



ETHICS & CAMPAIGN REVIEW BOARD
Monday, December 16, 2013
4:00 p.m.

City Council Chambers
1st Floor, City Hall
200 Lincoln Avenue

1. PROCEDURES

- a) Roll Call
- b) Approval of Agenda
- c) Approval of Minutes – November 5, 2013

2. DISCUSSION AND POSSIBLE ACTION

- a) Case #2013-1. Complaint Filed by Tarin Nix Alleging Violation of “Election and Political Campaign Codes Section 9-3.6 Seed Money Contributions, Sub-Section Sections A-E and Section 9-3.8 Application for Certification as a Participating Candidate, Sub-Sections B and C.” by Patti Bushee Mayoral Campaign and Patti Bushee.

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.)

- b) Action Regarding Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True, Show Probable Cause to Believe There Was a Violation.
- c) Action on Any Next Steps as Permitted Under Section 6-16.4(D) – Section 6-16.7 SFCC 1987.



Agenda

3. NEW BUSINESS

- a) Case #2013-2. Complaint Filed by Jeff E. Green Alleging Violation of "Incomplete Seed Money Expenditure Report, Exceeding \$1,500 in Expenditures, and/or making Expenditures for His Campaign from Source Other Than Seed Money" by Joseph M. Maestas. (Item May Be Contingent on Response from Respondent.)

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- c) Action on Any Next Steps as Permitted Under Section 6-16.4(D) – Section 6-16.7 SFCC 1987.

4. UPDATE FROM THE CITY ATTORNEY'S OFFICE ON OTHER PENDING MATTERS
5. BOARD MATTERS
6. PUBLIC COMMENT
7. ADJOURNMENT

Persons with disabilities in need of accommodations should contact the City Clerk's office at 955-6520 five (5) working days prior to the meeting date.

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CITY OF SANTA FÉ
ETHICS AND CAMPAIGN REVIEW BOARD**

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**MINUTES OF THE
CITY OF SANTA FÉ
ETHICS AND CAMPAIGN REVIEW BOARD
DECEMBER 16, 2013
4:00 p.m.**

1. PROCEDURES

a) Roll Call

A regular meeting of the City of Santa Fé Ethics and Campaign Review Board was called to order by Mr. Justin Miller, Chair on this date at approximately 4:00 pm in the City Councilor's Chambers, City Hall, 200 Lincoln Avenue, Santa Fé, New Mexico.

Roll call indicated the presence of a quorum as follows:

Members Present:

Justin Miller, Chair
Roderick Thompson, Vice Chair
Ruth Kovnat
Kristin Martínez
Seth McMillan

Members Absent:

Tara Luján [excused]
Paul Biderman [excused]

Staff Present:

Kelley Brennan, Interim City Attorney
Zachary Shandler, Assistant City Attorney

Others Present:

Councilor Patti Bushee
Councilor Rebecca Wurzbarger
David Garcia, Counsel for Ms. Nix
Tarin Nix, Complainant
Christopher Razor, Counsel for Ms. Bushee
Carl Boaz, Stenographer

b) Approval of Agenda

Ms. Kovnat moved to approve the agenda as presented. Mr. Thompson seconded the motion and it passed by unanimous (5-0) voice vote.

c) Approval of Minutes – November 5, 2013

Ms. Kovnat said it appeared there was an error on a comment by the public and response by the Board

and asked that the stenographer review the recording.

No action was taken on the November 5, 2013 minutes.

2. DISCUSSION AND POSSIBLE ACTION

- a) **Case #2013-1. Complaint Filed by Tarin Nix Alleging Violation of “Election and Political Campaign Codes Section 9-3.6 Seed Money Contributions, Sub-Section Sections A-E and Section 9-3.8 Application for Certification as a Participating Candidate, Sub-Sections B and C.” by Patti Bushee Mayoral Campaign and Patti Bushee.**

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.)

