

City of Santa Fe Ethics and Campaign Review Board

Subcommittee's Proposed

Advisory Opinion

**Application of disclosure requirements for campaign expenditures
by parties supporting a political committee**

April 19, 2017

The current election campaign to decide whether the City should impose a tax on drinks containing sugar to fund pre-kindergarten education has unearthed several issues over the correct reporting and identification of contributors. Specifically, confusion has arisen over who is required by the Campaign Act, City Ordinance § 9-2.1, to report expenditures by individuals and organizations on behalf of political committees; how they are to report; and what disclosures must be made on campaign materials.

This Advisory Opinion is issued by the Ethics and Campaign Review Board (ECRB), pursuant to its authority under § 6-16.2, to clarify the reporting requirements under the city ordinance of contributions to political committees supporting or opposing ballot measures.

1. Do the provisions of the ordinance apply to ballot measure elections?

The two political committees supporting and opposing the sugary drink ballot measure were advised that, in the opinion of the City Attorney's Office, § 9-2.6 was not applicable to the current election because it was not a candidate election. As a result, neither political committee checked the box on the contribution form to identify its contributors as independent group contributors who don't have to file a campaign finance report under § 9-2.6(A). Likewise, neither political committee included the required disclosure for contributions from such independent groups on its campaign materials.

ECRB finds no support for a distinction between candidate elections and ballot measure elections in the terms of the ordinance. ECRB further finds that such a distinction would be contrary to the policy underlying the ordinance because it would reduce transparency in ballot measure elections. Accordingly, ECRB finds that City Ordinance § 9-2.1 applies to all elections, including both candidate elections and ballot measure elections.

2. How must political committees supporting or opposing ballot measures report contributions and expenditures under § 9-2.11(A)?

The primary political committees supporting and opposing the ballot measure filed timely reports disclosing (1) their own expenditures in support of their campaigns, (2) the donors who have funded their expenditures, and (3) donations to them of campaign materials and services from other identified individuals and entities, which the political committees have reported as in kind donations. This third category includes reported expenditures to purchase materials,

such as flyers and yard signs, consulting services, legal fees, office space and canvassing support, as well as donated employee time.

ECRB interprets § 9-2.11(A) to require that these political committees must report contributions of all kinds, including in kind donations of goods or services, and to identify those contributions that have been made by groups not otherwise required to report.

This interpretation is consistent with the policy underlying adoption of the campaign ordinance. Campaign finance and expenditure reports are intended to disclose to the public the donors to each side of an election campaign and the purchases made with their funds. When an independent entity spends money or donates services for a political campaign, the voters are entitled to know who that entity is, so that the electorate knows who is providing support to each candidate or each side of a ballot measure.

When the entity making contributions coordinates with a political committee working on the campaign, that political committee must report on its disclosure statements any coordinated contributions of money or of in kind campaign services or materials from that entity. No other report is required from the political committee. That is what both reporting political committees who received such contributions have done in their reports. (In the cases of elections for public office, the outside entity will be subject to applicable limits on campaign expenditures. No such limits have been enacted for ballot measures.)

Although § 9-2.11 does not specifically require inclusion of such a box on the form disclosing in kind contributions, ECRB requests city staff to modify its in kind donation disclosure form to add such a box.

3. What issues remain to be decided?

Section 9-2.11(A)(3) mandates that any political committee disclose to the electorate when a source of the funding for the materials is not required to file a campaign report. While it would be preferable for the voters to know who paid for the materials, this requirement will at least give the voters a chance to evaluate the significance of receiving campaign materials published by a source that has not made full disclosure of its donors.

The requirement is triggered when a reporting political committee has identified the name of a contributor and indicated that the contributor is not subject to reporting requirements. If the contributor has in fact not filed a campaign finance disclosure form, then pursuant to § 9-2.6(B), any campaign materials distributed by the political committee using funding from that contributor must have a required disclosure on it. The required disclosure reads: "This campaign material is supported in part by donations from an organization that is not required to disclose its contributors to the Santa Fe County Clerk."

The reports filed by the two political committees supporting and opposing the sugary drink tax ballot measure bring to light another issue on which ECRB seeks public input. One reading of

the ordinance is that the political committees were not required to check the box or include the disclosure for the contributions that they received from union and trade association donors because those donors were required to file their own campaign finance reports under § 9-2.6. However, another way to read the ordinance is that the political committees *should* have checked the box and included the disclosure because those donors qualify as independent group contributors who are not required to disclose their contributors. The issue becomes further complicated when the types of donations made by such organizations are examined: is a donation of banners to a political committee by a group that does not qualify as a political committee an in kind donation by an independent group or are those banners campaign materials that require a campaign finance report? Which donors are required to file their own reports identifying their contributors? How onerous would such filing requirements be on the City Clerk? Etc.

