

JULY 1, 2013

Brenda Hall

From: Brenda Hall
Sent: Monday, April 01, 2013 5:42 PM
To: Jeff Bryant
Cc: Kristina Bell
Subject: Questions from Norman Election Commission

Several questions arose in today's meeting of the Norman Election Commission that they have asked that I forward to the Legal Department for response. They would like to have response to these questions as well as those raised in last week's meeting prior to their next meeting on Monday, April 8th at 2:00 p.m. It is at that meeting they will also discuss their Municipal Election Report that is to be submitted to Council on April 23rd and they would like to include the response with their first report. The questions raised are as follows:

Better Norman Advocates, Inc.

1. It has been alleged by Ms. Francis that one of the mail pieces for Better Norman Advocates did not have the "Paid for by" tag line, which is a violation of State statute. Ms. Francis interprets Sec. 7.5-27(c) as the Norman Election Commission (NEC) would determine if this is a willful violation of State Election laws and if so, a recommendation of such would be forwarded to the District Attorney's Office. The statute that stipulates what should be included on campaign literature is not part of the Political Subdivision Act but is found under Title 21, Crimes and Punishments - Chapter 70, Other Offenses Against Property Rights - Section 1840, Anonymous Campaign Literature. NEC would like input from the Legal Department as to whether this is something they should review for compliance.
2. Ms. Francis also feels that the encumbrance of such would have been known prior to March 22nd when the first Campaign Contribution and Expenditure Reports were due; therefore, the Committee should have been subject to filing a report on that day. Better Norman Advocates, Inc., registered with the Secretary of State on March 20th and the attorney for the Committee indicated to me that no expenditures or contributions were completed prior to the 22nd. She asked the NEC to determine the date of the first mailer to determine whether or not encumbrances were made prior to March 22nd.

Norman Chamber of Commerce

Mailers were distributed by the Norman Chamber of Commerce that appear to be advocating against the seated incumbents. A question was raised as to whether or not they would be subject to filing reports.

Tom Kovach

Mary Francis told the NEC she had filed a complaint with the City Attorney's Office regarding a possible violation of the Ethics Ordinance against Tom Kovach for his activity with the Tom Sherman for Mayor 2013 Campaign Committee. She also asked the NEC to determine whether Mr. Kovach would be subject to reporting requirements as advocating for Tom Sherman's campaign committee since he received compensation from Mr. Sherman's committee for his services.

Follow-up from prior meeting.

Friends of Dave Spaulding

Questions were raised at the prior meeting asked whether expenditures to the National Rifle Association and Wallbuilders/Pro Family Conference were legal expenditures under the statute for a candidate campaign committee.

*Brenda Hall
 City Clerk
 City of Norman*



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 alleged¹ 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.

¹ 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.

Office memorandum

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?

PRESORTED STANDARD
US POSTAGE
PAID
OKLAHOMA CITY, OK
PERMIT 2000

Paid for by Better Norman Advocates, Inc.

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/>)

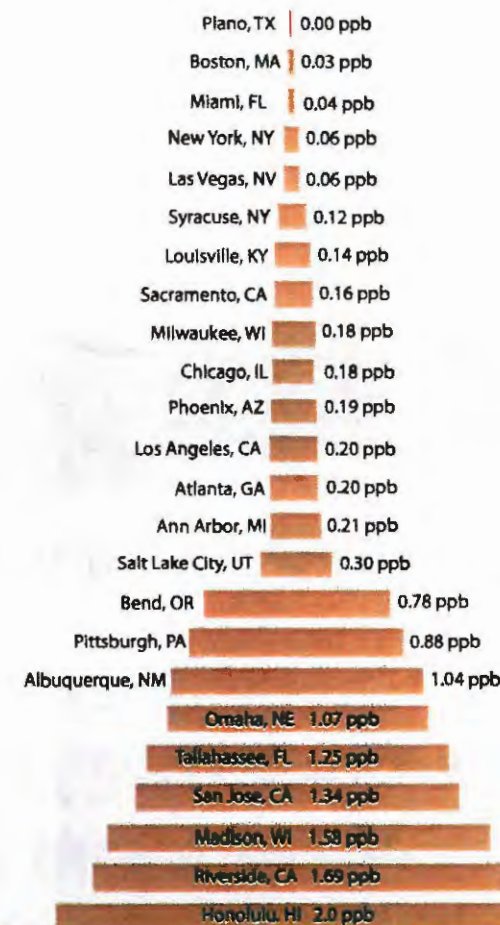
The Response

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.

