



Agenda

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ETHICS & CAMPAIGN REVIEW BOARD

Wednesday, January 18, 2012

4:00 p.m.

City Council Chambers, City Hall, 200 Lincoln Avenue

1. PROCEDURES
 - a) Roll Call
 - b) Approval of Agenda
 - c) Approval of Minutes – October 17, 2011
2. DISCUSSION MATTERS
 - a) Information / Communication With Candidates
 - 1) Status of Candidates and Reporting Requirements
 - 2) Campaign Code and Public Campaign Finance Code
 - Requirements, Deadlines and Sanctions
 - Review of Advisory Opinions
 - 3) Campaign Signs – Compliance and Enforcement
 - 4) Comments and Questions
3. BOARD MATTERS
4. DATE OF NEXT MEETING
5. PUBLIC COMMENT
6. ADJOURNMENT

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CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD

January 18, 2012

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**MINUTES OF THE
CITY OF SANTA FE**

ETHICS AND CAMPAIGN REVIEW BOARD

JANUARY 18, 2012

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 Councilor's Chambers, 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
Tyler Atkins
Paul L. Biderman
Tara Lujan
Kristina Martinez

Members Absent:

Ruth Kovnat (excused)

Staff Present:

Yolanda Vigil, City Clerk
Geno Zamora, City Attorney

Others Present:

Patti J. Bushee, District 1 Candidate
Houston Johansen, District 1 Candidate
Peter Ives, District 2 Candidate
Elizabeth Lujan, District 2 Candidate
Bob Sarr, District 2 Candidate
Marie Campos, District 3 Candidate
Gilbert Martinez, District 3 Candidate
Christopher M. Rivera, District 3 Candidate
Bill Dimas, District 4, Candidate
Representative for Carol Robertson Lopez, District 4 Candidate
Ann Yalman, Municipal Judge At-large
Charmaine Clair, Stenographer

- b) Approval of the Agenda

Ms. Martinez moved to approve the Agenda as presented. Mr. Atkins seconded the motion which was passed by unanimous voice vote.

- c) Approval of the Minutes- October 17, 2011

Mr. Thompson moved to approve the minutes of October 17, 2011 as presented. Mr. Biderman seconded the motion which was passed by unanimous voice vote.

2. DISCUSSION MATTERS

A) Information/Communication with Candidates

Chair Miller welcomed everyone and thanked them for coming. He said they were there to meet the candidates for the local election and to provide information. He explained the ECRB is a seven-member body and their role is multifaceted; educational, advisory and enforcement as related to the Santa Fe City Code of Ethics.

Chair Miller said he saw the Board and candidates as collaborators and partners trying to ensure a fair, open and transparent election and ensure everyone understood and complied with the rules. He said working together they could achieve the clean and fair elections wanted.

Chair Miller said they would hear mostly from City officials who are experts on the rules and laws and who would perform many of the administrative roles necessary to ensure an efficient election process.

The candidates were asked to introduce themselves. Chair Miller then gave the floor to City Clerk, Yolanda Vigil to review the status of the candidates and reporting requirements.

1. Status of Candidates and Reporting Requirements

Ms. Vigil said there are 11 certified candidates: two in District 1; three in District two; three in District three; two in District four and one candidate for municipal judge. All candidates that wanted to participate in the public financing had qualified; all had met their declaration of candidacy and filed their letters that stated they are familiar with the campaign code. Candidates also have filed the letter that states their signage designee.

2. Campaign Code and Public Campaign Finance Code

- Requirements, Deadlines and Sanctions

Ms. Vigil said the next reporting requirement is the financial filing. The Board's packet contained the Campaign Finance Statement that has to be filed by candidates who would not use Public Campaign Finance money.

Ms. Vigil said the first page explained that she is authorized to reject incomplete finance statements and would notify candidates if incomplete. The statement must be filed in person on the date and time and all statements are filed under oath.

Ms. Vigil explained that the campaign reporting for the Public Campaign Finance Code (second attachment) is new. Candidates that qualified for Public Campaign Finance monies have filed their report and qualifying contribution and have received \$15,000. Candidates would now only be required to file their expenditures and no other monies would come into their campaign.

Ms. Vigil said filing dates for candidates, whether using public or private money is as follows: Thursday, January 26, 2012 at 5 p.m.; Friday, February 10, 2012 by 5 p.m.; Tuesday, February 28, 2012 by 5 p.m. and the day before the election by noon and two weeks after the election, whether successful or not.

