

CITY OF ALBUQUERQUE
BOARD OF ETHICS AND CAMPAIGN PRACTICES

NERI HOLGUIN,

Complainant,

v.

BOE Case No. 02-2021

MANUEL GONZALES, III,

Respondent.

DECISION BY THE BOARD OF ETHICS AND CAMPAIGN PRACTICES

THIS MATTER was referred to the City of Albuquerque Board of Ethics and Campaign Practices by the City Clerk. Neri Holguin (“Complainant”) originally filed a complaint against Manuel Gonzales III (“Respondent”) on June 29, 2021. Respondent did not respond to the complaint. Complainant and Respondent collectively are referred to as “the Parties”.

Complainant alleges various violations by Respondent of the Open and Ethical Elections Code of Article XVI of the City Charter and the 2021 Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code.

At a Board hearing on July 16, 2021, the Board voted to have an investigation into the alleged violations of certain provisions of the Open and Ethical Elections Code (City Charter Article XVI) as set forth in the Complaint. By further vote, the Board of Ethics voted to utilize the City Office of Inspector

General to conduct this investigation and to provide the Board with a written report of the results of the investigation no later than August 16, 2021. The Inspector General complied with the Board's directive and timely submitted a Report of Investigation to the Board and to counsel for both Complainant and Respondent.

The Parties agreed to delay any further proceedings in this matter until after the Inspector General completed the investigation.

The Board held an evidentiary hearing on September 24, 2021. At this hearing, Complainant and Respondent both were represented by counsel. Consistent with parameters set by the Board in an earlier order, counsel for the Parties were afforded an equal opportunity to make opening and closing statements and to present evidence in support of their respective positions in the form of witness testimony, documents and recordings. In addition to these presentations and materials, the Parties submitted numerous exhibits. The parties also submitted briefs containing authorities related to the legal issues to be considered by the Board at the evidentiary hearing. At the request of Complainant, the Board issued subpoenas for the attendance of witnesses at the hearing. Respondent did not request that the Board issue any subpoenas.

At the close of the evidentiary portion of the hearing on September 24, 2021, the Board voted to go into closed session to deliberate on the arguments and evidence presented at the hearing.

Following its deliberations, the Board returned from closed session. The Board announced its unanimous decision to find in favor of Complainant and to impose a sanction of \$2,000.00 against Respondent and to issue a public reprimand.

As required by the Rules and Regulations of the Board of Ethics and Campaign Finances, the Board finds as follows:

1) Respondent was an “Applicant Candidate” running for the Office of Mayor and was seeking to be a “Participating Candidate” certified to obtain financing pursuant to the Open and Ethical Elections Code.

2) Complainant provided sufficient evidence of Respondent’s violation of the Open and Ethical Elections Code of Article XVI of the City Charter and the 2021 Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code.

Forged Signatures

3) Complainant called Jan Wright as a witness, who testified that her mother, Dorothy Wright, could not have signed the Qualifying Contribution

receipt submitted with Dorothy Wright's purported signature. Respondent did not contest or rebut this testimony.

4) Complainant also provided sufficient evidence that Respondent's campaign submitted no less than 15 other Qualifying Contribution receipts to the Albuquerque City Clerk that were not signed by the registered City voter identified on the Qualifying Contribution receipt.

5) At the evidentiary hearing held on September 24, 2021, counsel for Respondent admitted that Respondent's campaign submitted no less than 16 Qualifying Contribution receipts to the Albuquerque City Clerk that were not signed by the registered City voter identified on the Qualifying Contribution receipt.

6) The Open and Ethical Elections Code of Article XVI of the City Charter requires that all Qualifying Contributions be "signed by the contributor." Similarly, the 2021 Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code require that "the contributor himself or herself must sign the receipt." No less than 16 Qualifying Receipts submitted by Respondent's campaign were signed by a person other than the contributor.

Improper Payment of Qualifying Contribution

7) Complainant provided sufficient evidence that Respondent's campaign submitted to the Albuquerque City Clerk a Qualifying Contribution

receipt in the name of Dorothy Wright but that Dorothy Wright did not contribute \$5.00. Respondent did not refute this evidence. As set forth in the 2021 Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code, “if the funds are provided by any person other than contributor who is listed on the receipt, the qualifying Contribution will be deemed fraudulent.” The \$5.00 associated with the Qualifying Contribution in question did not come from the signer of that Qualifying Contribution receipt, and therefore, the funds were provided by a person other than the contributor.

Fine

The Board has the discretion to impose a fine not to exceed \$500.00 for each violation of the Election Code or the Board’s Rules and Regulations. In the present case, the Board finds that the appropriate monetary sanction for these violations is the imposition and levy of a fine of Two Thousand dollars (\$2,000.00). This fine is due upon entry of this Decision and must be paid to the City Clerk. If Respondent fails to pay this fine within 31 days after entry of this Decision, he is subject to the payment of interest as provided by law. The limitations set forth in Section 4(G)(10) of the Board’s Rules and Regulations on the sources from which these fines may be paid apply to the payment of this fine.

Public Reprimand

The Board has the discretion to issue a public reprimand related to a candidate's violation of the Election Code or the Board's Rules and Regulations. The Board finds that a public reprimand of Respondent is warranted.

Under Section 7 of the Election Code of Article XIII of the City Charter, when Respondent filed his declaration of candidacy, he also was required to "acknowledge in writing receipt and familiarity with the terms of the Election Code, the Clerk's Rules and Regulations, and the Board's Rules and Regulations."

As required by Section 4 of the Open and Ethical Elections Code of Article XVI of the City Charter, Respondent also was required to submit a declaration of intent prior to collecting any Qualifying Contributions and make explicit in the declaration that he will comply with the Open and Ethical Elections Code's contribution and expenditure limits and all other requirements set forth the Open and Ethical Elections Code.

Part C(6) of the 2021 Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code makes clear that "Applicant Candidates are responsible for assuring that receipts are fully and correctly filled out, including signatures. . . ."

Finally, at the evidentiary hearing, Respondent acknowledged that in April 2021, he signed a form under penalty of perjury stating he is fully responsible for

the statements made and materials submitted by his designated representatives on behalf of his campaign.

Based on the evidence presented, Respondent has failed to comply with his obligations as a candidate and has failed to exercise sufficient oversight of his campaign staff to ensure compliance with applicable provisions of the Open and Ethical Elections Code of Article XVI of the City Charter. That Respondent himself may not have violated these terms does not absolve him of all responsibility. Like all candidates, Respondent is responsible for the actions taken by his campaign staff.

Other than as set forth in this Decision, the Board does not impose any other fine, sanction or reprimand.

Any appeal from this decision of the Board must be taken to the Second Judicial District Court within the time limits set forth in Article XIII § 10(g) of the City Charter.

Dated this 30th day of September, 2021.

/s/ Andrew G. Schultz

Andrew G. Schultz
Chair, Board of Ethics and Campaign Practices