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INDEX OF
CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD

February 17, 2014

ITEM	ACTION TAKEN	PAGE(S)
1. PROCEDURES		
a. Roll Call	Quorum	1
b. Approval of Agenda	Approved	1
c. Approval of Minutes- January 22, 2014	Postponed until the next meeting	1-2
2. DISCUSSION AND POSSIBLE ACTION		
a) Case #2014-1. Complaint Filed by Fred Rowe Alleging Violation of Public Campaign Finance Code, SFCC 1987, Sections 9-3.8(A); 9-3.8(B) 9-3.11(D), 9-2.6, 9-2.3(L), 9-3.3(G) by Candidate Javier M. Gonzales and Jon B. Hendry.		
1) Action on Scheduling the Due Date for the Response: Ten Business Days after Completed Service of the Complaint by Certified Mail or Personal Service or a Shorter Deadline Prescribed by the Board.	Discussed	2-8
2) Action Requesting Whether Other Organization(s) Named in the Complaint Should Be Asked to Submit a Response.	Discussed	8
3) Action on Scheduling Date for the Board's "Determination of Legal Sufficiency" of the Complaint.	Discussed	8-9
4) Action on Steps Permitted Under Section 6-16.4(D) – Section 6-16.7 SFCC 1987.	Discussed	9
b) Action on Scheduling Date for "Pre-Election Meeting to Review Final Compliance Status by All Candidates."	Discussed	9
3. BOARD MATTERS	None	9
4. PUBLIC COMMENT	Discussed	9-10
5. ADJOURNMENT	Adjourned at 4:31 p.m.	10

MINUTES OF THE
CITY OF SANTA FE

ETHICS AND CAMPAIGN REVIEW BOARD

FEBRUARY 17, 2014

1. PROCEDURES

a) ROLL CALL

A regular meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order by Justin Miller, Chair on this date at approximately 3:35 pm 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
Paul L. Biderman
Ruth Kovnat
Tara Lujan (arrived later)
Kristina Martinez
Seth McMillan

Members Absent:
Roderick Thompson, Vice Chair (excused)

Staff Present:
Zachary Shandler, Assistant City Attorney

Others Present:
Fred Rowe, citizen
Stephen Curtice, Attorney representing J. Hendry
Justin Kaufman, Attorney representing J. Gonzales and Gonzales Campaign
Charmaine Clair, Stenographer

b) APPROVAL OF THE AGENDA

Ms. Martinez moved to approve the Agenda as presented. Ms. Kovnat seconded the motion which was passed by unanimous voice vote.

c) APPROVAL OF THE MINUTES- January 22, 2014

Mr. Biderman said there are a few discrepancies that might be misleading for those looking for guidance on the rules the Board has adopted.

Mr. Biderman moved to table the January minutes until the next meeting. Ms. Martinez seconded the motion and it passed by unanimous voice vote.

Ms. Lujan entered the meeting at this time.

2. DISCUSSION AND POSSIBLE ACTIONS

a) Case #2014-1. Complaint Filed by Fred Rowe Alleging Violation of Public Campaign Finance Code, SFCC 1987, Sections 9-3.8(A); 9-3.8(B) 9-3.11(D), 9-2.6, 9-2.3(L), 9-3.3(G) by Candidate Javier M. Gonzales and Jon B. Hendry.

   1) Action on Scheduling the Due Date for the Response: Ten Business Days After Completed Service of the Complaint by Certified Mail or Personal Service or a Shorter Deadline That May Be Prescribed By the Board.

Chair Miller said the special meeting was called to figure scheduling issues on the Complaint and given the short time frame between now and the election and the late filing of the Complaint; to do so in a way that would afford the parties their rights and due process.

He asked Mr. Shandler to set the background of the Complaint.

Mr. Shandler explained the Board rules require a sworn response by the Respondent filed with the City Clerk within 10 business days of completed service of the Complaint. The filing must be by certified mail or personal service. The Board could also prescribe a shorter deadline.

He said service in the matter was attempted by certified mail to both named Respondents on the 10th [February] on the original Complaint. The green cards have not been received back in the City Clerk's office and there is no confirmation certified mail service has been completed. The service was also sent electronically.

Mr. Shandler said the certified letter on the amendment to the Complaint was sent on the 14th [February] and again the green cards have not been received back, so there cannot be confirmation yet that there has been completion of the service. The amendment was also sent electronically.

Chair Miller asked the representatives of the parties if they had been served. He asked Mr. Rowe if he would confirm that he filed the amended Complaint on the thirteenth [February].

Mr. Fred Rowe said he lives in Santa Fe and is an attorney and would state upfront that while he has been supporting Councilor Bushee for Mayor, the Complaint was filed in his personal individual capacity as a concerned citizen and a professional lawyer, aiming to preserve the City's public campaign financing system. He said as the former Board chair he has the utmost regard for the Board's wisdom and capability and dedication to overt a tainted election, if possible.

Mr. Rowe said he filed the amended Complaint on the thirteenth. He said he understood that all of the pleadings in the matter have been electronically transmitted. He noted that the Respondent had responded to the media regarding the Complaint and the amendment sent electronically.

Mr. Rowe said with regard to scheduling, he was impressed by the Board's alacrity to expedite a resolution of the important case and with the election 15 days away, time is of the essence. He noted that the Board's rules provide that they can "shorten-up the normal calendaring and filing dates". He suggested the Board do that, "less there be a potentially tainted election without the Board having made an appropriate determination as to the merits of this Complaint".

Mr. Rowe suggested a due date of Wednesday-two days from now for the full Response to the Complaint by Candidate Gonzales and Mr. Hendry. He said with regard to the other parties named he suggested they be given the option of filing their Response also by Wednesday; "less they request more time and defeat expeditious handling of this matter".

Mr. Rowe said with regard to the timing it is urgent and paramount that the Board issue a subpoena to Mr. Hendry now, rather than wait. He said if the Board waited the time might run out and they might look back on an election that could have been handled more fairly.

He thought Mr. Hendry's affidavit was essential to ascertain whether the Complaint activities were coordinated and acted in concert, or were in fact independent. He said if the Board prefers to make the determination that the Complaint tentatively states a violation; they would move forward with Discovery.

Mr. Rowe thanked the Board.

Mr. Justin Kaufman said he was present on behalf of Javier Gonzales and the Gonzales Campaign. He said he would respond to a number of things stated and to the question on timing.

Mr. Kaufman said Mr. Gonzales was served via certified mail on Saturday; both the original Complaint as well as the amendment.

Ms. Martinez asked if Mr. Gonzales would dispute that he received that by e-mail prior to that date.

Mr. Kaufman said Mr. Gonzales did receive the e-mail from the Clerk's office; the original Complaint filed on February 10th and the amendment on Thursday night also via e-mail.

Chair Miller said Board rules allow the Respondent ten business days to respond which places Mr. Gonzales's response date on 28 February. He asked Mr. Kaufman if he had objections to a shorter time period or could suggest a time reasonable for Mr. Gonzales.

