the code. This section of the code addresses the Board's authority if a violation; the board could 1) issue a reprimand, 2) impose a fine not to exceed \$500 per violation. The Board may seek enforcement of the fines in district court. He explained a reprimand is a statement that the board is issuing a public reprimand for a violation of the campaign code.

**Member Amer moved that the Board impose the sanction of a public reprimand for a violation of the campaign code.**

She said the Board should send a message that although inadvertent, this type of mistake is not tolerated.

Member McMillan agreed. He said given the candor and contrition of Pre-K for Santa Fe he was not in favor of a sanction or a fine, but the board has found a violation and letting the community know these types of mistakes are not tolerated is appropriate. However, if in the course of the hearing process the party makes clear they have fixed the issue, the sanctions would not be severe.

**Member McMillan seconded the motion and the motion to impose a public reprimand was passed by unanimous voice vote.**

### 3) Action on Any Next Steps as Permitted Under Section 6-16

Member Martinez suggested looking at the issue in the code of reprinting an editorial and issuing an advisory opinion might be helpful on the defenses raised, but then waived.

Member McMillan said they could explore including something in the code similar to what had been mentioned by Mr. Harrington. That would not constitute an advisory opinion as much as looking at whether the code should be amended. He added that there were also issues raised by Ms. Heldmeyer he thought worth exploring.

Member Martinez thought the advisory subcommittee would be willing.

Chair Miller confirmed that the board had decided the reprinting and redistribution of an editorial does not fall within the press exception under the current ordinance.

- d) Presentation, Discussion and Possible Action on Advisory Opinion on Which Types of Groups Need to File Campaign Reports and Which Types of Groups Need to "Check the Box" under Sections 9-2.6 and 9-2.12.

Chair Miller said the advisory subcommittee consisted of Mr. Biderman, Ms. Martinez and Ms. Kovnat and he would let them present their opinion.

Member Biderman said this is the first election where the code applied and they have learned from the current campaign. He said the subcommittee was confident about offering opinions on two of the items, but would like to hear from the public on the third. The subcommittee looked first at:

#### *1. Do the provisions of the ordinance apply to ballot measure elections?*

There are a few places where ballot measures are not specifically named in the rules. The City Attorney's office advised some who inquired that the rule 9-2.6 that involves disclosure of the source of campaign funding for literature disseminated may not be applicable for the election on a ballot measure, opposed to an election for candidates.

The subcommittee finds that for purposes of this rule, there is no difference or distinction between a candidate election and a ballot measure. As a policy matter it is as important to know the source of funding for campaigns that involve ballot issues as to know who supports a candidate.

Member Biderman noted a similar discussion at the legislature required disclosure and said that a candidate can be beholden to a large contributor. The Supreme Court required the candidates to disclose. A bond issue, ballot issue, etc. cannot be beholden to someone.

The Board felt that both the letter of the rule and the policy favors knowing who is backing a campaign, even on a ballot issue when supported by contributors, especially large contributors.

The Board finds that a distinction would be contrary to policy and underlie the ordinance, because it

would reduce transparency in ballot measure elections.

The Board finds that the city ordinance applies in all respects to all elections, including both candidate and ballot measure elections.

2. *How must political committees supporting or opposing ballot measures report contributions and expenditures under section 9-2.11 (a).*

The Board analyzed three types of reports on expenditures and donations: a political committee reporting its own expenditures in support of its campaigns; reporting of donors who have funded those expenditures; and donations received of campaigns, materials and services from other individuals and entities reported as in-kind donations, including reported expenditures for the purchasing of materials such as flyers, yard signs, consulting services, legal fees, office space, donated employee time, etc.

The Board interpreted 9-2.11 (a) to require that these political committees must report contributions of all kinds, including in-kind donations of goods and services, and identify contributions made by groups not otherwise required to report.

