

CITY OF AUSTIN ETHICS REVIEW COMMISSION

Nathan Wiebe
Complainant

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Complaint No. 20170717B

v.

Clifford Gillard
Respondent

ORDER ON PRELIMINARY HEARING

I. PROCEDURAL HISTORY

On July 17, 2017, Mr. Nathan Wiebe (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a Sworn Complaint (“the Complaint”) against Mr. Clifford Gillard (“Respondent”). On July 17, 2017, the City Clerk sent a copy of the Complaint and a notice of filing to the City Attorney, the Ethics Review Commission (“the Commission”), Complainant, and Respondent.

On September 5, 2017, Commission Staff Liaison Sue Palmer (“Palmer”) issued a Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for September 20, 2017, and advising Complainant and Respondent of the procedures for the Preliminary Hearing.

On October 24, 2017, Palmer issued a Revised Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for November 8, 2017, and advising Complainant and Respondent of the procedures for the Preliminary Hearing.

The agenda for the November 8, 2017, meeting of the Commission and Preliminary Hearing in this matter was timely posted on November 3, 2017.



II. FINDINGS OF FACT

1. Respondent is a commissioner on the African American Resource Advisory Commission (“AARAC”).
2. Complainant is Chief of Investigations, Office of the City Auditor. The Complaint alleges that the Respondent violated Austin City Code, Chapter 2-7, which deals with ethics and financial disclosure, Section 2-7-63(B) (Prohibition on Conflict of Interest), and Sections 2-7-64(A) and (B) (Disclosure of Conflict of Interest), and Section 2-1-24(B) (Conflict of Interest and Recusal), by participating in a vote or decision on a matter regarding funding that affected a nonprofit entity for which he served as a corporate officer or member of the board of directors and failing to disclose his interest in the nonprofit entity. The Complaint also alleges that the Respondent violated Austin City Code, Chapter 2-1, which deals with City boards, Section 2-1-24(B) (Conflict of Interest and Recusal), by failing to indicate on the attendance sheet for the meeting at issue that he had a conflict of interest with respect to the matter.
3. The Complaint alleges that the alleged violations occurred at a meeting of the AARAC on July 13, 2016.
4. The alleged conflict is based on the fact that Respondent is on the board of directors of Capitol View Arts (“CVA”), the nonprofit entity affected by his participation and vote during the AARAC meeting at issue.



5. Complainant and Respondent were each afforded an opportunity to appear at the Preliminary Hearing in accordance with Chapter 2-7 of the City Code and the Rules of the Commission. Complainant appeared in person. Respondent also appeared at the hearing.
6. Complainant provided evidence to support the allegations. Respondent stated that he did participate in the matter as alleged, but that in hindsight he realized he made a mistake and should not have participated and voted on any matter affecting CVA.
7. Respondent agreed that the alleged violations occurred and so stated to the Commission.

III. CONCLUSIONS OF LAW

1. The November 8, 2017, 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.
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. The Complaint was filed with the City Clerk, was sworn to by Complainant, and identifies the sections of the City Code alleged to have been violated, as required by Section 2-7-41 of the City Code.



4. Three of the provisions at issue are under Chapter 2-7 of the City Code (Ethics and Financial Disclosure), specifically Section 2-7-63(B) (Prohibition on Conflict of Interest), and Sections 2-7-64(A) and (B) (Disclosure of Conflict of Interest).

5. Section 2-7-63(B) reads, in relevant part:

A city official or employee who serves as a corporate officer or member of the board of directors of a nonprofit entity may not participate in a vote or decision regarding funding by or through the City for the entity.

6. Section 2-7-64(A) reads:

A City official shall disclose the existence of any substantial interest he may have in a natural person, entity or property which would be affected by a vote or decision of the body of which the City official is a member or that serves as a corporate officer or member of the board of directors of a nonprofit entity for which a vote or decision regarding funding by or through the City is being considered.

7. Section 2-7-64(B) reads:

To comply with this section, a councilmember or unsalaried City official, prior to the vote or decision, either shall file an affidavit as required by Chapter 171 (*Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments*) of the Local Government Code or, if not so required, shall publicly disclose in the official records of the body the nature and extent of such interest.



8. The fourth provision at issue is under Chapter 2-1 of the City Code (City Boards), specifically Section 2-1-24(B) (Conflict of Interest and Recusal).
9. Section 2-1-24(B) reads:

At each meeting, a board member shall sign an attendance sheet and shall indicate:

 - (1) that the board member has no conflict of interest related to any item on the agenda; or
 - (2) the number of an agenda item for which the board member has a conflict of interest.
10. 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 that section, if a respondent agrees that a violation has occurred, the respondent may so state and the Commission may proceed to determine the appropriate sanction or prosecution.

IV. DETERMINATION OF THE ETHICS REVIEW COMMISSION

The Commission determines, and Respondent agrees, that reasonable grounds exist to believe that a violation of Sections 2-7-63(B), 2-7-64(A) and (B), and Section 2-1-24(B) of the Austin City Code, provisions within the jurisdiction of the Commission, has occurred as a result of the actions or omissions alleged in the Complaint.



Because Respondent has agreed that the alleged violations occurred the Commission will not set the Complaint for a Final Hearing.

The Commission will not refer the allegation under Section 2-1-24(B) for prosecution, but requires that Respondent exercise due caution to avoid any future violation of that section as well as Sections 2-7-63(B), 2-7-64(A), and 2-7-64(B), of the Austin City Code.

The Commission determines that the appropriate sanction for Respondent's violations is a Letter of Notification under Section 2-7-48(C) (1) of the Austin City Code.

ORDERED as of the 8th day of November 2017.



Peter Einhorn
Chair, Ethics Review Commission