PRESORTED STANDARD
US POSTAGE
PAID
OKLAHOMA CITY, OK
PERMIT 2000

NEC 2013 FINAL ELECTION REPORT

JULY 1, 2013

EXHIBIT

Paid for by Better Norman Area

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

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

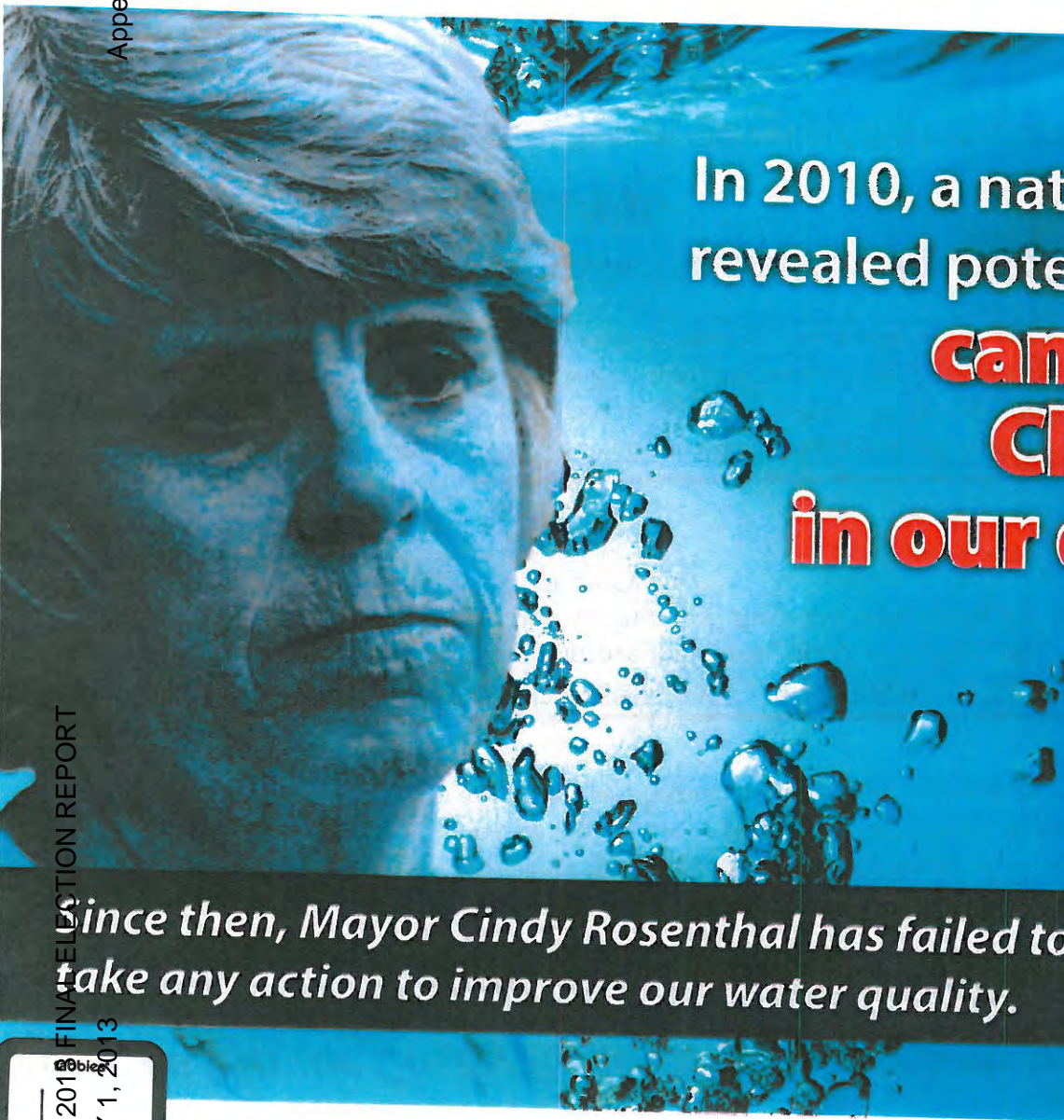
Mayor Cindy Rosenthal has done nothing to improve our water quality since a national study first exposed cancer-causing Chromium 6 in Norman's drinking water.

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 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.*

PRESORTED STANDARD
US POSTAGE
PAID
OKLAHOMA CITY, OK
PERMIT 2000

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.



NEC 2013 FINAL ELECTION REPORT

JULY 1, 2013

ComplaintFILED IN THE OFFICE
OF THE CITY CLERK
ON 4-8-13

To: Norman Election Commission Chair Ty Hardiman and members,
Cc: Brenda Hall, City Clerk

Attached and copied below is the OK Statute which addresses the unattributed political mail as discussed at the Norman Election Commission (NEC) meeting April 1, 2013. This is a formal request and follow-up to my oral request of April 1, 2013, that the source of the unattributed mailer be investigated and records requested from the responsible committee.

It is clear in the Norman Ordinance Sec. 7.5-27,(c), that the Norman Election Commission is required to determine if said committee's political mail violates the state statute. and also if there is "reason to believe" (not 'proof' mind you) that a willful violation has occurred. See Sec. 7.5-27,(c):

Whenever the Norman Election Commission has reason to believe a willful violation of the State Election Laws has occurred, it shall send its documentation to the District Attorney of Cleveland County with a recommendation for appropriate legal action.

The most efficient and reasonable way to make that determination is to ask for records, of course. That authority is clearly provided by Sec. 7.5-27,(e):

The Norman Election Commission may at any time demand and shall be furnished records of campaign contributions and expenses of a candidate or committee. The Norman Election Commission shall also call a candidate or candidates before the Commission for the purpose of discussing any irregularities or inconsistencies in the candidate's filings.

and

Candidates shall be required to preserve all records, accounts, bills, receipts, books, papers, and other documents necessary regardless of physical form or characteristic, to substantiate the reports required to be filed by a candidate or committee as set forth herein related to campaign contributions and expenditures for a period of one (1) year from the date of election in which they are a candidate.

No relevant committee was registered with the City nor was a Contribution and Expenditure Report filed by the March 22, 2013 deadline. Therefore, I also request that the NEC determine when said committee began operation, when and where the unattributed mail was encumbered and what times any other political activity was initiated, so that any penalties or fines due may be determined.

I also request that contact information for the NEC be provided for citizen's convenience on the City website.

