



**City of Boulder
City Clerk's Office**

October 23, 2017

John B. Spitzer, Jr.
2323 20th Street
Boulder, Colorado 80304
Also via email to jspitzer011@gmail.com and jspitzer011@comcast.net

Dear Mr. Spitzer,

This letter responds to your complaint originally filed on October 18, 2017 and supplemented on October 19, 2017. You allege that Open Boulder, an Unofficial Candidate Committee, violated provisions of Chapter 13-2 of the Boulder Revised Code. Specifically, you allege that a brochure, a newspaper advertisement and a sticker constituted express advocacy by the Open Boulder Unofficial Candidate Committee and were not reported as expenditures by the Open Boulder Unofficial Candidate Committee.

In response, Martha Tierney, an attorney for the Open Boulder Unofficial Candidate Committee, stated that the materials to which you refer were paid for by Open Boulder and not its affiliated Unofficial Candidate Committee. The Boulder Revised Code requires Unofficial Candidate Committees to report all independent expenditures. An independent expenditure is one made "for the purpose of expressly advocating the election or defeat of a candidate or candidates." § 13-2-2, B.R.C. 1981.

After consulting with the city attorney, I have determined that no probable cause exists that further investigation would disclose a violation by the Open Boulder Unofficial Candidate Committee. The city attorney reviewed the brochure attached to your complaint, the advertisement, which you supplied, and the "sticker" affixed to the first page of the October 14, 2017 Boulder Daily Camera. He advised that none of the statements made in any of the documents constitute "express advocacy," as that term has been defined by the Colorado Supreme Court. Under Colorado law, express advocacy is limited to advocacy using words such as "vote for," "elect," "support," "cast your ballot for," "Smith for City Council," "vote against," "defeat," "reject" or substantially equivalent synonyms. None of these words or any substantially equivalent synonyms appear in any of the documents that form the basis for your complaint. I therefore find a lack of probable cause to support your complaint. Pursuant to section 13-4-5(a), B.R.C. 1981, this determination is final and not subject to appeal.

The city is required to keep all records of this investigation and finding confidential. § 13-4-13, B.R.C. 1981. Accordingly, the city will not be releasing any information about your complaint.

Very truly yours,

Lynnette Beck
City Clerk

cc: Martha M. Tierney, Esq. (via U.S. Mail and email at mtierney@tierneylawrence.com)