Chair Miller said, to set the framework or landscape for this item, that at the last meeting the Board had been presented with the complaint and the Board already had received a response from the respondent right before the meeting (without enough time to process the response and act on the complaint). So the Board set this meeting for consideration of the initial step: to determine if the complaint was valid or not. That was the initial order of business at this meeting. The Board might go into executive session to consider the administrative adjudicatory proceeding, depending on the first decision of the Board.

He stated as the threshold matter, that earlier this afternoon, the Board received a communication from the respondent including an affidavit and some email material attached to the affidavit. He thought it would be a preliminary issue to have Board discussion on whether this was the kind of evidence or information that the Board should consider now, given its late arrival. He asked for comment from the Board.

Mr. David Garcia started speaking.

Chair Miller interrupted him to explain that he was asking the Board to give their thoughts on the matter first.

Mr. Thompson didn't like the late arrival but in reviewing the material he didn't seem to find anything new in this. He pointed out that they didn't have a deadline for submission of exhibits or other documents in the rules. So he was torn but because it didn't have new information he was inclined to allow it with the understanding that the Board should do something about these loopholes.

Ms. Kovnat thought it was not pertinent to their first question, the sufficiency of the complaint. So she thought it was not proper to consider it in connection with that question.

Ms. Martínez agreed with Ms. Kovnat. She questioned whether it stated on its face that there was a probable cause of a violation. The affidavit, from what she could see, went to the merits so the Board shouldn't strike it but hold it until they went to the merits of the complaint it they got to that point.

Mr. Thompson and Mr. McMillan agreed with Ms. Martínez.

By consensus, the Board decided to proceed with the understanding that the Board was not regarding the content of this submittal until after considering this part of the case.

Chair Miller asked for brief public comments on this particular question of considering this affidavit.

Mr. Garcia agreed with Ms. Kovnat and requested that the document not be considered at all in this hearing. Contrary to what was said by Mr. Thompson, there was new material in the submittal and his client would certainly rebut it.

Mr. Razor, Councilor Bushee's Attorney, who explained that their reason for submitting it this afternoon was after having decided that this media information might prove to the Board that there didn't seem to be any reason to delay submitting it. That seemed to be the task for the Board this afternoon - a very narrow legal focus on the sufficiency of the complaint. And it was subject to the ruling of the Board.

Chair Miller asked Mr. Shandler if he thought this was in the prerogative of the Chair to make an evidentiary ruling on this or if it would need a motion of the Board.

Mr. Shandler said the Chair could make a ruling or choose to have a vote of the Board whether to hold it in abeyance at this time. It was the presiding officer's prerogative.

Chair Miller said, as Chair, that the Board would hold this affidavit aside and not consider it in today's proceedings.

Moving to the heart of the matter, Chair Miller asked for comment from the Board.

Ms. Kovnat said she had been looking at the complaint and the public comments and the rules of the Board. Although there were surely gaps in the Public Finance Code, she did not see this complaint as a violation of anything in the present code. Of course it was the Board's responsibility to enforce the Public Finance Code but that code didn't speak to the period before a candidate decides to file for public financing. That might be a hole and might have to be filled so that the Board could enforce the Public Finance Code to achieve its purposes at keeping lots of money out of the campaigns. Since we have no time period covered by our ordinance before that decision to engage in public financing, she did not think the complaint was sufficient.

Mr. Thompson agreed completely with Ms. Kovnat. He didn't see the sufficiency and what ordinance was actually violated under the scenario presented by Ms. Nix.

As a side note, he was glad it was brought to the Board's attention because it was a loophole that should be closed before the next election. He just didn't see where the violation was according to the ordinance.

Ms. Martínez agreed there appeared to be a hole in the code. But she had big concerns with just allowing someone to get by on a technicality. What went on in this case for her didn't pass the small test. She was particularly concerned about the candidate's request that the text be swapped out. "Everyone knows that there is something not above board going on with this payment. There was a hole and she was not sure how broad the Board could construe its jurisdiction to address the issues that have been raised which she thought were valid but might not fit within the particular framework of the code as it was now drafted.