ECRB cannot answer these and other related questions without seeking input from the City and the public. ECRB thus seeks public comment and invites the public to raise items of concern at the next ECRB meeting. After public comment, ECRB intends to issue another advisory opinion and decide whether clarifying amendments to the ordinance are needed to prevent confusion in the next City election campaigns.

Draft: August 3, 2017

**Advisory Opinion by the City of Santa Fe Ethics and Campaign
Review Board**

Opinion #17-01

Problem: What disclosures are required under the City of Santa Fe Campaign Code when political committees and/or candidates receive in-kind contributions of campaign materials from donors who have made expenditures that would otherwise fall under the provisions of Section 9-2.6, “Independently Sponsored Campaign Communications and Reporting”?

Question I: Section 9-2.6(A) of the City Campaign Code requires independent individuals and organizations to disclose campaign contributions that meet certain threshold requirements. What are the disclosure obligations of the persons or entities who make or receive these kinds of expenditures?

Answer: Independent individuals and organizations making qualifying campaign expenditures under Section 9-2.6(A) must make the following disclosures:

- 1) File a report of the expenditures, **and** all contributions received from other sources for the purpose of paying for

such expenditures, with the city clerk on the days prescribed for filing of campaign finance statements.

- 2) Specify each contribution by date, amount of contribution, name and address and occupation of the person or entity from which the contribution was made.
- 3) Meet all other requirements of Section 9-2.6(A): e.g., no contribution shall be reported in the name of another, etc.
- 4) Comply with the provision of Section 9-2.6(B), that any person or entity required to file under Section 9-2.6 who receives contributions from another entity that does not have to disclose its contributors to the city clerk, shall place a visible disclosure statement to that effect on its campaign materials. Examples of exempt contributions that trigger the disclosure statement requirement may include contributions of less than \$250 in value or those made outside the 60-day window for required disclosure.
- 5) If the individual or entity making the expenditures governed by Section 9-2.6 did not receive any contributions for the express purpose of making those expenditures, but instead used personal or business assets for the expenditures, that should be certified to the city clerk in the required report of expenditures.

Question II: What are the disclosure obligations of candidates or political committees who **receive** in-kind contributions from independent persons or entities that have made the expenditure described in Section 9-2.6(A)?

Answer: Candidates and political committees receiving in-kind contributions from independent sources must make the following disclosures:

- 1) If an independent individual or entity contributes campaign materials to a candidate or political committee, that contribution must be reported by the recipient candidate or political committee in its own finance statements. *Disclosure by the candidate or political committee does not absolve the individual or entity making the expenditures governed by Section 9-2.6 from the reporting requirements of that provision.*
- 2) If the recipient of the in-kind contribution of materials governed by Section 9-2.6 receives such a contribution from a person or entity that is not required to disclose its contributors, it should disclose that on its campaign finance statements, as required by Section 9-2.12(B).

Fact pattern: “It’s a Zoo Out There”—an independent group--wants to expend \$1000 for a lavish buffet for a reception for Private Candidate X for mayor two weeks before Election Day. “It’s a Zoo” has invited 300 people.¹ The following flows from that action?

1. “It’s a Zoo” has to file a campaign report? YES or NO. If yes, its report looks like...

Contributor Name	Amount	Have to Disclose own Contributor list
Dog Indep Group	\$300 check	
Cat Indep Group	\$250 check	
Horse Indep Group	\$250 check	
Capital Cars	\$150 check	
Johnny Citizen	\$50 check	

Expenditure Name	Amount
Food expenses from Zack’s Cafe	\$1000

Cat Indep Group plans to raise \$ and send out a flier to 300 people next week. Horse Indep Group does not plan any further activity.

- 2. The box next to Dog Indep Group, Cat Indep Group must be checked? YES or NO.
 - 3. The box next to Horse Indep Group, Capital Cars, Johnny Citizen must be checked? YES or NO.
 - 4. Dog Indep Group, Cat Indep Group, Horse Indep Group, Capital Cars & Johnny Citizen must file their own reports? YES or NO
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It’s a Zoo’s invitation reads: “You should support Private Candidate X at our lavish buffet because he is pro-animal. This dinner is supported in part by donations from organizations that do not have to disclose their contributors to the City Clerk.”

