

**INDEX OF
CITY OF SANTA FÉ
ETHICS AND CAMPAIGN REVIEW BOARD**

May 20, 2015

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**MINUTES OF THE
CITY OF SANTA FE
ETHICS AND CAMPAIGN REVIEW BOARD
Wednesday, May 20, 2015**

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 3:06 p.m. in the City Council Chambers, 1st floor, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

Members Present:

Justin Miller, Chair
Paul Biderman
Ruth Kovnat
Seth McMillan

Members Absent:

Tara Luján [excused]
Kristina Martínez [excused]
One Vacancy

Staff Present:

Zachary Shandler, Assistant City Attorney

Others Present:

Jim Harrington, Common Cause
Vicky Harrison, Common Cause
Karen Heldmeyer, former City Councilor
Jodi Larsen, League of Women Voters
Carl Boaz, Stenographer

B. APPROVAL OF THE AGENDA

Ms. Kovnat moved to approve the agenda. Mr. Biderman seconded the motion and it passed by unanimous voice vote.

C. APPROVAL OF MINUTES

1) April 15, 2015

Ms. Kovnat moved to approve the minutes of April 15, 2015 as presented. Mr. Biderman seconded the motion and it passed by unanimous voice vote.

2) April 27, 2015

Mr. Biderman said he had submitted two typographical corrections by email but didn't have them with him. He noticed on page 10, the language said that the motion to eliminate the alternative "shall place the following disclosure" but it doesn't have that disclosure included.

Mr. Shandler said Ms. Kovnat's motion did not state the disclosure. He said the disclosure would say, "This campaign material is supported, in part, by donations from an organization that is not required to disclose its contributors to the Santa Fe City Clerk."

Mr. Biderman said the Board needs to have that language in the record as having adopted that language.

Chair Miller thanked Mr. Shandler for that disclosure language.

Mr. Biderman asked Mr. Shandler if he had looked at the emailed typographical changes.

Mr. Shandler said he and the City Clerk looked at those and they seemed to be just he to she or things like that and were submitted to the minute taker for those typographical corrections.

Mr. Biderman moved to approve the minutes of April 27, 2015 as amended. Mr. McMillan seconded the motion and it passed by unanimous voice vote.

2. PUBLIC COMMENT

Ms. Heldmeyer provided as a hand out for the Board, a copy of her memo for suggestions that she could talk further about at the second public comment.

Regarding coordination she noted that in the last week there were some interesting discussions about a presidential candidate who misspoke and retracted it immediately. The New York Times article said the reason for that is that until he became a candidate, he could coordinate "until the cows come home." She looked up the definition of candidate in the code. Three things were fairly clear but the fourth thing that said "any activity that is held to promote an election campaign of an individual, if that activity is endorsed or supported by that person or if the benefits of such activity are later accepted by such a person."

She said "You have City Councilors now who are planning to run for Mayor in 2018." She wasn't sure which of their behaviors would fall under #4, but she thought "if that's the peg you are going to hang your hat on in terms of coordination, I think you may have problems because everybody who becomes a candidate... before they become a candidate, goes and talks to people and tells them, 'I am thinking of running. What do you think?' And if that kind of behavior falls under #4, you are going to see a lot more

about coordination by individuals and, to a lesser extent, of groups.”

Secondly, there is a lot of discussion about the new way of doing public financing is going to cost the City and Mr. Harrington sent out memos that all the City is required to do is what is in the ordinance and that amount of money is the same as the amount of money that has been there in the past. However. There is nothing in the ordinance that says the City cannot add more money, if there are more candidates. So if all 5 councilors ran for mayor in 2018, you might want to approve more money.

The problem for someone running a campaign, early on, they need to have an idea of how much money they would have. And if it is approved the way it is written, there is no more money and especially in mayoral campaigns, many candidates might not want to depend on a pro-rated share. They will want to make sure the money promised to them is there. A lot of work on campaigns are done before being certified as a candidate.

If people are not very sure what they will get from public financing, the City may get people opting out. A goal of this Board is to get more to choose public financing so the Board needs to look at the realities.

Mr. Jeff Green said he thought the Board was making a bad system worse with this change.

There were no other speakers from the public.

3. DISCUSSION AND POSSIBLE ACTION

Chair Miller pointed out that the Board has spent considerable time on the first three already so they would go to #4 first and then comment on 3-B

Mr. Biderman asked when the Board has to recommend to Council.