Mr. Kaufman said they would object to an earlier time period; they need the whole ten days. He said the Complaint is extensive and has a number of code cites. He said obviously they feel the Complaint lacks merit in the first place and they have a number of responses to make on the merits as well. He said the Complaint is complicated and the time is needed to adequately respond, but he understands the rules with respect to timing.

Mr. Stephen Curtice said he is with the law firm of Youtz and Valdez representing Mr. Hendry. He said he spoke to Mr. Hendry this morning who said he had not yet received a copy of the Complaint. He said he did not ask if Mr. Hendry had received a copy by e-mail.

Mr. Curtice said he has received portions of the Complaint, specifically the Memorandum, in an unsigned word version on Friday. He did not receive the attachments or the cover letter until this morning.

Chair Miller asked the possibility, if the Board shortened the time to respond.

Mr. Kaufman said he certainly needs time to respond. He noted at there are at least four others, one who has not received at all, who has operations being challenged by the Complaint. He said it is not in the Board's best interest to shorten the time period to respond.

Chair Miller asked Mr. Kaufman if he could accept service for Mr. Hendry. Mr. Kaufman replied he could and would accept service today.

The Board discussed the timing of the Responses and whether President's Day would be counted.

Chair Miller said if the Respondents are given the full ten days their Response would be due on Friday February 28 for Mr. Gonzales and March third for Mr. Hendry. He noted that the election is March fourth and the Board would not be able to meet with the consideration of their Responses before the election.

Mr. Biderman said since the Board has the discretion to shorten the time, he would ask the consequences of the Board requiring a shortened response time. He said that would allow the Board to meet and discuss the issue and possibly resolve before [the election]; or what the consequences would be of not acting until after the election.

Chair Miller thought the more progress made before the election, the better. He said depending on how the Board acts on the Complaint, some courses of action could never be done by March third. The Board could take steps to have a preliminary determination of legal sufficiency before the election; or other decisions.

Ms. Martinez said depending on whether a legally sufficient Complaint is found and if the hearing procedures were waived and the Board expedited things; they could hear this before the election. She said that depends on whether the Respondents want a full-blown evidentiary hearing.

Ms. Kovnat asked if the Respondents could come up with a proposed deadline that would not prejudice them, shorter than the proposed 10 business days. She said if so, the Board could do things more quickly than the 10 days would allow.

Chair Miller asked the Respondents to address Ms. Kovnat's suggestion. He explained the Board is looking at a way to shorten the time period without prejudicing the Respondents in their Response and still allow the Board to act before the election.

Mr. Kaufman said as he stated, they feel the full response time is needed in order to formulate a written Response that the Board could review in its consideration of the Complaint. He said he and Mr. Gonzales obviously take the position that the Complaint is meritless and should be dismissed on "first blush," but would like to be able to lay that out for the Board. He said that would take the time he has asked for and that the Board rules prescribe.

Mr. Curtice said he would be remiss if he did not point out that there are parties whose actions are being challenged who are not yet parties to this case. He said for example, his client asked about the constitutionally protected member-to-member communications, on which he would engage the help of AFSCME's D.C. council. He said it raises First Amendment questions regarding the application of the Ordinance as alleged, but they are not yet parties.

He thought likewise the Board would conclude that the Complaint lacks merit and should be dismissed. He said he received the full version of the Complaint this morning and had difficulty envisioning a response much shorter than 10 days and would ask for as much time as the Board would give. He asked the Board to bear in mind that they are facing allegations against parties who are not yet parties to the case.

Ms. Martinez said on that point; the Complaint is actually filed only against Javier Gonzales and Jon Hendry. She questioned if the Political Action Committees (PACs) have to be served in order for the Board to move forward on the Complaint. She asked Mr. Shandler if he had a position on that.

Mr. Shandler said they are not named as the Respondent and the reason the City Clerk did not attempt service on them. He said item 2 (a) 2 is to discuss whether it would be helpful or if there should be an opportunity for them to bring in information; or whether that is unnecessary.

Mr. Rowe said if he were a lawyer for the Respondent he would prefer to have the answer filed after the election, "which of course would make the Board look impotent and the Public Financing Campaign law a farce without teeth". He said under the code which governs the actions of the Board, a Response is not required before a determination of whether the Complaint on its face states probable cause of a violation. "Hence there is no code requirement for a Response; there is no due process requirement for a Response."

Chair Miller said the Board has heard from the parties. He said as a discussion point, frequently in election law there are disputes and issues that require rapid consideration and determination in both the state election and the city election codes. He thought the Board is within its rights and reasonable in shortening the time period.

Mr. Biderman said he is still uncertain, but thought an argument is viable that there is little the Board could do other than to decide whether the Board wants to proceed on the face of the Complaint before the election. He said there is enough here at stake, including the interpretations of the Campaign Finance law that an argument could be made. He said the Board should be more deliberative and not act until they have seen the arguments on both sides; even if that means taking it past the election.

Mr. Biderman said he isn't clear "what the taint is to the election by not acting sooner", in the sense that the damage, if there is damage, has been done. He said a lot of activity has been done already by the PACs that are at issue. He wasn't sure that waiting until after the election would change anything that has already happened and he thought it could lead the Board to a hasty decision.

Chair Miller thought the Respondents could come up with a thorough response in seven days, which would be February twenty fourth.

Mr. Biderman said there are financial remedies after the election. One thing the Complaint calls for is to charge the funds expended by the PACs on behalf of the particular candidate involved, to that candidate's cost. He said the Board would be advised to consider that potential before acting further.

Ms. Martinez thought the Board should give due consideration to the Complaint. She said she found it somewhat disingenuous for the Respondents to claim they need the full ten days from the dates they were served. She said the most fair measure is to have the Respondents respond a week from today, which would have been the original deadline if they had been served.

Ms. Martinez thought the Board wouldn't be able to take action on the Complaint before the election, but was important to determine the legal sufficiency of the Complaint before the election. She said the public should know and to her that weighs greater than the other considerations brought up.

Ms. Kovnat agreed that a week from today would be a fair amount of time for the Response. She said the benefit to the Board in determining the sufficiency of the Complaint by what is in the Response, outweighs the burden the Board might be placing on the Respondents.

Mr. Biderman said people could think that the Board had decided the outcome. He said he was thinking of the Order issued by District Judge Singleton to the County Clerk to either issue marriage licenses to gay couples or show cause why she should not. The Clerk proceeded to do that as if there had been a Finding by the court that they had a legal right and was simply a show cause Order.

Chair Miller said it is important for the Board to be clear and for the public to understand that whatever the Board's next step; the process could be lengthy or could just be an intermediary step.

There were no further comments from the Board.

Chair Miller asked Mr. Kaufman to continue with his comments.