Member Biderman said mistakenly the advisory committee omitted a reference to 9-2.12 (b): *"a candidate or political committee that receives contributions from another entity that does not have to disclose its contributors to the City Clerk, shall indicate such on the Campaign Finance Statement submitted to the City Clerk pursuant to existing reporting requirements."*

There are entities that are not required to report completely such as secondary contributors to contributors, or the Russian doll issue, or entities protected by status that do not have to disclose under the law.

Chair Miller confirmed that the advisory opinion also would include 9-2.12 (b) after 9-2.11 (a).

Member Biderman said the advisory committee was not comfortable issuing an advisory on the third point: the in-kind contribution to a candidate or political committee from a third party independent source. The rule could be interpreted to mean that the candidate would have to report and mention that the contribution did not come from a source required to disclose their donors.

Another interpretation is that the group making the contribution should also be reporting because the group itself is making a contribution in the campaign. The question is whether the Board intended for the receiving entity reporting as a political campaign committee/politician *and* the outside group to report.

Another side is the Board may possibly be requiring a union with thousands of members who check a box that allows the use of their dues for political purposes and the union itself donates to a cause (in a candidate/ballot measure), to report every donor. The intent was not for the purpose of the union to disclose the name of every union member. The public just needs to know that the union contributed.

Member Biderman said Mr. Harrington mentioned a case with a threshold point, which might help.

Member Martinez added the subcommittee wanted to also hear from the City Clerk's office how onerous this kind of reporting would be if required.

Member Amer said regarding whether the provisions of the ordinance apply to the ballot measure, the definition of ballot is defined as: *"ballot proposition means any measure, amendment or other questions submitted to, or proposed for submission to a popular vote at a Santa Fe election"*. In addition 9.2.6 specifically states *"something that is disseminated to 100 or more eligible voters"* either expressly advocates the election or defeat of a candidate, or the approval or defeat of a ballot proposition. She thought on its face, the ordinance clearly applies to ballot proposition issue questions.

Mr. Shandler said there will be a filing on Tuesday. He asked for instruction to provide the groups.

Member Biderman read 9.2-12(b) *"a candidate or political committee that receives contributions from another entity that does not have to disclose its contributors to the City Clerk..."* He said he did not think that referred to an individual.

Member Martinez said disclosure would depend on the contribution. The question is if they qualify as a group that would have to file, or if they were just giving an in-kind donation. She suggested people continue to report as they have been for this election and the issue could be clarified for upcoming elections.

Member Biderman said 9-2.6 (a) sets the threshold of \$250, whether cash or in-kind, for anyone making a contribution, otherwise they are not required to report. He suggested adding a column on the in-kind form similar to the column on the cash form, regarding whether the contribution was from a donor that is not required to report, or to provide an instruction sheet. The subcommittee favors interpretation of a stronger stance, but the intent for disclosure was not to the degree of every union member.

#### Public Comment

Mr. Harrington said there were some misconceptions and one is that the \$250 is a threshold for how big a contribution has to be before it is reported. The \$250 is a spending threshold for expenditures on advertising materials, etc. and the threshold for reporting contributions is zero.

The second is that someone reporting under 9-2.6 might have to report all of their contributions, such as the union. However only the contributions received for the purpose of paying for such expenditures (made in this election) have to be reported. A general contribution to a union, etc. would not have to be reported unless made for the purpose of paying for advertising. Political committees have to report everything, but reporting under 9.26 only needs the contributions received for the purpose of expenditures.

Mr. Harrington said there were reports in political committee filings of expenditures made that clearly constituted spending covered by section 9-2.6. He provided an example of the American Beverage Association (ABA) reporting an expenditure of \$42,880 for a direct mail piece to voters. Section 9-2.6 says spending for a direct mail piece requires that be reported. Reporting under 9-2.6 requires a lot more information; whereas in-kind contributions can be a vague description. He said the Board should be clear that the code should not be evaded in that manner.