Chair Miller said they needed to recommend today but if something else is needed, it can be addressed down the road but not in this final recommendation.

Ms. Kovnat was happy to go first to the Matching Fund Proposal but didn't want the Board to forget to deal with Transparency in this meeting.

Chair Miller said his intention is to finish before 5:00.

A. Consideration of the Following Amendments

4) Matching fund Proposal

Chair Miller asked for comments on the drafted language.

Ms. Kovnat said the subcommittee didn't recommend changes on this part. They considered the state of the Fund and thought it was protected with provisions from pro-rated reductions. But the amount of the match is designed to be an incentive to have a public-funded candidate be able to solicit small contributions and could be faced with a privately financed candidate that is financed by a PAC. So they stuck to the 4 to 1 match as the right number for the incentive to engage them sufficiently in small contributions to defend themselves against privately financed candidates.

Mr. Biderman added that this is not an ideal solution but probably all the Board could do for a meaningful attempt to answer the situation where an outside independently financed source funds a candidate. It is the best the Board has been able to come up with national research. The proposal at the State Legislation didn't pass.

Ms. Kovnat said they thought momentarily to increase the small contributions from \$100 to \$200 but were mindful that there are lots of people in Santa Fé for whom \$100 is a maximum contribution. So they stuck with \$100.

Chair Miller understood that the hundred dollar limit also stays well below the maximum contribution under regular campaigns besides the fundraising part of the proposal compared to those running without public financing.

Ms. Kovnat agreed. Private funding has no limits.

Chair Miller thought there was discussion about those who could give more than \$100.

Ms. Kovnat said there wasn't. They were trying to limit the amount of time that must be spent on fund raising but the \$100 is a good limit.

Mr. Biderman said the code provides that no candidate can get more than \$1,000 contributions and the Mayoral candidate is limited to \$2,500.

Chair Miller said the matching proposal should be tailored to the particular jurisdiction and in Santa Fé we want to take into account the maximum for privately funded candidates and the ability of the City to match those funds and all that went into this recommendation.

Ms. Kovnat said the subcommittee talked about a graduated system but it is far too complex.

Chair Miller asked for public comment on this item.

Mr. Harrington thought what Chair Miller referred to is the first level and it is then raised more, we cannot depend on what more means. If it looks like the fund will be short, in current law, they can opt out at an early stage. But when the City hands out the money, there is no opt out. If the fund comes up short, the contribution could be raising in private sources but is still very small.

Chair Miller asked if there is a way for the fund to be increased if that happens. He asked what they could write in to the ordinance to say it could be increased if the fund was insufficient to cover the payments to candidates.

Mr. Shandler said the current law says, "The balance for City and Mayor elections has to be \$600,000. The balance preceding a Council or Judge election is \$300,000." Current code also says "Each fiscal year a sum of \$150,000 is budgeted and deposited into the fund." 9-3.4 is that citation. So on an annual basis, some money has to be in it. Council has obligated itself to replenish the fund and also it sets a minimum floor in the account. Mr. Harrington's reference is to a different section - 9-3.10, for the initial grant of money. It talks about a proportionate reduction if the fund is light. So the Board could add a sentence, "Such other appropriations to the fund as may be made by the Governing Body as necessary to fulfill the requirements of this article." That would be added in 9- 3.4, D-7.

Chair Miller reasoned that would work when the Council was aware that the fund was short and could appropriate money at that time.

Mr. Shandler agreed but pointed out that one lawyer could interpret it, "If there is a shortfall during the election then a supplemental appropriation could be made" (a permissive action). Another could point to the word "necessary" which is a strong word. If the money is not there, that is reality.

Mr. Harrington suggested the language should say at least \$600,000 or at least \$300,000.

Mr. Biderman was concerned in part 3, in taking out the seed money or the qualifying money, to get to the maximum authorized amounts of the fund. He was concerned this could be costly and a self-defeating measure. The City has a lot of other needs. There is just so much money the City has to put in. He thought the Board ought to stick with what they had there now.

There were no other speakers from the public regarding matching funds.

**Mr. Biderman moved to adopt the subcommittee's proposal for matching fund proposal (part 5)
Ms. Kovnat seconded the motion and it passed by unanimous voice vote.**

1) Coordination Between Candidates and /or their Campaigns and Independent Expenditures Groups or Individuals

Chair Miller said the Board has taken action on this recommendation so now is the time to see if anyone on the Board or the public think there are other changes to be made to that proposal.