Mr. Kaufman said to respond to a couple of points made; it is true this is a serious Complaint. He and Mr. Gonzales took it seriously when they received the e-mail. He said there are claims made against the candidate and his campaign and against other groups with whom the Gonzales Campaign is not allowed to coordinate with.

Mr. Kaufman said some of those groups are here and some are not and the Board should decide if any of those groups need to be added to the mix. He said counts in the Complaint allege conduct by people who are not Javier Gonzales and have to do with the reporting requirements by other groups. He said

to fully resolve all of the allegations and the Complaint, the Board should have those groups in front of them too.

Mr. Kaufman said the Gonzales Campaign has no ability to deal with that and that is a complicating factor for them. He asked the Board to "put it on their radar" that they need to resolve whether the other groups should be brought in and how they could be given proper notice to respond.

Mr. Kaufman said the other point he wanted to make is that most of the conduct took place a long time ago. The fact that the Complaint was filed on February 10 and is being dealt with in an expedited manner isn't the fault of the Respondents; the point of the Complaint and the timing of the Complaint should be considered by the Board as well.

Ms. Martinez said that was a question she had as well; why the Complaint was not filed until February tenth. She asked to hear from Mr. Rowe on that.

Mr. Rowe said he agrees with counsel that the Complaint is complex and the issues are not easy to resolve. He emphasized that in regard to the other groups, the relief of the Complaint goes solely to the Gonzales Campaign. The other groups are factual participants, but are not charged with violations.

Mr. Rowe said he has asked that the Campaign give back to the City that part of the money they received. He said the Campaign "doubled up on benefits by virtue of those groups exercising their constitutional rights to speak up; to pay up; to exercise their First Amendment privileges. He said they are not essential for this determination. He said it would be appropriate and desirable for them to speak if they wish to, but in his view are not parties to this action.

He said with regard to the timing of the Complaint, the only action goes to the hiring of the "political research firm" by the Progressive PAC, which Mr. Hendry chaired. He said no payment was made to that research firm until late in January.

Mr. Rowe said the other action he challenged is on an ongoing basis and includes last week's mailing of twin circulars by the Campaign and Mr. Gonzales, which "reek of concert". He said he did not sit back and wait. He had to get the Campaign Finance Report that disclosed key facts, such as the payments for the challenged transaction and an on-going disregard for the Code.

Mr. Rowe asked the Board not to be "toothless and helpless in this situation" and to at least let the public know what the issues are in the Complaint; even if the Board after hearing the Response in a hearing deliberates beyond the date of the election. He said this is not news to Mr. Gonzales and this should not entitle him [Mr. Gonzales] to extra time in order to "run out the clock" and afterwards, "feast on a potentially tainted election result".

Chair Miller asked the pleasure of the Board.

Ms. Kovnat moved that the Board ask the parties to respond to the Complaint by Monday, February 24, 2014 by close of business and that a hearing be set shortly thereafter for the Board

to make a determination about the sufficiency of the Complaint based on both the Complaint and the Responses. Ms. Martinez seconded the motion.

A roll call vote was passed by a majority vote with Ms. Martinez, Ms. Kovnat, Mr. McMillan and Ms. Tara Lujan voting in favor. Mr. Paul Biderman voted against.

2) Action on Requesting Whether Any Other Organization(s) Named in the Complaint Should Be Asked to Submit a Response.

Chair Miller said the Complaint names Respondents as Javier Gonzales and Jon Hendry, but the actions of a number of other entities are addressed that are not named as Respondents. He asked the Board if the other entities should be asked to respond.

Ms. Lujan said she wasn't sure an official response was needed, but thought it helpful to have the parties present and to hear from them at the next meeting.

Mr. Curtice said on behalf of AFSCME, although not named in the cover letter Complaint form; Count II claims that AFSCME's actions were illegal. The Complaint implicitly asked the Board to make a Finding as to that. He said on behalf of AFSCME he demands the right to respond to those allegations. He said all parties whose actions were described as illegal in the Complaint should have that right, whether or not they would be considered necessary parties under Rule 19 to litigation.

Mr. Kaufman said with respect to the timeline he begged the indulgence of the Board for a few more days. He said this implicates First Amendment questions and he would enlist help from a D.C. law firm on behalf of AFSCME.

Mr. Biderman thought the Board would not have jurisdiction over the other groups and could not direct them to do anything. He suggested the other groups be invited to respond. He said the sooner the Response the more likely that would have an impact.

Ms. Martinez agreed, if the other groups want to submit something. She would leave that to them.

Mr. Biderman moved that the Board ask the City Clerk's office to notify the groups listed in the motion of the copies of the Complaint and invite the groups to file a Response and advise them of the schedule. Ms. Lujan seconded the motion.

A roll call vote showed Ms. Martinez, Ms. Kovnat, Ms. Lujan, Mr. McMillan and Mr. Biderman voted to approve the motion unanimously.

3) Action on Scheduling Date for the Board's "Determination of Legal Sufficiency" of the Complaint.

Chair Miller said this date is driven in part by the Board's decision to require a Response by Monday February 24, 2014.

Mr. Shandler noted that 2 D requires the Board to have a pre-election meeting before March 4, 2014 regardless and the Board could combine the two.

The Board discussed availability for the dates and the meeting and Tuesday, February 25, 2014 was decided to be the primary date.

4) Action on Any Steps Permitted Under Section 6-16.4(D) - Section 6-16.7 SFCC 1987.

There were no further actions to consider at this time.

b) Action on Scheduling Date for "Pre-Election Meeting to Review Final Compliance Status by All Candidates."

Chair Miller indicated this would be handled the same day that the Board finds for the Complaint.

3. BOARD MATTERS *(incorrectly numbered as 4)*
There were no Board Matters.

4. PUBLIC COMMENT
Mr. Daniel Yohalem said he was present as a citizen and an attorney in Santa Fe and is worried about the outcome of the election. He said he supports Patti Bushee, but does not work for her campaign.

Mr. Yohalem said his concern is about the interplay between the City's effort to get other money out of this campaign through public financing and about the actions of PACs. He said he knows the PACs have First Amendment rights, but if a candidate is going to take public money that candidate should do whatever needed to keep the private money out of the campaign.

He said that isn't happening and he believes that the candidate has the power to make that stop. He is concerned about this Committee looking at what is happening and time is of the essence; the integrity of the electoral process is of the essence. He said he could tell them as a trial lawyer there is only one way the Board would get to the truth in this matter and that is by issuing subpoenas. He urged the Committee to exercise its authority and issue as soon as possible, subpoenas to the Gonzales Campaign and to Mr. Hendry. And to try to determine if there had been concerted action in this Campaign that without, the Board would not know what has happened.

Mr. Yohalem suggested that Mr. Hendry be asked to submit a sworn affidavit on the issue of contacts with any member of the Gonzales Campaign. He said the Gonzales Campaign is a broad group of people and the candidate has said there had been no contact. He said he is inclined to believe Mr. Gonzales- contacts with *him*. He said he also knows that the Campaign involves many people and there are a lot of ways that contacts could happen.

