



Agenda

DATE 1/17/14 TIME 10:00am

PREPARED BY _____

RECEIVED BY _____

ETHICS & CAMPAIGN REVIEW BOARD

Wednesday, January 22, 2014

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 – January 13, 2014

2. DISCUSSION AND POSSIBLE ACTION

- a) Case #2013-2. Parties' Presentations on the Merits of 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.

(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.
- 2) Action on Sanctions, if There Was a Violation, as Permitted Under Section 6-16.7 SFCC 1987.
- b) Action on Presentation by Advisory Committee on Disposition of Campaign Funds.
- c) Consideration of an Ordinance Relating to Campaign Contributions from City Contractors; Amending the Code of Ethics, Section 1-7 SFCC 1987 and the Campaign Code, Section 9-2 SFCC 1987 to Regulate Conflicts of Interest Arising from Campaign Contributions from City Contractors and for Related Purposes. (Councilor Calvert)

4. BOARD MATTERS

5. PUBLIC COMMENT

6. ADJOURNMENT

INDEX OF
CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD

January 22, 2014

<u>ITEM</u>	<u>ACTION TAKEN</u>	<u>PAGE(S)</u>
1. PROCEDURES		
a. Roll Call	Quorum	1
b. Approval of Agenda	Approved	1
c. Approval of Minutes- January 13, 2014	Approved	2
2. DISCUSSION AND POSSIBLE ACTION	Discussed	6-10
a) Case #2013-2 Presentations on Merits of Complaint Filed by Jeff E. Green Alleging Violation of "Incomplete Seed Money Expenditure Report, Exceeding \$1,500 in Expenditures and/or Expenditures for His Campaign from Source Other than Seed Money" by Joseph M. Maestas. (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	Discussed	10
2) Action on Sanctions, if There Was a Violation	Discussed	10-11
b) Action on Disposition of Campaign Funds	Discussed	2
c) Consideration of an Ordinance Relating to Campaign Contributions from City Contractors; Amending the Code of Ethics, Section 1-7 SFCC 1987 and the Campaign Code, Section 9-2 SFCC 1987 to Regulate Conflicts of Interest Arising from Campaign Contributions from City Contractors and for Related Purposes. (Councilor Calvert)	Discussed	2-5
3. BOARD MATTERS	Discussed	11
4. PUBLIC COMMENT	Discussed	5, 11-12
5. ADJOURNMENT	Adjourned at 5:55 p.m.	12

**MINUTES OF THE
CITY OF SANTA FE**

ETHICS AND CAMPAIGN REVIEW BOARD

JANUARY 22, 2014

1. PROCEDURES

a) ROLL CALL

A regular meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order by Justin Miller, Chair on this date at approximately 4:00 pm in the City Council Chambers, 1st floor, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

Members Present:

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

Members Absent:

Seth McMillan (Excused)

Staff Present:

Zachary Shandler, Assistant City Attorney

Others Present:

Jeff Green, candidate
Jim Harrington, Common Cause
Karl Sommer, Attorney for Mr. Maestas
Karen Heldmeyer
Charmaine Clair, Stenographer

b) APPROVAL OF THE AGENDA

Agenda order was changed to start with Item 2. b) Action on Presentation by the Advisory Committee first.

Ms. Kovnat moved to approve the Agenda as amended. Mr. Thompson seconded the motion which was passed by unanimous voice vote.

c) APPROVAL OF THE MINUTES- January 13, 2014

Ms. Kovnat moved to approve the minutes of January 13, 2014 as presented. Ms. Martinez seconded the motion and it passed by unanimous voice vote.

2. DISCUSSION AND POSSIBLE ACTIONS (Revised Agenda Order)

b) Action on Presentation by Advisory Committee on Disposition of Campaign Funds

Chair Miller said the Advisory Committee has addressed a request by Ms. Tara Nix regarding what to do with a check she received from campaign funds.