Ms. Kovnat thought it was clear the Board should develop a process for a candidate who was switching from considering a privately financed campaign to a public financed campaign. It should have the candidate come to this Board to ask advice about what to do about contributions and expenditures that may have occurred during that period of decision making. The Board doesn't have a process for that now and she recommended that the Board develop one because it was the responsibility of the Board to make sure that the public finance fund campaign was not avoided or thwarted by someone spending a lot of money in advance of that decision.

Mr. Thompson moved to dismiss this complaint in Case #2013-1. Ms. Kovnat seconded the motion.

Chair Miller thought the Board would benefit from public comment on the motion and the Board could have debate as well.

Mr. Thompson agreed to hold the motion in abeyance until comment from the public. He suggested a limit of two minutes each.

Public Comment

Mr. Morty Simon disclosed that his wife was the co-chair of Mr. Javier Gonzales' campaign. Having looked at this issue, he wanted to raise a couple of legal points.

"Number 1, there was a definition of when a campaign begins under the Public Finance Law - at the moment that there is any solicitation or contribution. It was clear there was a solicitation of contributions. To say that you can escape a law that sets the beginning of that date just by saying she was not soliciting for private money and therefore the law didn't apply to her seemed to him to undercut entirely the Board's ability to enforce the laws.

"Secondly, there were actions taken while the law was clearly in effect, which was the fifteenth of November where there was an oath sworn by Ms. Bushee that she had not accepted any contributions other than seed money. It was clear at that point that she was under the law. But it was also clearly that that was not true. She did and there needed to be an explanation.

"The fact that she only disclosed contributions that complied - those that were under a hundred but did not disclose at least two more besides her own - there were others that she said in the paper that she returned - seemed to him that during the time that she was under the law and asking for money, she made a misrepresentation. She also made a sworn statement that she had not spent money except from seed money contributions. Again, that was at a time that she was asking for money from the City - \$60,000 - and that was not true.

"Now, maybe there is an asterisk on that, but it certain is not true. And it's not true, even of the time frame that she was talking about because she said that she returned money after the time that she decided to run for public office. And those checks would ... oh, public financing. And those checks - the returned checks - would clearly be after the point that she made a decision, presumably, she did not return the money before. So you are opening a hole that allows someone to say the day before I apply for money I did all kinds of things. I collected all kinds of money and I spent all kinds of money and I cannot disclose it and that is not illegal. I think you have just destroyed our public finance system if you accept that."

Mr. Jim Harrington, Common Cause New Mexico, said he was speaking not about the merits of the complaint but, if the Chair allows it, he was accused, the moment he walked in the room by Mr. Garcia about being part of the Bushee campaign on account of these emails that were produced, attached to the affidavit. So he wanted to clarify his organization's role in this business and in the entire campaign. They had offered advice to all the candidates in the campaign. Their interest from the outset was to ensure the public financing had a successful debut in the mayoral election in Santa Fé.

"And because there are various rules that have to be obeyed or else it would jeopardize the public financing, they offered their advice to all the all candidates on how to navigate these rules. Initially, when a PAC appeared on behalf of one candidate, he talked with the head of the PAC and sat down with the candidate to advise them that it was their view, which now has been completely clarified in the code. But at that time there was enough doubt about it to inspire the press to say it was alright to have coordination between PACs and candidates. And he just wanted to advise the candidate for whom the PAC had been formed to support that that was not their dealing and it would be challenged if there were any. And he assured Mr. Harrington and the PAC that there wouldn't be any.

"And then later, as some of the Board members knew, when the press came out and said yes, you could co-ordinate, Common Cause wrote to all the candidates for Council and Mayor what their thoughts were and how they interpreted the city Attorney's opinion on that. And then finally, Councilor Bushee called him a few days before she filed the application to ask for advice on how to handle this payment that had been made a couple of months before. Because they had saved the money to try to rectify, if they could and wanted to know the best way to do that. And he gave advice on what he felt was the best way to do it. And in all of these cases, including the candidates when a PAC was formed and Councilor Bushee, that he didn't speak for the Board and said the Board was the judge. He didn't know how the Board was going to rule on it. These were their thoughts as to the best way to comply with the rules. And that had been their entire role.