Mr. Yohalem said to discern the facts under this circumstance are very important to the City of Santa Fe. He said the Board is empowered to find out what happened. He urged them to take that action.

Marilyn Bane President of the Historic Neighborhood Association said she came to talk about a step removed from what the Board had dealt with so far. She said they have been seeing a remedy in terms of dollars and cents; returning monies, etc., which will happen after the election.

Ms. Bane said her concern is what the money has bought and continues to buy in terms of consumer impressions. She said the City doesn't have a "cease and desist" and the best case scenario is that a lot more impressions are going out illegally. She said if on the other hand that isn't the case; people are being affected as they wait 10 days; as time goes on and more volunteers are paid from Albuquerque and are doing what they do.

Ms. Bane said we can't do anything about that as consumers, they count on the Board. She asked the Board to do whatever they could to "head off" or - to represent the people on the receiving end of all of it.

6. ADJOURNMENT

Ms. Martinez moved to adjourn the meeting. Ms. Lujan seconded the motion and the motion passed by unanimous voice vote.

There being no further matters to discuss and the agenda having been completed, the meeting adjourned at 4:31 p.m.

Approved by:

_____

Justin Miller, Chair

Submitted by:

Charmaine Clair

Charmaine Clair, Stenographer

INDEX OF
CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD

February 25, 2014

ITEM	ACTION TAKEN	PAGE(S)
1. PROCEDURES		
a. Roll Call	Quorum	1
b. Approval of Agenda	Approved	1
c. Approval of Minutes- January 22, 2014	Approved with conditions	2
2. REVIEW FINAL COMPLIANCE STATUS BY CANDIDATES	Discussed	2-3
3. DISCUSSION AND POSSIBLE ACTION		
a) Case #2014-1. Complaint Filed by Fred Rowe Alleging Violation of Public Campaign Finance Code, SFCC 1987, Sections 9-3.8(A), 9-3.8(B), 9-3.11(D), 9-2.6, 9-2.3(L), 9-3.3(G) by Candidate Javier M. Gonzales and Jon B. Hendry	Discussed	3-14
In Accordance with Section 6-16.4 SFCC 1987 "Determination of Legal Sufficiency; Setting a Hearing" Consideration of Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True, Show Probable Cause to Believe There Was a Violation.		
(The Board May Go Into Executive Session Under NMSA 1978, Section 10-15-1(H)(3) to Deliberate in Connection With an Administrative Adjudicatory Proceeding.)		
1) Action Regarding Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True, Show Probable Cause to Believe There Was a Violation.	Discussed	13
2) Action on Any Next Steps as Permitted Under Section 6-16.4(D)- Section 6-16.7 SFCC 1987.	Case Dismissed	14
4. BOARD MATTERS	None	14
5. PUBLIC COMMENT	None	14
6. ADJOURNMENT	Adjourned at 5:55 p.m.	14

MINUTES OF THE
CITY OF SANTA FE

ETHICS AND CAMPAIGN REVIEW BOARD

FEBRUARY 17, 2014

1. PROCEDURES

a) ROLL CALL

A regular meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order by Justin Miller, Chair on this date at approximately 3:30 pm 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
Paul L. Biderman
Ruth Kovnat
Kristina Martinez
Seth McMillan

Members Absent:
Roderick Thompson, Vice Chair (excused)
Tara Lujan

Staff Present:
Zachary Shandler, Assistant City Attorney

Others Present:
Fred Rowe, Complainant
Stephen Curtice, Attorney representing J. Hendry
Justin Kaufman, Attorney representing J. Gonzales and Gonzales Campaign
Ms. Kirtan Khalsa representing PACs: Santa Fe Progressive and Santa Fe Working Families
Carl Boaz, for Charmaine Clair, Stenographer

NOTE: All items in the Committee packet for all agenda items are incorporated herewith by reference.

b) APPROVAL OF THE AGENDA

Ms. Kovnat moved to approve the Agenda as presented. Ms. Martinez seconded the motion which was passed by unanimous voice vote.

c) APPROVAL OF THE MINUTES- January 22, 2014

Mr. Biderman said on page 3 last sentence and the second paragraph of the same page in the last sentence the term "knows or reasonably knows or "know or reasonably know", should have been reasonably *should* know or reasonably *should have* known. He said the problem is that a person who goes back to this for an explanation of what the change in the recommendation from the Board is, would probably be confused.

Mr. Biderman suggested an asterisk or editorial note be inserted in the two locations to state that the Board inserted the word "*should*" so it is an accurate reflection of what was intended.

Chair Miller asked City Attorney Shandler if possible to make a note in the minutes that the intent of the Board was *reasonably should know* as opposed to reasonably know.

Mr. Shandler said that was reasonable to note with an asterisk and does not alter what was mistakenly said. He said it would be clear to a future reader that the Ordinance was misquoted.

Mr. Biderman moved to approve the minutes as amended with the two locations indicated in the minutes modified to include an asterisk and a footnote that states the intention was to insert the word "should" before the word 'know' or 'knows.' Ms. Kovnat seconded the motion and the motion passed by unanimous voice vote.

2. REVIEW FINAL COMPLIANCE STATUS BY CANDIDATES

Chair Miller said one reason the Board is here is that they are required to meet shortly before the election to review compliance status by candidates. He said Mr. Shandler had a report for the Board.

Mr. Shandler said that City Clerk Vigil is still in her office and couldn't be present because today is a filing day. The next filing day is next Monday and all candidates have filed except for four and they have until five p.m. today. He noted that at approximately 1:30 p.m. at least seven of the reports were on the City Clerk website and more have probably gone up since. He said in terms of the actual reports, all have been accepted except the four yet to be received.

Mr. Shandler said the Board would note that some of the Publicly Financed candidates show a negative or a bracket because equipment, etc. was purchased and all of it was not needed. The negative/bracket shows how the money is refunded to the candidate and not a contribution from Home Depot, etc.

He said at least one organization has a negative balance. That means the candidate had more expenditures than contributions, partly driven because of the ECRB's oral ruling in a previous case. A candidate must show the expenditures at the time the service was accepted.

Mr. Shandler said the parties have now been advised if they have more expenditures than contributions that cannot show as negative cash on hand, but must show as a loan for that amount. He said the Board would see that on some of the reports as well. He said this is a form for future elections that the Board and the City Clerk might have to modify in situations of the expenditures prior to the contributions.

Mr. Shandler said that completed the report.

Mr. Biderman said he hoped the Board is keeping track of the issues they have been discovering through this election. He said the Board could review the Board rules after the election and make improvements on some for the next time.

Mr. Shandler replied he already has fourteen.

3. DISCUSSION AND POSSIBLE ACTIONS

a) Case #2014-1. Complaint Filed by Fred Rowe Alleging Violation of Public Campaign Finance Code, SFCC 1987, Sections 9-3.8(A), 9-3.8(B), 9-3.11(D), 9-2.6, 9-2.3(L), 9-3.3(G) by Candidate Javier M. Gonzales and Jon B. Hendry

In Accordance with Section 6-16.4 SFCC 1987 Determination of Legal Sufficiency; Setting a Hearing" Consideration of Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True, Show Probable Cause to Believe There Was a Violation.