Ms. Kovnat said the members of the Advisory Committee (Mr. Biderman, Ms. Lujan and herself) consulted with City Attorney, Zachary Shandler on the question. The question from Ms. Nix was that she held a check paid to her out of Ms. Bushee's seed money account. Ms. Nix had previously received a check from Ms. Bushee prior to Ms. Bushee's decision to be a publicly financed candidate.

Ms. Kovnat said the Committee found there was no violation of the Public Campaign Finance Code (PCFC) as written, but the question of what to do with the second payment remained.

The Advisory Committee concluded that the check issued in November should be treated as unspent seed money contribution and handled according to those procedures and be returned to the City's Public Campaign Finance Fund. The Advisory Committee rationale is that Ms. Nix should not be paid twice for the same work and at this point, the money would be unspent seed money and therefore appropriate to return the money to the taxpayers of the City.

Chair Miller said he reviewed the draft opinion and found the conclusion persuasive and sound. He had no questions or comments.

Mr. Thompson acknowledged the excellent work by the Advisory Committee. Chair Miller agreed and thanked the Advisory Committee and Mr. Shandler.

Mr. Thompson moved to approve the draft opinion of the ECRB Advisory Committee as issued to Ms. Tara Nix. Ms. Martinez seconded the motion and the motion passed unanimously by voice vote.

- c) Consideration of an Ordinance Relating to Campaign Contributions from City Contractors; Amending the Code of Ethics, Section 1-7 SFCC 1987 and the Campaign Code, Section 9-2 SFCC 1987 to Regulate Conflicts of Interest Arising from Campaign Contributions from City Contractors and for Related Purposes. (Councilor Calvert)

Chair Miller said the draft was tabled to be able to give greater consideration to the draft ordinance and an "oral suggestion" on how to deal with unions in the ordinance.

Mr. Biderman requested an explanation from Mr. Shandler to ensure everyone is clear what is involved.

Mr. Shandler said the bill was brought to the Board by Councilor Calvert. The Board could recommend to City Council to proceed or could make a negative recommendation. The item is scheduled on the City Council agenda as a Request to Publish and will be published in the appropriate notices. The item will not be deliberated on or have a public hearing until late February.

Mr. Shandler said the first major provision looks at the Conflict of Interest in the City Code. The elected official's responsibility is to follow the Conflict provision and if a conflict, must recuse themselves from a vote. This Ordinance adds clarification of the Conflict of Interest definition that a Councilor should recuse themselves if they know, or *reasonably* know a contribution was greater than \$250 within the last two years.

Mr. Shandler provided an example using a hypothetical company "Zac's Private Security Company." He said the company makes a contribution to a City Councilor in order to get City business and in the existing code there is an amount in place (\$250) for contributions to City Councilors. This Ordinance allows a vote by the whole Council when "Zac's Security Company contract comes before them, but the Councilor who received the contribution has to recuse. A two-year window of time would be looked at prior to the time of the vote, to determine if a contribution or series of contributions exceeded the allowable amount.

Mr. Shandler said finally, it would be unfair to "Zac's" company if he had given contributions to a Councilor, not knowing that the ordinance would change. Language was added to the Ordinance stating that a contribution made before the effective date of the Ordinance shall not be counted toward the running total. There would be no infringement on the right to make contributions.

Mr. Biderman said he appreciated the explanation and that helped clarify the Ordinance. He said the Ordinance is well written and is consistent with the State Procurement Code. He liked that the Ordinance takes a step further and disqualifies the recipient and enhances the consequences.

Mr. Shandler said part two is that language was added to the Campaign Code and notifies a contributor to look at the Conflict of Interest provisions.

Chair Miller asked how a City Councilor would know if someone whose business is before the Council as a business owner, made a contribution.

Mr. Shandler said Councilor Calvert believes the burden should be on the Councilor to track, though City Council might direct the City Clerk, as part of transparency, to put that online.

Chair Miller said the State Procurement Code provision prohibited donations to public officials who had authority over contracts. There were problems knowing who the official was and the legislature placed the burden on the public entities to identify the public officials. He thought there could be problems with that down the road.