JULY 1, 2013

Appendix D

Complaint

Sincerely,

Mary Francis

850-C Cardinal Creek Condos

Norman, OK 73072 405 474-0695

Mary Francis

Barbara R Neas

Barbara R Neas

Lester W. Snyder

Lester W. Snyder

Harold E Spake

Harold E Spake

David B. Miller

David B. Miller

Anthony Maffucci
Anthony Maffucci

Bette Maffucci
BETTE MAFFUCCI

Bert Smith

Greg Painter

Greg Painter

Rhonda Painter

Rhonda Painter

Ted Metscher

Ted Metscher

Edwin Kessler

Edwin Kessler

Sharon A. Barton

Sharon A. Barton

M2 Ellen Frank

M2 Ellen Frank

Kathleen M. Wallis

Kathleen M. Wallis

ZACK BLASH Lubers II

ZACK BLASH Lubers II

Tony J. Lewis

Tony J. Lewis

Title 21, Section 1840

A. It shall be unlawful for any person, firm, corporation, partnership, organization, or association to cause to be broadcast, written, printed, posted, or distributed a statement, circular, poster, or advertisement which is designed to influence the voters on the nomination or election of a candidate or to influence the voters on any constitutional or statutory amendment or on any other issue in a state, county, city, or school district election, or to influence the vote of any member of the Legislature, unless there appears in a conspicuous place upon such circular, poster, or advertisement, or within a broadcast statement, either the name and address of the person who paid for the communication if an individual, or the name and address of the president, chairman, or secretary, or of two officers of the organization, if an organization which paid for the communication. Persons violating this act shall be guilty of a misdemeanor.

B. The provisions of this section shall not apply to material purchased before the effective date of this act, provided that proof of purchase can be properly documented. The provisions of this section shall not apply to bumper stickers, pins, buttons, and other small items upon which the required information cannot be conveniently printed. The provisions of this section shall not apply to skywriting, water towers, or other means of displaying of such a nature that the inclusion of the required information would be impractical. Nothing in this section shall be construed to apply to any matter broadcast by the electronic media or thing published in any newspaper, magazine, or journal recognized and circulating as such, which matter is broadcast by the electronic media or published by such newspaper, magazine, or journal on its own behalf and upon its own responsibility and for which it shall not charge or receive any compensation whatsoever, nor shall the provisions of this section apply to any publication issued by any legally constituted election officials in the performance of their duties.

Sincerely,

Mary Francis

850-C Cardinal Creek Condos

Norman, OK 73072 405 474-0695

Mary Francis

Barbara R Neas
Barbara R Neas

Lester W. Snyder
Lester W. Snyder

Harold E Spake
Harold E Spake

David B. Miller
David B. Miller

Bert Smith
Bert Smith

Greg Painter
Greg Painter

Rhonda Painter
Rhonda Painter

Teil Metscher
Teil Metscher

Edwin Kessler
Edwin Kessler

Peter Allen Gher

Sharon A. Barton
Sharon A. Barton

Ellen Frank
Ellen Frank

Kathleen M. Willis
Kathleen M. Willis

Betty Maffucci

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signatures continued on the back →

Back of Page 2: Complaint (signatures continued)

NAME and	Printed Name
Johnny Hunsfield	Johnny Hunsfield
Pat McCauley	Patricia McCauley
EDWARD SANKOWSKI	EDWARD SANKOWSKI
Betty J. Harris	Betty J. Harris
GAYLON HAYES	GAYLON HAYES
CONNIE ALAGOOD	CONNIE ALAGOOD
MIKE ALAGOOD	MIKE ALAGOOD
Bailey Perkins	Bailey Perkins
Bailey Perkins	Bailey Perkins
Valele Adair	Valele Adair
SAM GRAETE	SAM GRAETE
Elise Robillard	Elise Robillard
MOLLY ROBERTS	MOLLY ROBERTS
JUDITH COKER	JUDITH COKER
Allison Lee Palmer	Allison Lee PALMER
Adrienne Gautier	Adrienne Gautier
Marjorie Greer	Marjorie Greer
Bryan Jackson	Bryan Jackson
Roy Shober	Roy Shober
DOROTHY JENKINS	DOROTHY JENKINS
Tae Hee Si	Tae Hee Si
Jerry Medlin	Jerry Medlin
Diane Hardersen	Diane Hardersen
Evelyn Jewell Friedman	Evelyn Jewell Friedman
JUDY CALHOUN	JUDY CALHOUN
Wallace Collins	Wallace Collins
Pat Collins	Pat Collins

Continued on Supplemental page 3

FSW Signature:

Date:

Supervisor Initials:

Date:

LOCAL ELECTION REPORT

Lack of Attribution Complaint

Appendix D

Supplemental (page 3) of Complaint

Observations/Progress Notes	Printed Name
Signature	
DONNA L. RUSSELL	DONNA L. RUSSELL
Troy Green	Troy Green
Anthony DeGiusti	Anthony DeGiusti
Chadwick Cox	Chadwick Cox
John McDowell	John McDowell
Julie F. Morris	Julie F. MORRIS
Nancy Smart	Nancy Smart
Amos Kimberling	AMOS KIMBERLING
Amanda Coughlin	Amanda Coughlin
Suzette McDowell	Suzette McDowell
Ronald R. King	RONALD R. KING
Sandra Rose	SANDRA ROSE
Bruce Cold	BRUCE COLD
Barbara Schindler	Barbara Schindler
Cindy R. Kellogg-Cason	Cindy R. Kellogg-Cason
James Vernon	James Vernon
Michael S. Hopkins	Michael S. Hopkins
Larry Berman	LARRY BIERMAN

FSW Signature: _____

Date: _____

Supervisor Initials: _____

Date: _____



Date: May 20, 2013
To: Norman Election Commission
Through: Jeff Harley Bryant, City Attorney *JHB*
From: Kristina L. Bell, Assistant City Attorney *KLB*
Subject: Follow-up re: Spring 2013 Election Complaints

From the Norman Election Commission ("NEC") meeting on April 8, 2013, two items were left for review by the City Attorney's office. Those are reviewed below:

I. BETTER NORMAN ADVOCATES, INC. ("BNA")

Norman City Code ("Code") Section 7.5-22 requires committees in support of or in opposition to a candidate for the office of Councilmember or Mayor to file a campaign statement ten (10) days prior to the Municipal Election. The Municipal Election was held on April 2, 2013. If expenditures or contributions occurred prior to March 22, 2013, then a campaign report should have been filed by March 22, 2013. BNA filed a campaign report on March 29, 2013.

