



# office memorandum

**Date:** April 8, 2013  
**To:** Norman Election Commission  
**Through:** Jeff Harley Bryant, City Attorney *JHB*  
**From:** Kristina L. Bell, Assistant City Attorney *KLB*  
**Subject:** Spring 2013 Campaign Questions

**I. BETTER NORMAN ADVOCATES, INC., MAILERS**

**Background**

In the April 1, 2013, Norman Election Commission ("NEC") meeting, Mary Francis alleged<sup>1</sup> that one of the mail pieces for Better Norman Advocates, Inc. ("BNA") did not have the required "Paid for by" tag line in violation of 21 O.S. § 1840, entitled, "Anonymous Campaign Literature." The NEC requested input from the Legal Department regarding whether this was an issue it should review for compliance.

Ms. Francis also alleged that the encumbrance of the mailers distributed by BNA would have been known prior to March 22, 2013, when the first Campaign Contributions and Expenditures Reports were due. Ms. Francis requested that the NEC determine the date of the first mailer to determine whether BNA should have filed a report on March 22, 2013.

**Issues**

- 1) Whether the NEC should be reviewing campaign mailers for compliance with State Election laws.
- 2) Whether BNA failed to include the "Paid for by" tag line on one of its mailers.
- 3) Whether BNA should have filed a Campaign Contributions and Expenditures Report ("report") on March 22, 2013, and, if so, whether a late fee should be imposed.

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<sup>1</sup> No verified written complaints were filed in accordance with Section 7.5-27(a) of the City of Norman ("City") Code of Ordinances ("Ordinances"). Nonetheless, in the interest of expediency, the substantive concerns have been addressed here.

**Discussion**

Section 7.5-26 of the City Ordinances outlines the duties of the NEC. It provides:

Sec. 7.5-26. – Duties of the Norman Election Commission.

In addition to any other duties designated by the terms of this article, the Norman Election Commission shall:

- (1) Enforce the provisions of this article;
- (2) Cooperate with the City Clerk in preparing the design and content of appropriate forms for campaign statements required by this article;
- (3) Cooperate with the City Clerk in the preparation and publication of written instructions explaining the duties of person and committees under this article;
- (4) Determine whether the statements required to be filed under this article and also the statements required to be filed by the State Statute in the Office of the City Clerk have been properly filed;
- (5) To review, compare and examine for inconsistencies or other deficiencies all statements filed in the Office of the City Clerk, including forms required to be filed under this article and also State forms required to be filed in the Office of the City Clerk by the applicable State Statutes;
- (6) Investigate any substantial discrepancy, including, but not limited to, total expenditures listed in campaign statements filed before the election and expenditures listed in statements filed after the election;
- (7) Make a public report to the City Council within forty (40) days after the Municipal Election and ninety (90) days after the final election, including, but not limited to, ongoing investigations, violations of this article and violations of the election laws of the State of Oklahoma;
- (8) Recommend or advise the City Council on possible changes as needed to this article;
- (9) Make an effort to inform the public about the importance of reporting all contributions and expenditures by candidates for local offices as well as the political action committees (PACs) involved in a given campaign.

Under this section, the NEC is not charged with the duty of reviewing campaign mailers for compliance with State Election laws. The duties under this section include preparing informational material and instructions (subsections 3 and 9), creating forms (subsection 2), advising and preparing reports to City Council (subsections 7 and 8), and reviewing campaign statements for compliance with Chapter 7.5 of the City Ordinances and state law (subsections 1, 4, 5, and 6). The primary purpose of Chapter 7.5 and the NEC is to enforce reporting requirements. Section 7.5-26 has enumerated these specific duties of the NEC. The NEC is not charged with the broader responsibilities of enforcing all state election laws. The NEC's duties do not include reviewing campaign mailers, other than for the limited purpose of determining whether expense reports should be filed.

Sections 7.5-27(b) and (c) are part of the *procedural* section of Chapter 7.5. Section 7.5-27, entitled, "Norman Election Commission procedure," outlines the procedures by which the NEC shall carry out the duties listed in Section 7.5-26. The provisions of subsection (c) referring to forwarding documentation of believed willful violations of the State Elections Laws to the District Attorney's office are only activated when carrying out the specific duties of Section 7.5-26. Since reviewing campaign mailers is not an NEC duty outlined in Section 7.5-26, then Section 7.5-27(c) does not apply in this situation.

However, in an effort to clarify any confusion, counsel for BNA has provided the Legal Department with the three mailers BNA distributed, and all three of them contain the "Paid for by" tag line in the bottom right-hand corner, although the dark blue mailer with the black font (Exhibit 3) is more difficult to see. *See* BNA mailers, attached as Exhibits 1-3.

