

## NORMAN ELECTION COMMISSION MINUTES

April 8, 2013

The Norman Election Commission of the City of Norman, Cleveland County, Oklahoma, met in the Municipal Building Conference Room at 201 West Gray on the 8th day of April, 2013, at 2:04 p.m. Notice and agenda of the meeting were posted at the Municipal Building 48 hours prior to the beginning of the meeting.

**Item 1. Roll Call.** City Clerk Hall called the roll.

MEMBERS PRESENT:

Robin Allen  
Richard Hilbert  
Elizabeth Windes  
Chairman Ty Hardiman

MEMBERS ABSENT:

Nina Flannery

STAFF PRESENT:

Brenda Hall, City Clerk  
Jeff Bryant, City Attorney  
Kristina Bell, Assistant City Attorney

**Item 2. Approval of minutes from the April 1, 2013, meeting.** Member Hilbert moved that the minutes from the April 1, 2013, meeting be approved, which motion was duly seconded by Member Allen;

Items submitted for the record

1. Norman Election Commission minutes of April 1, 2013

and the question being upon approving the minutes from the April 1, 2013, meeting, a vote was taken with the following result:

YEAS:

Members Allen, Hilbert, Windes,  
Chairman Hardiman

NAYES:

None

Chairman Hardiman declared the motion carried and the minutes from the April 1, 2013, meeting were approved.

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**Item 3. Consideration of report from the City Attorney's Office.**

In its meeting of April 1, 2013, the Norman Election Commission (NEC) asked several questions regarding campaign literature and whether or not the literature violated State election laws, the City's Ethics Ordinance, or Chapter 7.5, Elections, of the City Ordinances. NEC requested review and input from the Legal Department regarding the complaints.

Mr. Jeff Bryant, City Attorney, highlighted the questions raised and the results of the Legal Department review. He said the Legal Department is not ready to respond to some of the issues as additional research is needed and follow-up will be provided at the next meeting.

Item 3, continued:

**Better Norman Advocates, Inc.**

The NEC questioned whether or not they should be reviewing campaign mailers for compliance with State laws. There had been a complaint that one of the mailers distributed by Better Norman Advocates, Inc., (BNA) did not have the required “paid for by” tag line, which was in violation of State law.

Mr. Bryant said the “paid for by” tagline was on the BNA mailers, but apparently the ink was dark on a dark background and hard to see. However, he said the purview or duties of NEC are very specific in the City’s Code of Ordinances, Section 7.5-26, Duties of the Norman Election Commission. He highlighted those duties and said the Code provision was passed initially in an effort to ensure the public would have an opportunity to know who the contributors were and the type of expenditures incurred for a particular candidate. He said under the ordinance, the focus of NEC is to make sure candidates are educated, develop forms to help achieve that purpose and primarily, to review statements and reports to make sure those statements and reports are in compliance with City Code. He said the complaint regarding the “paid for by” tagline is outside of the purview of the NEC. The NEC is not charged with enforcing all State election laws and their duties do not include reviewing campaign mailers other than for the limited purpose of determining whether expense reports should be filed.

Mr. Bryant said Ms. Francis stated she felt there was a violation of Section 7.5-27, Norman Election Commission Procedures that outlines the procedures by which the NEC shall carry out their duties listed in Section 7.5-26. He said the procedure section does not impose more duties on the NEC not already stated in Section 7.5.26, Duties of NEC. He said if a State statute is thought to have been violated, it is not the duty of NEC to conduct an investigation; it is only their duty to turn the information over to the Legal Department. He said if the Legal Department believes there is a violation, they will forward those potential violations to the District Attorney’s (DA) Office and the DA will determine whether or not to pursue the complaint.

Mr. Bryant said, after contacting an attorney for BNA, it was found that the BNA was not incorporated until March 20, 2013, and all expenditures of the mailers sent by BNA were not completed until after the March 22, 2013, campaign report deadline; however, all expenditures were reported in their March 29, 2013, campaign report.

Chairman Hardiman said if the NEC did not exist, what would the procedure be for someone to get potential violations to the State Election Board and Mr. Bryant said violations are reported to the DA. He said violations referred to the City Legal Department would be referred to the DA if it were a determined a possible violation did exist.