Mr. Shandler said Mr. Harrington has suggested the language "knows or reasonably knows" to put the burden on the Councilor.

Mr. Biderman said it was common that Councilors see contributors' names on the agenda. He said by the time the Councilor gets to the meeting they know who not to be involving themselves with.

Mr. Shandler explained that part three defines a business. The current language in the Campaign Code is about an individual and a business contributor. *Business contributor* would be now expanded to include labor organizations and unincorporated associations.

Ms. Kovnat presented a scenario of a labor organization that makes a contribution of more than \$250 to every member of the City Council and as a result of Collective Bargaining; there is a proposed increase for the organization. She asked the consequence of including labor organizations in the definition.

Mr. Shandler said Councilor Calvert rationalizes it should be an even playing field and a business should have the same rules as a union. He said a catchall was discussed and in the Conflict of Interest provision, if everyone/or a majority is recused, the voting status could be restored.

Ms. Kovnat said if the majority of members of City Council had to recuse in her hypothetical; each one had received a contribution that caused a conflict under the definition. She asked how City Council is then able to vote for a benefit to the union that has been achieved through Collective Bargaining.

Mr. Harrington said in the Code of Ethics, 1.7 a "saving clause," states if the City would be disabled from taking action because of conflicts of interest; the person(s) otherwise disqualified, could take action after full disclosure.

Ms. Kovnat thanked Mr. Harrington. She asked on including labor organizations and its members and using the hypothetical Zac's Security; suppose the Company is also a member of the Police Officers Union and the union has made a contribution in excess of the amount; but the owner has not. She asked if that involves a conflict in the owner seeking the contract with the City. She was concerned in terms of labor organizations, with going beyond.

Mr. Shandler said under Section 1, under the concept of "*pay to play*" a Councilor could not vote if it benefits someone who has given them money. He said the union organization would not benefit, it is the members and why language was included to capture that.

Mr. Harrington said the last change was to close a gap in the word *contributor*. He said formerly a business if not profit-making or an individual, could not be a "contributor" although they might be donating money to a candidate. He said this does not address when a labor union gives over \$250 and whether that disqualifies them from voting on a Collective Bargaining contract for employees.

Mr. Biderman said the issue raised has troubled him since the start. On one hand it seems an individual or business may present a contract, or request for variance, etc. and a specific action of benefit to that contributor is defined. Then the Council is taking votes; you don't want people who have contributions to be voting.

He said on the other hand, a Collective Bargaining Agreement (CBA) doesn't seem to fit that concern. He said you expect the unions who represent the employees to negotiate with the City on issues on

behalf of their members. Mr. Biderman asked if there was anything other than a CBA they would ask for a vote on.

Mr. Harrington said Councilor Calvert said the Council doesn't act on matters that would affect the pecuniary interests of employees not part of the CBA.

Mr. Biderman asked if an exception should be made for CBAs. Mr. Harrington replied that the suggested amendment wouldn't apply to anything and would only apply to businesses.

Ms. Martinez suggested the Board not make additional amendments if they recommend that City Council proceed on the proposed Ordinance.

Chair Miller opened the floor to Public Comment at this time.

PUBLIC COMMENT

Karen Heldmeyer said anyone running for public office knows who gave them \$250 or more. She donors are required to put the name of their business and profession when donating.

She said secondly, in terms of labor organizations there are several interlocking layers; the local affiliate, above that, like ASCME; there is the local, state and Central Labor Council ASCME, which also may give money. She said the Board is getting into complications about who is giving the money vis-à-vis who is doing the Collective Bargaining.

Mr. Thompson said he is hard pressed to disagree with Ms. Heldmeyer, but has misgivings about how much a candidate knows about a donation. He said if there a lot of employees and company subsidiaries, etc. it seems the law could be used aggressively. He said the consequence of giving more than \$250 is supposed to be that the Councilor would not get to vote. He said he sees so much room for manipulation, etc.