5. **It’s a Zoo’s** invitation is in compliance with code? YES or NO.

Private Candidate X’s report looks like....

Contributor Name	Amount	Have to Disclose own Contributor list
It’s Zoo Out There	\$1000 (in kind)	
Justin Miller	\$100 check	
Judie’s Towing	\$450 check	

.....

Expenditure	Amount
Anthony Scaramuci-staff salary	\$550

- 7.The box next to **It’s a Zoo** must be checked? YES or NO.
8. The box next to Justin Miller and Judie’s Towing must be checked? YES or NO
9. Justin Miller & Judie’s Towing must file their own reports? YES or NO
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¹ This document was created by the City Attorney’s Office to provide as a set of silly but relevant hypothetical examples.

Current language on “check box”

INDEPENDENTLY SPONSORED CAMPAIGN REPORTING
CAMPAIGN FINANCE STATEMENT / CONTRIBUTIONS BY ENTITIES
(See §§9-2.3(J)(2) and 9-2.6(D) SFCC 1987)

Cumulative Total of Contributions to Date (Including this Report):	\$0.00
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Date Received	Name of Entity Physical Address Name of President, C.E.O. or Equivalent Position	Cash/Check Credit Card Other	Amount	Contributor Cumulative Total	*Contributor Disclosure Not required

Page Total	\$0.00
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Possible new language on “check box”

CAMPAIGN FINANCE STATEMENT / CONTRIBUTIONS BY INDIVIDUALS
(Continued)

Page Total _____

Possible new language for “check box” on the
In-Kind Contribution form

CAMPAIGN FINANCE STATEMENT / CONTRIBUTIONS IN-KIND

Page Total _____

Current language for asterisk

City of Santa Fe

CAMPAIGN FINANCE STATEMENT CERTIFICATION

This Campaign Statement has been prepared with all reasonable diligence and is true and complete in accordance with §9-2 SFCC 1987; however, the Campaign Finance Statement of a candidate for Municipal Judge is not required to be signed or acknowledged by the candidate.

Candidate's Signature _____ Date _____

Treasurer's/Deputy Treasurer's Signature _____ Date _____

Treasurer's/Deputy Treasurer's Address _____

Subscribed to and sworn before me this _____ day of _____, _____.

Notary Public

My Commission Expires:

Received in the Office of the City Clerk at _____ (AM/PM) on the _____ day of _____, _____.

(SEAL)

Yolanda Y. Vigil, CMC, City Clerk

* A candidate or political committee that receives contributions from another entity that does not have to disclose its contributors to the City Clerk, shall indicate as such on the campaign finance statement submitted to the City Clerk pursuant to existing reporting requirements. (§9-2.12(B) (Form CC025B)

- The term "contribution" does not include a volunteer's personal services provided without compensation or the travel or personal expenses of such a campaign worker. (§9-2.3(I)(2) SFCC 1987)
- The City Clerk is authorized to reject any incomplete campaign finance statements. (§9-2.10(E) SFCC 1987)
- The City Clerk shall assess a fine of one hundred dollars (\$100) for unexcused late filing of campaign finance statements. (§9-2.10(G) SFCC 1987)

Possible new language for asterisk

City of Santa Fe

CAMPAIGN FINANCE STATEMENT CERTIFICATION

This Campaign Statement has been prepared with all reasonable diligence and is true and complete in accordance with §9-2 SFCC 1987; however, the Campaign Finance Statement of a candidate for Municipal Judge is not required to be signed or acknowledged by the candidate.

Candidate's Signature _____ Date _____

Treasurer's/Deputy Treasurer's Signature _____ Date _____

Treasurer's/Deputy Treasurer's Address _____

Subscribed to and sworn before me this _____ day of _____, _____.

Notary Public

My Commission Expires:

Received in the Office of the City Clerk at _____ (AM/PM) on the _____ day of _____, _____.

(SEAL)

Yolanda Y. Vigil, CMC, City Clerk

* Please put a check in this box if the contributor has to disclose his/her/its own contributor list. Citation:

* A candidate or political committee that receives contributions from another entity that does not have to disclose its contributors to the City Clerk, shall indicate as such on the campaign finance statement submitted to the City Clerk pursuant to existing reporting requirements. (§9-2.12(B) (Form CC025B)

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