Candidates who have not closed out their account of campaign monies within the two weeks are required to file within six months.

Ms. Vigil said she has met with all candidates and treasurers and has reviewed all of the forms. Forms were provided by CD and could be filled out on the computer; however a hard copy has to be brought in on the filing dates.

Ms. Vigil said it was important the Board look at the Campaign Finance Statements with the report and summary for activity that took place during the reporting period. Candidates are required to list the name, mailing address and the principal business or occupation of all people contributing; if two people are listed on the check, the information is required for both.

Ms. Vigil said candidates are required to disclose if anyone contributed under \$25 and those monies could be lumped together. The form for \$25 or more by business or political committee; again requires the name, mailing address etc. and is required and contributions under \$25 must be listed as well. Candidates are required to list all the expenditures, loans and miscellaneous contributions. Fairly new is the requirement that candidates keep contributor totals on all contributions.

The Public Campaign Finance Code requires candidates to list any expenditures and the aggregate of what they pay to each person or organization. Ms. Vigil reviewed all of the forms with the candidates and their treasurers and the packet explains what a *contribution* and *expenditure* is. She or Mr. Zamora could answer any questions.

Ms. Vigil said a few questions resulted in an Advisory Opinion issued by Mr. Zamora which was also in the packet.

Ms. Vigil reiterated the next deadline is Thursday, January 26, 2012 for candidates to file their report. She said all candidates have been asked to e-mail her by Monday and she would review their reports for anything glaring and meet with the candidates or their treasurers. The final reports would be filed on Thursday.

Ms. Lujan entered the meeting.

Ms. Vigil noted the Identification of Campaign Materials in the packet. She said section 9-2.5 states that all of the materials disseminated by candidates must have the name of the candidate and/or the campaign treasurer or the name of officer or other person responsible for such materials.

Written, printed or posted materials have to show a telephone contact and signs have to have a contact number for the sign liaison so staff could if necessary, contact them about a removal of a sign immediately.

Mr. Thompson asked Ms. Vigil to identify which candidates accepted the public campaign funding.

Ms. Vigil identified Patti Bushee in District 1; Mr. Johansen applied but failed to meet the requirement. Bob Sarr and Peter Ives in District 2; Christopher Rivera in District 3 and Carol Robertson Lopez in District Four.

- Review of Advisory Opinions

Mr. Zamora said several questions came up over the last few months where guidance could help and was best clarified in written form so they could be referred to by the City Clerk and referenced by campaigns. A disclaimer was included in each opinion that candidates would be responsible for understanding and complying with the campaign ordinances and should seek their own counsel and that the Advisory Opinions were for advisory purposes only.

Mr. Zamora said the questions point out the complexities of the ordinances and where further clarification could be necessary. He provided his Advisory Opinion on the following three questions:

- 1) Can Qualifying Contributions be collected by Electronic Means (website, credit card service etc)

Mr. Zamora said the conclusion was "yes" when looking at the totality of the code; however candidates are responsible for ensuring the contributions comply with the requirements and City ordinances including the Public Campaign Finance Code. The purpose of the code is not to inhibit but to enable public financing. The solution is candidates are required to turn in \$5 from each contributor so that if there is a service fee because of collection by electronic means, it has to be added.

- 2) Do Qualified Contributions Need to Be Returned to the City

Mr. Zamora explained this was if a candidate collected seed money or qualifying contributions but ultimately did not obtain public financing was required to a) return the contribution to each contributor or b) deposit the qualified contributions and seed money with the City.

Mr. Zamora said once collected whether seed money or qualifying contributions; those monies become the City's and the candidate has the responsibility to deposit it with the City. The seed money is allowed to be collected and expended for the purpose of collecting qualified contributions. Should the candidate choose not to pursue public financing, the unspent seed money needs to be deposited with the City and would not go back to the contributors.

3) How In-kind Contributions are handled under the Campaign/Finance Campaign Code

Mr. Zamora said whether in-kind contributions (the transfer of anything of value including personal and professional services) received by campaigns should be reported would vary based on whether a candidate is publicly financed or receiving private contributions.

A candidate could not accept in-kind contributions while seeking public financing pursuant to the Public Campaign Finance Code. The code requires full consideration be paid for services etc. received by a campaign seeking or using public funds.

