

## CITY OF SANTA FE ETHICS & CAMPAIGN REVIEW BOARD

IN THE MATTER OF: COMPLAINT  
AGAINST MR. JAVIER GONZALES  
AND MR. JON HENDRY  
Respondents.

CASE #2014-1

### **ORDER DISMISSING THE COMPLAINT**

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

#### **Procedural Findings of Fact:**

1. Mr. Javier Gonzales was a candidate for mayor of Santa Fe for the March 2014 election.
2. Mr. Javier Gonzales was a participating candidate as a publicly funded candidate.
3. On February 10, 2014, Mr. Fred Rowe filed a complaint with the City Clerk's Office against Mr. Gonzales and Mr. Jon Hendry ("Respondents").
4. The complaint alleged violations of SFCC 1987, Sections 9-3.8(A); 9-3.8(B); 9-3.11(D); 9-2.6; 9-2.4(L) and 9-3.3(G).
5. On February 13, 2014, Mr. Rowe filed a complaint amendment.
6. On February 25, 2014, the Board heard oral presentations from Mr. Rowe, Respondents and the above-stated organizations.
7. On February 25, 2014, the Board announced its oral decision to dismiss the Complaint.

#### **Substantive Findings of Fact:**

8. The Complaint and amendment ("Complaint") alleged that Mr. Hendry was involved, or affiliated, with four political committees and independent expenditure organizations that

were “coordinating” with the Gonzales campaign to urge citizens to vote for Mr. Gonzales.

9. The Complaint alleged, in relevant part, that: (a) Mr. Hendry was an officer of Santa Fe Progressive PAC, but left Santa Fe Progressive PAC and joined the Gonzales campaign as a volunteer, and that Santa Fe Progressive PAC had expended money on research of the mayoral candidates; (b) Santa Fe Working Families PAC, which was funded by AFSCME, had expended money on a poll of the mayoral candidates; (c) AFSCME, which had endorsed Mr. Gonzales, had offered to expend money to pay workers to canvass and phone bank; and (d) Working America had expended money on mailing fliers urging citizens to vote for Mr. Gonzales.
10. The Complaint alleged that these actions were occurring at the same time and this constituted a contribution to the Gonzales campaign.
11. The Complaint alleged that several of these organizations occupied adjacent office units on Cerrillos Road in Santa Fe, New Mexico.
12. The Complaint included as attachments, including but not limited to, several newspaper articles, campaign report filings and emails from union organizations to its members.
13. The Complaint stated: “Speedy ECRB action is appropriate here because a subpoena would amplify existing circumstantial proof of concerted actions....”
14. The Board requested, and received, written responses and affidavits from Respondents and the four above-stated organizations.
15. Respondents and the four above-stated organizations denied there had been coordination with the Gonzales campaign and Mr. Hendry denied he had done any work as a volunteer or staff for the Gonzales campaign.

## **Conclusions of Law**

1. The Board has jurisdiction to “enforce the provisions of the ...Campaign Code (Section 9-2 SFCC 1987) and the Public Campaign Finance Code (Section 9-3 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 Findings of Fact #1-2, 8-9, the Board has jurisdiction over Respondents under Section (A)(4).
5. SFCC 1987, Section 6-16.4(A)(3) states “[u]pon receipt of the complaint, the board shall determine the following...if the complaint is frivolous or intended solely to harass or intimidate....”
6. Based on Findings of Fact #1-15, the Complaint is not frivolous or intended solely to harass or intimidate under Section (A)(3).
7. SFCC 1987, Section 6-16.4(A)(2) states “[u]pon receipt of the complaint, the board shall determine the following...if the complaint was filed with one (1) year after the complainant first discovered or reasonably should have discovered the facts on which the complaint is based....”
8. Based on Findings of Fact #1-5, the Complaint was timely filed under Section (A)(2).
9. SFCC 1987, Section 6-16.4(A)(1) states “[u]pon receipt of the complaint, the board shall determine the following...[i]f the face of the complaint sets forth legally sufficient facts which, if true, show probable cause to believe that there was a violation....”

10. “A candidate who has been certified as a participating candidate shall not thereafter accept any contribution to the candidate’s campaign other than payments received from the [Public Campaign Finance] fund....” SFCC 1987, Section 9-3.11(D)
11. A contribution can be “an expenditure by a person other than a candidate ... that is made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate or the candidate’s political committee.” SFCC 1987, Section 9-3.3(E)(1)(f).
12. Based on Findings of Fact #1-15, the Complaint’s allegations do not satisfy the “legally sufficient” standard under Section (A)(1).

### **Discussion**

13. The term “coordination” is an umbrella term that includes cooperation, consultation or in concert. The dictionary definition generally covers “a situation in which people work together to do something.” See [www.merriam-webster.com/dictionary/cooperation](http://www.merriam-webster.com/dictionary/cooperation); see also [www.merriam-webster.com/dictionary/concert](http://www.merriam-webster.com/dictionary/concert) (“to act in harmony or conjunction”); [www.merriam-webster.com/dictionary/consultation](http://www.merriam-webster.com/dictionary/consultation) (“a discussion about something that is being decided”).
14. In order to show probable cause of coordination, a complaint must allege facts that go beyond circumstantial evidence that a series of alleged actions are happening at the same time. That standard was not met here.
15. This decision, however, was not easily reached and there were troubling issues raised during the course of the matter. (E.g., Mr. Hendry’s affidavit stated: “I never contacted anyone from Javier Gonzales’ campaign regarding volunteering” while Mr. Gonzales’ affidavit stated: “[T]here was a period of 2 days between when Mr. Hendry told me that he volunteered to join our Steering Committee and when he told me that he would not be

joining our Steering Committee. During those 2 days, however, no Steering Committee meetings were held, and Mr. Hendry took no action on behalf of my campaign.”).

16. Accordingly, the Board offers the following recommendations to future campaigns to ensure compliance with the Public Campaign Finance Code:

- a. a publicly funded campaign, in the future, should erect a “firewall” between itself and outside organizations, including in physical space arrangements.
- b. to erect such a firewall, a publicly funded campaign, in the future, should take steps to accurately track and to prevent the potential revolving door between political committees/independent expenditures organizations and campaign workers/volunteers.

**ORDER**

1. The Complaint is DISMISSED under SFCC 1987, Section 6-16.4(A)(1).

  
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Justin Miller, Chairperson

Dated: 12/17/14