

CITY OF ALBUQUERQUE

BOARD OF ETHICS AND CAMPAIGN PRACTICES

NERI HOLGUIN,

Complainant,

v.

CASE NO. BOE 01-2021

MANUEL GONZALES, III,

Respondent.

**COMPLAINANT’S BRIEF ADDRESSING ISSUES TO BE CONSIDERED
BY THE BOARD OF ETHICS AND CAMPAIGN PRACTICES**

It is undisputed that the Respondent in this case, Manuel Gonzales III, signed a receipt reflecting that he had collected a \$5 Qualifying Contribution, when he had not. It is also undisputed that he permitted his campaign to submit that receipt to the City Clerk’s Office as evidence that he had collected a contribution, when he had not. These acts, in themselves, constitute violations of the Open and Ethical Election Code and Election Code. The evidence will also establish that Respondent made a deliberate choice to commit this violation by refusing the \$5 contribution, even when offered, explaining “we’ll cover that.” In addition, there is now evidence that Respondent routinely failed to collect \$5 from people falsely designated as “contributors.” This conduct not only violates specific provisions of the operative Codes, it fundamentally violates the spirit of laws that were adopted to eliminate corruption from elections. To address this wrongful conduct, the Board should exercise its authority to issue a fine and to reprimand Mr. Gonzales. The Board should include any findings necessary for the City Clerk to consider denial or revocation of certification to Mr. Gonzales.

BACKGROUND

Albuquerque’s voters adopted the Open and Ethical Election Code in 2005. That code provides a mechanism for candidates for mayor or city council to obtain public financing for their campaigns. Under the Code, a candidate for Mayor is required to collect \$5 Qualifying Contributions from a minimum of 1% of the City’s registered voters in order to qualify for public financing. *See* OEEC § 5. Money from the contributions is deposited into the City of Albuquerque Open and Ethical Election (CAOEE) Fund. For Qualifying Contributions that are made in person, the candidate must submit a receipt to the Office of the City Clerk. *See* 2021 Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code Part (C)(4). The receipt must be signed by the Representative Collecting Contribution. *See* OEEC Regulations Part (C)(6).

Respondent, a candidate for the Mayor of Albuquerque, attended a meeting of the Salvation Army Advisory Board on May 27, 2021. After addressing the Board, Respondent circulated a nominating petition and asked those in attendance to sign so that he could be on the ballot in November 2021. He also circulated books with receipts for Qualifying Contributions. Dean Zantow, a member of the Board, signed the nominating petition. He also signed a Qualifying Contribution receipt. At that point, he asked Respondent, “Is this where I give \$5?” Respondent replied, “No, that’s okay, we’ll cover that.” Respondent then did not collect \$5 from Mr. Zantow. Respondent nonetheless signed the receipt representing that he had collected \$5 and permitted his campaign to submit the receipt to the City Clerk’s Office and to deposit \$5 — from an unidentified source — into the CAOEE Fund. Respondent has admitted that he cannot say

whether Mr. Zantow made a \$5 contribution, even though Respondent signed the Qualifying Contribution receipt as the Representative Collecting Contribution.

At the request of both the City Clerk and the Board, the Office of Inspector General conducted an investigation into these and other allegations. In its report, the OIG identified multiple additional instances in which Respondent signed a Qualifying Contribution receipt as the collecting representative, but did not collect \$5. First, the OIG reported that other individuals at the Salvation Army Advisory Board meeting signed Qualifying Contribution receipts but did not pay \$5. Complainant's Exhibit 8 (Report of Investigation) at 15. Second, the OIG also identified, based on sample of Qualifying Contributions collected the same day as the Salvation Army meeting, two other individuals who stated that they signed a Qualifying Contribution receipt but did not pay \$5. *See id.* at 16. Based on the OIG's Report, these receipts were either signed by Respondent himself or by Michele Martinez, a campaign volunteer. *See id.* Third, in interviewing individuals identified through a random sample, the OIG found that Respondent signed four receipts where individuals either indicated that they signed the receipt but did not pay \$5 or did not recall whether they paid \$5. *See id.* at 14. Thus, Complainant understands that the OIG identified ten additional instances in which Respondent failed to collect a \$5 contribution.

LEGAL ISSUES

The evidence now establishes that Respondent routinely failed to collect \$5 contributions from individuals signing Qualifying Contribution receipts. His conduct violated both the OEEC and the Ethics Code. In addition, they show a cavalier disregard for those Codes and the process for collecting Qualifying Contributions. To address these violations, the Board should exercise

its authority to issue a fine and reprimand, and issue any findings it deems appropriate to permit the City Clerk to consider either denial or revocation of certification.

I. RESPONDENT VIOLATED THE OPEN AND ETHICAL ELECTION CODE BY SUBMITTING A FRAUDULENT QUALIFYING CONTRIBUTION TO THE CITY CLERK.

Respondent violated the OEEC by submitting \$5 contributions that were not paid by the person identified as the contributor on the receipt.

The OEEC Regulations expressly provide that “[a]ll Qualifying Contributions must be paid by the contributor.” OEEC Regulations Part (C)(6). “[I]f the funds are provided by any person other than the contributor who is listed on the receipt, the Qualifying Contribution will be deemed fraudulent.” *Id.* Here, the evidence establishes that Respondent submitted fraudulent Qualifying Contributions. When Mr. Zantow offered to provide \$5, Respondent refused. Respondent nonetheless signed the Qualifying Contribution receipt and permitted his campaign to submit the receipt to the City Clerk. His campaign then deposited \$5 that did not come from Mr. Zantow into the CAOEE fund. Because the funds were from a person other than the contributor listed on the receipt, the Qualifying Contribution was fraudulent.