Ms. Joy Hampton, The Norman Transcript, said she believed violations needed to be filed with the Oklahoma Ethics Commission, not the DA and asked if the law had changed. Mr. Bryant said the Legal Department follows the City’s Code provision, Section 7.5-27(b) which states, “whenever the Norman Election Commission has reason to believe a willful violation of this article has occurred, it will send its documentation to the City Attorney with a recommendation for appropriate legal action.” He said the City Attorney would take that legal action through the Municipal Court for a violation of City Code and similarly, in Section 7.5-27(c) states, “whenever the Norman Election Commission has reason to believe a willful violation of the State elections laws has occurred, it shall send its documentation to the District Attorney of Cleveland County with a recommendation for appropriate legal action,” so if a State violation is perceived, the City Attorney would forward that to the DA to determine appropriate action.

Item 3 continued:

**Friends of Dave Spaulding Expenditures**

In its meeting of March 25, 2013, NEC was asked whether expenditures to the National Rifle Association (NRA) and Wallbuilders/Pro Family Conference (Wallbuilders) reported in the Friends of Dave Spaulding's March 22, 2013, contribution and expenditure report were legal expenditures under State statute for a candidate campaign committee. Mr. Bryant said as in the previous discussion, the violation is a State statutory section and could be forwarded to the DA for review since it is not within the purview of the NEC; however, it appears the expenditures are likely permissible under the broad language in Title 51, Section 316(A). He said if the NEC disagrees with the City Attorney's assessment, the City's Legal Department will be happy forward the complaint to the DA for further review.

**Norman Chamber of Commerce**

Mr. Bryant said a complaint was filed against the Norman Chamber of Commerce (Chamber) regarding mailers distributed by the Chamber during the election cycle. He said Staff is still doing research on this complaint and a full response will be provided at the next meeting.

Chairman Hardiman said the Chamber sent out several mailers and did not file an expenditure report so the question was whether or not they should be required to file. Mr. Bryant said the language of the ordinance states that contributions or expenditures in support of or opposition to a candidate require a report be filed. He said Staff would review the language of the mailer(s) to determine whether they are in support or opposition of a candidate and Staff is doing further research before providing an opinion on this manner.

Chairman Hardiman said he thought reports are required to be filed so citizens will have an awareness of who was trying to influence the outcome of the election. He said he looks forward to the legal opinion. Member Hilbert agreed and said information should be available in a timely manner to the citizens prior to the election. Mr. Bryant said in discussions with representatives from the Chamber, they have been very sensitive to making sure they file timely; however, it is their position that they are not required to file since they were not acting on behalf of or in opposition to a candidate.

Chairman Hardiman said there was a question of an ethics violation involving Councilmember Tom Kovach's participation in a specific campaign. Mr. Bryant said he did not include that in the response because ethic complaints are not under the purview of the NEC. He said complaints regarding possible violation of the City's Ethics Ordinance are filed with the City Attorney's Office for investigation. The Ethics Ordinance is not part of Chapter 7.5, Elections.

Ms. Brenda Hall, City Clerk, said a complaint was filed moments before the meeting regarding a State requirement that an address accompany a "paid for by" tagline as well as the name and address of the treasurer or two members of the committee.

Ms. Hall said there were actually two verbal complaints submitted against Tom Kovach, one being an alleged ethics violation and the second being a complaint asking whether Mr. Kovach needed to file a campaign report as advocating for a candidate since he received payment for services rendered. Mr. Bryant said he did not address that complaint because Mr. Kovach was a paid consultant so he is not required to file a contribution report when acting as a paid consultant. He said Tom Sherman who paid Mr. Kovach for consulting services reported that expenditure on his campaign report.

Item 3, continued:

**Public Comments**

Ms. Mary Francis said according to State statutes the name and address of persons who paid for campaign mailers must appear in a conspicuous place upon the mailer or within a broadcast statement and if not, a violation of State law has occurred. She said City Code requires that City and State reports be properly filed with the City Clerk and NEC is to review, compare, and examine for inconsistencies or other deficiencies. She said the NEC is also required to investigate any substantial discrepancy including total expenditures listed on campaign statements filed before and after the election. She said when NEC has reason to believe, (not proof) a willful violation of State election laws has occurred, they should send the documentation to the DA of Cleveland County with a recommendation for appropriate legal action. She said anytime there is question regarding a contribution or expenditure by a candidate or committee they can call that candidate or committee to appear before the NEC to discuss irregularities or inconsistencies in the filing. She said the complaints bring to light those irregularities or inconsistencies that need to be investigated and she respectfully asked the NEC to ask for records to determine if a violation exists.

Ms. Francis said Mr. Bryant states being a paid consultant is not under the purview of the NEC; however, under the City Council Ethic's Policy, Councilmembers are not allowed to oppose or support another candidate, which Mr. Kovach has appeared to violate.

