

STATE OF NEW MEXICO
DIANNA J. DURAN
SECRETARY OF STATE

March 3, 2011

Somos Un Pueblo Unido
1804 Espinacitas Street
Santa Fe, New Mexico 87505
Attn: Marcela Diaz

Re: Complaint regarding use of campaign funds by the Susana Martinez for Governor Committee

Dear Ms. Diaz:

I am enclosing a copy of the response we received from the Susana Martinez for Governor Committee in the above referenced matter.

You alleged in your complaint that Governor Susana Martinez's campaign committee had paid for radio ads urging people to call their elected officials over the driver's license issue, and contended that it was a violation of Section 1-19-29.1 NMSA 1978 of the Campaign Reporting Act.

That section of law provides, in relevant part:

- A. *It is unlawful for a candidate or the candidate's agent to make an expenditure of contributions received, except for the following purposes or as otherwise provided in this section:*
- (1) Expenditures of the campaign;*
 - (2) Expenditures for legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenses to serve constituents, but excluding personal and legislative session living expenses;*
 - (3) Donations to the state general fund;*
 - (4) Donations to an organization to which a federal income tax deduction would be permitted under Subparagraph A of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended;*
 - (5) Expenditures to eliminate the campaign debt of the candidate for the office sought or expenditures incurred by the candidate when seeking election to another public office covered by the Campaign Reporting Act;*

- (6) *Donations to a political committee or to another candidate seeking election to public office; or*
- (7) *Disbursements to return unused funds pro rata to the contributors if no campaign debt exists.*

While you have characterized the Governor's campaign committee funds as "left-over" funds, and referred to the "spend-down" provision of the Campaign Reporting Act, those terms do not appear in the Act.

In its response, the Susana Martinez for Governor Committee has stated that it currently serves as the committee for the Governor's considered re-election. The Committee stated that the expenditures were made to produce and air radio spots to promote the Governor's issues and ideas and that the promotion of such issues and ideas are a standard campaign activity.

The Campaign Reporting Act, § 1-19-26 NMSA 1978, as amended in 2009, defines a "candidate" to mean:

An individual who seeks or considers an office in an election covered by the Campaign Reporting Act, including a public official, who either has filed a declaration of candidacy or nominating petition or ... (2) for statewide office, has received contributions or made expenditures of two thousand five hundred dollars (\$2500) or more or authorized another person or campaign committee to receive contributions or make expenditures of one thousand dollars (\$1000) or more for the purpose of seeking election to the office or for candidacy exploration purposes in the years prior to the year of the election. (emphasis added)

Susana Martinez meets the definition of a "candidate" who has authorized her campaign committee to make expenditures for the purpose of seeking future election to office. Such expenditures are authorized under Section 1-19-29.1, above.

In reviewing this matter, we also looked at how campaign funds and expenditures have historically been handled by campaign committees for statewide elected officials such as former Governor Richardson and Attorney General Gary King.

The Richardson for Governor Committee listed expenditures of over 1.3 million dollars during the first four months of the Governor's term that began in January 2007. The purposes of some of those expenditures were listed as "events," "consulting fees," "media," and "direct mail" as well as for "radio."

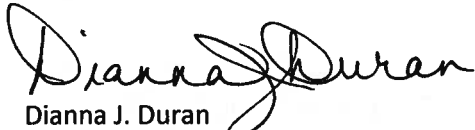
Similarly, the Committee to Elect Gary King listed campaign expenditures in 2007 for the purposes of "fundraisers," "media consultants" and "polling".

In all three cases involving the campaign committees of the current Governor, the former Governor and the current Attorney General, those types of expenditures meet the definition of campaign expenditures

under Section 1-19-29.1(A)(1) as "expenditures of the campaign," and under subsection (A)(5) as "expenditures incurred by the candidate when seeking election to another public office covered by the Campaign Reporting Act."

Therefore, pursuant to 1-19-34.6 NMSA 1989, I have no reasonable belief that the Susana Martinez for Governor Committee committed any violation of the Campaign Reporting Act, and I do not intend to refer this matter to the Attorney General or a district attorney.

Best Regards,

A handwritten signature in black ink that reads "Dianna J. Duran". The signature is fluid and cursive, with the first name being the most prominent.

Dianna J. Duran
Secretary of State

c: Paul M. Kienzle, III
Scott & Kienzle, P.A.
P.O. Box 587
Albuquerque, New Mexico 87103-0587
Attorney for Susana Martinez for Governor Committee