Ms. Marilyn Bane, past president of OSFA, said she was speaking this evening because she worked very hard along with Mr. Harrington and other people, on the revisions to the campaign review ordinance. One of the things that they were so concerned about was that in some way ... they tried to plug

every hole they could anticipate. Clearly there were some they had not anticipated. She thanked the Board for saying they could find other ways to plug the holes in it. The one thing they didn't want was politicizing of this entire process. She felt at the last hearing that it was politicized and she would not like to see that again at this meeting. She thought there were two courts here: the ECRB's and the court of public opinion.

She said she was very worried, whether it was Councilor Bushee or whether it was Mr. Gonzales or anybody else, that there were opportunities taken to in some way insinuate fault or credit. She didn't know how to avoid it completely. But she asked the Board to do it as much as they could and be very sensitive to that. She thought technicalities were important and technicalities needed to be used from a legal standpoint because that was how the Board should make its decisions. By the same token, she didn't think people should be faulted for using technicalities. So she asked the Board to please be sensitive to that because the papers would come out tomorrow on whichever side, one way or the other. She asked the Board to please be aware of their responsibilities.

Councilor Wurzbarger, Mayor Pro Tem and recent candidate for mayor, said she was in a different race. She didn't seek an opinion from Jim Harrington but did weekly seek advice from both the City Attorney's office and from the Office of the City Clerk "to the point of being obnoxious." It was a confusing law, but what was clear to her from the beginning was that the candidate had to make a choice. "You could not loan your campaign money. You could start an account for a hundred dollars. I also understood that if you were going to be wanting public financing, you had to act from the beginning when you declared your candidacy as though you were in public financing. You couldn't decide that you would try to do this a certain way and earn \$5,999 and then decide you were going to shift to public financing. And that was from the interpretation that I received from the City Clerk. And we ran our campaign that way and my understanding is the other two as well.

"To me, this is not about politics. This is an issue of the integrity of the law. And it is a technicality you can get opinions from somebody to help write the code and you have a different interpretation. So I am here. I don't have a sworn affidavit. I probably have the wrong form at this point. I just have my voice and I want to express to you my experience on my campaign is this is the information we were given by the City Clerk's office. And if there is a technicality that she could have pointed out, I wish that we would have known that much earlier."

Mr. Fred Rowe introduced himself as the previous Chair of this Board for its first eight years. He said he had a regard for the fairness and wisdom of this Board's determination. He was appointed to this Board by Councilor Wurzbarger on two occasions but also contributed to the campaign of Councilor Bushee for whatever that may say. He strongly concurred in the views expressed by Ms. Kovnat and Mr. Thompson, especially because this was an adjudicatory board, not a legislative one.

"This Board was to apply the existing law and as Ms. Kovnat said, the present code didn't cover this situation. When a candidate changes their mind. There was nothing in the public financing ordinance that would compel someone must choose up front which way they want to finance their campaign. He thought Councilor Bushee acted in good faith and this was a manufactured complaint from someone who insisted to be paid up front. Then when she was given another chance instead of returning the first one, she brought the complaint ..."

Mr. Garcia objected.

Chair Miller overruled saying Mr. Rowe was wrapping up his public comment and had as much right to speak as anybody else.

Mr. Garcia apologized. He explained he didn't object to his remarks until he made comments about his client which she had testified to rebut. That was hearsay on his part.

"And since my name was brought up with regard to Mr. Harrington, let me just say this. Some of you know me; some of you don't. This was my professor in law school; I am that old. But she is not. She was a child when she was a professor. And I know some of the others. I was also on this committee for two or three years - on the ECRB. I wasn't the chair but it was during the time that Mr. Rowe was on it.

"Now with regard to what Mr. Harrington said, you can't have it both ways. And just real briefly, in terms of, he wants to use the imprimatur of Common Cause but then he says he is talking as an individual. He can't have it both ways. If you're talking as an individual, just say you are talking as an individual if you are representing Common Cause - and that's great.

