

FINAL - REVISED

EVALUATION REPORT

OF

ALLEGED CAMPAIGN VIOLATIONS

REPORT NO. 07-206



City of Albuquerque
Office of Internal Audit and Investigations

Evaluation of Alleged Campaign Violations
Report No. 07-206
Executive Summary

Background: The Office of Internal Audit and Investigations (OIAI) conducted an evaluation of City Council candidate processes and requirements resulting from a request from the Council Services Director (Director). In an interoffice memorandum dated June 7, 2007, the Director informed the Inspector General (IG) that several City Councilors were concerned that taped messages used in the campaign by opposing candidates contained false and misleading statements. The Director requested the IG determine if the messages violated any City laws or policies, including City Charter Article XII: Code of Ethics, City Charter Article XIII: Election Code and City Charter Article XVI: Public Financing (City Charter Articles). The Director submitted two audio tapes to the IG.

Objective: Do the campaign materials violate any City laws or policies, including the Code of Ethics, the Election Code and the Public Financing City Charter Articles?

The Director submitted an audio tape of a message by the challenger in the District 2 Council seat. A review of the challenger for Council District 2 candidate's file with the City Clerk shows the receipt of a robo call tape dated June 8, 2007. However, the language in the message on file with the City Clerk is not the same message contained in the telephone call received on May 16, 2007 by a constituent in Council District 2. The message in the May 16, 2007 call does not provide the sponsor of the call. There were no complaints on file with the City Clerk regarding the message delivered on May 16, 2007.

The Director submitted a second audio tape of a message by a Measure Finance Committee (Committee). This taped message was on file with the City Clerk's office.

The Election Code does not require that candidates and Committees file campaign materials until after they have been distributed. Unless a complaint is filed, the City Clerk or Board do not know that campaign material is being used but not filed or that campaign material has other omitted requirements. Candidates and Committees may be using campaign materials that violate the election City Charter Articles and rules without the knowledge of the City Clerk and Board.

Recommendations: The City Clerk and Board should consider modifying the Board Rules and the City Clerk Rules and/or the City Charter Articles to improve the process for identifying campaign material that is reported and filed with the City Clerk. The clear identification of campaign material will ensure it can be traced to the expenditure on the *Summary Audit Report by Candidate* (Report).

The City Clerk and Board may wish to consider changes to the election City Charter Articles and rules and regulations that require candidates and Committees to file campaign materials with the City Clerk prior to distribution. This will allow the City Clerk to inform the candidates of violations prior to distribution.

The City Clerk and Board should request the opposing candidate in Council District 2 to explain why the May 16, 2007 robo call is not on file with the City Clerk.

During our fieldwork, we noted no exceptions for the following objective:

Are false or misleading statements made by a candidate a violation of the Code of Ethics, the Election Code and the Public Financing City Charter Articles?

Management responses are included in the report.



City of Albuquerque
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Accountability in Government Oversight Committee
City of Albuquerque
Albuquerque, New Mexico

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INTRODUCTION

The Office of Internal Audit and Investigations (OIAI) conducted an evaluation of City Council candidate processes and requirements resulting from a request from the Council Services Director (Director). In an interoffice memorandum dated June 7, 2007, the Director informed the Inspector General (IG) that several City Councilors were concerned that taped messages used in the campaign by opposing candidates contained false and misleading statements. The Director requested the IG determine if the messages violated any City laws or policies, including City Charter Article XII: Code of Ethics, City Charter Article XIII: Election Code and City Charter Article XVI: Public Financing (City Charter Articles).

The Director submitted two audio tapes to the IG. Three incumbent City Councilors were the targets of these messages. The first tape is a telephone recording received May 16, 2007 by a constituent residing in Council District 2. The message is delivered by a challenger for the District 2 Council seat. The other is a recording of a radio announcement that aired on a local radio station. The message is delivered by a Measure Finance Committee in opposition to the incumbent candidate in Council District 4 and the incumbent candidate in Council District 9. A Measure Finance Committee (Committee) is a political committee, person, or individuals who act in aid of or in opposition to the effort of the election to, or recall from, office of one or more candidates for office when the Committee has accepted contributions in excess of \$250 or make expenditures in excess of \$250.