BNA was not incorporated until March 20, 2013. *See* Secretary of State report, attached as Exhibit 4. BNA's counsel has advised that he believes that all of the expenditures were completed after the March 22, 2013, deadline, and he is in the process of confirming that assertion. BNA's counsel also advised that the amount of expenditures for the three mailers was included in its March 29, 2013, expenditure report.

### Conclusion

The NEC's duties do not include reviewing campaign mailers to determine if they substantively meet all state election law requirements. However, all three of BNA's mailers contained the required "Paid for by" signature line, and the corresponding expenditures have been reported.

## II. FRIENDS OF DAVE SPAULDING EXPENDITURES

### Background

In the March 25, 2013, Norman Election Commission ("NEC") meeting, it 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, Contributions and Expenditures report, were legal expenditures under state statute for a candidate campaign committee.

### Issues

- 1) Whether the NEC is charged with the duty of determining whether expenditures reported are legal expenditures under state law.
- 2) Whether a campaign committee's expenditures to the NRA and Wallbuilders are legal expenditures under state statute.

### Discussion

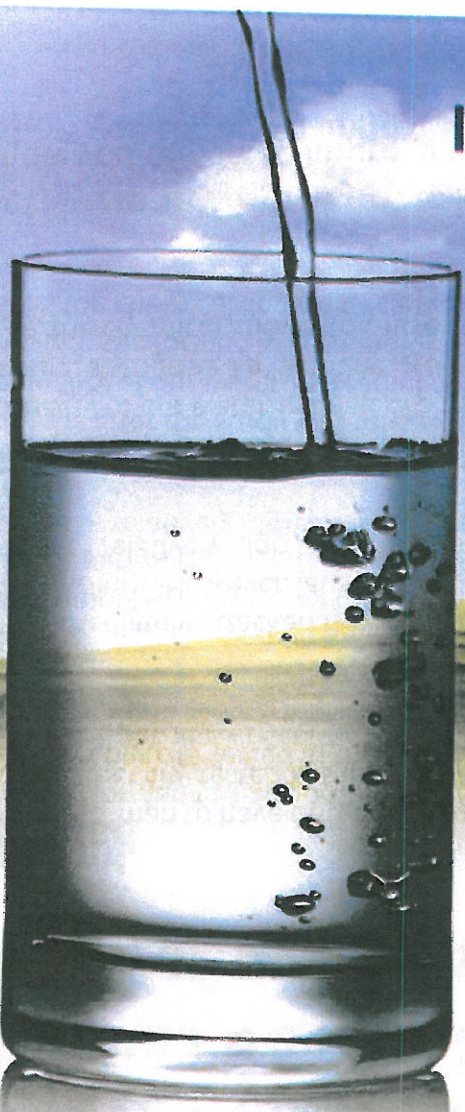
As discussed in Section I above, Section 7.5-26 outlines specific, limited duties of the NEC. Although these duties include reviewing Campaign Contribution and Expenditure Reports to ensure that all contributions and expenses are filed, they do not include making legal determinations as to whether the expenditures reported are "legal" under state statute.

Even though the NEC is not charged with the duty of determining whether reported expenditures are legal, it is the opinion of the City Attorney's Office that the language in 51 O.S. § 316(A), included in the Political Subdivisions Ethics Act, is probably broad enough to include these expenditures as proper use of campaign contributions. This section states, "Contributions accepted by any candidate or candidate committee shall be used to defray any campaign expenditures or any ordinary and necessary expenses incurred by the person in connection with duties as holder of the public office including, but not limited to, expenses for use in a future election campaign, *for political activity*, for community activity or for nonreimbursed public office related expenses." (emphasis added). Any final determination, however, would have to be made by the District Attorney's Office, since it has jurisdiction over interpretation of these state statutes.

### Conclusion

The NEC is not charged with the duty of determining whether reported expenditures are legal or proper under state statute. However, it appears that these expenditures are likely permissible uses of campaign contributions under the broad language of 51 O.S. § 316(A).





In a national study,  
**Norman's drinking water** was found  
to have the **highest amounts** of  
**cancer-causing Chromium 6**  
of any city tested.