While it was originally believed that no expenditures or contributions occurred prior to March 22, 2013, after conducting further research and review, and in consultation with BNA's legal counsel, it was determined that in fact contributions had been received and encumbrances had been made by the first reporting deadline of March 22, 2013. It is believed that this was likely an oversight or misunderstanding and not an action taken maliciously or in bad faith. Nonetheless, in accordance with Section 7.5-22, a seventy dollars (\$70) late fee was assessed and collected since the first report was not filed by BNA until March 29, 2013.

II. CHAMBER OF COMMERCE MAILERS

BACKGROUND

In the April 1, 2013, Norman Election Commission ("NEC") meeting, Mary Francis alleged that mailers distributed by the Norman Chamber of Commerce ("Chamber") appeared to be advocating against the seated incumbents and should therefore be subject to filing Campaign Contributions and Expenditure Reports.

ISSUE

Whether the Chamber's mailers constituted express advocacy or the functional equivalent of express advocacy in order to trigger the campaign statement filing requirements of Section 7.5-22 of the City Code.

BRIEF CONCLUSION

While at first glance, four of the five mailers distributed by the Chamber appear to be advocating against seated incumbents, the specific language of these mailers does not sufficiently advocate against any specific candidate to constitute express advocacy or the functional equivalent thereof under current federal election law.

DISCUSSION

Section 7.5-22 of the Norman Code states that “any committee acting on behalf of or in opposition to a candidate shall file a campaign statement.” (emphasis added).

The “Shop Norman” mailer, attached as Exhibit 1, does not appear to advocate for or against any candidate. This mailer appears to encourage citizens to take a specific action of shopping local. Therefore, it is clear that no campaign statement would be required to be filed for that expenditure.

Exhibits 2-5, however, at first glance, appear to advocate against, or *in opposition to*, seated incumbents running for re-election. Each of these mailers includes language describing failed policies of the City of Norman and encouraging voters to “Tell our city leaders” that we “need to value Norman businesses” by voting in the April 2, 2013, election. No City ballot measures were on the April 2, 2013, ballot, except for a hotel bed tax. None of these mailers mentioned or referenced the hotel bed tax on the ballot. There were no other general City issues on the ballot, only elections for the Mayor and City Council positions.

These mailers encourage voters to vote specifically in the Mayoral and City Council elections. These mailers appear to urge citizens to send a message to “City leaders” that they value Norman businesses by voting in these elections. Reviewing the four corners of these documents could lead to a reasonable interpretation that the Chamber is advocating against seated incumbents (ie: “City leaders”). The mailers clearly outline alleged “failed policies” of the City and seemingly encourage citizens to “send a message” to City leaders by, it could be assumed, voting against those currently in office.

Current federal election law, however, requires more than just the implication of a reasonable interpretation that the literature distributed is advocating for or against a candidate for office before campaign reporting disclosure can be required. In *Citizens United v. Fed. Election Comm’n*, the United States Supreme Court recognized its prior holding in *McConnell v. Federal Election Comm’n*, 124 S. Ct. 619 (2003), that speech must be either “express advocacy” or the “functional equivalent of express advocacy” for or against a specific candidate.” 130 S. Ct. 876, 890 (2010). The “functional-equivalent test is objective: ‘a court should find that [a communication] is the functional equivalent of express advocacy only if [it] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.’” *Id.* (quoting *Fed. Election*

Comm'n v. Wisconsin Right to Life ("WTRL"), 127 S. Ct. 2652, 2655 (2007)) (emphasis added).

In *Citizens United*, the Supreme Court applied this objective functional-equivalent test to a film called *Hillary* and found that it sufficiently constituted the functional equivalent of express advocacy against Senator Hillary Clinton who was running for President. *Id.* The Court characterized the movie as a "feature-length negative advertisement that urges viewers to vote against Senator Clinton for President." *Id.* The Court recognized that the film contained more suggestions and arguments than facts but found that there was "little doubt that the thesis of the film" was that she was "unfit for the Presidency." *Id.* The Court noted that the film concentrated on alleged wrongdoing during the Clinton administration, Senator Clinton's qualifications and fitness for office, and policies the commentators predicted she would pursue if elected. *Id.* The Court rejected the organization's argument that the film was just a "documentary" that "examined certain historical events" and instead found that there was "no reasonable interpretation" of the film "other than as an appeal to vote against Senator Clinton." *Id.*

McConnell expanded the traditional express advocacy "magic words" test of *Buckley v. Valeo*, 96 S. Ct. 612, 647 (1976), which required that for literature to be governed by mandatory disclosure, it must "in express terms advocate the election or defeat of a *clearly identified candidate*," as demonstrated by the inclusion of words "of express advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' [or] reject.'" *Id.* at 647 n.52 (emphasis added). The Court noted that "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application." *Id.* at 646.