"Let's go to the heart of the matter. I agree with Morty Simon in that at least the violations that he has cited with regard to the affidavit have been clearly made. I think that that alone, facially supports a valid complaint and requires that this Board appoint an investigator to flush out fully the allegations and the sworn statements that have been made to know whether or not there was a violation which I and my client submit there has been.

"One of the things that hasn't been discussed and I think if very important is that and Councilor Wurzbarger touched on it with regard to what she knew. Ms. Bushee is not a novice candidate. She has been a candidate many, many times as well as worked on the election codes. She is very knowledgeable. Why didn't she go to the City Attorney? But wait a minute. She already had a memo from the City Attorney that was prepared for the Clerk. Have you all seen that? It is a memo from Geno Zamora to the Clerk. It was on June 12th to Yolanda Vigil.

"Subject: Start Date for Seeking Seed Money Under the City's Public Finance Code' and he clearly states and advises these people: One, you need to be aware of the code. But two, when ... Candidacy: An individual seeking municipal office becomes a candidate under the PCFC when the person announces publicly, files for office, accepts contributions, makes campaign expenditures or when an event activity endorsed or supported by an individual's help to promote the individual's campaign. (Cited 99-3.3c.) He submitted this.

"If I recall right and I could be wrong but I think the only person that was a candidate at that time was Patti Bushee. I find it hard to believe, one, if she didn't request that the Clerk seek this opinion from Geno Zamora. And even if she didn't that she didn't receive immediately this memo. If she hadn't read it, I'd ask you to read it. It is Advisory Memo from the City Attorney on this topic. So to talk about the gap or to complain about ignorance - that's not right. Not when you have your City Attorney advising you at that date, June 12th, what the rules are.

"I believe that, I submit that we have, under the rules before this Board, submitted a complaint that requires an investigation to go forward. What you do then is up to you. I think to do otherwise would merely make a mockery of the new public finance code. Otherwise, you could spend millions and millions and then say, 'Hey, I've changed my mind. You know what? I'm going to go over there and collect that extra \$60,000. It's free. Doesn't cost me anything. So what. It's only the public's money. Right?' I submit that is not what it was intended for. That's what would happen. That's what will happen here without the proper investigation from this body moving forward."

"Mr. Christopher Razor, said, "You know, when you look at this system, unlike the state system, which is confidential, we are on a transparent system and I think that is a net good. However, what comes with it is a heightened concern for abuse of that process. Ms. Bane spoke to this quite well, I think. If you have a complaint that is primarily politically motivated, you know it's a win just to get some air time. And the further along it gets in the process, the more of a win it is, no matter what happens. Here there is no violation. There's a lot of discussion of what should be a violation; whether there shouldn't be a procedure in this instance.

"And we are not disputing that Ms. Bushee was a candidate. We agree with Mr. Garcia on that point. The question was at what point she was going to decide whether to take public or private funds for her campaign. And a lot of this is driven, you know... the Mayor's campaign is supposed to start after Fiestas. It's not supposed to start in May. And a lot of that is driven by this. And maybe we just need to recognize that modern reality and prepare for that and address it in our code. There was no violation and no intent to violate the code. Rather, there is a good faith effort to comply with both the code and the intent of the code.

"And again, I would ask the Board to focus on the narrow legal issue of the facts, as alleged in the code and whether those facts amount to a violation of the code. And, you know, words were thrown around tonight like contributions, spending and such. The fact is the code has a definition of contribution. The code has a definition of expenditure. And when you look at the facts as alleged and those definitions, there is simply no code violation.

"I do want to respond to something that was brought up the other night in public comments which was assertions that there was another attempt to solicit more funds in violation. I think that is not at all relevant to what you are doing tonight. But also, there wasn't. And I believe Ms. Roybal said tonight - testified to the fact that there is simply a joint contribution by domestic partners of \$100 and the only solicitation association would get them to solve the proper paperwork for different people.