Ms. Kovnat said putting the burden for the Councilor to be aware of the contributions he or she receives, is appropriate in her view. She said it is important to be alert of not being in a conflict in order to keep corruption down and that is the purpose of this. She said anything can be used in a manipulative way, but if the Councilor is responsible; the responsibility lies with the elected officials.

Mr. Thompson voiced concern that candidates wouldn't be able to keep track.

Ms. Kovnat said the Board's responsibility is to look at this from an ethics point of view. The changes pose an ethical responsibility on the Councilor to not vote where there is an actuality or appearance of undue influence. She said it is not the Board's job to think of all of the permutations that could occur.

She said she is in favor, but has concerns about the addition of the labor organizations. She said she trusts that the City Council would struggle with that when considering the Ordinance and doesn't feel the Board should remove the language. She said the Board could express their concerns.

Ms. Lujan said she is concerned about the labor as well and how that would be managed when a contract is asked for, etc. She thought it doesn't make sense to include that in the ordinance.

Mr. Biderman moved that the Board recommend the adoption of the Ordinance to the City Council and express their reservations about the inclusion of the unions given a different status.

Ms. Martinez said her understanding is that the Board could just recommend City Council *proceed* to address the ordinance. She suggested the Board make a list of things their reservations.

Chair Miller clarified that the motion: "to recommend adoption while expressing reservations about including labor organizations."

Ms. Kovnat seconded the motion.

Ms. Martinez suggested language: "that City Council *proceed to consider* the ordinance."

Mr. Biderman said he was open to that. He said if the Board agrees, he wants to express that it is good to put a limit on contributions a Councilor could accept before they recuse themselves.

Chair Miller said it would be helpful to the Council if the Board's opinion is given one way or the other.

Ms. Kovnat clarified the language for Mr. Biderman's motion: **Mr. Biderman moved to recommend the ordinance to the Council and express the Board's reservations about the inclusion of the labor organizations.**

Mr. Biderman agreed.

There was no further discussion.

Chair Miller restated the motion is that the Board would recommend adoption of this bill, while expressing reservations about the inclusions of labor organizations.

The motion to recommend was passed by majority voice vote. Mr. Thompson voted against.

Mr. Biderman excused himself from the rest of the meeting as he was recused from Case #2013-2.

- a)Case #2013-2. Parties' Presentations on the Merits of 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. (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 the Board considered the Complaint filed by Jeff Green and at the last meeting, determined that the Complaint was legally sufficient under the provisions of the Ethics and Campaign Finance Code.

He said this meeting is to determine whether on the substance of the Complaint, there is violation of code and if a violation, whether the Board wishes to impose Sanctions.

Chair Miller said the Board received written legal argument from both the Complainant and the Respondent and would hear an oral presentation from both today. He said after the presentations the Board might go into Executive Session to deliberate in connection with an adjudicatory proceeding. The Board will determine afterwards in Open Session, whether there was a violation and if so, whether Sanctions should be imposed.

Mr. Thompson suggested a time limitation of five minutes for each presentation.

Complainant Presentation: Jeff Green

Mr. Green said he is the candidate who brought the Complaint forward and his sole interest in doing so was to ensure a fair and fully transparent election process in District Two. When he observed the violations he felt a Democratic responsibility both as a candidate and a citizen, to bring that to the attention of the Board.

He said this Complaint addresses a number of violations of the PCFC; namely failure to submit a true and complete Seed Money Expenditure Report; exceeding the \$1500 limit on seed money expenditures; and paying for expenditures from a source other than seed money.

Mr. Green said it is common sense in his opinion, that the three expenditures totaling more than \$600 were in fact expenditures. The purchases were made during the seed money period and the goods and services were used during the seed money period and were publicly represented as being paid for by the candidate.

He said in addition on December 10, the Respondent said in a public-relations response: "In retrospect I should have included each expense in our Seed Money Expenditure Report regardless of the billing circumstances." He said that is the heart of this issue, but despite that statement the Respondent is arguing that these were not expenditures. Mr. Green said he believes the facts and circumstances clearly show they are.