Although no Tenth Circuit or Oklahoma cases were found specifically on point, the Colorado Supreme Court recently handled a similar issue. In *Colo. Ethics Watch v. Senate Majority Fund, LLC*, 269 P.3d 1248 (Colo. 2012), the Colorado Supreme Court analyzed the definition of "express advocacy" under a state Constitutional Amendment that had passed in 2002 requiring political committees who had made "expenditures" in excess of \$200 to "support or oppose the nomination or election of one or more candidates." *Colo. Ethics Watch*, 269 P. 3d 1253. The definition of "expenditure" required that it was made for the "purpose of expressly advocating the election or defeat of a candidate." *Id.* The Colorado Supreme Court recounted the history behind the process of defining "express advocacy" in campaign finance law and noted the concerns initially addressed by the Supreme Court in *Buckley*. "[B]ecause there is often significant overlap between candidates and the issues that they champion or oppose, the Court was concerned that independent speech related to issues could be interpreted by some to implicate a candidate." *Id.* at 1254.

The Colorado Supreme Court held that because "express advocacy" had been specifically defined by a prior Colorado court case (adopting the *Buckley* "magic words" test at the time the Constitutional Amendment was adopted), that that definition should

govern, despite the United States Supreme Court's holding in *Citizens United*. The Colorado Supreme Court rejected the argument that the more expansive functional equivalence test espoused in *Citizens United* should govern, distinguishing *Citizens United* and *McConnell* since they focused on "electioneering communications," under federal statutes which were statutorily defined to apply in more limited circumstances than the "express advocacy" at issue under the Colorado Amendment. *Id.* at 1257. The Court noted that in both *McConnell* and *WRTL*, the United States Supreme Court was interpreting the Bipartisan Campaign Reform Act ("BCRA"), which pertained to "electioneering communications," the definition of which was "easily understood and objectively determinable." *Id.* at 1257. An "electioneering communication" is defined as any advertisement that 1) is broadcast on radio or television; 2) clearly identifies a candidate for federal office; 3) airs within either thirty days of a primary or sixty days of a general election; and 4) targets an identified audience of at least 50,000 listeners or viewers. The Court emphasized the United States Supreme Court's reliance on the "easily understood and objectively determinable definition" to determine that it could survive the vagueness concerns behind the *Buckley* decision. *Id.* The Court recognized the distinction between "express advocacy," (which was narrowly defined as speech containing the *Buckley* "magic words") with the "functional equivalent of express advocacy." *Id.*

The United States Supreme Court further instructed in *WRTL* that in determining whether speech could reasonably be construed as advocating for the defeat or election of a candidate, courts must look at the words used in the ad and not the intent behind them. *Id.* (citing *WRTL*, 127 S. Ct. 2652, 2665-66). The Court feared that an intent-based test and the likelihood of litigation would chill protected political speech; accordingly, the Court held that only those ads that are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate" could be construed to be the functional equivalent of express advocacy. *Id.*

The four remaining mailers distributed by the Chamber (Exhibits 2-5) do not mention any candidate, incumbent or otherwise, by name. They certainly do not include any of the "magic words" contemplated by *Buckley*. It is at least arguable that these mailers are susceptible of more than one reasonable interpretation, one of which could be that they are an appeal to vote out seated incumbents. There are other reasonable interpretations, however, such as promoting awareness of business-related issues and encouraging voters to discuss these issues with their leaders. The mailers notably do not mention any specific candidate or incumbent's stance on these issues.

CONCLUSION

The four remaining mailers do not mention any specific candidate, City leader, or incumbent by name. They do not include any of the *Buckley* "magic words," such as "vote for," "elect," or "vote against." They do not directly state that City leaders should be "voted out." They most definitely do not constitute "express advocacy" under the "magic words" of *Buckley*. Although it could be reasonably interpreted that these mailers

imply that seated incumbents up for re-election ("City leaders") should be voted out of office ("Tell City leaders") because of alleged failed City policies, these mailers can also be subject to other reasonable interpretations. Because these mailers could be susceptible to other reasonable interpretations and do not specifically or directly advocate for or against any clearly identified candidate running for office, they are likely to not be determined the functional equivalent of express advocacy and therefore can not necessarily be subject to mandatory disclosure requirements under current federal First Amendment jurisprudence.

Although our task is to measure the applicability of political speech to Norman City Code Municipal campaign reporting requirements, any construction of the Norman Code provisions must be consistent with the United States Constitution and federal free speech provisions. When applying Norman Municipal campaign reporting provisions to the Chamber flyers 2-5 against the backdrop of United States Constitutional free speech jurisprudence, the flyers are not susceptible to only one reasonable interpretation of direct or specific advocacy for or against a particular candidate. Without only one reasonable interpretation of direct or specific advocacy for or against a particular candidate when reading the four corners of flyers 2-5, a campaign report cannot be required of the Chamber under the Norman City Code provision without violating federal free speech jurisprudence. Consequently, it is the opinion of the City Attorney's office that neither flyer 1 nor flyers 2-5 distributed by the Norman Chamber of Commerce during recent City Mayoral and Councilmember elections implicated the campaign expenditure filing requirements of Norman City Code, Section 7.5-22.

Appendix D



**Norman sales tax growth is trailing our neighbors,
but we can help reverse that trend by shopping local.**

Quality retailers open for business

Norman is blessed with an abundance of quality retailers and small businesses for shopping, recreation and indulgence. Our local retailers provide jobs in our community and contribute dollars back to our local charities and civic clubs. For a list of these establishments, visit www.NormanChamber.com.

Shopping local, investing in Norman

When you shop local, you invest in Norman. That means more sales tax dollars for core government services, like our police and fire fighters. The more our local economy grows, the better place Norman becomes to live, work and raise a family.