Ms. Francis said as far as the Chamber issue, the fact that the flyers were only mailed during the election period, not prior or after, should be information enough to tell the NEC that this is an attempt to influence the election.

Ms. Ellen Frank asked when the mailers from Better Norman Advocates, Inc., regarding Chromium 6 in Norman's water supply were mailed and Ms. Kristina Bell, Assistant City Attorney, said she contacted their attorney to obtain documentation and he is trying to verify the date they were mailed. Their attorney did state the organization was not incorporated until March 20, 2013, and she confirmed that information with the Secretary of State. Ms. Frank asked if one person or more contributed the \$50,000 for the mailings and if that needs to be investigated and Ms. Hall said the contribution report lists three contributions with one person giving a little over \$50,000 and two other contributions of approximately \$1,000 and \$250. Ms. Francis said expenditures for the mailers must be reported when they are ordered and mailed and that can only be done by obtaining the records from the organization. She said the organization did not register or file a campaign report by the March 22nd deadline and asked the NEC to determine when the campaign organization began operation, when and where the mailers were encumbered, and what time any other political activity was initiated so that any penalties or fines due may be determined. Mr. Bryant said Staff has tried to determine when those expenditures occurred and the organization has indicated they were incurred at a time where they were unable to file on March 22nd. He said Staff has no reason to doubt that, but has requested documentation to substantiate those claims.

Mr. Chadwick Cox said one mailer by the Chamber was pretty generic, but he cannot think of another reason for the other Chamber mailers other than to influence the election. Mr. Bryant said the Chamber is pretty resolved that the purpose of the mailers was not to be in support of or opposition to a particular candidate, which is the standard in the Code. He said Staff is continuing to research the language and timing of the mailers.

Item 3, continued:

**Public Comments, continued**

Ms. Frank said she did not know if the word “appearance” was in the Code, but if it is not maybe that is the problem because many things give the appearance of supporting or opposing a candidate. She said NEC should consider an amendment to the current ordinance. Mr. Bryant said the Code requires an element of willfulness and Staff looks at that as well as whether a candidate is being supported or opposed. He reminded everyone the language probably should not be so restrictive that people are discouraged from participating because they are worried about getting tripped up on the rules.

Ms. Hampton said a lot of these problems would have been solved if some of these people had attended the Orientation Session and asked what kind of turnout there was. Ms. Hall said the Orientation Session was attended by all candidates and/or their representatives, but did not recall representatives from any of the committees. Ms. Hampton said there always seems to be a committee that does not realize they are violating a law by not reporting expenditures and asked if the City has any plans for more public education on filing requirements. Chairman Hardiman said, for the next campaign, NEC will send a copy of their public service announcement to the Norman Transcript, for publication, which will be one piece of the public education component. He said the Orientation Session has evolved over time being held in the Council Chambers with slide shows and seems to be well attended by candidates. He said certainly NEC’s goal is to educate the broader public and seeks compliance rather than punishment.

Ms. Francis felt it would be a reassurance to citizens and candidates especially those interested in honest elections if violations were prosecuted. She said those candidates who have the ability to write the laws should be expected to know the laws. Ms. Frank said people lose confidence in government when the City does not follow-up on violations. She felt if candidates and committees know they will be held to a higher standard, everyone will be better served.

**Norman Election Commission Discussion**

Chairman Hardiman said questions raised in this meeting other than questions regarding expenditures of Dave Spaulding, were in reference to third party committees who have advocated or participated in the process, not against the candidates themselves. He said all candidates complied with all requirements.

**Better Norman Advocates**

Chairman Hardiman said Better Norman Advocates, Inc., did place a “paid for by” tagline on their mailers even though it was dark print on a dark background and hard to see. He said the City Attorney has indicated this is a State election issue and does not fall under the purview of the NEC. He said the NEC duties have more to do with ensuring campaign reports are properly filed and correct rather than the enforcement of the various aspects of State election laws. He asked Mr. Bryant what violation of state election laws should NEC include in its report to the City Council and if NEC does not report them, who would? Mr. Bryant said those violations would be referred to the DA and when that is resolved the NEC would report those findings to Council.

