

CITY OF AUSTIN ETHICS REVIEW COMMISSION

BRIAN MOLLOY
Complainant

§
§
§
§
§
§
§

Complaint No. 20200903

v.

DELIA GARZA
Respondent

ORDER ON PRELIMINARY HEARING

I. PROCEDURAL HISTORY

On September 3, 2020, Mr. Brian Molloy (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a sworn complaint (“the Complaint”) against Ms. Delia Garza (“Respondent”). On September 3, 2020, the City Clerk sent a copy of the Complaint and a notice of filing to the City Attorney, the Ethics Review Commission (“the Commission”), Complainant, and Respondent.

The Complaint alleged that the Respondent violated: Austin City Code, subsection (I) of Section 2-7-62 (Standards of Conduct), which provides: “A salaried City official or employee may not use the official’s or the employee’s official position to secure a special privilege or exemption for the official or the employee, to secure a special privilege or exemption for another person, to harm another person, or to secure confidential information for a purpose other than official responsibilities;” and subsection (J) of Section 2-7-62 which provides: “No City official or employee shall use City facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public, or to the extent that facilities, equipment or supplies are allowed to be used in a limited or de minimis manner in accordance with City policy”.



On October 20, 2020, an amended notice of preliminary hearing was issued setting a preliminary hearing of the Commission for November 18, 2020, and which advised Complainant and Respondent of the procedures for the preliminary hearing.

The agenda for the November 18, 2020, meeting of the Commission and Preliminary Hearing in this matter was timely posted on November 13, 2020.

II. FINDINGS OF FACT

1. Respondent is a member of the Austin City Council.
2. Complainant is Chief of Investigations, Office of the City Auditor.
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. Complainant appeared in at the hearing, with outside counsel and outside investigators. Respondent also appeared at the hearing, with counsel.

III. CONCLUSIONS OF LAW

1. Under Code Section 2-7-26, the Commission's jurisdiction includes jurisdiction over alleged violations of Chapter 2-7 of the City Code (Ethics and Financial Disclosure).
2. Under Code Section 2-7-44(A), 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.
3. Under Code Section 2-7-44(D), "[i]f the commission does not determine that there are reasonable grounds to believe that a violation has occurred, the complaint is dismissed."
4. Under Subsection (A) of City Code Section 2-1-6 (Quorum and Action), a majority of the total number of board members authorized to vote constitutes a quorum for conducting




business of the board, and six members of an 11-member board constitutes a quorum. Under Section 2-1-6(B), a board action must be adopted by an affirmative vote of the number of members necessary to provide a quorum; for an 11-member board, a board action must be adopted by an affirmative vote of six board members.

IV. DETERMINATION OF THE ETHICS REVIEW COMMISSION

At the conclusion of the preliminary hearing, a motion was made and seconded to find that reasonable grounds exist to find a violation of subsection (I) of City Code Section 2-7-62, and to proceed to a final hearing. The motion failed by a vote of three members in favor of the motion and six opposed. A subsequent motion was made and seconded to find that reasonable grounds exist to find a violation of subsection (J) of City Code Section 2-7-62, and to proceed to a final hearing. The motion failed by a vote of five in favor of the motion and four opposed. (Commissioners Ryan and Villalobos recused themselves from the preliminary hearing.)

The Commission, therefore, orders that the complaint be dismissed.

ORDERED as of the 18th day of November 2020.



Luis Soberon
Chair, Ethics Review Commission

