

CITY OF AUSTIN ETHICS REVIEW COMMISSION

DEE ROBINSON

Complainant

v.

LAURA PRESSLEY

Respondent.

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Complaint No. 20141208

ORDER ON PRELIMINARY HEARING

I. PROCEDURAL HISTORY

On December 8, 2014, Dee Robinson (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a Sworn Complaint (“the Complaint”) against Laura Pressley (“Respondent”). 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 December 10, 2014, Commission Staff Liaison and City of Austin Assistant City Attorney Cynthia Tom (“Tom”) issued a Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for December 18, 2014 and advising the Respondent and Complainant of procedures for the Preliminary Hearing.

On December 15, 2014, Tom posted a Notice of Special Called Meeting and Agenda for the Commission for a December 18 Preliminary Hearing.



City of Austin

Ethics Review Commission

ORDER ON PRELIMINARY HEARING – PAGE 1

II. FINDINGS OF FACT

1. Respondent was a candidate for Austin City Council, District 4, in the City of Austin municipal runoff election of December 16, 2014. Respondent did not sign a campaign contract under Section 2-2-14 of the Austin Fair Campaign Chapter.
2. Complainant alleges that Respondent violated Section 2-2-14, Austin City Code (“Section 2-2-14”) because Complainant “and many neighbors” received political advertising that did not include “the required disclaimers.” Complainant further alleges that “the political advertising disclaimer was included in miniscule, faded font on the back side of the political advertising.”
3. Complainant attached to the Complaint a flyer stating “YOU HAVE A VERY IMPORTANT MESSAGE FROM YOUR NEIGHBOR” with a web address. The flyer is signed “YOUR NEIGHBOR” with an illegible signature.
4. The reverse side of the flyer includes a faint statement in small typeface in the lower right corner: “*Political Advertising Paid for by Laura Pressley Campaign.*”
5. The flyer includes no statement with respect to the campaign agreeing or not agreeing to comply with the Austin Fair Campaign Chapter.
6. Complainant and Respondent were each afforded an opportunity to appear at the Preliminary Hearing in accordance with Chapter 2-7, and each appeared in person.
7. At the Preliminary Hearing, Respondent testified that neither Respondent nor her campaign produced the flyer. Respondent testified that a third party produced the



City of Austin

Ethics Review Commission

ORDER ON PRELIMINARY HEARING – PAGE 2

flyer without being authorized by or coordinating with the Respondent's campaign. Respondent testified that neither she nor her campaign knew about the flyers before the third party began distributing them. Respondent testified that once she learned of the third party's distribution of the flyers, she asked the third party to stop distributing the flyers. Complainant presented no evidence to rebut the testimony of the Respondent.

III. CONCLUSIONS OF LAW

1. The December 18 Meeting of the Commission and the Preliminary Hearing were 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 complaints alleging violations of Chapter 2-2 of the City Code (The Austin Fair Campaign Chapter), Chapter 4-8 of the City Code (Regulation of Lobbyists), Article III, Section 8 of the City Charter, (Limits on Campaign Contributions and Expenditures), Chapter 2-7 of the City Code (Ethics and Financial Disclosure), and Section 2-1-24 of the City Code (Conflict of Interest and Recusal).
3. Under Section 2-2-14(B), a candidate who does not sign a campaign contract under the Austin Fair Campaign Chapter "shall include the following notice in all political advertising: 'This campaign has not agreed to comply with the contribution and expenditure limits of the Austin Fair Campaign Chapter.'"



4. Under Section 2-2-14(E), a “candidate or other campaign representative who authorizes the publication of political advertising without the notice required by this section commits an offense.”
5. In the “definitions” section of the Austin Fair Campaign Chapter “political advertising” is defined with reference to its meaning in the Texas Election Code.
6. Under Section 251.001(16), TEX. ELECT. CODE, “Political Advertising” means
 - a communication supporting or opposing a candidate for nomination or election to a public office . . . that
 - A. in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or
 - B. appears:
 - (i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
 - (ii) on an Internet website.
7. Under Section 2-7-44, the issue to be considered by the Commission at a Preliminary Hearing is the existence of reasonable grounds to believe that a violation of a provision within the jurisdiction of the Commission has occurred.
8. Under Section 2-7-44, at any time during a Preliminary Hearing, the Commission may dismiss a complaint if it does not allege conduct which would be a violation of a provision within the jurisdiction of the Commission.
9. If the allegations in the complaint concern acts or omissions which are wholly outside the jurisdiction of the Commission, the complaint may be dismissed without affording an opportunity that it be revised and resubmitted.



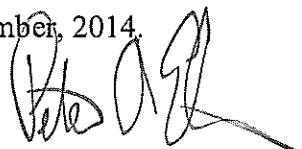
IV. DETERMINATION OF THE ETHICS REVIEW COMMISSION

1. The Commission determines that reasonable grounds do not exist to believe that Respondent violated Section 2-2-14, a provision within the jurisdiction of the Commission, as a result of the actions or omissions alleged in the Complaint with respect to absence of a City mandated disclaimer on the flyer attached to the Complaint because there is no evidence that Respondent or her campaign produced or distributed the flyer or authorized a third party to produce or distribute the flyer.
2. The Commission makes no determination as to whether the flyer constitutes political advertising.

V. REFERRAL/NON-REFERRAL TO FINAL HEARING

1. The Commission will not set the Complaint for final hearing.
2. The Complaint is DISMISSED without an opportunity for re-filing.

ORDERED as of this 18th day of December, 2014.



Peter Einhorn
Vice Chair, Ethics Review Commission



City of Austin
Ethics Review Commission

ORDER ON PRELIMINARY HEARING – PAGE 5