(The Board May Go Into Executive Session Under NMSA 1978, Section 10-15-1(H)(3) to Deliberate in Connection With an Administrative Adjudicatory Proceeding.)

Chair Miller said the Board met on Monday, February 17 and directed the Respondents to file a Response within seven days. The Board also directed the City Attorney's Office to contact other entities mentioned in the Complaints to give them the opportunity to provide a comment to the Board.

He said the Board has received Responses from the Respondents and several comments from other entities named and all of those submissions were received yesterday. The Board's first step is consideration of the Complaint to determine whether it is legally sufficient under the Ordinance and under the Board Rules, to move forward.

Chair Miller noted that the Agenda, Section 6-16.4 is the section of the Code the Board looks at to determine the legal sufficiency of the Complaint. He explained that the Board may go into Executive Session pursuant to the Open Meetings Act, to deliberate in connection with this proceeding.

Chair Miller opened the floor to members of the Board for comments or questions.

Mr. Biderman said with deep regret and reluctance he had to recuse himself, as he has done on several previous occasions. He said he especially regrets having to do so with this case, because he thought this a very important issue; probably the most important the Board has dealt with in terms of determining the application of the rules that the Board is sworn to enforce.

Mr. Biderman said the reason he feels obliged to withdraw is that if he is not able to perform his duties in this capacity, the public is entitled to know why. He said it is an ongoing conflict he has as a contractor with the City as an alternate Municipal Judge and means the contract comes before the City

Council. Anyone who is, or may be a voting member of the City Council may end up voting on whether or not that [contract] continues or voting on his salary.

Mr. Biderman said that may appear to be a conflict, but would not in fact, influence him.

Mr. Biderman said in this case there is the additional factor that the Board has very appropriately and correctly notified several Political Action Groups (PACs) that this proceeding may affect them and may affect their standing; that they may be found in violation of the Campaign Rules. He said it happens that several of the people who are involved are very close, long time friends personally. He does not want to cover that up. He does not feel it appropriate for him to act when their interests may be affected.

Mr. Biderman said the most important reason is that he trusts the Board to take the proper action. He does not want his personal relationships or contract to taint the Board's activity by appearing that this has influenced him in a public way. He emphasized that no one involved *has* attempted to contact him in any way, or influence anything.

He said despite the importance of this and what he feels is his responsibility to act, he also feels it is his responsibility to protect the Board's integrity in this matter. He said he would have to withdraw once again from this activity.

Mr. Biderman said on the other hand he does feel the Board is learning a lot about rules, challenges to the rules and issues the Board had not anticipated and that City Council had not anticipated when the rules were adopted. He said those will have to be dealt with in a rulemaking context and he looks forward to playing an active role in that.

Chair Miller thanked Mr. Biderman for bringing it to the Board's attention and for being conscientious about his role on the Board. He said Mr. Biderman will certainly have plenty of opportunity to consider changes to the rules.

Chair Miller said the Board has received written submissions from the Respondent and the Complainant. He said he would give both a brief chance to address the Board. He asked that their comments be kept to about five minutes.

He asked Mr. Fred Rowe to start. (Exhibit 1)

Mr. Rowe thanked Chair Miller. He said that while he supports Councilor Bushee for mayor he has filed this Complaint in his personal capacity as a concerned citizen and as an attorney, in order to preserve the Public Financing Code system. He said as a former chair, he has full confidence that this Board has legal powers, the legal alacrity and the legal wisdom to avert a potentially tainted mayoral election next week.

Mr. Rowe said he doesn't believe conversely that the Board will choose to sit on its hands and try to fix the code after the election. He said he would state up front that he believes that PAC financing in addition to public financing is wrong; it is wrong to take and feed from a public and private pot at the same time.

Mr. Rowe said as stated previously, the Gonzales campaign has benefited about $20,000 from PAC contributions, in addition to its own. He said he agrees with the Journal editorial that said "it stinks". Mr. Rowe said as for the capability of the Board to judge the legal sufficiency; he emphasizes that at this stage we must not demonstrate by hard proof of a violation, but rather enough facts, that if taken as true, establish probable cause to believe a violation of the Code has taken place. He said some lawyers call that "the Grand Jury test" and he thinks they have met that in spades

Mr. Rowe said he also wished to point out that we are not dealing with truly independent PACs or groups. We are dealing with PACs and groups that were specifically organized for the purpose of promoting and facilitating the election of a particular mayoral candidate. He said we are not dealing with independent constitutional rights; we are dealing with a situation where there has been enough indication of special support so as to not call those groups *independent* for purposes of the constitutional rights.

He said he also would like to stress that the Response filed yesterday, while ample and detailed, does not include a specific statement that "no member of the Gonzales campaign has communicated with any PAC or private organization regarding money". He said there are all kinds of details that have been put forth, but none of them specifically state that there has been no communication; no deal, nothing between the Campaign staff and the organizations themselves.

Mr. Rowe said he also thinks it's plain that concealed, hidden contribution arrangements are not "trumpeted or advertised by the particular parties". They have an obvious interest in seeking to appear to abide by the Code. He said in his view this heightens the need for this Board to have a Discovery by way of authorized subpoenas that would check the validity of some of those; in particular into the discrepancy between Mr. Hendry's affidavit and Mr. Hendry's media statement.

He said finally, the claim that they [Javier Gonzales and Jon Hendry] have immunity because the statute is not retroactive, is baseless. He said the Board at its November fifth hearing stated very clearly that this was a clarification of the Code; not a substantive change in the Code. Hence there is no valid claim of retroactive activity being made. He said the case the Respondent referred to is a murder case that has to do with the statute of limitation changes and the retroactivity thereof. He said that shows extreme assertions on their [Mr. Gonzales and Mr. Hendry] part.

Mr. Rowe said as a last matter he would read a sentence from a press release last Monday by the counsel for Mr. Hendry. (Exhibit 2) He read *"we look forward to investigating Rowe's connections with the Bushee Campaign and pursuing any applicable remedies against Rowe for any wrongdoing relating to his filing of these allegations"*.

Mr. Rowe said he has been a lawyer for over 60 years and has never been threatened by opposing counsel. He suggested the Board might want to consider some kind of protective rule for citizens against intimidation of this kind; which he believes is wrong and shameful.

Mr. Rowe said he would be pleased to answer questions from the Board.

Chair Miller thanked Mr. Rowe. He asked if there were any questions from Board members and there were none.

Mr. Justin Kaufman said he is representing Mayoral Candidate Javier Gonzales and the Gonzales campaign. He thanked the Board for their efforts in scheduling the Hearing and its time and effort to sort out the issues raised by Mr. Rowe's Complaint filed earlier this month.

