



April 10, 2017

Mr. Zach Shandler
Asst. City Attorney
City of Santa Fe

Via Email: zashandler@santafenm.gov

Dear Mr. Shandler:

We at Common Cause NM were glad to learn of your letters to Smart Progress New Mexico and the Rio Grande Foundation reminding them of their obligation to report their campaign spending under Section 9-2.6 SFCC. I am writing to suggest that you send similar letters to several other persons and entities who appear to have made expenditures in the current election that are covered by Section 9-2.6 and who have failed to file any reports of these expenditures.

In the campaign finance statements that were filed on March 22 and April 6 by Pre-K for Santa Fe and Better Way for Santa Fe and Pre-K, it was reported that the following persons and entities had made campaign expenditures of the following types and amounts:

1. Coca-Cola Bottling Co. of Santa Fe - reported on March 22, \$2,560 for "signs" and \$220 for "flyers;" reported on April 6, \$9 for "flyers" and \$1,580 for "signs."
2. American Beverage Association - reported on March 22, \$5,415.63 for "print, radio and media" and \$42,880 for a "direct mail piece."
3. IATSE - reported on March 22, \$1,600 for "banners."
4. Michael R. Bloomberg - reported on March 22, \$30,000 for "media;" reported on April 6, \$180,000 for "digital media."
5. Organizing in the Land of Enchantment - reported on March 22, \$30,208.33 for "field canvass;" reported on April 6, \$61,905.45 for "field canvass, printing costs."
6. Local Flavor - reported on April 6, \$970 for "half page color ad."

Although the descriptions of these expenditures are quite cursory, all of them would appear to fit the definition of a "communication including print, broadcast, cable or electronic advertising, billboards, signs, pamphlets, mass mailers, mass electronic mail, recorded phone messages, organized phone-banking or organized precinct-walking" within the meaning of Section 9-2.6 (though I'm not certain what a "field canvass" is, it probably consists of "organized precinct-walking" within the meaning of this section). If, as seems very likely, these communications were also "disseminated to one hundred

(100) or more eligible voters, and ... either expressly advocate[d] the election or defeat of a candidate, or the approval or defeat of a ballot proposition, or refer[red] to a clearly identifiable candidate or ballot proposition within sixty (60) days before an election at which the candidate or proposition is on the ballot, "they would be subject to the clear requirement of this section that any person making such expenditures must file" a report of all such expenditures made and all contributions received for the purpose of paying for such expenditures" on the dates specified and containing all the information specified by this section. No such reports have been filed.

This omission may have been based on an assumption by these persons and entities that they were excused from filing the required reports under Section 9-2.6 by the fact that their spending had been reported as "in-kind contributions" to one of the two political committees that are participating in this election. However, there is nothing in the language of Section 9-2.6 or anywhere else in the code that would support that assumption. Neither Section 9-2.6 itself nor Section 9-2.11 suggests or implies that reporting a campaign expenditure as an "in-kind contribution" to some other entity under section 9-2.11 will somehow exempt the spender from filing the report required by Section 9-2.6. Nor would allowing such an exemption serve the Campaign Code's declared purpose of ensuring that "political campaign contributions and expenditures [are] fully disclosed to the public" (§9-2.2(B) SFCC), because a report of an in-kind contribution under Section 9-2.11 provides far less information to the voters about the nature of the expenditure and the sources of its funding than is required in a report filed under Section 9-2.6. If you agree that the code provides no such exemption from the clear requirements of Section 9-2.6, I hope you will see fit to write to the listed persons and entities reminding them of their obligations to file reports under that section.

Please also let me know if Common Cause can provide any further assistance in the laudable effort that you've undertaken to ensure that the disclosure requirements of Santa Fe's code are enforced. In the event, heaven forbid, that any of these disputes should result in litigation, we would also be happy to put you in touch with the skilled national advocates who often assist with litigation defending the voters' right to full disclosure of the sources of campaign spending.

If you or your staff have any questions or would like more information about this, we would be happy to visit with you. You can reach me at 980-9086 or Jim Harrington at 983-8863.

Thank you for your attention.

Heather Ferguson, Legislative Director

Jim Harrington, State Chair

Common Cause is a nonpartisan grassroots organization dedicated to upholding the core values of American democracy. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard as equals in the political process.