**VOTE
TUESDAY
APRIL 2**



Shop Norman!

**When you shop local,
you invest in
Norman.**

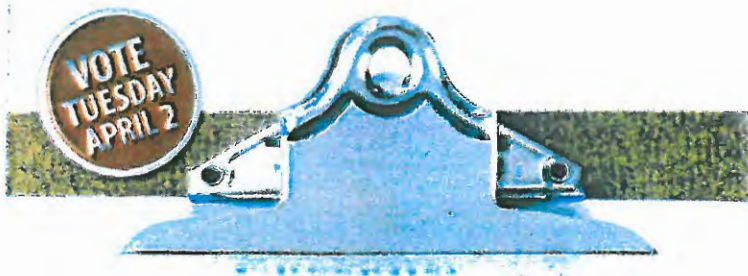


**NORMAN
CHAMBER
OF COMMERCE**

9993*****AUTO**S-DIGIT 73072 T7 P1
The Hall Family
Or Current Resident
4300 Warrington Way
Norman, OK 73072-0203

Printed by Norman Chamber of Commerce
118 E Gray St. Norman, OK 73072
(405) 321-7200

PSRT STD
U.S. POSTAGE
PAID
MAJORITY
DESIGNS



If we check off the boxes
on our to-do list,
Norman will have a
brighter future than ever.

1. ☐ *Vote this Tuesday, April 2*
Tell our leaders Norman businesses matter.
Vote in the Mayoral and City Council Elections.
After April 2...
2. ☐ *Shop Local*
Supporting our local retailers and small businesses will
keep jobs in Norman and help our local economy.
3. ☐ *Be Friendly to Norman Businesses*
We must insist our city leadership is friendly to Norman
businesses, with policies that encourage job growth
and expansion.
4. ☐ *Recruit New Businesses*
Surrounding cities are winning new retailers and other
businesses when those establishments should be
coming to Norman. We must aggressively seek out
new businesses to bring more jobs to Norman.

**To increase Norman's sales tax growth,
there are a few things
we have to do.**

☐ *VOTE this
Tuesday, April 2*

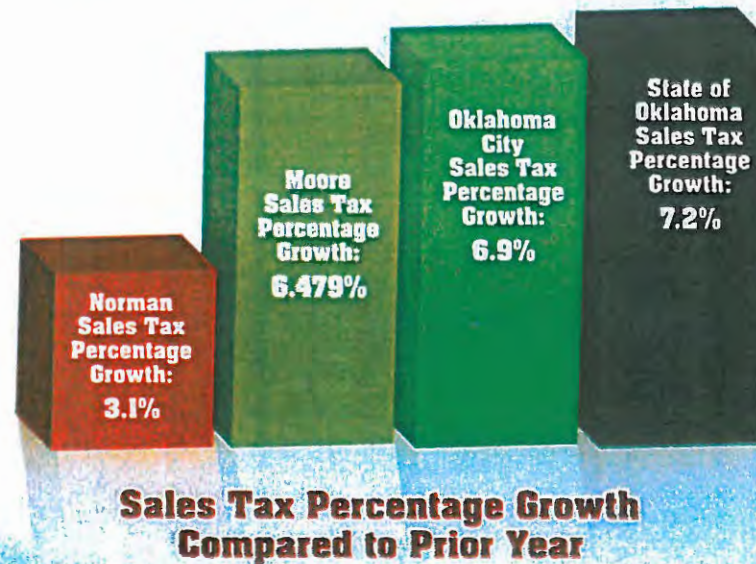
☐ *Shop local*

☐ *Be friendly to
Norman businesses*

☐ *Recruit
new businesses*



Norman's Economy Isn't Growing Like It Should

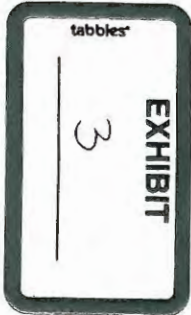


- ✗ Norman sales tax growth is less than half that of Moore
- ✗ Norman sales tax growth is less than half that of Oklahoma City
- ✗ Norman sales tax growth is less than half that of the State of Oklahoma

Paid for by Norman Chamber of Commerce
115 E Gray St., Norman, OK 73069
(405) 321-7280

PSRT STD
U.S. POSTAGE
PAID
MAJORITY
DESIGNS

9993*****AUTO**S-DIGIT 73072 T7 P1
The Hall Family
Or Current Resident
4300 Warrington Way
Norman, Ok 73072-0203



When our local economy doesn't grow, Norman families and businesses lose out.



Sales taxes fund core city services

Many of the things we enjoy and rely on in Norman depends upon sales taxes from our local economy. Police and fire protection, water treatment facilities, parks and of course our streets all depend on sales tax dollars for funding. When nearby cities generate more sales tax growth than our city, that means fewer police, fewer firefighters and less funding for streets in Norman.

Norman needs business-friendly policies

Business owners and retailers will choose to do business where they feel welcome; for too long in Norman, that hasn't been the case. In fact, Norman has lost out on several new retailers, costing our community jobs and sending sales tax dollars to other cities. If we are serious about helping new and expanding businesses in Norman, we need business-friendly policies at city hall that work to foster economic prosperity. The alternative is either flat lining services or increasing taxes.

**It's time to tell our city leaders
we need to value Norman businesses.
Mark your calendar to vote on
Tuesday, April 2.**





Norman

has some great
local retailers,
but why don't we
have even more?