"But if you look at the complaint, the complaint lacks legal analysis showing how the code is violated. And the reason is the code was not violated and we ask you do dismiss the complaint."

Ms. Tarin Nix said, "My name is Tarin Nix and I wasn't planning on speaking but I feel like there are some assertions that were made tonight and I want you all to kind of understand where I am coming from.

"I do this as a profession. This has been my job for seven years to run political campaigns. I take it very seriously. Of the 30 campaigns I've been involved in, I have never been faced with this dilemma where

someone has asked me after months of no communication to accept another check with a different date for the same services.

"I didn't demand payment. I was owed payment. Again, this is my job. This is my livelihood. I was hired to do a job. I moved here. After the 16th I was owed \$1,750 on the 15th. On the 17th I was let go. I wasn't reimbursed for any expenditures or any of my time after the 15th. So when I got the phone call, it set off alarms. Not that I did not think that I was still owed additional money. But I had agreed to let that go because I just wanted to be away from that campaign once it was decided they were going to seek public financing.

"So when I got the second phone call, right before the filing deadline, I didn't know how to respond. I sought clarification from the City Clerk and I was hoping that she would seek clarification from the City Attorney as to what to do with the second check - the second check that is still sitting in purse that I have not put in the bank. Because I, as a person who does things that are right and did not want to be held up in any kind of accusations of fraud or a malice intent or taking sixty thousand dollars of taxpayer money or helping to get that money. I wanted clarification on what I should do with that check.

"I still want clarification about what to do with that check. Because it terrifies the life out of me. And I'm in a position where I'm asked to accept another check - and they'd like the money back. They'd like the money back. They would like me to hand over cash to them. That was what I was asked to do. But I can keep it if I want to. I don't know what to do. This wasn't a game - some politically motivated game. This was me trying to make sure that I was doing what was right for the law.

"Councilor Bushee has done amazing work for Santa Fé. I am in a job that I love and I wouldn't be in that job if it wasn't for working for Ms. Bushee. So I'm asking you, what do I do with that check? I didn't ask for it. It was given. The reason why I filed the complaint was because I was told I would not get an answer to that question without filing a complaint. After looking at the law, it seemed like there were violations. And again, as a professional, simply because it is day in and day out, I never wanted to be associated with a campaign that was defrauding the public. So I ask, no matter what your decision is, that there also be an opinion on what I do with that check. That's all."

Chair Miller said he appreciated her making that comment to the Board today.

Mr. Garcia offered a copy of something [inaudible] and the Chair said the Board already had it.

Mr. Thompson restated his motion to dismiss the complaint.

There was no further debate on the motion.

The motion to dismiss the complaint passed by unanimous (4-0) voice vote.

Chair Miller stated the complaint was dismissed.

Ms. Kovnat noted that members of the public have pointed out and the Board had identified various holes in the Public Finance Campaign code. She asked if the Board could establish a committee perhaps to

work with City Attorney to draft procedures, to draft recommendations for new ordinances to address the questions that have been raised in this first test drive of the code in the mayoral election.

Chair Miller thought that would be fine. It was within the Board's jurisdiction to make recommendations to Council on the ordinances it was charged with. He offered to get that process started. He didn't see any reason to wait although the Board did consider making recommend changes to the codes after the elections.

Chair Miller asked if Ms. Kovnat would be willing to be on such a committee to be as well as Mr. McMillan. Both of them agreed.

b) Action Regarding Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True, Show Probable Cause to Believe There Was a Violation.

No action was taken regarding probable cause.

c) Action on Any Next Steps as Permitted Under Section 6-16.4(D) – Section 6-16.7 SFCC 1987.

No further action was taken on this case.

3. NEW BUSINESS

a) Case #2013-2. Complaint Filed by Jeff E. Green Alleging Violation of “Incomplete Seed Money Expenditure Report, Exceeding \$1,500 in Expenditures, and/or making Expenditures for His Campaign from Source Other Than Seed Money” by Joseph M. Maestas. (Item May Be Contingent on Response from Respondent.)