Ms. Kovnat said the Board was sent suggestions from the Campaign Legal Center and she went through all of them. Mr. Ryan suggested the Board include within the definition as an example for coordination, spending money to republish a candidate's campaign materials. She asked if that would be considered as an in-kind contribution to the candidate. The Board discussed that last time at length and approved to delete that part and she was satisfied that deletion was appropriate and that the Board could

take it up in context of an individual complaint.

Mr. Ryan also recommended modifying 3-A regarding what would or would not be considered on page 3, line 8, what is included in fund-raising activities. He suggested adding "or being a featured guest or speaker at a fund-raising event."

Ms. Kovnat thought it was useful but not necessary. She was agnostic about it.

Chair Miller asked for other members' comments.

Ms. Kovnat suggested it probably is a good idea to include it.

Mr. Shandler had no comment.

Mr. Biderman suggested it be at the end of the list.

Ms. Kovnat said it adds one more item of clarity and direction to candidates.

Mr. Biderman moved to adopt the language after the word 'provided' "; or being a featured guest or speaker at a fund-raising event." on page 3, line 12 under 3-A(c). Mr. McMillan seconded the motion and it passed by unanimous voice vote.

Mr. Biderman pointed out a possible conflict with page 5 at F-4 (just an appearance) which Ms. Kovnat didn't think was a conflict.

Chair Miller said merely appearing before members and shareholders is not, in itself, any evidence of coordination.

Ms. Elizabeth West said these are so interconnected and transparency with lots of teeth helps the rest sort of fall into place. People will have fun with this coordination no matter what the Board does. Trying to help people coordinate in an ethical way will bring a chuckle in the future.

2) Transparency and Independent Expenditures

Ms. Kovnat said regarding the possible exemption from reporting, that Mr. Ryan said (on page 7, line 1) the Board needs to clarify what is meant by "membership organization." A group might claim they represent all parents in Santa Fé. He suggested "dues paying organization." She thought about it and would not recommend any change on this section.

She recalled that at the last meeting the Board did vote to eliminate an exemption of the media (page 6, line 24). She had second thoughts about removing the media from this section. She felt its removal would stir serious concern among the media. Some might claim access under this exemption but is only a slight risk compared to the concerns of media and the public if they eliminated the exemption. She wanted

to put the original language back in on page 6, line 24 as it appears in the current code. She read the language.

Mr. Shandler explained that the language she read is not in the current code but in the draft by Common Cause. The media is not mentioned in the code now. It is in the original draft of the Board's amendment.

Mr. Harrington said it actually is expressed in the existing code but only indirectly. Currently 9.26 requires people to report only when they spend a certain minimum amount for campaign materials to disseminate and the definition of campaign materials excludes exactly this language. So by getting rid of the definition of campaign materials that got rid of the media exemption unless the Board adds it back in.

Ms. Kovnat moved to reinsert in 9-2.6.2(H) on line 25 after "No report is required under this subsection for expenditures made exclusively for - communications to or editorials, reports, or commentary by news media, or for impartial candidate forums." Mr. Biderman seconded the motion and it passed by unanimous voice vote.

Ms. Kovnat said on page 7, line 4, it was decided at the last meeting that it was too complex to have exposure of individuals through entities that make contributions but decided to have a disclosure provision and extend it not only to people that file under 9-26 (independent responsive campaign materials) but also the candidates or entities. The way this reads doesn't make sense. The main provision is directed at independent spenders and not directed to candidates and political committees. The way it reads looks as if any candidate, political committee or entity that has to file under 9-2.6. Candidates and political committees don't have to file under 9-26.

Ms. Kovnat proposed to strike the words, "candidate, political committee and just say "any person or entity that is required to file a report under 9.26 or under the subsection and receive contributions." And then to take care of applying this disclosure requirement to candidates or political committees to a new subsection under 9-2.11, add a new provision that says (in F) "a candidate or political committee which receives contributions from another entity that does not have to disclose its contributors to the City Clerk shall place the following visible disclosure on campaign materials."

She read the disclosure statement again.

Mr. Shandler asked if the Board wanted this *Russian doll* language there too. He thought he made an error on that. The *Russian doll language* is in lines 20 - 22.

Mr. Biderman said that was a separate point. That is in E that the reporter should not falsify the source of the contribution - to disguise a contribution as falsely coming from another person.