Mr. Green said in his legal argument he did an analysis. He said there may be additional evaluations that were not part of the original Complaints and the Board will probably not address those as part of their discussion today. He felt they were relevant to discuss them in his argument.

Mr. Green said public confidence in the election process is at stake and one of the primary roles of the Board and the Campaign Finance Code is to ensure public confidence in the election process. He said he stated in a Candidates Forum that he would "rather lose a fair election than win an unfair election". He hopes all other candidates feel the same and no matter who wins the election, the election was paramount and is a fair and fully transparent process.

He thanked the Board.

Chair Miller thanked Mr. Green. He called for the presentation on behalf of the Respondent.

Respondent Presentation: Karl Sommer representing Joseph M. Maestas:

Mr. Karl Sommer said he has submitted the supplemental legal argument on behalf of Mr. Maestas and would not repeat that. He would give a quick summary of the argument and move to his observations about the points that have been made in the filing.

Mr. Sommer said as seen in the submittal and on behalf of Mr. Maestas; looking back in retrospect and asking the questions: "Were these expenditures as the Code defined at the time. Were the invoices that had not been presented and not been paid, expenditures under the Code"? He said that is the central issue the Board must determine.

He said the code definition provides a common sense approach dealing with transfers; i.e. "did you make a transfer of funds of any kind" and goes further in the supplemental list; "does it include this as an expenditure under the code as it was written". He said his legal argument points out they believe it does not. This set of circumstances creates an ambiguity as to the meaning. He said clearly Mr. Maestas has provided all facts necessary to determine what he did, what didn't happen, etc. under oath; of not just of himself, but the people involved.

Mr. Sommer said the term expenditure is defined currently with a very specific reference to this set of facts. He said he asked the Board last week to think about how on January 8th the Code was amended in the term *contribution* to include payments by third parties on behalf of a candidate, etc. He said that is now defined in the Code as a contribution and the definition of expenditure includes that definition of contribution and is clearly stated today.

He said he would like to make observations about the filing. He said last week the directions were very clear to the Complainant and the Respondent. The Board asked to see legal argument; no additional factual assertions. He said that is a notion of fairness to everyone involved and a respect to the process and to the Board and the rules as they apply.

Mr. Sommer said the submission he received includes not just additional facts, documentations, quotes from hearsay out of articles from years ago, as factual assertions upon which the Board should make judgment of Mr. Maestas, his intentions and his actions. He said that is an express violation of the Rules of Procedure and sand bagging to Mr. Maestas in this process. He said that is not fair.

Mr. Sommer said that is ironic; Mr. Green said that his sole intention is to ensure the process is filled with integrity, fairness and honesty. He said that was a direct knowing violation of the Rules and Procedures in an attempt to impugn this man's [Mr. Maestas] integrity in a process where he would not have the opportunity to rebut. He said that is outside the bounds of the rules of the process.

He said it is not just factual allegations that Mr. Green included about other violations of the Code. Mr. Green includes additional claimed violations dealing with Mr. Murray and his activities and "you ought to investigate that and consider it as part of the process here". Mr. Sommer said again, that is outside the bounds of what the process is supposed to allow. He said that is not fair.

Mr. Sommer said the analysis Mr. Green gave about penalties that should be imposed; he does not address in his legal argument. He said it is their [his and Mr. Maestas] position that under the Code as written there is no violation, by virtue of the definition of *expenditure*. He added that he does not believe a Sanction should be imposed.

Mr. Sommer said the first thing Mr. Green analogizes is a reference to how you treat murderers, tax evaders and drug convicts and "three strikes you're out" and severe penalties. He said the analysis goes on to speak of hundreds of thousands of dollars in potential penalties and that "the Board is left with one choice; to revoke the public financing".

Mr. Sommer asked who benefits from that. He said this comes down to a question the Board asked last week "Was there a basis for a complaint." He said the other thing the Board did was to ask if the Complaint was filed for mere harassment or purposes like that and the Board determined no; there is probable cause and the Board would move on.

