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CITY OF SANTA FÉ
ETHICS AND CAMPAIGN REVIEW BOARD**
July 13, 2017

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

Thursday, July 13, 2017

A. PROCEDURES

1. ROLL CALL

A special meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order on the above date by Justin Miller, Chair, on this date at approximately 5:30 p.m. 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
Ruth Kovnat
Tara Luján
Kristina Martínez
Seth McMillan

Members Absent:

Judith Amer
Paul Biderman

Staff Present:

Zachary Shandler, Assistant City Attorney

Others Present:

Carl Boaz, Stenographer

2. APPROVAL OF THE AGENDA

Member Kovnat moved to approve the agenda as presented. Member Luján seconded the motion and it passed by unanimous voice vote.

3. APPROVAL OF MINUTES

a. April 19, 2017

Member Martínez moved to approve the minutes of April 19, 2017 as presented. Member McMillan seconded the motion and it passed by unanimous voice vote.

b. April 24, 2017

Member Kovnat moved to approve the April 24, 2017 minutes with typo corrections. Member Luján seconded the motion and it passed by unanimous voice vote.

4. Approval of Findings of Fact/Conclusions of Law

a. Case #2017-1A/1B – Complaint filed by Karen Heldmeyer Alleging Violation of SFCC 1987, Section 92.5(B), (D) against PreK for Santa Fe

Chair Miller summarized the Finding of Fact and Conclusions of Law for this case and he read the order of public reprimand issued to Pre-K Santa Fe.

Member Martínez noted what she thought was a typo but Member Kovnat explained it and Member Martínez agreed it is okay as presented.

Member McMillan asked if this is the public reprimand or if something else is published.

Mr. Shandler said it is the reprimand and it is on the City's web site.

Member Kovnat moved to approve the Findings of Fact and Conclusions of Law for Case #2017-1A/1B, including the order of public reprimand procedure and substances, indicating the Board's decision. Member McMillan seconded the motion and it passed by unanimous voice vote.

b. Case #2017-4A/4B – Complaint filed by Edward Stein Alleging Violation of SFCC 1987, Section 9-2 and 9-3 against Rio Grande Foundation

Member McMillan summarized the Findings of Fact and Conclusions of Law. The written order before the Board today reflects that decision. He read the order as follows:

Rio Grande Foundation has violated SFCC 1987, Section 9-2.6b by creating No Way Santa Fe as a political committee, which made independent expenditures and received contributions of items of value in amounts greater than \$250 and it failed to file a campaign report. The Board shall issue a reprimand to Rio Grande Foundation and order a campaign report be made forthwith to fulfill the responsibilities of the Campaign Code.

- a. Those voting in favor: McMillan, Luján, Amer, Kovnat, Biderman, Miller*
- b. Those absent: Martínez*
- c. Those recused:*

Member Martínez moved to approve the order and Findings of Fact and Conclusions of Law for Case #2017-4A/4B - Complaint filed by Edward Stein Alleging Violation of SFCC 1987 Section 9-2, 9-

3 against Rio Grande Foundation. Member Kovnat seconded the motion and it passed by unanimous voice vote.

B. DISCUSSION AND POSSIBLE ACTION

1. Review issue of “entity” and “business/organizational contributor” in Campaign Code

a. Written Public Comment

Chair Miller recalled that the Board requested written comment on these terms and how the terms might be interpreted. He asked first to hear from the Subcommittee.

Member Kovnat recalled the complaint filed against Pre-K Santa Fe was for failing to check the box regarding donations received from entities not required to disclose contributors. The City Attorney realized there was lack of clarity. The subcommittee had no problem answering two of the three questions:

1 - whether provisions applied to political committees for adopting or not adopting a resolution. The Subcommittee decided that rule does apply to them.

2 - whether in-kind contributions had to all be reported by the political committee set up for adoption or rejection of a ballot proposal, even if those in-kind contributions looked like campaign materials.

3 - when those people who made in-kind contributions made to political had an obligation of disclose - and if so, no need to check the box.

The Subcommittee looked at American Beverage - Coca-Cola - e.g. to Better Way for Santa Fe and Pre-K. It was recorded that they contributed \$1,580. The question was if it was a political expenditure and Coca Cola had to file a report or if, as a business entity out of their resources had made a contribution. American Beverage Corp contributed \$1,500 for printing and in doing so, were a political organization or a business organization. It comes out of their resources and it has to be a true in-kind contribution like the magazine *Local Flavor*, who donated a half page to Pre-K Santa Fe. It was worth \$970 for the half-page ad and was a genuine contribution that did not require disclosure.

The Subcommittee asked for legal advice from the City Attorney. They were appreciative of the written comments. That was what the Subcommittee struggled with and were grateful for those comments.

Member Martínez said they held the meeting at this same time period so more people could come.

Member Kovnat added that they had the benefit of Karen Heldmeyer

Chair Miller noted the receipt of written comments and listed the contributors and thanked them for the written comments. They were thoughtful. He asked Member Kovnat if the Board should consider changes.

