

Clean Elections Commission Report

Oct. 27, 2016

By Rivko Knox

All five of the Commissioners attended today's CCEC meeting, which though among its longer ones, wasn't that 'rich' in substance.

The items that took the most time were two complaint cases; a) one regarding two Clean Election/Participating Candidates in LD 1, i.e., Noel Campbell and David Stringer & b) the second a complaint against Save Our Solar.

a) The complainants, the Gray's (which included Linda Gray, a prior AZ Legislator who ran but was defeated in the Republican Primary) participated by phone. The issue related to a mailer & an event, with Commission staff determining that neither constituted a 'failure to report' violation. The mailer was NOT sent by the participating candidate although his name was on it, i.e., it said something like "you have two votes, and after you vote for x, please vote for the complainant with your second vote." Re the event, the participating candidate did not send out the mailer, did not know that his name was on it or that he was a 'featured' guest. After extensive discussion, statements by the Gray's, questions by commissioners and a political consultant involved in the mailer/event, the CCEC moved & approved a motion to support the staff recommendation.

b) The second case re Save Our Solar (Solar) relates to a failure to report. An attorney from Coppersmith Brockelman, Andy Gaarn, spoke on behalf of Solar. He said that the CCEC & Solar were very close to a conciliation; that CCEC had proposed a \$15,000 fine while Solar countered with \$8,000; & he felt the issue was about

to be resolved. He said Solar was asking that a 'reason to believe there has been a violation finding' should be postponed until the Nov. 17 CCEC meeting; that Solar had told him that they would NOT disband as a committee on Nov. 9th & would ensure they had at least \$15,000 to resolve the fine. Collins said that he was recommending a 'reason to believe' finding be made by the CCEC today; that Solar agree not to disband until the issue is resolved & agree to maintain sufficient funds to cover whatever the fine is. Collins pointed out that his interacts with Solar were not a final action by the CCEC but just a starting point. Further, Collins said that there is a daily fine or \$880, which actually could come to about \$300,000 in theory. Based on what the Commissioners said (which I did not see), apparently the Solar written response to the complaint stated that the CCEC was acting unconstitutionally & CCEC had no authority over this matter which was beyond it's scope (citing what Eric Spencer said!!). Gaarn spoke again stating that Solar did believe in total transparency, it's strong written language was part of 'the legal game' (none of this is verbatim), that the issue is related to the SOS website (see more below); that it wants to comply; & that it felt that the CCEC was singling them out. Re the singling out, Collins said that once he is notified of a complaint, CCEC must follow through.

Again, after extensive discussion & questions from the Commissioners, a motion was made, seconded & passed that the CCEC has a reason to believe that a violation may have occurred regarding a lack of filing of reports (not verbatim).

NOTE: the issue as it relates to the SOS is that because the SOS doesn't agree that CCEC has any authority in this area, there is no way to electronically file the kind of expenditure report CCEC requires in this case. Rather there is a link to a PDF on the SOS website that must be downloaded & then submitted to the CCEC.

In addition, under the Director's Report, Tom Collins stated that:

* The oral arguments in the Legacy Foundation Action Fund (LFAF), a 501(c)(4), were heard by the AZ Court of Appeals on Oct. 19, with CCEC represented by Joseph Roth. Eric Spenser, SOS, attended the hearing also & argued that the CCEC's authority only extends to people/entities involved in Clean Elections. This is a case regarding a deadline to file an appeal from a CCEC ruling that resulted in a \$96,000 fine relating to ads by LFAF attacking Mesa Mayor Scott Smith during the 2014 Republican primary. LFAF said their ads were issues vs. express advocacy ads. The Capitol Times indicated in an Oct. 21 article about this that the decision could "...settle long standing questions over how far the Clean Elections' authority extends. ..."

* Voter education efforts continue. In addition to ads, billboards etc., staff have been answering very many phone calls and are being told by those calling that the CCEC is the only entity they have contacted that answers the phones & actually walks them thru their issues.

* There is an on going issue with an AZ Supreme Court Taskforce on Fair Justice for All, which looked at surcharges as part of its mission. Of course surcharges is how Clean Elections is funded so any decisions/legal actions/rules about such could very significantly impact the CCEC. The Taskforce is proposing legislative language that would allow the courts to waive surcharges much more broadly than is done now. Collins pointed out that 83% of all surcharges on civil fines are NOT related to CCEC, which represents only 1/8th of the total. Thus, just excluding those could still make a huge impact on Fair Justice without getting into the 'voter protection' issue. It also came out during the Taskforces meetings, that a lot of surcharges are currently being waived without prior authorization, which lead to the question: If so, what has been the impact on the CCEC? Collins said that revenue was going down but no one

understand the reason for such. He said he will continue to follow this issue & will try to get details about how much in the way of fines have been waived, when etc.

The other business before the CCEC was the random selection of 15 Clean Legislative candidates out of the 23 participating to be subject to audit as soon as the final expenditure report is submitted, with those who were audited after the primary excluded from the 15. Using a 'good old fashioned' wire cage and orange balls with numbers on them corresponding to candidates' name, the candidates were selected. CCEC will also audit the only statewide participating candidate not audited after the primary, i.e., Tom Chabin. Staff also said that as so few statewide candidates are participating, in the future CCEC anticipates auditing all of them.

Regarding the on-going/never-ending disagreement with the Governor's Regulatory Review Commission (GRRC), Collins said that they are submitted another 5 year report, tho the GRRC has never indicated what is wrong with the initial one submitted or given a clue as to what should be revised.

Finally, regarding the issue of the CCEC's contract for government relations services (to include lobbying), which was prohibited by a Governor's Executive Order a few months ago, Collins said he has submitted a written request for an exemption, will meet with the appropriate DOA staff, but does not think that such an exemption will be approved.

Respectfully submitted,

Rivko Knox