Fast to the Norman Chamber of Commerce
111 E. Gray St. - Norman, OK 73069
(405) 321-7261

PSRT-STD
U.S. POSTAGE
PAID
MAJORITY
DESIGNS

9993*****AUTO**5-DIGIT 73072 T7 P1
The Hall Family
City Current Resident
4400 Warrington Way
Norman, OK 73072-0203

City leaders in Norman must focus on growing our local economy!

Stiff Competition

Cities in central Oklahoma compete every day to attract new businesses. They compete for these businesses because they want the jobs, the sales tax revenue, and the other economic benefits that businesses bring. Norman's market share of sales tax dollars in Cleveland County has decreased 10 percent over the past decade.

Norman is Lagging

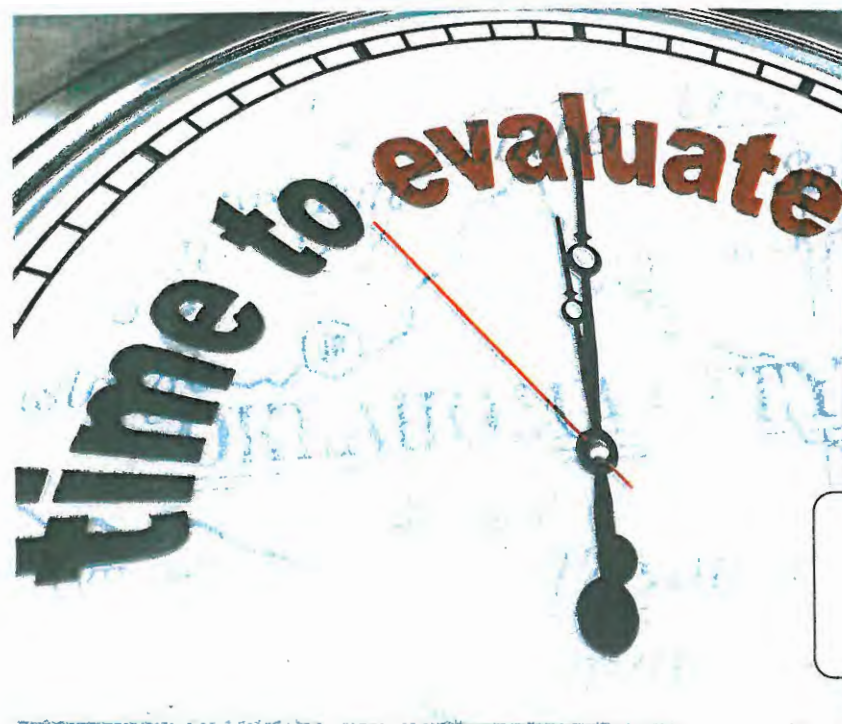
In Norman sales tax revenue is growing at a much slower rate than surrounding communities. If this trend continues, Norman's local economy may begin to suffer, meaning less money for vital city services such as parks for our children, better roads and stronger public safety.

Better Pro-Business Policies Are Needed

Norman needs our city leaders to make business recruitment, retention and expansion a priority. Other cities in central Oklahoma have had success when they have taken this pro-business approach. Ask our Norman city leaders to focus on creating a better business environment, so our local economy can grow stronger.

**Tell our city leaders we need to
value Norman businesses.
Mark your calendar to vote on
Tuesday, April 2,
in the Norman Mayoral and
City Council elections.**

**VOTE
TUESDAY
APRIL 2**



Why are Moore and Oklahoma City out-performing Norman?

Post for Norman Chamber of Commerce
112 E Gay St., Norman, OK 73069
(405) 321-7291

PSRT STD
U.S. POSTAGE
PAID
MAJORITY
DESIGNS

82937*****AUTO**5-DIGIT 73072 T7 P1
The Hall Family
Dr. Current Resident
4300 Warrington Way
Norman, Ok. 73072-0203

We need better policies to stop Norman sales tax dollars from lagging behind our neighbors.

The Issue

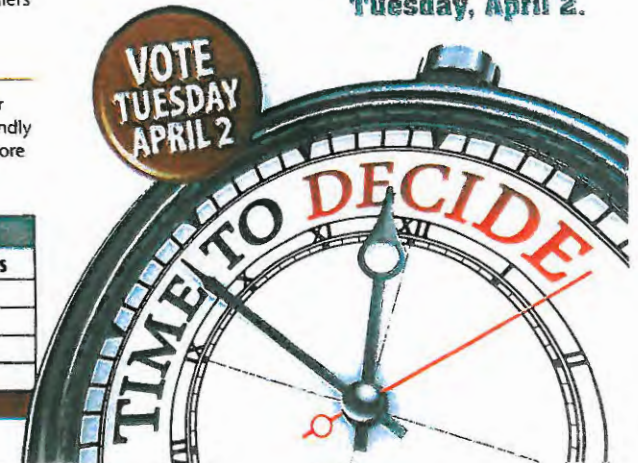
Our city runs on sales tax revenue. Everything from street repairs, parks and recreational facilities, water needs and our police and fire service depends on the sales tax revenue generated by our local economy. But poor policies at city hall have hurt our local retailers and other businesses, meaning less growth in sales tax revenue.

The Facts

Norman's two closest competitors for retail outlets and other business have grown their sales tax revenue twice as much as Norman because they offer welcoming policies, friendly incentives and leadership that values small businesses. The table below shows how Moore and Oklahoma City have grown their sales tax base twice as much as Norman.

