



ETHICS REVIEW COMMISSION

MEETING MINUTES

Wednesday, January 13, 2021

The Ethics Review Commission (“Commission”) convened in a regular meeting on Wednesday, January 13, 2021, Austin, Texas via Videoconference.

Chair Luis Soberon called the meeting to order at 6:10 p.m.

All Commissioners were in attendance: Chair Luis Soberon, Vice-Chair J. Michael Ohueri, Secretary Kenneth “Tray” Gober, and Commissioners Debra Danburg, Betsy Greenberg, Mary Kahle, Raafia Lari, Robin Lerner, Donna Beth McCormick, Nathan Ryan and Pedro A. Villalobos.

City Staff in Attendance: Lynn Carter, Commission Executive Liaison & Assistant City Attorney; Ashley Glotzer, Division Chief and Assistant City Attorney; Sue Palmer, Staff Liaison, Law Department.

CITIZEN COMMUNICATION

Each person who signed up to speak prior to the meeting being called to order and who designated this item on which to speak, or who did not designate an agenda item on which to speak will be allowed three minutes to speak.

There were no speakers for citizen communication.

1. EXECUTIVE SESSION

The Ethics Review Commission may announce it will go into Executive Session pursuant to Chapter 551 of the Texas Government Code to receive advice from legal counsel on any matters specifically listed on this agenda (Private Consultation with Attorney-Section 551.071).

The Commission may go into executive session to discuss legal issues related to:

- (a) Complaints filed by Mark Littlefield against Peck Young, Voices of Austin, which complaints allege violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-33 (Disclosure Statement Required).
- (b) Complaints filed by Mark Littlefield against Ellen Wood, Had Enough Austin PAC and Ellen Wood, Fight for Austin PAC, which complaints allege violations of City Code Chapter 2-2 (Campaign Finance) Sections 2-2-3 (Conformity with Texas Election Code) and 2-2-32 (Reporting of Direct Campaign Expenditures).
- (c) A complaint filed by Mark Littlefield against Save Austin Now, which complaint alleges violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-23 (Political Committees).

The Commission went into executive session at 6:13 p.m. and the open meeting resumed at 7:11 p.m.

2. PRELIMINARY HEARINGS

Discussion and possible action regarding the following:

- a. A complaint filed by Mark Littlefield against Save Austin Now, which complaint alleges violations of City Code Chapter 2-2 (Campaign Finance) Sections 2-2-23 (Political Committees) and 2-2-26 (Filing Campaign Finance Report Data) of Chapter 2-2 (Campaign Finance).

Outside counsel, Steve Sheets, appeared as counsel for the Commission in regard to this complaint, and Executive Liaison and Assistant City Attorney, Lynn Carter, assisted with procedural questions.

Parties Attending: Complainant Mark Littlefield appeared; attorney for Respondent, Donna Davidson, and representative Matt Mackowiak appeared on behalf of Respondent.

The parties had an opportunity to make presentations at the preliminary hearing, and the Commission asked questions to the parties.

At the conclusion of the preliminary hearing, Chair Soberon made a motion to proceed to a final hearing because reasonable grounds exist to believe a violation of the City Code occurred. The motion was seconded by Commissioner Danburg. After discussion, the motion passed on a unanimous vote of 11-0. Voting in favor of the motion to amend: Chair Soberon, Vice-Chair Ohueri, Secretary Gober, and Commissioners Danburg, Greenberg, Kahle, Lari, Lerner, McCormick, Ryan, and Villalobos.

The Commission then requested that the parties describe evidence they would like to have for final hearing. Complainant asked to provide an email the following week and later described some specific requests for evidence he desired to obtain from respondent. Respondent's counsel also described evidence that respondent requests from complainant.

In regard to evidentiary requests for the final hearing, Chair Soberon made a motion to schedule the request for submission of specific evidence for a final hearing at the next regularly scheduled meeting, which was seconded by Commissioner Kahle. The motion to passed on a unanimous vote of 11-0. Voting in favor of the motion: Chair Soberon, Vice-Chair Ohueri, Secretary Gober, and Commissioners Danburg, Greenberg, Kahle, Lari, Lerner, McCormick, Ryan, and Villalobos.

Chair Soberon made a (restated) motion that the city liaison and outside counsel work with the parties to discuss the kind of evidence that may be presented at a final hearing, so that at the Commission's next regularly scheduled meeting the Commission can formally request the kind of evidence the Commission wants presented at the final hearing. The motion was seconded by Commissioner Kahle. The motion passed on a unanimous vote of 11-0. Voting in favor of the motion to amend: Chair Soberon, Vice-Chair Ohueri, Secretary Gober, and Commissioners Danburg, Greenberg, Kahle, Lari, Lerner, McCormick, Ryan, and Villalobos.

- b. Complaints filed by Mark Littlefield against Ellen Wood, Had Enough Austin PAC and Ellen Wood, Fight for Austin PAC, which complaints allege violations of City Code Chapter 2-2 (Campaign Finance) Sections 2-2-3 (Conformity with Texas Election Code) and 2-2-32 (Reporting of Direct Campaign Expenditures).

Ashley Glotzer, Division Chief and Assistant City Attorney, appeared as counsel for the Commission on this item.