Mr. Zamora said the code language was difficult language. The opinions highlight the language of the ordinance but give the Governing Body and ECRB an opportunity to examine whether amendments are necessary.

There are exemptions for what is defined as a contribution and under the Public Campaign Finance Code the following are permitted: a) a volunteer's personal services provided without compensation or the travel or personal expenses of the worker and b) the cost of an event held in honor of or on behalf of the candidate when the total amount is under \$200.

Mr. Zamora said for those that receive private financing; pursuant to the Campaign Code the candidates could accept in-kind contributions but because the contributions are within the definition of *contribution* in the campaign code; in-kind contributions must be reported and counted against the campaign limits.

The Campaign Code has a \$1000 contribution per contributor limit this year just for the Council candidacy. In-kind would be reported as the value of those contributions and not what was charged.

Mr. Zamora said like the Public Campaign Finance Code, the Campaign Code has the same two exemptions; contributions do not include personal services provided by volunteers including their travel and expenses or the cost of an event held if under \$200.

Mr. Zamora said that summarized the three opinions issued. The City Attorney's office issues opinions in response to requests from the City Clerk's office, not the public, the candidates or the ECRB.

Chair Miller asked who candidates should go to first.

Mr. Zamora said the first point of contact was the City Clerk's office that has been diligent and could answer questions 99% of the time.

Chair Miller said the Board has an advisory role. He asked if Mr. Zamora anticipated the ECRB would issue any opinions.

Mr. Zamora said that would be at the discretion of the Board. The public, candidates and Staff could request an opinion from the ECRB and would then be up to the Board to officially opine and would be on a case-by-case basis.

Chair Miller said to him it could be an important distinction in advisory opinions of the ECRB and from the City Attorney. The Board's opinions are binding on the Board as far as the Board's enforcement later if a candidate acts in accordance.

Mr. Zamora said the Board's opinions would be binding for that situation. He said the City Attorney advisory opinions are intended to be more reactive. The Board has to meet at regular intervals via the Open Meetings Act with agendas, etc. and might not be able to act as quickly and in some issues was not necessary to come before the Board if Staff could handle them.

Mr. Biderman suggested if the Board could receive questions as they were issued rather than like today, if an issue arises as to the interpretation by the City Attorney, the Board could review that and determine whether to convene.

Mr. Zamora said that made sense. He said because the City Attorney's Office wears multiple hats it gets confusing. The opinions that are issued in the City Attorney's Office role were more advisory to City Staff than to the Board.

Mr. Zamora agreed with Mr. Biderman and apologized for the oversight. He said in addition to being distributed to the candidates the questions should also be distributed to the ECRB.

Mr. Biderman said he also observed that the Board might want to consider the prohibition of in-kind contributions to publicly funded candidates. The Board has the authority and the responsibility to make suggestions about revisions to the code.

Chair Miller agreed and addressing the candidates said that a role of the Board is to advise and give thought to City Council on the functioning of the code. He said if candidates run into problems in the course of their campaign that should be addressed, the Board would be happy to hear them.

Councilor Patti Bushee said it would be wise to debrief candidates particularly the publicly funded, on concerns and issues that had arisen. She thought she might have originated the electronic funding question as well as the in-kind question because people want to have gatherings and would provide food or beverage, etc.

Councilor Bushee said she appreciated the limitations expressed and set by the Advisory Opinion of the City Attorney. She hoped candidates could be invited to discuss what worked and what didn't from the perspective of those that used the ordinance.

Marie Campos, candidate for City Council in District 3 said she considered public financing. She was told by the City that the funds could be returned to the constituents if she didn't apply and that she could move the money to a regular campaign contribution. She said potentially the contribution could support an opponent's campaign if a decision was made not to apply and contributions to a person's campaign could be used for someone else.

Ms. Campos said she had to go back to her constituents to explain and apologize that their contribution wouldn't help her campaign and would be given to the City. She said the Board should think about that and consider the current opinion.

Chair Miller said that comprised the comments on the advisory opinions.

3. Campaign Signs- Compliance and Enforcement

Mr. Sevastian Gurule, Director of Constituent Services said his office primarily receives, processes, tracks and ensures the complaints through his office are resolved quickly.