He said they [he and Mr. Gonzales] agree with Mr. Rowe that the issues he raised in his Complaint are important, serious and really essential for a fair election in Santa Fe. What they disagree about is whether anything Mr. Rowe alleges in his Complaint has any legal consequence. He said we think that a careful review of the Complaint and the Amendment would lead the Board to conclude that it fails to allege the legally sufficient facts, which if true, show probable cause to believe that there was a violation of the Code.

Mr. Kaufman said they [he and Mr. Gonzales] ask the Board to dismiss this Complaint immediately.

Mr. Kaufman said he doesn't have time to go through every count in their Response, but did provide detailed responses on each and every count in the Complaint. He said before getting into those details he wanted to get into the overarching issue; the coordination between Candidate Gonzales, his political committee, and any independent group that was cited by Mr. Rowe in the Complaint.

He said they tried to provide the Board with an extreme level of detail about Candidate Gonzales and his campaign; about the structure of the organization; the names of the people who work for the campaign, whether paid or unpaid; their roles and the undisputed fact repeated in all of the Responses filed yesterday; that there was absolutely zero coordination between the Gonzales campaign, his political committee and any of these independent groups.

Mr. Kaufman said he thought a fair reading of the Complaint and all of the Responses will lead the Board to that conclusion. The allegations and hearsay and Mr. Rowe's Complaint about suspected coordination without anything else, can't be enough to warrant the extreme remedy Mr. Rowe is asking for: essentially broad subpoenas both to Candidate Gonzales, as well as to a citizen of Santa Fe.

Mr. Kaufman said if it was otherwise, the Board is approving challenges like this that are going to happen in every election going forward. He said it is a huge waste of time and resources.

Mr. Kaufman said he would address any questions the Board has. He urged the Board to focus today's discussion on what is on the agenda: whether this Complaint meets the legal sufficiency threshold.

Mr. Kaufman said he expects that the Board would hear from the public, who would discuss the concept that there shouldn't be outside groups raising money in publicly financed campaigns. He said the Board may also hear from members of the public, people who support the people running against Candidate Gonzales and that "Candidate Gonzales needs to make it stop".

Mr. Kaufman said setting aside the fact that a candidate is not allowed to call those groups and tell them to stop and to undo all of that, is beside the point. The point is the fact that although these are important issues they are not issues that need to be decided by the Board.

Mr. Kaufman said City Council enacts the laws that the Board is being asked to enforce today and Councilor Ives filed a response he would urge the Board to review. He believed the response makes salient points that are essential to be considered. He said Councilor Ives raised the fact that there are legislative solutions to this; the Board can recommend changes to the City Ordinance that deals with Public Campaign Financing. He said we need to ask our City Councilors to fix this, but we shouldn't be punishing a blameless candidate for abiding by the laws in place now.

Mr. Kaufman said the Board is asked to determine whether the Complaint is legally sufficient. He said there are no legally sufficient facts in the Complaint that warrant taking any other step. They have provided a detailed affidavit on behalf of Candidate Gonzalez and the Board has affidavits from a number of people involved in the independent groups that are at issue. They point to all of the evidence in the record. He asked that the Board dismiss the Complaint in its entirety.

Chair Miller thanked Mr. Kaufman. He asked if there were questions. There were none.

Chair Miller said the Board would hear from the parties named in the Complaint, even if not technically named as Respondents. He said Mr. Curtice could speak in his role representing Mr. Hendry and then could speak in his other capacity.

Mr. Curtice said the purpose of today's hearing is to test whether there is an alleged, legally sufficient fact. He said on a purely legal basis Mr. Hendry is not a proper party to the allegations made. He said and assuming all differences in support the Complainant made; Mr. Hendry is not the right entity. He is not an entity, nor is he a candidate. He is an individual who was at one time a chairman of a PAC of an election committee, but has not been so since October eighth.

He said the Complaint identifies the Code sections alleged to have been violated; the first is 9-3.8 (A) and (B) that provides for rules governing the candidate. He said that is limited to the candidates' activities; and again Mr. Hendry is *not* a candidate. He said Rule 9-3.11(D) is again placing restrictions on a *candidate,* of which Mr. Hendry is not.

Mr. Curtice said 9-2.6 refers to a person or entity that contracts or initiates the dissemination of campaign materials. He said although there have been allegations in this Complaint of campaign materials being disseminated; none of those allegations were against Mr. Hendry. They are against the various PACs; none of whom were joined as parties to the litigation. Furthermore, there is no allegation that the PAC Mr. Hendry was involved with was one of the groups disseminating campaign materials.

Mr. Curtice said lastly the Complaint cites 9-2.3 (L) and 9-2.3(G) which are the twin and identical definitions of the word *expenditure,* in both the Campaign Code and the Public Campaign Finance Code. He said thus, the general tenor of the Complaint is that certain PACs and additionally AFSCME, which is not a PAC, coordinated their expenditures with the Gonzales campaign. He said you would

think the natural response to such a claim would be the Gonzales campaign and those PACs. Mr. Curtice said none of those PACs were made parties of this proceeding; Mr. Hendry was.

Mr. Curtice said moreover the remedy sought, particularly in the Complaint Amendment, is something that Mr. Hendry cannot provide; which is Mr. Gonzales being forced to return money on the Public Finance.

Mr. Curtice said he would not go through every point, but would make two broader points. He said it had been stated there was a suggestion in the Complaint that the purpose of the Public Finance Code was to eliminate independent expenditures altogether. He said that is clearly false.

He said often when dealing with interpretation of statutes you are left with the problem of what the legislature intended. He said in this case they told us in no uncertain terms; they put in a Purpose section and an Objective section which were directed at campaign contributions. The purpose of the Public Financing is to eliminate the need for candidates to fund raise and to solicit contributions to their campaign.

Mr. Curtice said there is a broad line distinction in election law, between a campaign contribution and campaign expenditure. He said there is a reason for that distinction and as he put forth in his memo; is carried forward into this Code. He said an expenditure is an activity of First Amendment implications. He said what this Complaint is alleging is that the state has a right to tell people that they don't have the right to advocate on behalf of people they feel strongly should be in office. He said that would eliminate people from the public sphere.

He said he wasn't involved in the public narrative of the passing of the Code, but again the Code has set forth a Purposes section, all of which are aimed at contribution. He thought the reason for that was limiting campaign expenditures raises serious First Amendment implications; you are telling people not to involve themselves in politics altogether.

Mr. Curtice said the second broad point he wanted to make is that the Complaint seems to suggest that because the Javier Gonzales campaign may have benefited from certain activities of independent groups that that must deem those groups coordinated. He said that can't be the test. The groups would not engage in political activity if it did not benefit one candidate or the other. He said moreover, it is an ironic claim, because clearly the Patti Bushee Campaign has benefited from Mr. Rowe's activities. He said if that were the test of concert, then Mr. Rowe's Complaint itself is a violation of the Code.