Item 3, continued:

**Norman Election Commission Discussion, continued**

**Better Norman Advocates, continued**

Chairman Hardiman said if a committee placed mailers in a person's mailbox and that mailer did not contain taglines and the committee did not report that expenditure then to him, that would seem to be a willful violation of the intent of the ordinance. However, when a committee registers with the State of Oklahoma, files a report with the City of Norman prior to the election, and has the information on the mailer then to him, that does not seem to be a willful violation or an end run around public disclosure. He said it would probably not seem to be a willful violation to the DA either. Mr. Bryant agreed, but did not want to second guess what the DA's opinion might be; however, it does not seem to be sufficient evidence to report that Better Norman Advocates, Inc., willfully violated any laws. Chairman Hardiman said if NEC did not act on the perceived violation, could a member of the public still be free to petition the DA to investigate or file misdemeanor charges and Mr. Bryant said yes.

Chairman Hardiman said this item does not seem to fall under the issue of financial disclosure prior to an election because there was financial disclosure prior to the election and Mr. Bryant said that is correct. Chairman Hardiman asked if a State report been filed with the City Clerk from Better Norman Advocates, Inc., and Ms. Hall said no, but they have been contacted and intend to file a report. He asked Ms. Hall what the financial penalties are for failing to file a State report and Ms. Hall said \$100 per day with a maximum of \$1,000, but she have never collected a State late fee, but will follow-up on the procedure. Chairman Hardiman said he would like to know the answer for the purposes of clarity, but felt the State should be the one to collect their own late fees.

Member Hilbert asked if Staff could find out when the expenditures were made for the mailers and Mr. Bryant said Staff is working on getting that information.

**Chamber of Commerce**

Chairman Hardiman said the Norman Chamber of Commerce participated in the election process and have not filed a report. He said if the Chamber was participating in a way that requires full disclosure then that does fall under the purview of the NEC. He said the question seems to be whether or not the Chamber meets the ordinance definition that would require them to file. He said the City Attorney is still in the process of obtaining information and additional discussion on this matter will occur at the next meeting. Mr. Bryant said factually the Chamber did mail the flyers. There is the timing of the mailing of the flyers, which was before the election and the Chamber leaders believe they are not required to file a report. He said it is a question of the whether the words used on the mailer fall under the definition of opposing or advocating for a candidate and more legal research is being done. Member Hilbert said he would like to see the Chamber's response in writing if possible and Mr. Bryant said he can request that, but once the research is completed the Chamber may voluntarily file.

**Tom Kovach**

Chairman Hardiman said the City Attorney's opinion is that Tom Kovach was acting as a paid consultant, which would not require a report to be filed. Mr. Bryant said the expenditure was reported by the candidate who received those services. He said Tom Kovach was paid for services rendered and did not receive any contributions.

Item 3, continued:

**Norman Election Commission Discussion, continued**

**Friends of Dave Spaulding**

Chairman Hardiman said the scope of duties of NEC is to make sure reports are filed properly and on time and Dave Spaulding's expenditures do not seem to be in violation of the City ordinance. He said this could be a question of what State law allows as a legitimate campaign expense in a public election and Mr. Bryant said that is correct. He said if a citizen or the NEC wanted this to be referred to the DA, that could certainly happen.

**Items submitted for the record**

1. E-mail dated April 1, 2013, from Brenda Hall to Jeff Bryant and Kristina Bell
2. Memorandum dated April 8, 2013, from Kristina L. Bell, Assistant City Attorney, through Jeff Harley Bryant, City Attorney
3. Complaint filed April 8, 2013, submitted by Mary Francis; Barbara Neas; Lester Snyder; Harold Spade; David Miller; Bette Maffucci; Bert Smith; Greg Painter; Ted Metscher; Edwin Kessler; Anthony Maffucci; Sharon Barton; Kathleen Wallis; Zakk Luttrell; and Tony Lewis, to Norman Election Commission

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**Item 4. Discussion regarding the Municipal Election Report to be submitted to City Council on April 23, 2013.**

Chairman Hardiman said the Municipal Election Report is a summary of the election and campaign report filings. Ms. Hall said the Municipal Election Report must be presented to Council within 30 days of the election. She said that report will included on the April 23, 2013, Council agenda, which means it would need to be completed by April 16<sup>th</sup>. The final report will be submitted to Council within 90 days of the election and that report is all inclusive and will also include the Committee's findings on complaints filed.

The Commission agreed Chairman Hardiman could work with City Clerk Hall to prepare the Municipal Election Report to be submitted to Council.

**Item 5. Miscellaneous Discussion.**

Chairman Hardiman said the next meeting will be held on May 20, 2013, at 2:00 p.m.

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**Item 6. Adjournment.**

Chairman Hardiman declared the meeting adjourned at 3:35 p.m.