

The Proposed Independent Ethics Commission and the City Auditor: Which Body Should Have Jurisdiction Over Various Conflicts of Interest Investigations?

By Fred I. Lewis (3/12/2018)

The issue here is the respective investigation authority over conflict of interest and ethics investigations between the City Auditor and the proposed Independent Ethics Commission (“Ethics Commission”). The Commission’s other jurisdictional areas, such as campaign finance and lobbyist disclosure, are not in question.

Currently, conflict of interest and ethics (hereafter conflicts of interest”) investigations are handled under Austin City Code, Section 2-3, by the City Auditor for City officials and employees in various ways:

- 1) **The City Council, City Council staff, and City Manager.** The City Auditor hires an outside audit firm to investigate (because of the City Auditor’ s own potential conflict of interests) and the matter is heard by the Ethics Review Commission (ERC). Austin Code, Section 2-3-5(K).

Recommendation: Since the City Auditor does not handle these investigations, I believe these conflicts of interest allegations should be investigated and presented by the proposed Ethics Commission’s staff.

- 2) **Municipal Civil Service Employees.** The City Auditor investigates municipal civil service employees for violations of city laws and policies, including ethics violations; the cases are heard by the Municipal Service Commission, not the Ethics Review Commission. Austin Code, Section 2-3-5 (L)

Recommendation: Keep the process the same, with the City Auditor investigating and the Municipal Civil Service Commission hearing the conflicts of interest allegations. These municipal civil service cases will not be heard by the Ethics Commission, so its staff should not be investigating these issues.

- 3) **The City Clerk, Clerk of the Municipal Court Clerk, members of Board and Commissions, and City employees who are not members of the Civil Service.** The City Auditor currently investigates conflict of interest allegations against these officials and employees, and their cases are heard by the ERC. Austin City Code, Section 2-3-5 (L). All these cases would now be heard by the proposed Commission, since there would be no remaining body to hear them.

Recommendation: I believe the 2 Clerks should be under the Commission’s investigatory jurisdiction (similar to the City Manager) and the non-civil service employees under the City Auditor’s (because of the intermingling of city personnel policies with these issues and the workload). The more difficult issue, for me, is whether the Board members should be under the Auditor’s or Commission’s investigatory authority. I believe it should be the Commission because of their specialization in conflicts and because they have their own independent attorneys.