Mr. Shandler said on page 6, line 20-22 is that identical language and he recalled the Board has asked to make sure that campaign treasurers were aware of this and to put it in the campaign treasurer's section, so he copied that language from page 6, lines 20-22. So now the Board wants a new section F.

Ms. Kovnat agreed; with the same language that puts them on notice, which she repeated for him.

Mr. Shandler then asked for the new language on page 7, line 4 again.

Ms. Kovnat said it was just to strike "any candidate" from it.

Mr. Shandler understood and agreed.

Ms. Kovnat moved to revise the recommendation as stated in discussion including adding a new Section F. Mr. Biderman seconded the motion and it passed by unanimous voice vote.

3) Qualified Small Contribution System

There were no comments on this section.

B. Consideration of Other Issues Raised by the Public and Board

Chair Miller asked first for the Board's comments and then for the public comment.

Ms. Kovnat said the Board has the benefit of a very good memo from Ms. Heldmeyer on other issues not yet addressed by the Board. A few of them are out of the Board's jurisdiction and some of them could be addressed by procedural rules. One that has a lot of merit is adding "polls" to the definition of campaign materials (bottom of page one). She asked if the Board eliminated that definition.

Mr. Shandler said it has been restored as 9-2.3.

Ms. Heldmeyer said Mr. Harrington thinks the Supreme Court would say it is illegal because some polls might not be considered campaign related. This talks about polls as an expense of the campaign. It is not done independently but only those who do it by someone who is participating in a campaign.

Ms. Kovnat thought that might not be a simple matter. That kind of poll is often referred to as a "push poll."

Ms. Heldmeyer said they did enter into those in the past campaigns. When one becomes a participating candidate, it will be the first question that comes up. If a candidate wants to take public money, they can take only up to \$100 contributions.

Ms. Kovnat said they talked about it in the subcommittee. They asked if a person could start raising money now and still be publicly financed. Their opinion was that they could if there was no contribution above \$100.

Ms. Heldmeyer said if it is clear, the Board should issue an advisory opinion for those for whom it is not clear.

Chair Miller agreed. That is a good idea.

Mr. Shandler said on page 6 in the Transparency section, as a voter you would want to know who just gave you that poll. Probably most push polls would be by an independent group. Right now the rule says if an independent group makes an expenditure over \$250 - most polls would be over that much.

Then it goes on to say in line 10 that recorded phone messages would document that they contacted more than a hundred people so they would have to report that. There is some capture and it is not instantaneous. He was talking with the City Clerk on how to solve the problem.

Mr. Biderman said the Board has talked about how to provide explanatory material and gotten most of it done.

Ms. Kovnat thought the technology component in Ms. Heldmeyer's memo could be done by procedural rule and the Board is committed to revising the procedural rules. With regard to campaign materials - it already violates the law. She wouldn't have any objection to having that new section also make it a violation of the city's campaign code.

Chair Miller asked if possibly they could add a new section - 9-2.5.

Ms. Kovnat agreed.

Ms. Heldmeyer said in the past some of these have been by identified individuals or campaigns and the police are not interested in enforcement. The amounts are so small. There have been identifiable cases where identifiable people have stolen campaign materials.

Ms. Kovnat suggested maybe the City Attorney could figure out where to put it.

Mr. Biderman said it would be better to put in our code rather than in the courts.

Chair Miller reasoned that, setting aside any criminal conduct, it could be a violation of code. He thought putting it in the campaign material section would be the best place.

Mr. Shandler walked the Board through a violation.

Ms. Heldmeyer said section 6 was where the fines are put.

Ms. Heldmeyer used some personal examples where a person took signs in her car. The ECRB is the group that should tell the violators they violated.

Mr. Shandler asked if "willful" was better than "intentional."

Mr. Biderman agreed that would be better.

Mr. McMillan tried to imagine holding quasi-criminal proceedings, taking evidence and wondered what the burden of proof would be and if that was somewhere else in the Code.

Ms. Kovnat said the Board has the power to impose a certain limited number of sanctions and they include fines.

Mr. McMillan asked if it would include appearance, cross examinations, and testimony.

Ms. Kovnat said the Board has that authority for a full evidentiary hearing.

Ms. Heldmeyer said the Board could also call them criminal behaviors. The hearing is taken by a subcommittee and then a public hearing.

Mr. Biderman would move to adopt a provision that Mr. Shandler provides.

Mr. Shandler read the proposed language for 9-2.5 (D) as, "Willful theft, destruction or damage of campaign material shall be considered a violation of the City of Santa Fe's Campaign Code."