Respondent also violated this regulation in connection with other Qualifying Contributions submitted to the City Clerk. The OIG identified multiple other instances in which Respondent himself signed the Qualifying Contribution receipt as the collector, but the individuals identified as the contributor indicated that they did not give a \$5 contribution. Thus, the OIG has identified multiple additional instances in which Respondent submitted fraudulent Qualifying Contributions.

II. RESPONDENT VIOLATED THE ELECTION CODE BY SUBMITTING A CONTRIBUTION IN THE NAME OF A PERSON WHO WAS NOT THE ACTUAL SOURCE OF FUNDS.

Respondent's actions also violated the Election Code. The 2021 Regulations of the Albuquerque City Clerk for the Election Code, Part I(1), provide that:

No person may make a Contribution in the name of another person or knowingly permit his or her name to be used to accomplish such a Contribution. No person may knowingly accept a Contribution made by one person in the name of another. No person may knowingly accept a Contribution made by one person in the name of another. The contributor identified in the reports submitted to the City Clerk must be the actual source of funds for the Contribution.

Here, Mr. Zantow was not the source of funds that were deposited into the CAOEE account.

Thus, Respondent either made a contribution in the name of Mr. Zantow, or knowingly accepted a contribution made in Mr. Zantow's name. In either scenario, Respondent violated this provision. In addition, the OIG has now presented evidence that Respondent deposited other contributions when the identified contributor was not the source of the funds. Thus, Respondent committed multiple violations of the Election Code.

III. THE BOARD SHOULD ISSUE A FINE, A REPRIMAND AND ANY APPROPRIATE FINDINGS.

The appropriate remedy for the Respondent's actions is to issue a fine and reprimand, as well as any findings regarding Respondent's eligibility for public financing.

"Pursuant to the Codes, the Board may, after due hearing, impose on a Candidate ... a fine not to exceed the maximum set by state law, \$500, for each violation of the Codes or these Rules and Regulations or issue a public reprimand or do both." Rules and Regulations § 4(G)(1). Here, both a public reprimand and a fine are in order. Respondent's violations are particularly egregious, for at least four reasons. First, the violations were committed by the Respondent him-

self, not a campaign staffer or volunteer. Second, Respondent intentionally and willfully violated the codes by refusing an offer of money from Mr. Zantow and directing Mr. Zantow not to provide the \$5 contribution. Third, Respondent's actions appear to be part of an orchestrated scheme, as the campaign must have obtained the \$5 from another source before making a deposit to the CAOEE account. Fourth, Respondent appears to have routinely submitted Qualifying Contribution receipts without collecting \$5 contributions. In these circumstances, both a fine and a reprimand are appropriate.

In addition, the Board should issue any findings that it deems appropriate to permit the City Clerk to take action with respect to Respondent's certification. The OEEC Regulations provide that the City Clerk shall not certify an Applicant Candidate for public financing if the City Clerk finds that the Applicant Candidate has "been found to have submitted any fraudulent Qualifying Contributions ... where the Applicant Candidate knew or should have known of the fraudulence," OEEC Regulations Part (C)(15)(a)(v), or "been found to have made a materially false statement in a report or other document submitted to the City Clerk." OEEC Regulations Part (C)(15)(a). They also provide that this Board may decide to revoke a candidate's certification for public financing if "the candidate or an agent of the candidate ... submitted any fraudulent Qualifying Contributions or Qualifying Contributions that were not made by the named contributor, and the Participating Candidate knew or should have known of the fraudulence." OEEC Regulation Part (C)(17)(c).

As of the time this brief is being submitted, Respondent has been denied certification for public financing. That decision, however, is on appeal. Notably, Respondent has argued that it is the Board that must decide whether there are grounds for denial under Part (C)(15). While Com-

plainant does not agree with that argument, it would be appropriate for the Board to make findings so that, if the decision to deny certification to respondent is reversed, the City Clerk may take any appropriate action. In addition, it would be appropriate for the Board to issue findings as to whether there are grounds for revocation under Part C(17)(c) or (f). Accordingly, the Complainant requests that the Board issue the following findings:

- 1) Respondent submitted fraudulent Qualifying Contributions to the City Clerk;
- 2) Respondent knew or should have known the Qualifying Contributions were fraudulent;
- 3) Respondent made materially false statements in documents submitted to the City Clerk; and
- 4) There are sufficient grounds for revocation of certification.

The Board should also issue any additional findings it deems appropriate based on the evidence presented during the hearing.

CONCLUSION

For the foregoing reasons, Complainant respectfully requests that the Board determine that Respondent violated the Election Code and the Open and Ethical Election Code and issue a fine, a reprimand, and any appropriate findings based on those violations.

Respectfully submitted,

KEEFE LAW FIRM

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of August, 2021, the foregoing was sent via email to ewatson@cabq.gov, Aschultz@rodey.com, and carter@harrisonhartlaw.com.

KEEFE LAW FIRM

By: /s/ Lauren Keefe
Lauren Keefe