*Do you think it's healthy to drink?*

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EXHIBIT

1



**More than two years later,  
no action has been taken to improve  
the quality of our drinking water.**

### The Background

A 2010 study found Norman to have potentially dangerous levels of Chromium 6, a chemical known to cause cancer. No other city tested in the study had higher levels of Chromium 6, as you can see from the graph to the right. (source: Environmental Working Group, <http://www.pbs.org/newshour/multimedia/chromium-cities/>)

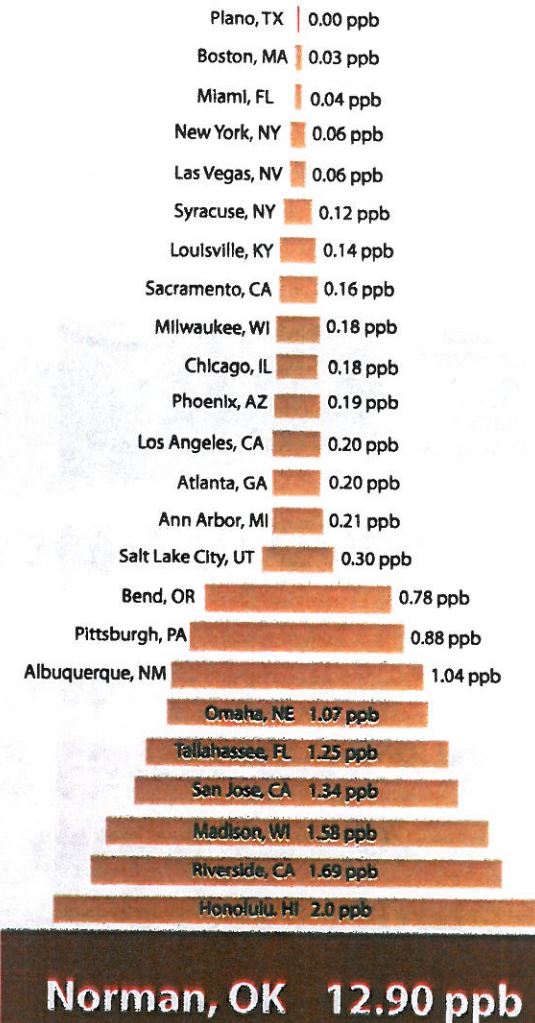
### The Response

Norman officials immediately attacked the study, questioning its methodology in an apparent effort to undermine the findings. However, later tests confirmed the study's results, and today city officials admit the presence of relatively high levels of Chromium 6 in our drinking water.


### The Failure

More than two years after the study was released, Mayor Cindy Rosenthal has not taken any action to improve the quality of our water. Instead of acting as a concerned citizen would, she has acted as a politician would: she formed a "working group" to study the issue and "monitor" Chromium 6 levels. Meanwhile, the chemical known to cause cancer remains in Norman's drinking water.

Go to **ProtectNormanWater.com** to learn more about this important issue and find out how you can act to improve water quality in Norman.







**Mayor Cindy Rosenthal  
has not improved  
the quality of our water.**

*Now it's time to improve the quality of our Mayor.*

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EXHIBIT

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# Mayor Cindy Rosenthal has not taken action, so now it's up to us.

*To protect our water, we need to change the Mayor.*

Mayor Cindy Rosenthal has done nothing to improve our water quality since a national study first exposed cancer-causing Chromium 6 in Norman's drinking water.


One thing is clear: if we want action to improve our water quality, we must take action to change leadership.



This Tuesday, April 2 is the day we can do something about Norman's water. Make your voice heard.

Go to [ProtectNormanWater.com](http://ProtectNormanWater.com) to learn more.





In 2010, a national environmental study  
revealed potentially dangerous levels of  
**cancer-causing  
Chromium 6**  
**in our drinking water.**

*Since then, Mayor Cindy Rosenthal has failed to  
take any action to improve our water quality.*

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3

EXHIBIT



## ***Why has Mayor Cindy Rosenthal not taken any action to improve the quality of our drinking water?***

### ***Defending the drinking water***

Instead of taking action to improve the quality of our drinking water, city leaders have defended the presence of Chromium in the water. Don't be fooled. Chromium 6 is in fact known to cause cancer, and the levels found in our drinking water are potentially hazardous. (Source: <http://1.usa.gov/16d00NC>)

### ***Risking our health?***

Mayor Cindy Rosenthal has apparently cared more about keeping her job than protecting our health. Instead of showing leadership and acting to improve the quality of our drinking water, Mayor Rosenthal has formed "working groups" to "monitor" the issue. Meanwhile, she has done nothing about the Chromium 6 levels we drink every day.

(Source: <http://normantranscript.com/editorials/x1678756338/More-about-Chromium-6>)

### ***Water supply is threatened***

Our health isn't the only thing potentially at risk. Norman's water supply also is threatened by the high levels of Chromium 6. In 2006, Norman was forced to close down many of its water wells due to high levels of arsenic. Many believe the same thing will happen because of the Chromium 6, causing a water supply crisis in our city. (Source: <http://normantranscript.com/headlines/x2036086387/Chromium-6-found-throughout-area>)

***Mayor Cindy Rosenthal has failed to protect Norman's water.  
It's time for new leadership.***

Go to **ProtectNormanWater.com** to learn more about this important issue.