Parties Attending: Complainant Mark Littlefield appeared; attorney for Respondent, Brian O'Toole and Respondent Ellen Wood also appeared.

The parties had the opportunity to make a presentation to the Commission, and the Commission asked questions to the parties. At the beginning of his presentation, Complainant Littlefield (without specificity) announced his withdrawal one of the four complaints he filed against Ellen Wood, Fight for Austin PAC and later clarified that he was withdrawing his complaint related to Ellen Wood's association with Fight for Austin PAC.

At the conclusion of the preliminary hearing, Vice-Chair Ohueri made a motion to find that the complaint filed against Ms. Wood by Mr. Littlefield that alleged a violation of Austin Code Section 2-2-3 does not in fact allege a violation of the City Code. The motion was seconded by Secretary Gober. Chair Soberon then made a motion to amend to allow the complainant 30 days to amend or resubmit the complaint in regard to the two complaints alleging violation of Section 2-2-3, which motion was seconded by Commissioner Kahle. The motion passed on a unanimous vote. Voting in favor: Chair Soberon, Vice-Chair Ohueri, Secretary Gober, and Commissioners Danburg, Greenberg, Kahle, Lari, Lerner, McCormick, Ryan, and Villalobos.

The Commission then voted on the motion as amended, that the two complaints alleging a violation of Code Section 2-2-3 fail to state a violation and that the complainant will have 30 days to amend or resubmit the complaint. The motion as amended passed on a unanimous vote of 11-0. Voting in favor of the motion to amend: Chair Soberon, Vice-Chair Ohueri, Secretary Gober, and Commissioners Danburg, Greenberg, Kahle, Lari, Lerner, McCormick, Ryan and Villalobos.

Commissioner Greenberg made a motion to dismiss both alleged violations that state the respondent should have filed the ATX1 report. The motion was seconded by Commissioner Kahle. The motion passed on a vote of 10-1. Voting in favor of the motion: Chair Soberon, Vice-Chair Ohueri, Secretary Gober, and Commissioners Danburg, Greenberg, Kahle, Lari, Lerner, McCormick, and Ryan. Commissioner Villalobos voted against the motion.

- c. A complaint filed by Mark Littlefield against Peck Young, Voices of Austin, which complaint alleges violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-33 (Disclosure Statement Required).

Parties Attending: Complainant Mark Littlefield appeared; Attorney Roger Borgelt appeared on behalf of Peck Young and Voices of Austin.

Complainant Mark Littlefield stated that the complaint stating a violation of City Code Section 2-2-33 [with an alleged violation date of September 26, 2020] can be dismissed because Our Mobility [Our Future] PAC previously acknowledged making the automated voice call. Mr. Littlefield then addressed the second complaint allegation, which alleged a violation on October 2, 2020 that involved a mailer. At the beginning of his presentation, Mr. Borgelt stated that Voices of Austin made no “robo-calls” [automated calls] in regard to the complaint that he believed Mr. Littlefield had withdrawn that complaint.

During the preliminary hearing, the parties each had an opportunity to make a ten-minute presentation to the Commission and each party completed their presentations. Following the presentations of the parties, the Commission began its questioning of the parties.

At 9:43 p.m. a WebEx failure caused a loss of the WebEx virtual meeting connection for all commissioners and parties. The meeting was automatically adjourned at 10:00 p.m.

3. OLD BUSINESS

a. Discussion and possible action regarding the following:

i. Working group status reports and/or recommendations on the following.

Working group one (Vice-Chair Ohueri and Commissioners Greenberg and Lerner) on the following subjects:

- Commission sanctions including effectiveness, past cases, and recommendations.
- Potential amendments to City Code, Chapter 2-7 (Ethics and Financial Disclosure).

ii. Working group two (Chair Soberon and Secretary Gober) on the following subjects:

- Commission procedures including effectiveness, past cases, and recommendations.
- Scope of work of the Commission (powers, duties, and obligations), including effectiveness, past cases, and recommendations.
- Potential amendments to the Rules of the Ethics Review Commission.
- Best practices for city attorney opinions including effectiveness, past cases, and recommendations.

iii. Equity Working Group (Commissioners Kahle, Lari, and Ryan) status report and/or recommendations on addressing issues of race, identity, and equity including:

- (i) planning for presentations or trainings by the Equity Office;
- (ii) helping focus the Commission’s evaluation of racial injustice and how the Commission can operate more fairly and effectively in light of racial injustice.

This item was not reached prior to adjournment.

**4. APPROVAL OF MINUTES: OCTOBER 14, 2020 AND NOVEMBER 18, 2020
REGULAR COMMISSION MEETINGS.**

(a) Discussion and possible action regarding the minutes for the October 14, 2020 regular commission meeting.

(b) Discussion and possible action regarding the minutes for the November 18, 2020 regular commission meeting.

This item was not reached prior to adjournment.

5. FUTURE AGENDA ITEMS

This item was not reached prior to adjournment.

ADJOURNMENT

The meeting was automatically adjourned at 10:00 p.m. due to (1) a WebEx failure at 9:43 p.m. and (2) an inability to reinstate the WebEx connection within sufficient time for a quorum to reconvene and consider a motion to extend the meeting past 10:00 p.m. as required by the Commission bylaws.