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THE OFFICE OF THE NEW MEXICO SECRETARY OF STATE

IN RE:

RULEMAKING PROCEEDING FOR THE
ADOPTION OF 1.10.13 NMAC – CAMPAIGN
FINANCE

CONCISE EXPLANATORY STATEMENT

The Office of the New Mexico Secretary of State (the “SOS”) hereby adopts a new rule that updates the SOS’s administrative code to include Part 1.10.13 NMAC – Campaign Finance.

(1) Statutory Authority for Rule Promulgation:

NMSA 1978, Sections 1-2-1 and 1-19-26.2, authorizes the SOS to adopt and promulgate rules and provide uniform guidelines to implement the provisions of the Campaign Reporting Act.

(2) Effective Date of Rule:

Date of publication in the New Mexico Register.

(3) Date of Adoption of Rule:

October 29, 2019

(4) Reasons for Adopting Rule:

This rulemaking was mandated by the legislature in Senate Bill-3 (N.M. 2019 Regular Session-SB-3, Section 16). The Campaign Reporting Act gives the SOS the ability to adopt and promulgate rules and regulations relating to all persons, candidates and committees covered by the Campaign Reporting Act, NMSA 1978, Sections 1-19-25 through 1-19-37. The rule provides guidance regarding the application and implementation of the provisions of the Campaign Reporting Act to affected parties in a manner that meets the requirements set forth in case law and provides clear and consistent guidance to the SOS in administering and enforcing the statute. The rule provides specific reporting requirements related to independent expenditures, and explains the disclaimer requirements for certain political advertisements. In addition, the rule defines and sets forth reporting procedures for a new political committee called the “legislative caucus committee.” The rule also provides guidance on when a contribution is “earmarked” or made in response to a solicitation used to fund independent expenditures.

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(5) Reasons for Changes Between Published Rule and the Final Rule

The SOS found the thoughtful and meticulous public comments on this rule persuasive and have changed its published rule to conform to the public comments received. The SOS incorporated changes to the rule to include the public comment that legislative caucus committees should be treated as agents of political parties for purposes of reporting coordinated expenditures. The SOS included in the definition of “coordinated expenditures” any agent or representative of a candidate, campaign committee or political party, including a legislative caucus committee. In response to public comments that the registration process and reporting procedures for a legislative caucus committee was set out in two sections and those sections were not conforming, the SOS consolidated the legislative caucus committee registration requirements into one section, 1.10.13.32 NMAC, which tracks the language of the statute.

The SOS restored language that had been removed in 1.10.13.8(A) related to the time a candidate must register the candidate’s campaign committee with the SOS. Further, based on public comments that the amended statute did not require for registration, “*the name, address and relationship of any connected or associated organization or entity; a connected or associated organization or entity means a related corporation, union or trade organization from which the political committee receives more than fifty percent of its funding;*” the SOS removed this provision from 1.10.13.10 Political Committee Registrations.

The SOS also received public comments requesting that the SOS describe when contributions are earmarked or solicited for independent expenditures. In response to these concerns, the SOS included a description of when a contribution is earmarked or made in response to a solicitation to fund independent expenditures in Section 11. See, 1.10.13.11(C) NMAC. The rule describes a contribution as “earmarked” or made in response to a solicitation to fund independent expenditures, if the person making the contribution: designates, requests, or suggests that the amounts be used for independent expenditures; or if the person provided the amounts in response to a solicitation or other request, whether direct or indirect, express or implied, oral or written, for a transfer or payment to fund independent expenditures; or if the person knew or had reason to know from the surrounding circumstances that the amounts would be used to fund independent expenditures.

The SOS also received several public comments related to the SOS’s deletion of rule 1.10.13.31 NMAC regarding disclaimer notices on political advertisements. Commentators requested that the previous rule on disclaimer notices be restored, and some public commentators wanted the disclaimers to disclose more information than is required by the amended statute. The SOS restored the rule, which was codified in the amended statute pursuant to NMSA 1978, Section 1-19-26.4 (2019). The SOS also included requirements as to how these disclaimers should be provided depending on how the advertisement is presented to the public, such as printed materials, radio, or television.

All of the changes made to the final published rule are within the scope of the noticed rule making and based on public comment received.

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(6) Reasons for Not Accepting Substantive Arguments from Public Comment:

The SOS is legislatively mandated to create this rule. NMSA 1978, § 1-19-26.2. Although some commentators wanted the SOS to promulgate more detailed disclosure requirements under 1.10.13.31, the SOS is statutorily prohibited from exceeding the scope of its authority by adding requirements that are not required by the relevant statute. Commentators wanted political advertisements to include a website address of the organization that sponsored and paid for the ad; to include a list of the donors or the top five donors of the sponsored organization, and to include other information not required under NMSA 1978, 1-19-26.4 (2019). The SOS did include some limited specifications as to how the required information- the name of the candidate, committee or other person who authorized and paid for the advertisement- should be displayed, so that the required information is clear and legible.

The proposed rule is hereby adopted as of the date of this Concise Explanatory Statement.

IT IS SO ORDERED.

10/16/19
DATE

ON BEHALF OF THE OFFICE OF THE
NEW MEXICO SECRETARY OF STATE

Maggie Toulouse Oliver
Maggie Toulouse Oliver
Secretary of State