The Office of the City Clerk (City Clerk) is responsible for activities encompassing municipal and City elections. The City Clerk is responsible for promulgating regulations as required by the Open and Ethical Elections Code. The regulations provide procedures and campaign deadlines that must

be followed by candidates running for City Council who elect to seek eligibility to receive public funds. The City Clerk also provides all candidates with an election guide delineating election procedures. The Board of Ethics and Campaign Practices (Board) promulgates rules and regulations for the interpretation and enforcement of the Code of Ethics. The Board hears complaints of alleged violations of the Code of Ethics. The City Clerk is the custodian of all records that are required to be filed with the Board.

The City of Albuquerque is a home rule entity; therefore, state election laws do not apply.

OBJECTIVES

The objectives of the evaluation were to determine:

- Do the campaign materials violate any City laws or policies, including the Code of Ethics, the Election Code and the Public Financing City Charter Articles?
- Are false or misleading statements made by a candidate a violation of the Code of Ethics, the Election Code and the Public Financing City Charter Articles?

SCOPE

Our evaluation did not include an examination of all the functions, transactions and activities related to campaign practices. Our scope was for the specific messages brought to our attention by the Director and was limited to campaign events from March through October 2007.

This report and its conclusions are based on information taken from these specific messages and do not intend to represent an examination of all related transactions and activities. The evaluation report is based on our examination of activities through the completion of fieldwork, March 14, 2008, and does not reflect events after that date.

METHODOLOGY

OIAI interviewed City Clerk personnel and reviewed the following:

- Article XII. Code of Ethics, Article XIII. Election Code and Article XVI. Open and Ethical Elections Code;
- State election laws;

- Rules and Regulations of the Board of Ethics & Campaign Practices (Board Rules);
- Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code (City Clerk Rules);
- Office of the City Clerk 2007 Election Guide;
- 2007 Election Calendar Summary of Campaign Deadlines;
- Application for Certification as a Participating Candidate forms for candidates choosing to seek eligibility to receive public funds;
- City Clerk's certification of qualifying candidates and amounts and date of the first distribution of funds from the Open and Ethical Elections Code;
- Accounting of the qualifying contributions deposited in the Open and Ethical Elections Fund;
- Declarations of Intent forms for candidates;
- Committee forms;
- Verification by the City Clerk of accuracy of information submitted by candidates on qualifying forms;
- Opinions issued by the Board;
- Complaints filed with the Board alleging violations of the Code of Ethics or Election Code;
- Signature authority for checking accounts of candidates and Committees;
- Campaign materials used in the campaign by candidates and Committees;
- Comparison of *Summary Audit Reports by Candidate* to campaign materials.

FINDING

The following finding concerns an area that we believe would be improved by the implementation of the related recommendations.

1. THE CITY CLERK AND BOARD SHOULD CONSIDER PROPOSING MODIFICATIONS TO THE CITY CHARTER ARTICLES AND THE BOARD AND CITY CLERK RULES TO IMPROVE THE IDENTIFICATION PROCESS OF CAMPAIGN MATERIAL FILED WITH THE CLERK CLERK.

A review of the challenger for Council District 2 candidate's file with the City Clerk shows the receipt of a robo call tape dated June 8, 2007. However, the language in the message on file with the City Clerk is not the same message contained in the telephone call received on May 16, 2007 by the constituent in Council District 2. The message in the May 16, 2007 call does not provide the sponsor of the call. There were no complaints on file with the City Clerk regarding the message delivered on May 16, 2007.

A review of the challenging candidate's *Summary Audit Report by Candidate* (Report) shows four expenditures made relating to telephone campaign materials. The table below shows the four expenditures. There is no way to tell from the information on the Report if one of these is the robo call made on May 16, 2007.

EXPENDITURES RELATING TO TELEPHONE MESSAGES

Statement Due	Type	Amount
May 31, 2007	Campaign Call	\$265.20
October 1, 2007	4,106 Automated Calls	\$349.92
October 9, 2007	Robo Calls, Total Calls 4,921	\$319.14
October 9, 2007	Robo Calls, Total Calls 4,741	\$349.92

Source: City Clerk's Office

The Report does not show that the expenditure is referenced to a specific campaign material submitted by the candidate or Committee. There is no way to tell that a specific expenditure was made for specific campaign material. The City Clerk checks the Report against the campaign materials and if the description on the Report reflects the type of campaign material submitted and the two are made within the reporting requirement, it is assumed that the two are a match. If there is no match, then the City Clerk determines a violation has occurred. If neither the expenditure or campaign material is reported, the City Clerk would have to rely on a complaint to determine the violation.