Ms. Heldmeyer said she had three practical points. 1) When the Board wants public comment they should put that in writing. People cannot comment if they do not know about it. 2) If the Board finds unclear items with the law, they could recommend a change of the law to City Council. 3) There is the question of who could ask for an advisory opinion and code says "someone who is contemplating doing something and would like the Board's opinion". She said there are things in this discussion she would not contemplate doing, but would like an advisory opinion on.

### **3. UPDATE ON STATUS OF CAMPAIGN FINANCE LEGISLATION**

Member Biderman said the public financing rule was a pocket veto and the disclosure rule as well as the combined local elections/alternate election years was also vetoed.

### **4. BOARD MATTERS**

Member Martinez suggested holding the Monday hearing after working hours if possible.

Mr. Shandler pointed out there is another complaint to consider on Monday by Elaine Sullivan and Nancy Woodward alleging misrepresentation to voters of the details proposed in the soda tax ballot initiative.

### **5. PUBLIC COMMENT**

Elaine Sullivan said she had never filed a complaint before but was motivated after she received three phone calls from Better Way for Santa Fe. The second call was a repeat of the first and was a taped survey that included two different references to the category of drinks that would be taxed, referring to diet drinks and artificially sweetened. The third call was a caller who talked about the number of jobs that would be lost in Santa Fe if the tax was passed. The calls referenced millions of dollars of surplus that Santa Fe has that could be used for early childhood education.

Ms. Sullivan asked that Better Way for Santa Fe be held accountable.

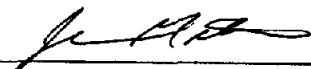
Mr. Harrington qualified his earlier statement regarding a safe harbor for spending over 1,000 dollars. He explained the case involved independent spending in a candidate election and there is a possibility the 10<sup>th</sup> circuit court might draw a distinction and set a higher threshold for ballot measure elections.

### **6. SCHEDULE NEXT MEETING – April 24, 2017 at 3 p.m.**

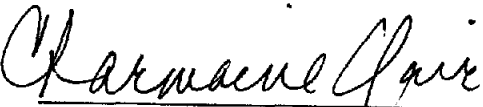
### **7. ADJOURNMENT**

**Member McMillan moved to adjourn the meeting at 5:14 p.m. Member Lujan seconded the motion, which passed by unanimous voice vote.**

Approved by:

  
Justin Miller, Chair

Submitted by:

  
Charmaine Clair, Stenographer




**Affidavit of Glenn Silber**

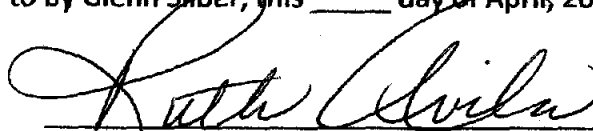
I, Glenn Silber, being duly sworn, depose and state as follows:

1. I am an Academy Award-Nominated documentary filmmaker and long-time network TV news producer who has produced more than 80 prime-time newsmagazine stories for various CBS News and ABC News broadcasts, as well as several independent feature documentaries.
2. I was twice nominated for an Academy Award for Best Feature Documentary.
3. I received two National Emmy Awards, the George Polk Award for National TV Reporting, the Columbia-DuPont Silver Baton, the IRE (Investigative Reporters & Editors) Award; a Writers Guild Award, and dozens of other awards, nominations and citations for my work as an independent Producer/Director and network TV newsmagazine producer.
4. My recent documentary, "A Death in St. Augustine" for *Frontline*, in partnership with the *New York Times*, was nominated in 2014 for an Emmy for Best Investigative Reporting, Long Form.
5. In June, 2016, I was Senior Producer & Writer for "Adnan Syed: Innocent or Guilty?" one hour special for the Investigation Discovery Channel (I.D.).
6. I was a Directing Fellow at the American Film Institute's Center for Advanced Film Studies; was the recipient of the John Simon Guggenheim Fellowship for Filmmaking; a founding board member of the Independent Feature Project (IFP); a co-founder of First Run Features, a film distribution company.
7. I am a member of the Academy of Motion Picture Arts & Sciences (Documentary Branch).
8. I looked at the website "No Way, Santa Fe." I also viewed the one-minute video "No Way, Santa Fe," which is a fairly well done, but simple political persuasion ad.
9. The ad does not feature any live action video.
10. Rather, it relies entirely on graphics and animation, to visually illustrate the voice over narration that makes several claims about the impact of the soda tax if implemented in Santa Fe, as well as making claims about the Philadelphia soda tax.
11. From a production standpoint, putting together the video "No Way Santa Fe" would require an experienced writer, producer/director, graphic artist and editor.

