City of Austin
Ethics Review Commission

LETTER OF ADMONITION

TO: Dr. Fred L. McGhee

FROM: City of Austin Ethics Review Commission

DATE: October 1, 2014

RE: Determination of Sanctions under City Code, Sections 2-7-48 and 2-7-49

In accordance with Chapter 2-7 of the Austin City Code, this letter is to advise you that the City of Austin Ethics Review Commission (the "Commission") has completed its consideration of the complaint filed with the Commission against you on September 3, 2014.

The complaint alleges that you violated Section 2-2-14 of the Austin City Code ("Section 2-2-14"). Following completion of the hearing procedures in Article 3 of Chapter 2-7, the Commission determined that a violation occurred. Specifically, the Commission found that you violated Section 2-2-14 by producing and distributing political advertising that did not include the required disclaimer concerning the campaign's agreement or non-agreement to comply with the contribution and expenditure limits of the Austin Fair Campaign Chapter.

The Commission further determined that this violation was minor or may have been unintentional. The Commission recommends that you, and all candidates, carefully review the terms of Section 2-2-14 to ensure that all future political advertising complies with City disclaimer requirements. The Commission recommends that candidates err on the side of including disclaimers.

Based on those determinations, the Commission issues this letter of admonition to you.

This action is effective as of September 23, 2014.

CITY OF AUSTIN ETHICS REVIEW COMMISSION

By: _____
Commission Chair Austin Kaplan

CITY OF AUSTIN ETHICS REVIEW COMMISSION

SHAUN IRELAND Complainant	§ § §	**Complaint No. 20140902**
v.	§ §	
FRED L. McGHEE Respondent.	§ §	

ORDER ON PRELIMINARY HEARING AND COMPLAINT

I. PROCEDURAL HISTORY

On September 3, 2014, Shaun Ireland ("Complainant") submitted to the Austin City Clerk ("City Clerk") a Sworn Complaint ("the Complaint") against Fred L. McGhee ("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 September 12, 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 September 22, 2014, and advising the Respondent and Complainant of procedures for the Preliminary Hearing. On September 18, 2014, Tom issued a Revised Notice of Preliminary Hearing resetting the Preliminary Hearing to September 23, 2014.

On September 19, 2014, Tom posted a Notice of Special Called Meeting and Agenda for the Commission for a September 23 Preliminary Hearing.

II. FINDINGS OF FACT

1. Respondent is a candidate for Austin City Council, District 3, in the City of Austin municipal election of November 4, 2014.

2. Complainant states that he is an Austin resident.

3. Complainant alleges that Respondent violated Section 2-2-14 of the Austin City Code ("Section 2-2-14") by printing and mailing political advertising without disclosure notices required under Section 2-2-14 and by the Texas Election Code.

4. Complainant attached to the Complaint a copy of a postcard promoting a book by Respondent that was postmarked August 19, 2014. The postcard also makes reference to Respondent's City Council campaign, including the statement "Dr. Fred L. McGhee for Austin City Council District 3" and "Join our city council campaign!" The postcard also lists a campaign Facebook web page and a Twitter address.

5. The copy of the postcard attached to the Complaint does not include a State of Texas or City of Austin disclaimer.

6. At the Preliminary Hearing, Respondent acknowledged under oath that he had sent multiple copies of the postcard, and that it did not comply with "disclaimer" requirements for political advertising in the City Code.

III. CONCLUSIONS OF LAW

1. The September 23 Meeting of the Commission and the 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*).

3. Under Section 2-7-44 of the City Code, (Section 2-7-44) the Respondent is not required to attend or make any statement at a Preliminary Hearing. Complainant and Respondent have each been afforded an opportunity to appear at the Preliminary Hearing in accordance with Chapter 2-7.

4. 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 2-2-14 has occurred.

5. The Commission does not have jurisdiction to determine whether a violation of the Texas Election Code has occurred.

6. Under Section 2-7-44, at 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. The Commission may also decide whether a final hearing on the Complaint should be held. If a respondent

acknowledges the existence of a violation, the Commission may proceed directly to determinations on the Complaint.

7. Pursuant to Section 2-2-14, which is part of the Austin Fair Campaign Chapter, ("The Fair Campaign Chapter") a candidate in a City election must include on "political advertising" either the disclaimer "*This campaign has agreed to comply with the contribution and expenditure limits of the Austin Fair Campaign Chapter,*" or "*This campaign has not agreed to comply with the contribution and expenditure limits of the Austin Fair Campaign Chapter.*"

8. Pursuant to Section 2-2-14(D), this requirement does not apply to "bumper stickers, pins, buttons, pens, apparel, and similar small or impractical items upon which the notice cannot be conveniently printed."

9. Under Section 2-2-2(18) of the City Code, "*political advertising*" has the meaning set out in the Texas Election Code.

10. Under Section 251.001(16), Texas Election Code, the definition of "political advertising" is as follows:

> *(16) "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure 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.

IV. DETERMINATIONS OF THE ETHICS REVIEW COMMISSION

1. Based on the Respondent's acknowledgments at the Preliminary Hearing, the Commission determines that reasonable grounds exist to believe that a violation of Section 2-2-14 of the City Code occurred as a result of the actions or omissions described in the Complaint.
2. The Commission will not set the Complaint for final hearing.
3. The Commission determines that a violation of Section 2-2-14 occurred.
4. The Commission determines that this violation was minor or unintentional.

V. PROSECUTION RECOMMENDATION

1. The Commission recommends that the violation not be prosecuted.

VI. SANCTIONS BY THE ETHICS REVIEW COMMISSION

1. The Commission issues the following sanction in accordance with Sections 2-7-48 and 2-7-49(F) of the City Code: a Letter of Admonition to the Respondent.

ORDERED this 23rd day of September, 2014.

Austin Kaplan
Chair, Ethics Review Commission