Pursuant to Article XIII. Election Code Section 5 *Campaign Materials*, each candidate and each chairperson of each Committee shall ensure that all campaign materials specify the name of the sponsor who authorized the distribution of such material. Each candidate and each chairperson of each Committee shall also ensure that a copy of each campaign material used in the campaign is promptly filed with the Board upon such material being printed or distributed.

The Office of the City Clerk 2007 Election Guide Part II Campaign Contributions and Expenditures, Limitations and Reporting Requirements, *Reporting Campaign Materials*, requires campaign material submitted to the City Clerk include a report identifying the expenditure listed on the campaign finance report that pertains to the campaign material submitted.

The Election Code does not require that candidates and Committees file campaign materials until after they have been distributed. Unless a complaint is filed, the City Clerk or Board do not know that a campaign material is being used but not filed or that a campaign material has other omitted requirements. Candidates and Committees may be using campaign materials that violate the election City Charter Articles and rules without the knowledge of the City Clerk and Board.

The City Clerk relies on the candidates and Committees' understanding of the requirements for compliance.

RECOMMENDATIONS

- A. The City Clerk and Board should consider modifying the Board Rules and the City Clerk Rules and/or the City Charter Articles to improve the process for identifying campaign material that is reported and filed with the City Clerk. The clear identification of campaign material will ensure it can be traced to the expenditure on the Report.
- B. The City Clerk and Board may wish to assign filed campaign material a specific identification number that correlates to the corresponding expenditure on the Report and require candidates to disclose the language in the campaign material as support to the Report. The process should tie the campaign material directly to the expenditure and will allow the City Clerk to tell if there are expenditures for which campaign materials have not been filed or vice versa.
- C. The City Clerk and Board may wish to consider changes to the City Charter Articles and rules and regulations that require candidates and Committees to file campaign materials with the City Clerk prior to distribution. This will allow the City Clerk to inform the candidates of violations prior to distribution.
- D. The City Clerk and Board should request the opposing candidate in Council District 2 to explain why the May 16, 2007 robo call is not on file with the City Clerk.

RESPONSE FROM CITY CLERK AND BOARD

“A. The City Clerk agrees with this recommendation. The Clerk’s Office is currently working with a subcommittee of the Board of Ethics and Campaign Practices to resolve this and other matters to better the electoral process for citizens, candidates and measure finance committees.

“B. This recommendation would simplify the correlation of materials to a disclosed expenditure; the concern is disclosure reports are input into a cognos report, therefore “exact language” may not be possible with the current system due to a limitation of space in a particular field. The City Clerk’s Office has acquired POD, Inc. to assist ISD in offering recommendations and upgrades to better the current campaign reporting system. This issue will be forwarded to this group for further assessment and the Clerk’s office will work with the Board of Ethics Subcommittee to consider possible solutions.

“C. The City Clerk will consider this recommendation and raise it with the Board Subcommittee. The only concern of the Clerk after a brief review of the issue is the additional burden that such a filing could place on Candidates and Committees. Each change that is made to the already complex reporting process may cause each “user” of the system additional burdens and it may interfere with the candidates’ ability to run their campaign. For example, if a filing is required before distribution, the other candidates will have additional time to respond to the distribution and that would alter the campaign process. Such a change may not be a negative, but the consequences should be considered before any change is made.

“D. The City Clerk does not have jurisdiction to request the opposing candidate in Council District 2 to provide an explanation regarding the May 16, 2007 robo call; at the time this issue was discovered it should have been filed as a Board of Ethics Complaint with the City Clerk. On July 30, 2008, a settlement conference has been scheduled with the opposing candidate in Council District 2. Campaign materials shall be discussed not pertaining to this particular matter. Settlement is pending due to the completion of this conference.”

CONCLUSION

The City Clerk and Board require that campaign material be filed promptly after the campaign material has been distributed. The City Clerk and Board may not see or become aware of violations until after the distribution has taken place and the violations have occurred.

There is no finding regarding the second objective. There is nothing in the Election Code, Code of Ethics or Open and Ethical Elections City Charter Articles that address or prohibit speech in campaign material. There is also nothing that requires candidates or Committees to verify statements in campaign material.

We appreciate the assistance and cooperation of the City Clerk and Board personnel during the evaluation.

Inspector General

REVIEWED AND APPROVED

APPROVED FOR PUBLICATION:

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Chairperson, Accountability in Government
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