

CITY OF AUSTIN ETHICS REVIEW COMMISSION

JAMES WICK
Complainant

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Complaint No. 20181030

v.

LUKE MCALPIN
Respondent

ORDER ON PRELIMINARY HEARING

I. PROCEDURAL HISTORY

On October 30, 2018, James Wick (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a Sworn Complaint (“the Complaint”) against Megaphone GPAC, Luke McAlpin, Treasurer (“Respondent”). On October 30, 2018, the City Clerk sent a copy of the Complaint and a notice of filing to the City Attorney, the Chair of the Ethics Review Commission (“the Commission”), Complainant, and Respondent.

The Complaint alleges that the Respondent violated Section 2-2-23(C) of Austin City Code, Chapter 2-2 (Campaign Finance). The Complaint alleges a violation occurred October 29, 2018, and that Megaphone PAC failed to file an appointment of campaign treasurer 60 days prior to making an expenditure on October 26, 2018. The Complaint alleges a campaign treasurer appointment was filed by Megaphone PAC on October 19, 2018.

On November 28, 2018, a Notice of Preliminary Hearing was issued, which set the preliminary hearing regarding this complaint on December 12, 2018. The notice also advised Complainant and Respondent of the procedures for the Preliminary Hearing. On or about December 3, 2018, Complainant Wick requested a postponement of the preliminary hearing to the next available meeting, which request was granted.

On December 21, 2018, a revised Notice of Preliminary Hearing was issued, which set the preliminary hearing for January 9, 2019.

The agenda for the January 9, 2019 meeting of the Commission and Preliminary Hearing in this matter was timely posted on January 4, 2019.

II. FINDINGS OF FACT

1. Complainant is James Wick, who appeared at the preliminary hearing.
2. Respondent, Luke McAlpin, did not appear at the preliminary hearing.
3. 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.
5. Complainant presented evidence to support the allegations.

III. CONCLUSIONS OF LAW

1. A respondent is not required to appear at a preliminary hearing before the Commission.
2. The January 9, 2019 meeting of the Commission and the Preliminary Hearing were properly noticed in accordance with Chapter 2-7 of the City Code and the Texas Open Meetings Act.
2. Under City Code Section 2-7-26, the Commission has jurisdiction over complaints alleging violations of Chapter 2-2 of the City Code (Campaign Finance).
3. The Complaint was filed with the City Clerk, was sworn to by Complainant, and identifies the section of the City Code alleged to have been violated, as required by Section 2-7-41 of the City Code.
4. City Code Section 2-2-23(c) states:

A general purpose political committee that makes more than 50 percent of its expenditures in a reporting period in connection with a City election, or

makes an expenditure of \$2,500 or more in connection with a City election, or intends to do so, shall file with the city clerk as a notice of intent an original or a copy of its current "Appointment of a Campaign Treasurer" not later than the 60th day before making a contribution or expenditure in connection with a City election. At the written request of the general purpose political committee, the original filing with the city clerk of the "Appointment of a Campaign Treasurer" may serve as a notice of intent to participate in future City elections.

5. 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.

6. The U.S. Fifth Circuit Court of Appeals held that a similar 60-day waiting period in state law was unconstitutional in *Catholic Leadership Coalition of Texas v. Reisman*, 764 F.3d 409, 428-432 (5th Cir. 2014).

IV. DETERMINATION OF THE ETHICS REVIEW COMMISSION

At the conclusion of the preliminary hearing, a motion was made and seconded to dismiss the complaint based on the U.S. Fifth Circuit Court of Appeals decision in *Catholic Leadership Coalition of Texas v. Reisman*. The motion passed by unanimous vote of the seven Commission members present at the hearing.

The Commission orders that the complaint be dismissed.

ORDERED as of the 9th day of January, 2019.



Ben Stratmann
Chair, Ethics Review Commission