



ETHICS REVIEW COMMISSION MINUTES

**REGULAR MEETING
Tuesday, October 28, 2014**

The Ethics Review Commission (“Commission”) convened in a regular meeting on Tuesday, October 28, 2014, at City Hall, 301 W. 2nd Street, Room 2005, in Austin, Texas.

Chair Austin Kaplan called the meeting to order at 6:06 p.m.

Commission members in attendance: Chair Austin Kaplan, Vice Chair Peter Einhorn, Sylvia Hardman-Dingle, Donna Beth McCormick, James Ruiz, and Dennis Speight. Not present: James Sassin.

Staff in Attendance: Assistant City Attorney Cynthia Tom; James Cousar, outside legal counsel for the Commission; C. Robert Heath, outside legal counsel for the Commission; Deputy City Auditor Corrie Stokes; and Office of the City Auditor Chief of Investigations Jason Hadavi.

Items No. 1.a., 1.b., and 1.c.: The Commission went into executive session at 6:08 p.m. to discuss legal issues related to:

- (1) a complaint filed on September 10, 2014, by Steve Speir against Robert Thomas alleging violation of City Code, Chapter 2-2 (Campaign Finance) (Private consultation with legal counsel pursuant to Section 551.071 of the Government Code);
- (2) a complaint filed on September 17, 2014, by Earl L. Jones III against Mackenzie Kelly alleging violation of City Code, Chapter 2-2 (Campaign Finance) (Private consultation with legal counsel pursuant to Section 551.071 of the Government Code); and
- (3) a complaint filed on October 1, 2014, by Mary Rudig against Becky Bray alleging violations of Article III, Section 8 of the City Charter and City Code, Chapter 2-2 (Campaign Finance) (Private consultation with legal counsel pursuant to Section 551.071 of the Government Code).

The Commission returned from executive session at 7:26 p.m.

Item No. 2.a.: The Commission convened a preliminary hearing under Section 2-7-44 of City Code to consider a complaint filed on September 10, 2014, by Mr. Speir against Mr. Thomas alleging violation of City Code, Chapter 2-2.

Commission Counsel Heath described the proceeding.

The complainant, Mr. Speir, appeared in person and under oath and made a statement regarding the alleged violation of Section 2-2-27.

The respondent, Mr. Thomas, appeared in person and under oath and made a statement responding to the alleged violation. Mr. Thomas admitted to violating Section 2-2-27 of City Code by failing to report a campaign expenditure of more than \$25,000 from his personal funds within seven business days of making the expenditure.

Vice Chair Einhorn made a motion that a violation of Section 2-2-27(A) of City Code had occurred and had been admitted to by Mr. Thomas. Commission Member Speight seconded the motion. The motion was approved on a 6-0 vote. Commission Member Sassin absent.

Vice Chair Einhorn made a motion that the Commission not recommend prosecution of Mr. Thomas, which was seconded by Commission Member Speight. The motion was approved on a 6-0 vote. Commission Member Sassin absent.

Commission Member McCormick made a motion that the Commission issue a letter of admonition to Mr. Thomas, but there was no second.

Commission Member Ruiz made a motion that the Commission issue a letter of notification because the violation was clearly unintentional and minor. The motion was seconded by Commission Member Hardman-Dingle. After discussion, Commission Member Ruiz restated his motion to remove the reference to the violation being minor, which was acceptable to the second, Commission Member Hardman-Dingle. Vice Chair Einhorn made a substitute motion to issue a letter of admonition, but then withdrew the substitute motion. The Commission voted on Commission Member Ruiz's restated motion to issue a letter of notification to Mr. Thomas. The motion failed on a 2-4 vote. Commission members voting in favor: Commission Member Hardman-Dingle and Commission Member Ruiz. Commission members voting in opposition: Chair Kaplan, Vice Chair Einhorn, Commission Member McCormick, and Commission Member Speight. Commission Member Sassin absent.

Vice Chair Einhorn made a motion that the Commission issue a letter of admonition to Mr. Thomas because although the violation may have been unintentional, it called for a more substantial response than a letter of notification. The motion was seconded by Commission Member McCormick. The motion was approved on a 4-2 vote. Commission members voting in favor: Chair Kaplan, Vice Chair Einhorn, Commission Member McCormick, and Commission Member Speight. Commission members voting in opposition: Commission Member Hardman-Dingle and Commission Member Ruiz. Commission Member Sassin absent.

The preliminary hearing was concluded.

Item No. 2.b.: The Commission convened a preliminary hearing under Section 2-7-44 of City Code to consider a complaint filed on September 17, 2014, by Mr. Jones against Ms. Kelly alleging violation of City Code, Chapter 2-2.

