



Office of the City Clerk
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www.cabq.gov/clerk

Ethan Watson, City Clerk

July 9, 2021

SENT VIA EMAIL ONLY

Manuel Gonzales III
PO Box 27408
Albuquerque, NM 87125
MANNY@MANNYFORABQ.COM

Re: Denial of Certification as Participating Candidate for Public Funding

Dear Sheriff Gonzales:

The purpose of this letter is to notify you that the Office of the City Clerk hereby denies the certification of your compliance with Section 7(A)(5) and (6) of the Open and Ethical Election Code and Part (C)(15)(a)(iii) and (v) of the 2021 Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code at this time. Below, I have provided an overview of concerns that prevent certification and explain your right to appeal.

The Open and Ethical Election Code ("OEEC") was enacted in 2005 with well-defined purposes. As stated in the code, the purpose of the law is to:

- (A) Avoid both actual undue influence of large campaign donors and the appearance of undue influence in Council and Mayoral elections and decision-making;
- (B) Diminish the public perception of corruption and strengthen public confidence in the governmental and election process;
- (C) Provide well-qualified candidates with adequate funding to mount campaigns to encourage competitive Council and Mayoral elections so that the City's residents have more choices about the leadership and direction of the City;
- (D) Increase the accountability of elected officials to their constituents who elect them, as opposed to the contributors who fund their campaigns; and
- (E) Insure (sic) that the City's Council and Mayoral election process is fair, responsible and ethical.

Charter of the City of Albuquerque, art. XVI, § 2. Consistent with those principles, candidates seeking public financing agree to significant expenditure and contribution limitations, regulations on the use of public funding, and other regulations. *See generally id.* § 8(D)-(E). During the qualifying and petition period, candidates must also gather 3,779 five-dollar contributions from voters within the City of Albuquerque and three thousand petition signatures. *Id.* § 5(A); *id.* art. II, § 4.

I. Certification Standard

Pursuant to the OEEC, the Clerk shall determine “[w]ithin twenty days of a final submittal of Qualifying Contributions by an Applicant Candidate,” “whether the Applicant Candidate has:

- (1) signed and filed a declaration of intent to obtain fund revenue;
- (2) submitted the appropriate number of Qualifying Contributions;
- (3) qualified as a candidate pursuant to other applicable City and State election law;
- (4) complied with Seed Money contribution and Expenditure restrictions;
- (5) otherwise met the requirements for obtaining financing pursuant to the Open and Ethical Elections Code;
- (6) otherwise met any additional criteria for certification set forth in rules by the Clerk;
- (7) been qualified as a Candidate by the County Clerk; and
- (8) there are not pending challenges to the County Clerk's qualification of the Candidate.

OEEC, § 7(A). Part(C)(15) of the 2021 Regulations of the Albuquerque City Clerk for the Open and Ethical Elections Code (“OEEC Regulations”) further provide that in determining whether to certify an Applicant Candidate for public financing, the Clerk shall determine whether the Applicant Candidate has:

- i. been found to have accepted Contributions in excess of the pre-and post-Exploratory Period limitations set forth in the OEEC, and has otherwise complied with Seed Money and In-Kind restrictions;
- ii. run for the same office as a Non-Participating Candidate in the same election year;
- iii. been found to have made a materially false statement in a report or other document submitted to the City Clerk;
- iv. failed to pay any civil penalty assessed by the City Clerk or Board of Ethics, except that a candidate has three (3) working days from the date of the request for certification to pay the outstanding penalty and remain eligible for certification; and
- v. been found to have submitted any fraudulent Qualifying Contributions or any falsified acknowledgement forms for Qualifying Contributions or Seed Money Contributions, where the Applicant Candidate knew or should have known of the fraudulence or falsification.

OEEC Regulations, pt. C(15). The City Clerk and the City Board of Ethics each have independent enforcement authorities under the City Charter with regard to the Open and Ethical Election Code. OEEC, art. XVI, § 20.

The Open and Ethical Election Code is generally modeled on the New Mexico Voter Action Act (VAA), and proceedings under that Act are useful in interpreting the Open and Ethical Election Code.¹ See NMSA 1978, §§ 1-19a-1 to 1-19a-17. In the one reported decision under that Act, the appellant sought public financing under the VAA but the Secretary of State subsequently informed the Applicant that the Applicant was not qualified to receive public funding because he had violated the Act's contribution limits and reporting requirements. *Montoya v. Herrera*, 2012-NMSC-011, ¶ 2, 276 P.3d 952. Specifically, the appellant had exceeded the seed money contribution limits and violated reporting requirements. *Id.* In this decision, the New Mexico Supreme Court upheld the determination by the certifying official, which was a facial analysis of

¹ Like the OEEC, the VAA requires applicant candidates to gather a certain number of “qualifying contributions” during a qualifying period. If they obtain the required number of qualified contributions and otherwise comply with the laws and regulations, the Secretary of State certifies the candidate to receive a distribution from the Public Election Fund.

compliance with the applicable laws and regulations, based on the information available to the certifying official at the time of certification.