Mr. Gurule explained that complaints are received in person, by telephone, e-mail or the City website and assigned to Georgia Yoeste who assigned them to the appropriate Staff. Complaints are entered into tracking and show who submitted them and the date assigned to the inspector in the Enforcement Division. That gave the inspector an opportunity to enter comments on how the complaint was resolved. He said he would be happy to provide statistics to the Board.

He said in the last election season there were two consistent complaints; large political signs without the contact information on the sign as required by code and after the election a large amount of signs were not removed.

Mr. Gurule urged the Board to look at the code and section 9-2.15 that identifies the requirements for the placement for temporary political signs and the number of days the sign should be removed after the election.

Mr. Gurule said Staff would ask the person who files a complaint for their contact information, physical address of the alleged violation and both the candidate's and the contact's name and phone number.

Mr. Gurule provided his phone number at Constituent Services and invited the Board to contact him any time. He said a request could be submitted on the City website at www.santafe.org by clicking on the "One Click" icon and filling out the information for their request.

4) Comments and Questions

Mr. Zamora asked to provide clarification on behalf of Staff of the confusion in informing Candidate Campos. He said it brought to light some questions that required more detailed analysis and Ms. Campos received confusing information from City Staff; mainly his office. He doesn't want someone to file a complaint against Ms. Campos because of the City Attorney opinion issued much later and issued to minimize confusion.

Mr. Zamora said he wrote the opinion several weeks after Ms. Campos asked the question. The need for something to be produced in writing was pointed out so Staff could be consistent and confusion would be minimized for the candidates.

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

PUBLIC COMMENTS (Revised Agenda Order)

Bob Sarr, City Council candidate in District 2 said there should be some information about the parties (gatherings) and what they could be.

He said he has a volunteer who is a professional photographer that took pictures and he asked the volunteer to submit an invoice because it was an in-kind contribution. Then he read volunteers could offer their services. He said he paid the invoice but a neighbor thought the photographer's services should have been free.

Mr. Sarr said it would be useful to know how big an in-kind contribution could be and what a *volunteer* is.

Patti Bushee, City Councilor and candidate in District one asked how the recycling of campaign stakes, etc. would work.

Mr. Zamora said what they heard is representative of new language that needs to be clarified. He said language that created some confusion is "*contribution includes the transfer of funds or anything of value between political committees.*"

He said candidates who ran previous elections must close the campaign six months after the election and they have signs they want to reuse in their current campaign. He said the City is trying to step carefully around those issues and use reason.

Mr. Atkins asked what type of things the publically financed candidates are concerned about.

Ms. Campos, candidate District three said she isn't publicly funded but has a lot of experience with federal grants and regulations. Normally if a professional photographer took photographs of a person it would be an in-kind contribution because that is their profession and what they get paid for; if photography is a hobby that would be a personal service.

Chair Miller said it was obvious there would be difficulty with interpretation and the Board, the City Attorney and City Staff would try to clarify as much as possible. He recognized that a lot of responsibility would fall on the candidates. He said if unclear, candidates should err on the side of caution.

Ms. Vigil said once the candidates filed the findings next Thursday the findings would be on the website. She offered to provide hard copies or e-mail them to the Board.

Ms. Vigil said she handed out FAQs on the three General Obligation (GO) Bond questions to the Board and candidates as a factual information packet. She or Mr. Zamora could be contacted if anyone had questions.

Mr. Zamora said that City Staff has an obligation to provide informational and educational materials on the GO Bond either on site or City Hall or where distributed to the media. The City Attorney's Office worked closely with Staff to ensure the information is not promotional.

3. BOARD MATTERS

Mr. Biderman suggested the Board determine a meeting date for the final rules.

Chair Miller said the rules could be on the next agenda.

4. DATE OF NEXT MEETING

A date and time would be established and the Board informed via e-mail.

5. ADJOURNMENT

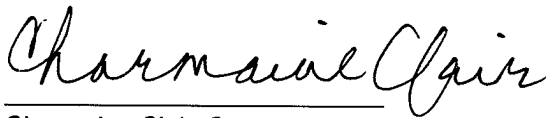
Mr. Thompson moved to adjourn the meeting. Mr. Biderman seconded the motion which passed by unanimous voice vote.

There being no further matters to discuss and the agenda having been completed, the meeting adjourned at 5:05 p.m.

Approved by:

Justin Miller, Chair

Submitted by:



Charmaine Clair, Stenographer