Member Kovnat noted we have important elections coming up and there are campaign contribution limits. So, it is an important question and for ballot questions especially. He agreed it would be good to consider changes.

b. Oral Public Comment

Ms. Karen Heldmeyer, 325 E. Berger, said if the Board looks at what Mr. Harrington did and he talked about the inconsistencies in the code. What he is talking about are changes needed in the code. She was talking about changing the code but there is not enough time to change it before the election - time to figure out what you want to do and vote on it and present it to the committees. She didn't think it would be fair to candidates to change the game in the middle of the campaign.

In terms of advisory opinion, she suggested the Board make it as close to being consistent with current code so that in March 2018 - maybe bring in the Brennan Center and maybe the State will have better clarity on dark money.

The decision made about if you are taking money from people and we don't know who they are - that was a last minute decision. Maybe next year there will be a better non-compromised position. More than one candidate has addressed that. They can start printing materials way before the September date and we cannot hamstring candidates like that.

Member Kovnat appreciated her concurrence.

Chair Miller asked Mr. Shandler if he agrees there is not time before September 1.

Mr. Shandler said the process is generally a 6-8-week period.

Chair Miller understood. And it would put the matter beyond the September 1 date for the \$5 contribution.

Member Luján said she would favor not changing the code at this point.

Member Martínez added that Mr. Biderman is out of town.

Chair Miller thanked the Subcommittee.

2. Tasks for Subcommittee on Issues Raised in 2017 Special election and Preparation of 2018 Election

Member Luján asked if the Board needs to provide notice to the public on this.

Chair Miller pointed out that the Board needs to have a way to advise candidates

Member Kovnat agreed - and also independent groups,

Chair Miller asked what the members of the Subcommittee thought about bringing things back to the Board.

Member Martínez said she would be available until September.

Member Kovnat thought they could work on it and didn't think it will be too difficult.

Chair Miller agreed to find a date for meeting.

Member Kovnat said the Subcommittee was concerned about the burden of enforcement to that provision. We were concerned about the City's ability to enforce. Maybe the City Attorney could think about that.

Mr. Shandler said okay.

Chair Miller wondered if there is any point in distinguishing between a business in the code vs. organizational contributions.

Member Kovnat asked if that is captured in 2.6. That is part of the enforcement issue.

Chair Miller said it would make it easier for candidates to know what their obligations are. The code has been built on and amended over the years with terms no longer necessary and that contributed to confusion. That may be more reason for changing the code.

Member Martínez said the Subcommittee did discuss that. The Board might have to undertake it at some point or maybe that is Council's job.

Member Luján said it is a great discussion and she is looking forward to it. There are lots of things going on federally regarding election code issues, too.

C. BOARD MATTERS

Mr. Shandler explained that in 2008, the Citizens of Santa Fe adopted an amendment to the City's Charter regarding runoff provisions. Until 51% is given to a candidate to announce a winner, lower voted candidates drop out. The 2008 amendment specified that election software would be implemented to address it. We still have no certified software but there is software available at a cost of \$40,000 which would make implementation possible. The Secretary of State has a contract with Dominion (the vendor) and they have software in the works that could be used with election machines. It is a two-step process - must get approval from the US Election Assistance Commission and secondly a certification by the Secretary of State. Dominion announced they submitted it to the US Election Assistance Commission and would get approval by August 25 and submit it to the Secretary of State who has a 30-day process so it

could be certified by September 30.

The Council determined 4-3 that the technology wouldn't be certified by September 1 so it would not be used in this election. Last night, two members were absent and a motion was made for another vote two weeks from now to possibly rescind their decision.

He said there are lots of cities who use it and have implemented changes to the election code. If the Council rescinds the previous vote and decided to implement this, it may come to the ECRB or not if Council needs an expedited schedule. Arguments have been made about when the rules start. Some people say it is for voting and not campaigning but it might affect how campaigns are done. The end result is that there is nothing to do now but may be legislation to review at the next meeting.

Member Kovnat asked if the proposed amendment was given to the public.

Chair Miller had heard no update on that.

Mr. Shandler had not either.

Chair Miller said the Board might need to adjust the schedule for that meeting to review the legislation.

D. PUBLIC COMMENT

Ms. Heldmeyer said when this was first proposed to be put in the charter, she and Councilor Ortiz amended it to include "reasonable cost." She thought \$40,000 sounds reasonable. And second, that the machines could spit out incorrectly marked ballots. Some people have difficulty between rating and ranking. Rating could have two #1's. Also, that wouldn't apply to mail-in ballots.

In the comments at Council where it was voted down, Councilor Harris pointed out that the company had failed to meet two previous deadlines. The Council didn't discuss what kind of voting - whether limited to three or not limited. What to do if your first choice is no one else's first choice. For the people who are really crazy about it - it is not easy.

The decision at next Council may or may not get rescinded. The motion was made by Councilor Maestas, who wasn't absent when it was voted. There is a small dedicated group pushing for getting it through for this election. Council has a full court press and some are not happy about it. Strong comments were made to them. No one in the majority would vote for reconsideration because they felt they were bullied.

E. SCHEDULE NEXT MEETING (IF NEEDED)

Notice for the next meeting will get out as soon as possible.

F. ADJOURNMENT

Member Martinez moved to adjourn the meeting. Member Luján seconded the motion and it passed by unanimous voice vote.

The meeting was adjourned at 6:27 p.m.

Approved by:

Justin Miller, Chair

Submitted by:



Carl Boaz for Carl G. Boaz, Inc.