Mr. Biderman asked if that meant anybody or just a candidate or a person who is working on behalf of a candidate. The Board doesn't have any jurisdiction over someone who is not working in a campaign.

Ms. Kovnat agreed.

Mr. Biderman moved to insert in section 9-2.5 (D), "Any candidate or person who is representing or working on behalf of a candidate shall not willfully steal, destroy or damage campaign materials and if done, shall be in violation of the City of Santa's Campaign Code." Ms. Kovnat seconded the motion and it passed by unanimous voice vote, except for Mr. McMillan who abstained.

Ms. Heldmeyer gave one more pitch that the items the Board could clarify with advisory opinions which are not available on-line should be done sooner rather than later. Things clear to attorneys might not be clear to members of the general public.

Ms. Jodi Larsen wanted to clarify on behalf of the League of Women Voters that they put out voters' guides but sometimes support or oppose propositions on the ballot and usually do it by sending their view to the newspaper, which is free.

But if the LWV put on a forum that advocates for or against a particular proposition on the ballot or took out an ad that the League would have to file if the ad cost more than \$250. They would usually that from their general fund so she asked if they would have to report all of their members and non-member

contributors or just ask for donations from those who want to support that and be willing to have their names disclosed.

The LWV operates as a 501(c) 4 organization except for their 501(c) 3 activities.

Mr. Biderman said Section M in the campaign code 9-2.23 does define political committee to include those who support or oppose propositions at a cost. For those, he thought the campaign code is applicable.

Mr. Shandler said it was on page 6, line 12, 17, so this is under independent groups. They must report expenditures and all contributors. That was taken out and just put back in.

Chair Miller said it is limited to the expenditures for that particular purpose and asked if that was correct.

Mr. Shandler agreed. He remembered Mr. Ferguson talking about this a couple of meetings ago.

Ms. Kovnat said he wanted to take that out and we put it back in. She was missing his point.

Mr. Shandler said he was just pointing out this issue to the Board and was not pointing out an answer to Ms. Larsen. There was back and forth with Mr. Ferguson on it.

Ms. Kovnat said not all contributions have to be disclosed; just those made for the purpose of support or defeat of a proposition.

Mr. Shandler thought the point of Mr. Biderman then was that during the legislature, there are going to be dedicated accounts now that are the wave of the future. But Ms. Larsen might be saying is that perhaps the League is not into those dedicated accounts and the cost, if it comes from their General Fund, do they have to report all members.

Ms. Larsen asked if the League would have to set up a special account. She thought maybe they should just send a letter asking for an opinion.

Ms. Kovnat said the League would probably get a better opinion.

Mr. Biderman said it might be an ordinance at Council.

Ms. Larsen said they would show up there.

4. NEXT MEETING AND RECOMMENDATIONS

Chair Miller said the Board will meet in the near future but didn't need to set a date right now.

Chair Miller asked Mr. Shandler for the next steps.

Mr. Shandler said the staff will compile them and send it under a memo to Councilors. To get through this next election cycle it needs approval by June 10 so we will put it together ASAP and see if a Councilor is interested in picking up the recommendations.

Chair Miller offered to work with distribution.

Mr. Shandler said they could then discuss if the Board wants to have monthly meetings going forward.

Mr. Biderman said he would be out of the country or in court until June 25th.

5. BOARD MATTERS

Ms. Kovnat said the Board needs to have a vacancy filled.

Mr. Shandler clarified that the vacancy was the lawyer position and nominations come from the local bar association and Mr. McMillan is the president of it.

Mr. McMillan asked if he should be soliciting names and not wait for the Mayor.

Mr. Shandler agreed.

Mr. McMillan asked if some of the Board's terms end soon.

Chair Miller asked for clarity on Board terms and what the Board might need to do.

Mr. Shandler agreed to get that for them.

6. PUBLIC COMMENT

Ms. Harrison wanted to thank the Board and wished she could clone this Board in every municipality in the state. She said Common Cause has worked with many groups in the City and will be turning out in droves for Council consideration.

7. ADJOURNMENT


Ms. Kovnat moved to adjourn the meetings. Mr. McMillan seconded the motion and it passed by unanimous voice vote.

The meeting was adjourned at 4:52 p.m.

Approved by:

Justin R. Miller, Chair

Submitted by:



Carl Boaz for Carl G. Boaz, Inc.