He said he would submit that the nature of the Response received by the Board, additional factual allegations or assertions, not innocuous; additional broadening of the nature of the Complaint; all of which was based on information that Mr. Green had when he filed his Complaint. That shows intention to subvert the process and that the purpose of the Complaint is revealed by his supplemental response.

Mr. Sommer said this is a campaign piece; Mr. Green knew that Mr. Maestas would not have the opportunity to respond. He knew that the Journal North would be here and he had to know that this would get in the [news] paper.

Mr. Sommer said he submits to the Board that they should revisit that question in light of the facts and circumstances and disregard the suggestion of penalties that are well beyond, under these facts and circumstances. He said there is no evidence that Mr. Maestas did anything other than act in good faith. He filed reports that he believed complied with the law. Today, there would be a clear violation, but at that time there was not.

Mr. Sommer said they [Mr. Maestas and he] submit that there should be no Sanction imposed. He said if the Board makes the determination that there was a violation, they should take into account the record of the filings and the nature of the Responses that have been filed, both by Mr. Maestas and by Mr. Green.

Mr. Sommer said he would stand for questions.

Ms. Kovnat moved that the Board go into Executive Session for discussion of the Complaint on the Agenda. Mr. Thompson seconded the motion.

A roll call vote with Ms. Kovnat, Ms. Lujan, Ms. Martinez and Mr. Thompson approved the motion unanimously. There were no votes against.

The Board went into Executive Session at 5:05 p.m. under NMSA 1978, Section 10-15-1(H)(3) to deliberate in connection with an administrative adjudicatory proceeding.

Ms. Martinez moved to reconvene from Executive Session. Ms. Kovnat seconded the motion.

A roll call vote to reconvene with Ms. Lujan, Ms. Kovnat, Mr. Thompson and Ms. Martinez was approved unanimously.

The Board returned to Open Session at 5:40 p.m.

Chair Miller asked the record to reflect that the Board met in Executive Session and the only matters discussed in Executive Session were matters related to Case #2013-2 regarding an action on determination of the merits of the Complaint and consideration of Sanctions, if a violation was found.

Chair Miller said he would read the Findings and Conclusions of the Board and the Board would vote on those Findings and Conclusions in Open Session.

Chair Miller said as a preliminary matter prior to that, the Board had decided at the last meeting to proceed based on the record before them. He said the Board felt there were enough facts and information to decide the merits of the Complaint and the parties were asked to present legal argument in writing and make an oral presentation to the Board this evening.

Chair Miller said the Board's decision is based on the record before the Board at the last meeting and the legal arguments made in writing and the oral presentations made today.

1) Action on Determination on the Merits of Complaint

Chair Miller read the Findings and Conclusions of the Board as follows:

The Findings and Conclusions:

1. Mr. Maestas accepted the campaign materials from Focus, Inc. and used them for purposes of his campaign.
2. Mr. Maestas accepted the Robo-call for purposes of benefiting his campaign.
3. These activities meet the definition of "expenditure" found in the Public Campaign Finance Code Section, 9-3.3g specifically, the definition of expenditure includes: *a contract to promise, or agreement, whether or not legally enforceable, to make an expenditure.*

The Board finds two discreet violations:

- 1) In the acceptance of the campaign materials and
- 2) In the acceptance of the benefits of the Robo-call.

2) Action on Sanctions, if there was a violation, as permitted under Section 6-16.7 SFCC 1987

The Board finds that these activities violate two sections of the Code; 9-3.6b which prohibits a candidate from expending more than \$1500 in seed money. Secondly, 9-3.8: which requires a report to be filed listing all expenditures of seed money.

Chair Miller asked the Board to confirm the Findings and Conclusions of the Board.

Ms. Lujan noted that the Board did not include the new evidence and information that was brought forward and had focused only on the initial Complaint.

Chair Miller agreed. He said the focus was on the Complaint, the legal arguments submitted and the oral presentations made today.

Ms. Kovnat moved that the Board confirms these are the Findings and Conclusions of the Board. Ms. Martinez seconded the motion.

A roll call vote taken with Ms. Kovnat, Ms. Lujan, Ms. Martinez, and Mr. Thompson passed unanimously. There were no votes against.

