

CITY OF AUSTIN ETHICS REVIEW COMMISSION

EARL L. JONES, III
Complainant

v.

MACKENZIE KELLY
Respondent.

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Complaint No. 20140917

ORDER ON PRELIMINARY HEARING

I. PROCEDURAL HISTORY

On September 17, 2014, Earl A. Jones, III (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a Sworn Complaint (“the Complaint”) against Mackenzie Kelly (“Respondent”). On September 17, 2014, 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 30, 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 October 28, 2014, and advising the Respondent and Complainant of procedures for the preliminary hearing.

On October 24, 2014, Tom posted a Notice of Regular Meeting and Agenda for the Commission for an October 28 Preliminary Hearing.



City of Austin
Ethics Review Commission

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II. FINDINGS OF FACT

1. Respondent is a candidate for Austin City Council, District 6, in the City of Austin municipal election of November 4, 2014.
2. Complainant alleges that Respondent entered into a “campaign contract” (under Section 2-2-11 of the Austin City Code) (“Section 2-2-11”) and was required under the Austin Fair Campaign Chapter to participate in live candidate forums.
3. Complainant alleges that Respondent failed to appear at a District 6 candidate forum conducted September 15, 2014, at Hope Presbyterian Church at 6:00 p.m.
4. Both Complainant and Respondent appeared at the Preliminary Hearing and made statements.
5. Respondent admitted that she entered into a campaign contract.
6. Respondent admitted that she did not attend the District 6 candidate forum on September 15, 2014.
7. Respondent testified that she failed to attend the forum due to medical reasons.
8. Respondent testified that she notified Tom of her reason for missing the forum after the forum had already begun.

III. CONCLUSIONS OF LAW

1. The October 28 Meeting of the Commission and the Preliminary Hearing on this Complaint 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 complaints alleging violations of Chapter 2-2 of the City Code (Campaign Finance); 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); Section 2-1-24 of the City Code (Conflict of Interest and Recusal); and Chapter 4-8 of the City Code (Regulation of Lobbyists).
3. The Complaint alleges a violation of Chapter 2-2 of the City Code which is within the Commission's jurisdiction.
4. Under Section 2-2-65(A) of the City Code ("Section 2-2-65(A)"), a candidate who signs a campaign contract must participate in a series of candidate forums produced by the Commission. The Commission has jurisdiction over this provision under its civil enforcement authority.
5. The requirement to participate in a series of candidate forums pursuant to Section 2-2-65(A) is incorporated into the standard "Campaign Contract" promulgated by the City Clerk. The Commission does not have jurisdiction to enforce the terms of a campaign contract.
6. 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 were each afforded an opportunity to appear at the Preliminary Hearing in accordance with Chapter 2-7.



7. 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.
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. At the Preliminary Hearing, Respondent admitted that her actions constituted a violation of Section 2-2-65(A), but cited as extenuating circumstances a medical issue existing on the date of the Commission produced candidate forum.
10. When a Respondent admits the existence of a violation, the Commission may proceed to determinations and decisions on referrals and sanctions as if it were acting in a final hearing.

IV. DETERMINATIONS OF THE ETHICS REVIEW COMMISSION

1. The Commission determines that reasonable grounds 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 set out in the Complaint with respect to the Respondent's entering into a voluntary campaign contract and non-attendance at a Commission produced candidate forum.



2. Based on the Respondent's admissions, the Commission further determines that a violation of Section 2-2-65(A) occurred.
3. The Commission determines that the appropriate sanction is a Letter of Notification to the Respondent because the violation was clearly unintentional.

V. SANCTION

1. The Commission authorizes the Chair to prepare a Letter of Notification to Respondent stating that, in the event that Respondent is unable to attend a Commission produced candidate forum for medical reasons, the candidate should notify the event coordinators prior to the beginning of the forum if possible.

ORDERED as of this 28th day of October, 2014.



Austin Kaplan
Chair, Ethics Review Commission

