CITY OF SANTA FE ETHICS & CAMPAIGN REVIEW BOARD

IN THE MATTER OF: COMPLAINT
AGAINST RIO GRANDE FOUNDATION
Respondent. CASE #2017-4A/4B

ORDER OF PUBLIC REPRIMAND

THIS MATTER came before the City of Santa Fe's Ethics & Campaign Review Board ("Board") pursuant to a complaint filed by Mr. Edward Stein, and as the Board being fully advised in the premises, issued an Order of Public Reprimand for the following reasons:

Procedural Findings of Fact:

1. On April 7, 2017, Edward Stein filed a complaint with the City Clerk's Office against the Rio Grande Foundation for failure to file campaign reports.
2. The complaint invokes alleged violations of SFCC 1987, Section 9-2.6.
3. On April 7, 2017, Mr. Paul Gessing, President, Rio Grande Foundation, filed a letter.
4. On April 13, 2017, Mr. Stein filed an amended complaint with the City Clerk's Office against the Rio Grande Foundation for failure to file campaign reports.
5. On April 14, 2017, Mr. Paul Gessing, President, Rio Grande Foundation, filed a letter.
6. On April 19, 2017, the Board held a hearing to determine the "legal sufficiency" of the complaint under SFCC 1987, Section 6-16.4.
7. On April 19, 2017, the Board voted to schedule a hearing on the merits for April 24, 2017.
8. On April 24, 2017, the Board heard testimony from Mr. Gessing, Mr. Glen Silver (Mr. Stein's witness) and Respondent.
9. On April 24, 2017, the Board announced its oral decision.

Substantive Findings of Fact:

10. The Complaint and its amendment ("Complaint") alleged that Rio Grande Foundation distributed a video without complying SFCC 1987, Section 9-2.6.
11. The Rio Grande Foundation created a sub-entity called "No Way Santa Fe."
12. On April 11, 2017, "No Way Santa Fe" started running a video on its web page.
13. The video referred to a clearly identifiable ballot proposition within sixty days before an election at which the proposition is on the ballot.
14. As of April 24, 2017, it was still running.
15. Mr. Silver testified that the video cost more than $250.00 to make.
16. Mr. Gessing did not contest that amount.
17. Mr. Gessing stated the video was produced by a third party.
18. Mr. Gessing refused to state the name of the third party.
19. Mr. Gessing stated the third party had given the video to Rio Grande Foundation.
20. As of April 24, 2017, there were 157 "hits" viewing the video.
21. Mr. Gessing stated Rio Grande Foundation spent approximately $200 in advertisement fees.
22. The Rio Grande Foundation had not filed any campaign filing reports with the City Clerk's office for the May 2017 special election.

Conclusions of Law

1. The Board has jurisdiction to "enforce the provisions of the ...Campaign Code (Section 9-2 SFCC 1987)...." SFCC 6-16.2(A).
2. SFCC 1987, Section 6-16-4(A) sets four separate elements to review to determine whether a complaint is legally sufficient or whether it should be dismissed.

3. SFCC 1987, Section 6-16.4(A)(4) states "[u]pon receipt of the complaint, the board shall determine the following...[i]f the board lacks jurisdiction to adjudicate the complaint.
4. Based on Finding of Fact #1-4, the Board has jurisdiction over Respondent.
5. Rio Grande Foundation created "No Way Santa Fe".
6. Based on Finding of Fact #15-17, a third party expended more than $250.00 making a video.
7. Based on Finding of Fact #17-19, a third party gave the video to No Way Santa Fe.
8. Under the City Code Section 9-2.3(M), an expenditure is a form of contribution.
9. Based on Finding of Fact #15-19, No Way Santa Fe received an in kind contribution from the third party.
10. No Way Santa Fe disseminated independent sponsored campaign video communication to the voters.
11. Based on Finding of Fact #12-14, 20, the video communication referred to a clearly identifiable ballot proposition within sixty days before an election at which the proposition is on the ballot and the number of hits on the video exceed 150 contacts to Santa Fe voters.
12. In addition, No Way Santa Fe expended approximately $200 in advertisements in this effort.

ORDER

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, Lujan, Amer, Kovnat, Biderman, Miller

b. Those absent: Martinez

c. Those recused:

Justin Miller, Chairperson

7/13/17

Dated