Commission Counsel Cousar described the proceeding.

The complainant, Mr. Jones, appeared in person and under oath and made a statement regarding the alleged violation of Chapter 2-2.

The respondent, Ms. Kelly, appeared in person and under oath and made a statement responding to the alleged violation. Ms. Kelly admitted to violating Section 2-2-65 of City Code by signing a candidate contract and then failing to attend the City's live, in-person candidate forum for District 6 on September 15, 2014, due to medical reasons. Ms. Kelly stated that she notified Assistant City Attorney Tom of her inability to attend the forum after the forum had already begun, which Assistant City Attorney Tom confirmed.

Vice Chair Einhorn made a motion that the Commission had jurisdiction over Section 2-2-65 of City Code, which was seconded by Commission Member Speight. The motion was approved on a 6-0 vote. Commission Member Sassin absent.

Vice Chair Einhorn made a motion that a violation of Section 2-2-65 of City Code had occurred and had been admitted to by Ms. Kelly. Commission Member Speight seconded the motion. The motion was approved on a 6-0 vote. Commission Member Sassin absent.

Commission Member Speight made a motion that the Commission issue no sanction to Ms. Kelly due to extenuating circumstances of health, which was seconded by Vice Chair Einhorn. The motion failed on a 2-4 vote. Commission members voting in favor: Vice Chair Einhorn and Commission Member Speight. Commission members voting in opposition: Chair Kaplan, Commission Member Hardman-Dingle, Commission Member McCormick, and Commission Member Ruiz. Commission Member Sassin absent.

Commission Member Ruiz made a motion that the Commission issue a letter of notification to Ms. Kelly advising her that in order to avoid future violations, she should give advance notice to the coordinators of the forum if she cannot attend for medical reasons. Commission Member Hardman-Dingle stated that she would second the motion if Commission Member Ruiz would add to the motion that Ms. Kelly should give advance notice if possible, which was acceptable to Commission Member Ruiz. The motion failed on a 3-3 vote. Commission members voting in favor: Chair Kaplan, Commission Member Hardman-Dingle, and Commission Member Ruiz. Commission members voting in opposition: Vice Chair Einhorn, Commission Member McCormick, and Commission Member Speight. Commission Member Sassin absent.

Commission Member McCormick made a motion that the Commission issue a letter of admonition to Ms. Kelly because her campaign could have notified the forum coordinators in advance, which was seconded by Commission Member Ruiz. The motion failed on a 3-3 vote. Commission members voting in favor: Commission Member McCormick, Commission Member Hardman-Dingle, and Commission Member Ruiz. Commission members voting in opposition: Chair Kaplan, Vice Chair Einhorn, and Commission Member Speight. Commission Member Sassin absent.

Vice Chair Einhorn made a motion to reconsider issuing a letter of notification to Ms. Kelly advising her that in order to avoid future violations, she should give advance notice, if possible, to the coordinators of the forum if she cannot attend for medical reasons. The motion was seconded by Commission Member Ruiz. The motion to issue a letter of notification was approved on a 5-1 vote. Commission members voting in favor: Chair Kaplan, Vice Chair

Einhorn, Commission Member McCormick, Commission Member Hardman-Dingle, and Commission Member Ruiz. Commission member voting in opposition: Commission Member Speight. Commission Member Sassin absent.

The preliminary hearing was concluded.

Item No. 2.c.: The Commission convened a preliminary hearing under Section 2-7-44 of the City Code to consider a complaint filed on October 1, 2014, by Ms. Rudig against Ms. Bray alleging violations of Article III, Section 8 of the City Charter and City Code, Chapter 2-2.

Commission Counsel Cousar described the proceeding.

The complainant, Ms. Rudig, appeared in person and under oath and made a statement regarding the alleged violations of Article III, Section 8(A) of the City Charter and Section 2-2-27 of the City Code.

The respondent, Ms. Bray, did not appear at the preliminary hearing but was instead represented by counsel, Terry Bray, who did appear in person. Mr. Bray made a statement admitting to the violations.

Vice Chair Einhorn made a motion that violations of Article III, Section 8(A) of the City Charter and Section 2-2-27 of the City Code occurred and were admitted to by Ms. Bray's counsel, which was seconded by Commission Member Speight. The motion was approved on a 6-0 vote. Commission Member Sassin absent.

Commission Member Hardman-Dingle made a motion that the Commission not recommend prosecution of Ms. Bray, which was seconded by Commission Member McCormick. The motion was approved on a 6-0 vote. Commission Member Sassin absent.