He said the only one of the other four counts that directly deals with Mr. Hendry is the first one. He quoted from the Complaint: *"this count challenges the failure to report an indirect contribution; the $1925 payment of the Santa Fe Progressive PAC for political research in concert with the Gonzales campaign".*

Mr. Curtice said first, as the Complaint acknowledges, the payment was made in January; three or four months after Mr. Hendry left the PAC. Secondly, if the claim is that the PAC should have reported the payment differently than it did, then the PAC, *not* Mr. Hendry, should be the Respondent to that claim. He said of course they did not report it incorrectly, they reported it as an expenditure.

Mr. Curtice said the Complaint doesn't state *who* failed to report it, presumably because it didn't join the PAC, it must mean that the Javier Gonzales campaign failed to report it as a contribution. Again, an expenditure by an independent group is not a contribution except in one narrow circumstance; following the change to the Code made on January eighth- *if* it has been made in concert.

Mr. Curtice said the federal regulations on coordinated contributions have about five pages and objective requirements to avoid this type of innuendo and hearsay. The objective requirements look to content-based requirements and conduct based requirements. He said you have to have both; a Finding that there is one of the conduct based requirements and one of the content-based requirements. He said there is no allegation of that anywhere in the Complaint.

Mr. Curtice said he would address AFSCME. He said he previously identified incorrectly count two, which is actually count three, that deals with the alleged paid volunteers. He quoted from the Complaint: "*basically this count challenges a Code violation by AFSCME about January 28, 2014 to arrange Santa Fe paid volunteer opportunities and to organize 'paid volunteers' to work on the Gonzales mayoral campaign*". He said again the Complainant is alleging what appears to be a violation by AFSCME, however was not joined.

He thanked the Board for the opportunity to respond on AFSCME's behalf. He said this is simply not true and the documents that are attached in support of this alleged claim show that they are not true. He said Carter Bundy provided an affidavit that shows how those were his and explains how those were disseminated.

Mr. Curtice said first was an e-mail (Exhibit N) to the Complaint in early January that said:"we are going to begin a member to member outreach program. We haven't started it yet, in the meantime you are free to volunteer for the Javier Gonzales campaign. We cannot pay you for that activity".

Mr. Curtice said that couldn't be clearer.

Mr. Curtice said the second e-mail was after the member to member program began. He said in that case the people who participated were not volunteering for the Javier Gonzales campaign. They were instead doing member to member outreach. They were union members talking to other union members about the candidates, including Mr. Gonzales but not limited to, that the union had endorsed. He said first of all there is no allegation, nor could there be, because there are no campaign materials as part of this. It was just face to face, phone to phone conversations between union members about candidates.

Mr. Curtice said the timing of this stipend is irrelevant because, AFSCME or CLC (Central Labor Council) the PAC is a political committee under the definition set forth in the Code. They are not required to report it as such. He said clearly it is a matter of convenience that allows for a time payment when all of the work has been performed.

Mr. Curtice said more importantly this type of member to member communication has been recognized as protected activity since at least 1948 by the US Supreme Court. He said as he stated in the Brief, the regulation of union participation in political campaigns is not new, going back to at least 1925. He said however, there is the CIO case where indictments were brought against the union and its

president for allegedly violating that code because they sent an internal newsletter to members of the union saying "I urge you to vote for this particular candidate for Congress."

Mr. Curtice said the US Supreme Court had to determine if that violated what was then a broad prohibition on any contribution or any expenditure by a labor organization or a Corporation in a federal election. He quoted from the case: "if the Act were constructed to prohibit the publication by corporations and unions in the regular course of conducting their affairs, periodicals advising the members, stockholders or customers of danger or advantage to their interests from the adoption of measures or the election of office to men; espousing such measures, the gravest doubt would arise in our mind as to its constitutionality".

He said going to 1957 to a UAW case and in 1972, the Pipefitters case; the Supreme Court has repeatedly recognized that the member to member communication is simply outside the realm of Campaign Finance laws.

Mr. Curtice said given that the Code is alleging violation against AFSCME, but not actually joining AFSCME; timed so that the only way that it could be heard as was insisted prior to the election, to shorten the normal response time; that the facts alleged in the Complaint are contradicted by the materials attached in support of the alleged facts; that it alleges contact that is not even arguably within the subject of the Campaign Code or the Public Campaign Finance Code and that further more would be protected under the First Amendment; suggests that we make the further request that you not only dismiss the Complaint, but that you make and publish a Finding that it is frivolous and sought solely to intimidate or harass.

Mr. Curtice thanked the Board.

Chair Miller said at this time the Board would hear from other entities.

Ms. Kirtan Khalsa said she represents the Progressive Santa Fe PAC and Santa Fe Working Families [PAC]. She said initially she would respond to count one, the Progressive Santa Fe Political Action Committee.

She said the essence of the claim, and she thought, the essence of *all* of the claims, is that Mr. Rowe thought that any participation by political committees should be disallowed, regardless of whether there is evidence of any coordination or communication regarding expenditures and any concert. She said of course that is not the law.

Ms. Khalsa said it is well settled, as Mr. Curtice pointed out that the government cannot infringe the First Amendment rights of independent expenditure groups to advocate for or against candidates for political office. And within that right have the right to commission polls, to conduct research, and to engage in activity that they have independently determined appropriate and in line with the goals of the particular PAC.

Ms. Khalsa said both the Progressive Santa Fe PAC as well as the Santa Fe Working Families PAC has submitted affidavits indicating that there has been absolutely no communication, concert, or coordination between any of their independent expenditures in the Javier Gonzales campaign.

Ms. Khalsa said furthermore Mr. Rowe's Complaint does not allege any facts that are legally sufficient to indicate anything to the contrary or anything that would indicate that these affidavits are in fact false. There is absolutely no probable cause in this case to believe that there has been a violation by the Respondents or by the Political Action Committees.

Ms. Khalsa said she would not go through arguments that Mr. Curtis has brought up, but would invite any questions that the Board may have for either of the PACs.

Ms. Kovnat asked if correct that the Santa Fe Working Families PAC had disseminated campaign materials.

Ms. Khalsa said they did not disseminate any materials. She thought that was addressing count three against Working America. She said the allegation against Working Families had to do with poll that was commissioned; information was presented in the media that there was a poll.

Ms. Khalsa said there has never been any communication directly with the Javier Gonzales campaign or Jon Hendry for that matter that research would be conducted or the results of that poll.

Ms. Kovnat said she understood that, but she saw that there was a difference in the expenditures between from the poll and the total expenditures. She said she wondered whether that was for preparing mailers or dissemination.

Ms. Khalsa consulted with her client. She apologized. She said mailers *were* sent out and she had been confused because that was not raised as part of the allegations in the Complaint. The mailers were not created or sent in any way in concert with the Javier Gonzales campaign. She said the mailers cannot be considered anything but independent expenditures by an independent group and there is no allegation concerning that in the Complaint.

There were no further questions from the Board.