II. Analysis

Based on the foregoing, the Office of the City Clerk cannot certify you have complied with Section 7(A)(5) and (6) of the OEEC and Part(C)(15)(a)(iii) and (v) of the OEEC Regulations. This Office cannot provide that certification because: (1) a registered voter has filed an attestation that you personally—as the candidate seeking public financing—told a registered voter that you would pay a required five-dollar contribution for that voter in possible violation of OEEC Regulations, Part C(6); and (2) documents presented to my Office show different signatures for the same voters on different official documents in possible violation of numerous provisions of our regulations and other laws. *See e.g.* OEEC Regulations pt. C(6) (requiring contributors to sign receipts themselves).

The documents raising these concerns were submitted in support of complaints pending with the Board of Ethics filed on June 7 and June 29, 2021. The Office of the City Clerk has not reached this decision based on the mere fact that complaints were filed. The decision instead is based on the conclusion that the evidence submitted to date prevents the Office from certifying that you are entitled to receive \$661,309.25 from the Open and Ethical Elections Fund. The Office of the City Clerk cannot provide that certification on the record as it stands today because of the obligation all officials have to safeguard public funds.

Regarding the first issue, a member of the Salvation Army Advisory Board has attested that at an event on May 27, 2021, you solicited five-dollar contributions from members of the Salvation Army Advisory Board. Complaint at 8, *Holguin I v. Gonzales*, 01-2021, June 7, 2021. That board member, Dean Zantow, specifically attests that after he filled out the five-dollar contribution form he asked whether he needed to give five dollars. *Id.* In response, he states that you personally told him, “No, that’s Ok, we’ll cover that.” *Id.* You signed the contribution book as the representative collecting the contribution and submitted it to the Clerk’s Office. In my July 9, 2021 letter to the Board of Ethics, Inspector General, and City Attorney, I advised that I had deemed the contribution of Dean Zantow fraudulent and referred it to the City Attorney for investigation pursuant to our rules and regulations. July 9, 2021 Letter to City Attorney, Board of Ethics, and Inspector General. The Office of the City Clerk also more generally referred all these matters to the Board of Ethics and requested an investigation by the City Inspector General.

Regarding the second issue, documents were submitted with a second complaint that show different signatures purportedly from the same voter on different official documents (petitions, duplicate qualifying contributions, and voter registration cards). Complaint, *Holguin II v. Gonzales*, 02-2021, June 29, 2021. An additional 100 qualifying contribution records were submitted with a letter dated July 6, 2021, raising further concerns about your public financing submissions. The contrast between signatures for the same voters on those documents further prevent certification at this time. The public is not served if the Clerk’s Office certifies that public funds should be distributed in these circumstances.

III. Declining to Certify

Based on the foregoing, the Office of the City Clerk denies certification of your campaign for public financing at this time. You may appeal this determination pursuant to Article XVI, Section 19 of the City Charter. Under that provision, the procedure for challenging a decision of the Clerk to grant, deny, or revoke a Candidate's certification as a Participating Candidate is as follows:

(A) A Person aggrieved by the Clerk's decision may appeal to the Clerk within three days of the decision. The appeal shall be in writing and shall set forth the reasons for appeal;

(B) Within five days after an appeal is properly made, and after due notice is given to the parties in dispute, the City Hearing Officer shall hold a hearing whereby:

(1) the appellant has the burden of providing evidence to demonstrate that the Clerk's decision was improper; and

(2) the City Hearing Officer shall rule on the appeal within three days after the completion of the hearing;

(C) the parties in dispute may appeal the decision of the City Hearing Officer by commencing an action in district court pursuant to New Mexico Rule of Civil Procedure 1-074;

Sincerely,

A handwritten signature in black ink, appearing to read 'Ethan Watson', with a long horizontal flourish extending to the right.

Ethan Watson

Albuquerque City Clerk

Cc: Cilia Agliodoro, City Treasurer, CAgliodoro@cabq.gov; Thad Porch, Independent Auditor, thad.porch@porchcpa.com; Rachel Rodarte, Fiscal Officer, rrodarte@cabq.gov.