

CITY OF AUSTIN ETHICS REVIEW COMMISSION

STEVE SPEIR

Complainant

v.

ROBERT THOMAS

Respondent.

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Complaint No. 20140910

ORDER ON PRELIMINARY HEARING

I. PROCEDURAL HISTORY

On September 10, 2014, Steve Speir (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a Sworn Complaint (“the Complaint”) against Robert Thomas. On that date, the City Clerk sent a copy of the Complaint and a notice of filing to the City Attorney, the Ethics Review Commission (“the Commission”), the Complainant, and the Respondent.

On September 12, 2014, Commission Staff Liaison and Assistant City Attorney Cynthia Tom (“Tom”) issued a Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for September 23, 2014, and advising the Respondent and Complainant of procedures for the preliminary hearing. The original hearing date was postponed due to schedule conflicts, and on October 1, 2014, Tom sent a Revised Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for October 28, 2014.

On October 24, 2014, Tom posted a Notice of Regular Meeting and Agenda for the Commission for an October 28 Preliminary Hearing.



II. FINDINGS OF FACT

A. General Findings

1. Respondent is a candidate for Austin City Council, District 10 in the City of Austin municipal election of November 4, 2014.
2. The City of Austin provides Form ATX-2 to municipal candidates as part of the City's Candidate Guide.
3. Respondent submitted a Form ATX-2 to the City Clerk on August 15, 2014. This submission reflected 20 expenditures from personal funds between July 1, 2014, and August 13, 2014.
4. The 20 expenditures totaled more than \$40,000 with the largest expenditure being one dated July 1, 2014, for \$30,000 that was paid to Stampede Consulting as a consulting expense.
5. Complainant alleges that Respondent violated Section 2-2-27(A)(1) of the Austin City Code ("Section 2-2-27(A)(1)") by failing to report expenditures from personal funds cumulating to \$25,000 within seven business days after the total reaches \$25,000.
6. The complaint relates to expenditures that were made on and after July 1, 2014.
7. The seventh business day after July 1, 2014, was July 11, 2014, a little more than a month before the Form ATX-2 reflecting the \$30,000 expenditure was filed.
8. Respondent admitted that the Form ATX-2 showing the \$30,000 expenditure was not filed by the seventh business day following the expenditure.



9. Respondent testified that the differing requirements of the state election code and the city code were confusing.
10. Respondent testified that the failure to file the Form ATX-2 when required was an oversight and was not intentional.

III. CONCLUSIONS OF LAW

1. The October 28 Meeting of the Commission and Preliminary Hearing are properly noticed in accordance with Chapter 2-7 of the City Code, the Ethics and Financial Disclosure Ordinance (“Chapter 2-7”), and the Texas Open Meetings Act.
2. The Commission has jurisdiction over the Complaint pursuant to Section 2-7-26, Austin City Code, which provides that the Commission has jurisdiction over City Code Chapter 2-2 (*Campaign Finance*). The Commission has jurisdiction over the Respondent pursuant to Section 2-7-41, Austin City Code, which provides that the Commission shall consider possible violations by candidates for election to City offices.
3. Complainant and Respondent were each afforded an opportunity to appear at the Preliminary Hearing in accordance with Chapter 2-7, and each presented testimony.



4. Under Section 2-7-44, at a preliminary hearing, the Commission may dismiss a complaint if it does not allege conduct that would be a violation of a provision within the jurisdiction of the Commission. The Commission may also decide whether a final hearing on the Complaint should be held.
5. In a preliminary hearing at which the Respondent agrees that a violation has occurred, the Commission may move directly to determinations that would otherwise be made during a Final Hearing conducted pursuant to Section 2-7-45 of the City Code, and may consider the appropriate sanction or prosecution pursuant to Section 2-7-47, Section 2-7-48, and/or Section 2-7-49 of the City Code.
6. When the complaint before the Commission alleges a violation of the Fair Campaign Chapter, the Commission's potential sanctions and other actions are set out in Section 2-7-49 of the City Code ("Section 2-7-49").
7. Under Section 2-7-49, if the Commission determines that a violation of The Fair Campaign Chapter has occurred, the Commission may recommend that the City Attorney prosecute the violation, may request the appointment of a special prosecutor, or, if the Commission determines that the violation is minor, clerical, or may have been unintentional, may recommend that the violation not be prosecuted or be prosecuted only if the violation is not corrected.
8. Under Section 2-7-49, the Commission is not required to make a recommendation with respect to a complaint.



9. Under Section 2-7-49, the Commission may also draft and publish a letter of notification, a letter of admonition, a reprimand, or a letter of censure to a respondent found to have violated a provision subject to Section 2-7-49. The provisions of Chapter 2-7 addressing the criteria for these remedies are set out at Section 2-7-48 of the City Code.
10. Under Section 2-7-44 of the City Code, the issue to be considered by the Commission at this preliminary hearing is the existence of reasonable grounds to believe that a violation of Section 2-2-27(A)(1) has occurred.
11. Because the Respondent has admitted the facts establishing the violation, it is appropriate to make a final determination.
12. Respondent concurs that it is appropriate to make the final determination at the October 28, 2014, hearing.
13. The \$30,000 expenditure from personal funds to Form ATX-2 filed by the Respondent on August 15, 2014, exceeded \$25,000 and, thus, triggered a requirement that the expenditure be reported on or before July 11, 2014—the seventh business day after the expenditure.
14. Since the Respondent did not file a Form ATX-2 reporting the \$30,000 expenditure from personal funds until August 15, 2014, he did not comply with the requirement for timely filing set out in Section 2-2-27(A)(1).



IV. DETERMINATIONS OF THE ETHICS REVIEW COMMISSION

1. The Commission determines that reasonable grounds exist to believe that a violation of Section 2-2-27(A)(1) of the City Code occurred as a result of Respondent's failure to disclose a July 1, 2014, expenditure from personal funds of \$30,000 on or before the seventh business day (July 11, 2014) following the expenditure.
2. The Commission determines that a violation of Section 2-2-27(A)(1) has occurred.

V. ACTIONS AND SANCTIONS BY THE ETHICS REVIEW COMMISSION

1. The Commission recommends that the violation relating to the failure to timely disclose the expenditure of \$30,000 in personal funds on July 1, 2014, not be prosecuted.
2. The Commission determines that the violation may have been unintentional but calls for a more substantial response than a letter of notification, and, thus, directs that a letter of admonition issue.

ORDERED as of this 28th day of October, 2014.



Austin Kaplan
Chair, Ethics Review Commission



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