Sales Tax Growth Compared To Prior Year		
City	Percentage Growth	Growth in Dollars
State of Oklahoma	7.2%	\$280,740,000
Edmond	17.13%	\$10,597,945
Moore	6.47%	\$1,080,362
Oklahoma City	6.9%	\$17,622,193
Norman	3.16%	\$1,247,983

**It's time to tell our city leaders
we need to value Norman businesses.
Mark your calendar to vote on
Tuesday, April 2.**





The City of NORMAN

201 West Gray P.O. Box 370 Norman, Oklahoma • 73070

NEC 2013 FINAL ELECTION REPORT

JULY 1, 2013

Appendix D

Norman Election Commission

Phone: 405-366-5406

July 1, 2013

Ms. Mary Francis
850-C Cardinal Creek Condos
Norman, OK 73072

RE: April 1, 2013, and April 8, 2013, Complaints

Dear Ms. Francis:

We are in receipt of the written Complaint you filed on April 8, 2013. As you are aware, we requested legal advice from the City Attorney's Office regarding several of the issues you raised. You also expressed other concerns in the April 1, 2013, meeting.

This correspondence is the Norman Election Commission's ("NEC") response to your April 8, 2013, complaint. We have also addressed the concerns you voiced in the April 1, 2013, NEC meeting even though those complaints were not memorialized in writing.

Background

At the April 1, 2013, NEC meeting, you voiced two concerns against Better Norman Advocates, Inc. ("BNA"). First, you alleged that one of the mail pieces distributed by BNA did not have the required "Paid for by" tag line in violation of State statute. Second, you alleged that the encumbrance of these mail pieces would have been known prior to March 22, 2013, the date the first Campaign Contributions and Expenditures Report was due. Both of these concerns were then documented in the written Complaint you filed on April 8, 2013.

Three other concerns were also addressed during the April 1, 2013, meeting. First, it was asked whether Councilmember Dave Spaulding's expenditures to the National Rifle Association ("NRA") and Wallbuilders were legal expenditures under state law for a candidate campaign committee. Second, you asked the NEC to determine whether Councilmember Tom Kovach should have filed a report disclosing the compensation he received from the Tom Sherman for Mayor 2013 Campaign Committee for consulting services. Finally, you also alleged that the mailers distributed by the Norman Chamber of Commerce ("Chamber") appeared to be advocating against seated incumbents and therefore the Chamber should have been required to file campaign reports.

Discussion

I. Better Norman Advocates, Inc. (BNA)

A. Missing “Paid for by” Tag Line

Representatives of the City Attorney’s Office attended the April 8, 2013, NEC meeting, at which you were also present. At that meeting, the City Attorney’s Office submitted a memorandum addressing the concerns you raised regarding BNA. A copy of that memorandum is attached to this response for your convenience. The City Attorney attached color copies of the four BNA mailers as exhibits to the memorandum, and four contained the required tag line, even though some were more difficult to read because of the coloring of the text and the background.

B. March 22, 2013, Report Filing Deadline

At the April 8, 2013, NEC meeting the City Attorney’s Office advised that based upon conversations with BNA’s legal counsel, it was believed that no expenses or contributions were due by the first March 22, 2013, deadline. At the May 29, 2013, NEC meeting, however, the City Attorney’s Office announced that after further investigation, it was determined that certain contributions and encumbrances had been made before the March 22, 2013, deadline that would have required a report on or before that date. As a result, BNA paid a seventy dollars (\$70) late fee since it did not report until March 29, 2013. A copy of the City Attorney’s May 20, 2013, memorandum is also attached for your reference.

II. Friends of Dave Spaulding Expenditures

The attached April 8, 2013, memorandum from the City Attorney’s Office also addresses this issue and concludes that the NEC is not charged with the duty of determining whether reported expenditures are legal under state law since the District Attorney’s Office is responsible for handling complaints of alleged state election law violations. The City Attorney also advised that he believed that these expenditures are likely to be found permissible under the broad language of 51 O.S. § 316(A).

III. Councilmember Kovach’s Consulting Services

At the April 8, 2013, NEC meeting, the City Attorney’s Office explained that Councilmember Kovach would not be required to file a report disclosing the compensation he received from the Tom Sherman for Mayor 2013 campaign. Sherman’s campaign committee properly reported that money as expenditures incurred by the committee in accordance with Sections 7.5-21(g) and 7.5-22 of the Norman Code of Ordinances. Councilmember Kovach was acting as a paid consultant and was paid for consultation services rendered. He was not a candidate or committee receiving contributions and therefore was not required to file a report.

IV. Chamber of Commerce Mailers

The attached City Attorney's May 20, 2013, memorandum also includes a detailed legal opinion regarding whether the Chamber should be required to file campaign statement reports to disclose the amounts spent on the five fliers it distributed. The City Attorney's Office determined that one of the fliers (Exhibit 1 to that memorandum) did not appear to advocate for or against any candidate and that the other four fliers, although capable of being interpreted as apparent advocacy against seated incumbents, did not contain sufficiently specific language to constitute express advocacy or the functional equivalent thereof under current federal election law. Accordingly, the City Attorney's legal opinion was that the Chamber could not be compelled to file a campaign statement.

Conclusion

Following the advice of the City Attorney's Office, the NEC did not find any violation of the City Code provisions under the facts presented above with the exception of BNA failing to file its report timely. Pursuant to § 7.5-22, the BNA was charged a seventy dollars (\$70) late fee, which was paid in full prior to the May 29, 2013, NEC meeting. That issue is now considered resolved and closed.

Please feel free to contact me with any questions or concerns.

Sincerely,



Ty Hardiman
Chairman, Norman Election Commission

Cc: Steve Lewis, City Manager
Brenda Hall, City Clerk
Jeff Harley Bryant, City Attorney
Kristina Bell, Assistant City Attorney