

CITY OF AUSTIN ETHICS REVIEW COMMISSION

Nathan Wiebe	§	
Complainant	§	
	§	Complaint No. 20160928
v.	§	
	§	
Elizabeth Spencer	§	
Respondent.	§	

ORDER ON PRELIMINARY HEARING

I. PROCEDURAL HISTORY

On September 28, 2016, Mr. Nathan Wiebe (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a Sworn Complaint (“the Complaint”) against Ms. Elizabeth Spencer (“Respondent”). On September 28, 2016, 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 October 4, 2016, Commission Executive Staff Liaison and City of Austin Deputy City Attorney Deborah Thomas (“Thomas”) issued a Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for November 9, 2016, and advising the Complainant and Respondent of the procedures for the Preliminary Hearing. On November 29, 2016, Thomas issued a Revised Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for December 14, 2016, and advising the Complainant and Respondent of the procedures for the Preliminary Hearing.

The agenda for the December 14, 2016, meeting of the Commission and Preliminary Hearing in this matter was timely posted.

II. FINDINGS OF FACT

- Respondent is the former Director of the City of Austin's Neighborhood Housing and Community Development Department (NHCD).
- The Complainant is Chief of Investigations, Office of the City Auditor. The Complainant alleges that the Respondent violated Chapter 2-7, Section 2-7-64 (Disclosure of Conflict of Interest), subsection (c), of the City Code. Specifically, the Complaint alleges that the Respondent supervised a city employee who notified the Respondent of a potential conflict of interest and the Respondent failed to reassign matters on which the employee worked that were affected by that conflict.
- The Complaint alleges that the date of any violation was between August 27, 2012, and October 1, 2015.
- The Complaint and the evidence submitted at the Preliminary Hearing did not show a specific act that would have required the Respondent to reassign a matter during the two year period preceding the filing of the complaint.

III. CONCLUSIONS OF LAW

- The December 14, 2016, 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, and the Texas Open Meetings Act.
- The Commission has jurisdiction over complaints alleging violations of Chapter 2-2 of the City Code (Campaign Finance), 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).

- Under Section 2-7-44 of the City Code, the Respondent is not required to attend or make any statement at a preliminary hearing. Complainant and Respondent were each afforded an opportunity to appear at the Preliminary Hearing in accordance with Chapter 2-7 of the City Code. The Complainant was present, but the Respondent did not attend.
- Under Section 2-7-44 of the City Code, 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.
- Under Section 2-7-44(E) of the City Code, at any time during 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. If the complaint does not allege conduct that would be a violation of a provision within the jurisdiction of the Commission then the complainant shall be afforded one opportunity to revise and resubmit the complaint.
- Section 2-7-41 of the City Code, (Complaints) subsection (c) provides, "A complaint alleging a violation of Sections 2-7-62 (Standards of Conduct) through 2-7-65 (Substantial Interest of Relative) must be filed with the city clerk within two years from the date of the action alleged as a violation, and not afterward."
- The Complaint is based on Chapter 2-7, Section 2-7-64, subsection (c) of the City Code, which is within the jurisdiction of the Commission. However, the

Complaint and evidence submitted at the Preliminary Hearing did not include specific conduct within the two year limitations period that would be within the jurisdiction of the Commission.

**IV. DETERMINATIONS OF
THE ETHICS REVIEW COMMISSION**

- The Commission determines that reasonable grounds do not exist to believe that a violation of a provision within the jurisdiction of the Commission has occurred as a result of the actions or omissions as alleged in the Complaint.
- The Commission will not set the Complaint for final hearing.

**V. ACTIONS OF
THE ETHICS REVIEW COMMISSION**

- Pursuant to Section 2-7-44(E) of the City Code, the Complainant shall be afforded an opportunity to revise and resubmit the Complaint no later than February 15, 2017; if the Complainant does not revise and resubmit the Complaint by that date the Complaint shall be considered dismissed with no further action by the Commission.

ORDERED as of the 14th day of December, 2016.



Peter Einhorn
Chair, Ethics Review Commission