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Chair Miller suggested taking no action on this matter since the Board had not received a response from the respondent.

Mr. Thompson moved to postpone Case #2013-2. Ms. Kovnat seconded the motion and it passed by unanimous voice vote.

Mr. Thompson asked for clarification on the deadline on response.

Mr. Shandler said he thought the deadline was originally the 19th and then the complainant added and addendum which would start the clock by just a couple of days after that time period. She thought they would get that information when the Clerk returns tomorrow.

Chair Miller said it would be ten business days from the date being served.

b) Action Regarding Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True, Show Probable Cause to Believe There Was a Violation.

This item was not considered.

c) Action on Any Next Steps as Permitted Under Section 6-16.4(D) – Section 6-16.7 SFCC 1987.

This item was not considered.

4. UPDATE FROM THE CITY ATTORNEY'S OFFICE ON OTHER PENDING MATTERS

Mr. Shandler said the Board had a handwritten form on top of the complaint form. At the last meeting there was some discussion about whether when someone was petitioning under the public finance code about the Clerk's action, whether it should be a sworn complaint or something different. So he mocked up a rough copy in this handout. So if the Board wanted to have a second form - it was labeled Petition of Aggrieved Party under Section 9-317; then the name of the person who was aggrieved and the name of the action that was a violation by the City Clerk's office. It was still sworn at the bottom. This was just a direction from the Board whether they wanted a second form or just stick with the complaint form.

Chair Miller directed the newly formed committee to take a look at it as part of the procedures.

Mr. Shandler asked if the Board wanted the City Clerk to reply concerning the check item or to give a formal advisory process on it.

Ms. Kovnat suggested that since the Board had advisory powers, the Board should consider issuing an opinion on what to do with the check.

Ms. Martínez agreed. She was concerned with Councilor Bushee's actions but equally concerned that the check had not been returned or donated to the City or put to some other good purpose. She thought it would be helpful for the Board to give some guidance to anyone who might be holding a check.

Ms. Kovnat suggested going further and speak to candidates who had need for advice. Seeking an advisory opinion from the Board would be the safest course and it would then guide the Board in future matters.

Chair Miller agreed that was a good point - what this Board does as advisory regarding future conduct.

The Board has an advisory committee. He agreed to look into it about how to respond to Ms. Nix's question.

Ms. Brennan opined that the Board was correct in giving advice. It was disturbing that advice was sought, given and followed from outside. People that are charged with enforcing the ordinance should be consulted and people should be encouraged on the record to call and contact those people with questions. Sometimes they are time-sensitive and the City Attorney's office would answer them but also refer those questions to the Board for further information.

Chair Miller agreed with that opinion but also pointed out that candidates considering running for public office could seek advice from any number of experts, professionals whose opinions they respected.

Ms. Brennan agreed but noted that if it was legal advice and the City was going to be bound by it, it would be best if the advice came from those who were responsible for enforcement.

Mr. Harrington agreed with Ms. Brennan and made a brief comment about the situation not having sufficient time for an advisory opinion to be issued.

5. BOARD MATTERS

Ms. Martínez asked if the Board should set a time for evaluation of the pending complaint.

Chair Miller said in considering the holidays, the Board should do that pretty quickly in January.

Mr. Thompson agreed they should wait until after the holidays to schedule it.

Chair Miller said once they received the response he would notify everyone.

Mr. Thompson added that there were a lot of churlish comments from the public and the Board needed to emphasize that we based our decision on the law that we have now. It was the law that the Board used and nothing else.

6. PUBLIC COMMENT

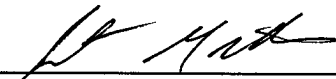
There was no further public comment.

7. ADJOURNMENT

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

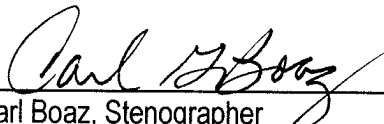
The meeting was adjourned at 5:00 p.m.

Approved by:



Justin Miller, Chair

Submitted by:



Carl Boaz, Stenographer