Chair Miller asked if everyone had been heard from under the responding entities.

Chair Miller said Mr. Rowe had asked for a chance for rebuttal and everyone has had an opportunity to present their thoughts to the Board. He asked if there were any comments or discussion from the Board.

Ms. Kovnat said she would like to hear from Mr. Rowe.

Mr. Rowe said he wanted to briefly address the three counts from the two [Respondents] that spoke at some length. First, Mr. Gonzales' counsel reiterated and the papers [newspapers] and their affidavits reiterated that there was no coordination. He said the statute that we are talking about does not require

coordination and that is an important point. MR. Rowe said *concert* means mutual, harmonious, mutually beneficial actions and does not require a contract or agreement or treaty.

Mr. Rowe said regarding the paper filed by Councilor Peter Ives, whom he respects as a colleague and a friend. (Exhibit 3) He said he is dead wrong by indicating that his [Mr. Rowe's] pro bono volunteering is somehow a contribution that should be reported and in some way comparable to the monies of the expenditures by the PACs and the other groups before this Board. He said that is a collateral point.

Mr. Rowe said with regard to the points made by the counselor for Mr. Hendry. He is not claiming a violation by way of any expenditures by Mr. Hendry or AFSCME or any other group; none of which are independent; which were organized for the purpose of promoting and collecting money and spending to promote the election of Candidate Gonzales.

He said all of these precedents of the Supreme Court back to 1925 and before, has arguably no pertinence to this case. None of them involve public financing, none of them involve contributions pertaining to public financing, none of them pertain to groups that have previously endorsed and were organized for the purpose of electing a candidate, which is the case here.

Mr. Rowe said there is no basis for those charges. He said for that reason he re-iterates that concerted campaign promotions and activities by the Code, as amended by the City Council at the recommendation of this Board; do not require any kind of agreement or coordination. He said what it does indicate is mutual and harmonious and beneficial activities reached as indirect contributions.

He said they are not violations by the PAC or by the group; they are violations by the candidate for not reporting those expenditures made in concert and for the purpose of benefiting one candidate against another.

Mr. Rowe thanked the Board.

Chair Miller said he is trying to understand Mr. Rowe's comment about coordination. He asked if his position is that there could have been a contribution from the PACs to Mr. Gonzales' campaign without any involvement or knowledge on the part of Mr. Gonzales' campaign...as long as those activities benefited Mr. Gonzales' campaign.

Mr. Rowe said he would not go that far; although the Board may determine that a PAC or another group organized for the purpose of promoting and electing a candidate is not independent. Hence even a minor activity by such a group is a reach by the ban on concerted, not *coordinated*, activities.

Chair Miller thanked Mr. Rowe. He asked if there were further questions for Mr. Rowe. There were none.

Ms. Kovnat moved that the Board go into Executive Session for discussion of the Complaint before the Board. Ms. Martinez seconded the motion.

A roll call vote approved the motion unanimously with Mr. McMillan, Ms. Kovnat and Ms. Martinez voting in favor. There were no votes against.

The Board went into Executive Session at 4:34 p.m. under NMSA 1978, Section 10-15-1(H)(3) to deliberate in connection with an administrative adjudicatory proceeding.

Mr. McMillan moved to reconvene from Executive Session. Ms. Kovnat seconded the motion and the motion passed by unanimous voice vote.

The Board returned to Open Session at 5:44 p.m.

Chair Miller asked the record to show that while in Executive Session the Board discussed only matters that fall within the purview of the item on the agenda in the evaluation of Complaint 2014-1 and the legal sufficiency of that Complaint.

Chair Miller thanked everyone for their patience. He said the Board engaged in a lot of deliberation about the Complaint. He would announce the decision of the Board and the voting Board members would then vote on that decision.

1) Action Regarding Whether the Complaint Sets Forth Legally Sufficient Facts Which, if True, Show Probable Cause to Believe There Was a Violation.

Chair Miller said first the Board evaluated under Ordinance Section 6-16.4 and made a determination of legal sufficiency of the Complaint. There were four factors involved in the determination:

1. *If the Board lacks jurisdiction to adjudicate the Complaint.*
   Findings: The Board finds that the Board does have jurisdiction to adjudicate the Complaint.

2. *If the Complaint is frivolous or intended solely to harass or intimidate.*
   Findings: the Board does not find that the Complaint is frivolous or intended solely to harass or intimidate.

3. *If the Complaint was filed within one year after the Discovery or when the Complainant should reasonably have discovered the information on which the Complaint is based.*
   Findings: the Board finds that the Complaint was timely filed.

4. *If the face of the Complaint sets forth the legally sufficient facts, which if true, show probable cause to believe that there was a violation.*
   Findings: The Board disagrees with the Complainant's interpretation of this standard for coordination or a contribution between a political committee and a candidate.

The Board finds that the Complaint fails to allege facts that show there is probable cause to believe that the Respondents may have benefited by a contribution made in cooperation, consultation or concert with the candidate's committee.

2) Action on Any Next Steps as Permitted Under Section 6-16.4(D)- Section 6-16.7 SFCC 1987.

Chair Miller said the Complaint is dismissed. He said the deciding Board members intend to issue an explanation of the decision in writing that would follow this ruling of the Board.

Chair Miller said he would entertain a motion and vote by the Board to confirm the decision of the Board is as he has read it.

Mr. McMillan moved to dismiss the Complaint for the reasons outlined previously by Chairman Miller. Ms. Kovnat seconded the motion.

A roll call vote showed unanimous approval of the motion to dismiss with Mr. McMillan, Ms. Kovnat and Ms. Martinez voting in favor of the motion. There were no votes against.

Chair Miller said the Complaint is dismissed and Item three of the Agenda is resolved.

4. BOARD MATTERS

Ms. Kovnat said she would like to add to her vote. She said it is her belief that it is the candidate or the candidate's responsibility who accepts the public financing, to create and maintain a firewall between the campaign and independent groups. She said there were no facts alleged in the Complaint that rose to the level of showing there was an action in cooperation with the campaign. She said she would emphasize the requirement of maintaining a firewall between a publically financed candidate and those independent groups that seek to support that candidate.

Ms. Martinez said she thought the Complaint failed to allege facts to support the allegations. She said she is particularly troubled by certain discrepancies in the affidavits of Mr. Hendry and Candidate Gonzales regarding whether or not they actually spoke to each other. Ms. Martinez said the public should be aware of that, but the Complaint failed to meet the standard by which the Board evaluates that.

There were no further matters from the Board.

5. PUBLIC COMMENT

There were none.

6. ADJOURNMENT

Ms. Martinez moved to adjourn the meeting. Ms. Kovnat seconded the motion and the motion passed by unanimous voice vote.

There being no further matters to discuss and the agenda having been completed, the meeting adjourned at 5:55 p.m.

Approved by:

_____

Justin Miller, Chair

Submitted by:

Charmaine Clair

Charmaine Clair, Stenographer