Chair Miller said having found two violations of the Public Finance Campaign Code, the Board also considered Sanctions.

The Board determined Sanctions under the Board's authority under Sanctions, 6-16.7B(2).

The Board imposes a fine of \$500 per violation for a total of \$1000, payable to the City of Santa Fe to be made to the City Clerk within 30 calendar days. The money cannot come from the campaign, because such payment of a fine is not a permissible use of Campaign Funds under 9-3.11 (Use of Payments from the Campaign Fund).

Ms. Martinez moved to confirm the Sanctions of the Board. Ms. Lujan seconded the motion.

A roll call vote taken with Ms. Kovnat, Ms. Lujan, Ms. Martinez, and Mr. Thompson was passed unanimously. There were no votes against.

Chair Miller said this is the decision of the Board. The Respondent has the right to appeal the decision of the Board to District Court. He asked for further comments from Board members and seeing none, said Agenda Item two is concluded.

4. BOARD MATTERS

There were no Board Matters.

5. PUBLIC COMMENT

Jim Harrington said he had a comment on the Advisory Opinion issued. He also commended the Board on the hard work that went into both cases.

He said the Advisory Opinion carries implications of what the Board would do on future code amendments and he wanted to express Common Cause's view.

Mr. Harrington said the first check, as he thought Councilor Bushee and her Advisor had told Ms. Nix; could be to dispose of however the person wanted. He said the second check was to be the payment

and was the theory on which Councilor Bushee was able to validly say she had made no campaign expenditures, except from seed money.

Mr. Harrington said from Common Cause's view the implication going forward is that the Code doesn't need any amendment. The requirement that you make all your expenses out of seed money is in an effective prohibition against the kind of thing the Code is trying to prevent; i.e. running a hundred thousand dollar privately financed campaign. He said that shouldn't be allowed and he thought that was the rationale on which Councilor Bushee's defense rested.

Mr. Harrington said Common Cause recommends that the Board issue cautionary guidelines to candidates thinking about public financing, instead of amending the Code.

Stefanie Beninato said she was a candidate for City Council in 2010. She said in terms of the first decision, she read the Code and thought it doesn't cover very well if a candidate had tried to do private and then goes to public. She said there needs to be more clarification. She asked for example "did the candidate gather the money in the same way they would have gathered a public financing"? "Is it okay to loan yourself some money, but as long as they don't use the amount of seed money when the candidate thought they were private, but then went public; is that okay"?

Ms. Beninato said it is bogus to say that Ms. Bushee paid Ms. Nix from her seed money. "She paid her from her private funding and we know that; there is the first check."

She said she appreciates and congratulates the Board in applying the law fairly in this situation and finding that there were two violations of the financing requirements for public funding concerning Mr. Maestas. She said as a candidate, she had to do due diligence that what she was saying on her reporting was true and accurate. She said if someone is employing someone to do Robo-calls in their voice, you know it is being used.

Ms. Beninato thanked the Board for applying the law and not just wanting a certain outcome and appreciates that ethics and transparency is in this process.

Ms. Karen Heldmeyer said those who have been following the public financing have been urging everyone involved, the candidates, the City, etc. to make list of things that are not clear or that no one thought would come up. She said she would hope the Board would do that as well.

She said after the election is over "let's combine our lists to see what needs to be done in terms of amending the Code", because they have seen things that might need to be tweaked.

6. ADJOURNMENT

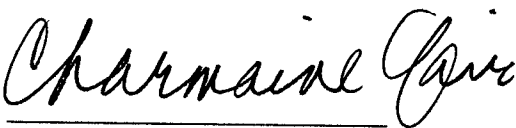
Mr. Thompson moved to adjourn the meeting. Ms. Kovnat seconded the motion and it passed by unanimous voice vote.

There being no further matters to discuss and the agenda having been completed, the meeting adjourned at 5:55 p.m.

Approved by:


Justin Miller, Chair

Submitted by:


Charmaine Clair, Stenographer