Commission Member Hardman-Dingle made a motion that the Commission issue a letter of notification because the violations were clearly unintentional and were remedied quickly. The motion was seconded by Commission Member Ruiz. Commission Member McCormick stated that the notification letter should advise that Ms. Bray pay careful attention in filling out campaign finance reports in the future and complete all requirements. Commission Member Hardman-Dingle restated her motion to include Commission Member McCormick's additional language, which was acceptable to Commission Member Ruiz. The motion failed on a 3-3 vote. Commission members voting in favor: Commission Member Hardman-Dingle, Commission Member McCormick, and Commission Member Ruiz. Commission members voting in opposition: Chair Kaplan, Vice Chair Einhorn, and Commission Member Speight. Commission Member Sassin absent.

Vice Chair Einhorn made a motion to issue a letter of admonition to Ms. Bray because, although the violations were minor and unintentional, they called for a more substantial sanction than a letter of notification. The motion was seconded by Commission Member Speight. The motion was approved on a 4-2 vote. Commission members voting in favor: Chair Kaplan, Vice Chair Einhorn, Commission Member McCormick, and Commission Member Speight. Commission

members voting in opposition: Commission Member Hardman-Dingle and Commission Member Ruiz. Commission Member Sassin absent.

Vice Chair Einhorn made a motion to authorize Chair Kaplan to draft all sanction letters and orders on preliminary hearing for Items No. 2.a., No. 2.b., and No. 2.c., which was seconded by Commission Member Speight. The motion was approved on a 6-0 vote. Commission Member Sassin absent.

The preliminary hearing was concluded.

Item No. 2.d.: The Commission heard citizen communications from Michael Whellan, legal counsel for Texas Disposal Systems (“TDS”), and from other representatives of TDS urging the Commission to pass a resolution regarding the jurisdiction of the Commission and invalidating actions of the City Auditor. After discussion by the Commission members, Commission Member Hardman-Dingle made a motion that the Commission take no action on the resolution brought to the Commission by TDS, but there was no second. There was no action taken by the Commission on this item.

Item No. 4.a.: Chair Kaplan took up Item No. 4.a. out of order. The Commission heard from the working group; City staff, including Chief of Investigations Hadavi, Deputy City Auditor Stokes, and Assistant City Attorney Tom; and members of the public, including representatives of TDS, regarding the powers, duties, and functions of the Commission and the City Auditor, including City Council Resolutions No. 20141016-024 and No. 20141016-033.

At 10:00 p.m., Vice Chair Einhorn made a motion that the Commission meeting continue past 10:00 p.m., which was seconded by Commission Member Speight. The motion was approved on a 6-0 vote. Commission Member Sassin absent.

After discussion, Vice Chair Einhorn made a motion that the working group draft a recommendation to Council and a flow chart recommending that Council remove Commission jurisdiction over City rank-and-file employees which are covered by a civil service system, which was seconded by Commission Member Speight. Vice Chair Einhorn withdrew his motion. Vice Chair Einhorn then made a new motion that the Commission call a special meeting before the November 20, 2015 City Council meeting for the purpose of the full Commission considering a draft recommendation to the City Council, prepared by the working group, relating to the City Auditor and the Commission. The motion was seconded by Commission Member McCormick. The motion was approved on a 5-1 vote. Commission members voting in favor: Vice Chair Einhorn, Commission Member Hardman-Dingle, Commission Member McCormick, Commission Member Ruiz, and Commission Member Speight. Commission member voting in opposition: Chair Kaplan. Commission Member Sassin absent.

Item No. 4.b.: Chair Kaplan took up Item No. 4.b. out of order. Item No. 4.b. was postponed until the next Commission meeting.

Item No. 4.c.: Chair Kaplan took up Item No. 4.c. out of order. Item No. 4.c. was postponed until the next Commission meeting.

Item No. 5: Chair Kaplan took up Item No. 5 out of order. There were no speakers for general citizen communication.

Item No. 6: Chair Kaplan took up Item No. 6 out of order. There were no future agenda items discussed, other than Items No. 4.a., 4.b., and 4.c., which were discussed previously.

Item No. 2.e.: Commission Member Speight made a motion to reelect Chair Kaplan and Vice Chair Einhorn to serve another term as chair and vice chair of the Commission, which was seconded by Commission Member McCormick. The motion was approved on a 6-0 vote. Commission Member Sassin absent.

Item No. 2.f.: Commission Member Speight made a motion to set the regular 2015 Commission schedule as the following: January 27, April 28, July 28, and October 27, 2015, which was seconded by Commission Member Hardman-Dingle. The motion was approved on a 6-0 vote. Commission Member Sassin absent.

The meeting adjourned at 10:22 p.m.