12. My opinion is that if the producers already had an approved script for the video "No Way, Santa Fe" in hand, which would take the writer at least one day, the director and the video editor/graphic artist could produce the one-minute video in 3-4 days additional.
13. If these professionals were getting paid standard rates — and this was produced by professionals, including renting an editing system, adding the music and refining the graphics — I would estimate the cost for producing the "No Way, Santa Fe" video would cost an absolute minimum of three thousand dollars (\$3,000.00), and possibly two or three times that amount.
14. I base this on my general knowledge of writing, editing, graphics and related producing and directing videos for a wide range of network, and independent clients.
15. This does not include the cost of designing and setting up the website "No Way, Santa Fe," which is also well done and would cost an additional amount of money.
16. I also consulted my video editor in Brooklyn after he watched the video "No Way, Santa Fe".
17. He said the technique or editing tool they used in the video to create motion was probably "After Effects" animation.
18. He agreed with my assessment of the cost.

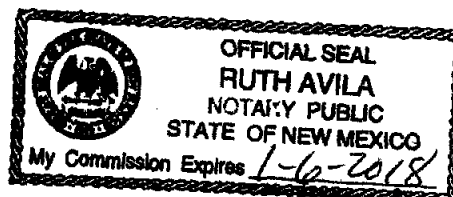
  
Glenn Silber

SUBSCRIBED AND SWORN to by Glenn Silber, this 17 day of April, 2017.

  
NOTARY PUBLIC

My commission expires:

1-6-2018





**Rio Grande Foundation**

*Liberty, Opportunity, Prosperity  
New Mexico*

**Via E-Mail**

Zachary Shandler  
Assistant City Attorney  
City of Santa Fe  
200 Lincoln Avenue  
PO Box 909  
Santa Fe, NM 87504-0909

**Re: April 6, 2017 Letter Concerning City Campaign Code Section 9-2**

Dear Mr. Shandler:

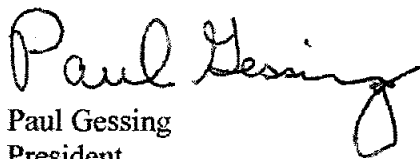
In my April 7 letter, I told you I would send a follow up on April 14 to report the results of my investigation into whether the Rio Grande Foundation has triggered the provisions of the ordinance. This is the promised follow-up letter.

As of now, my research indicates that we have not engaged in any conduct or spending that require disclosure under the ordinance.

We were planning to engage in public communications that would have triggered your reporting requirements and would have done so but for the ordinance. Requiring 501c3 nonprofits to disclose their donors is a major burden and, accordingly, we are choosing not to speak rather than expose the privacy of our donors, including exposing them to potential harassment.

As you know, the Foundation must respond to your April 10 complaint by April 20. We will file an additional response at that time, and will amend our conclusions accordingly if needed.

Thank you,

  
Paul Gessing  
President

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# Anti-soda tax group plans to file campaign finance report

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Loveless Johnson III of Smart Progress New Mexico speaks Sunday to a group of people at Boxcar Bar and Grill. Robert Nott/The New Mexican

Posted: Sunday, April 9, 2017 11:00 pm | Updated: 11:43 pm, Sun Apr 9, 2017.

By Robert Nott  
The New Mexican

The head of a group opposed to the city of Santa Fe's proposed sugary-drink tax said Sunday that he will file a campaign finance report with the city on Monday — a day past the deadline for such actions.

Loveless Johnson III of Smart Progress New Mexico told a group of about 35 supporters Sunday evening that, despite an initial reluctance to reveal donors and donation amounts, he did not want to be accused of using "dark money" to influence the May 2 election.

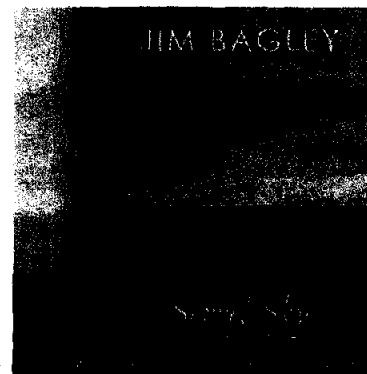
"We were never trying to be sneaky about it," he said at the gathering, held at the Boxcar Bar and Grill on Guadalupe Street. "We were just protecting people from blowback ... we didn't want it to become a war with the mayor."

Mayor Javier Gonzales first proposed a 2 cents per-ounce tax on sugary beverages to raise funds to expand early childhood education programs for needy children last November. Since then, advocates for and against the tax have waged a sometimes-contentious war of words and money to win over voters.

As of last Friday, two political committees on opposite sides of the tax fence have raised a total of \$1.57 million in cash and in-kind services, according to campaign finance reports filed with the city.

Johnson said Smart Progress New Mexico has raised at least \$11,000, but less than \$15,000 — "small money," he said — with \$10,000 of that coming from the Coca-Cola Bottling Co. of Santa Fe and another \$1,000 coming from the Boxcar.

The rest of the donors, he said, are local business owners or citizens opposed to



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**the tax.** Not one penny came from out-of-state, he said.

Johnson and Tate Mruz, co-owner of the restaurant, said they had come under attack from pro-tax supporters who accuse them of being against children.

"We shouldn't be demonized for being against this tax," Mruz told the assembly, which included City Councilor Ron Trujillo, who has publicly voiced his opposition to the tax.

Trujillo said the issue has "divided our community." He said the city should not be getting involved in issues that fall under state control, like public education.

Mruz and Johnson said the tax, which will be imposed upon distributors, will eventually be passed on to consumers.

Mruz said as a result, it will hurt tourism. If a family of four enters his restaurant and finds a \$16 price tag for four sodas — "and no free refills" — next year that family will instead go to Taos, he said.

David Sandoval, a spokesman for the Wings For Hope nonprofit, a biker group that works to raise funds to help children, said that it's unfair to suggest that anyone who is against the tax is not working for the welfare of children. The tax, he said, "will hurt businesses that give donations to groups like ours."

Loveless said while he does not yet have an alternative idea for funding pre-K programs, as they are known, his group would work with the mayor to find a way once the election is over.

Johnson said his group will file by 5 p.m. Monday, April 10. He said city assistant attorney Zach Shandler told him there will be no penalty for being a day late. He said he expects Smart Progress New Mexico to raise more funds by May 2.

At least one other group involved in the campaign — the Rio Grande Foundation — has not yet filed campaign finance reports with the city.

The president of the foundation, Paul Gessing, said in an email last Sunday that he doesn't think the group spent more than \$250 by the April 7 filing. He added, "We are exploring our options and will have a more detailed response to the city ... by next Friday."

Contact Robert Nott at 505-986-3021 or [rnott@sfnwmexican.com](mailto:rnott@sfnwmexican.com).

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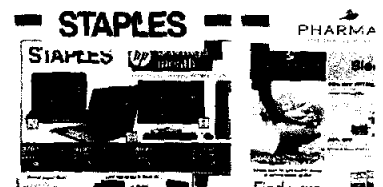


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