



ETHICS REVIEW COMMISSION

MEETING MINUTES Wednesday, December 11, 2019

The Ethics Review Commission (“Commission”) convened in a regular meeting on Wednesday, December 11, 2019, City Hall, Room 1027, 301 W. 2nd Street, Austin, Texas.

Chair Mary Kahle called the meeting to order at 6:10 p.m.

Commissioners in attendance: Chair Mary Kahle, Vice-Chair Luis Soberon, and Commissioners Debra Danburg, Betsy Greenberg, Robin Lerner, Donna Beth McCormick, J. Michael Ohueri, Nathan Ryan, and Pedro Villalobos. The liaison announced at the beginning of the meeting that Commissioner Ohueri is abstaining or recusing from items 1a and 2; Commissioner Ryan is abstaining or recusing from items 1a and 2; and Chair Kahle is abstaining or recusing from items 1c and 4. Secretary Kenneth “Tray” Gober and Commissioner Raafia Lari were absent.

City Staff in Attendance: Lynn Carter, Commission Executive Liaison & Assistant City Attorney, and Loren Doyen, Paralegal, Law Department.

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 matter specifically listed on this agenda (Private Consultation with Attorney-Section 551.071).

The Commission went into executive session to discuss legal issues related to:

- a. A complaint filed by Matthew Mackowiak, against Natasha Harper-Madison, which complaint alleges violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-7 (Commencement of Campaign Period).
- b. The Chair’s initial determination that the Commission lacks jurisdiction over a complaint filed by Mackenzie Kelly against Jimmy Flannigan, which alleges a violation of City Code Section 2-1-24 (Conflict of Interest and Recusal).
- c. Evidentiary issues and scheduling of final hearing related to a complaint filed by Robert Mark Littlefield against Unconventional Austin SPAC, which complaint alleges violation of City Code Chapter 2-2 (Campaign) Section 2-2-32 (Reporting of Direct Campaign Expenditures).

The Commission went into executive session at 6:13 p.m., and the open meeting resumed at 7:06 p.m.

GENERAL 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.

One speaker, Carlos León, spoke during General Citizen Communication.

2. PRELIMINARY HEARING

Discussion and possible action regarding the following:

A complaint filed by Matthew Mackowiak, against Natasha Harper-Madison, which complaint alleges violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-7 (Commencement of Campaign Period).

Commissioners Ohueri and Ryan recused themselves from participation on this item.

Commissioner Lerner made a motion that pursuant to City Code Chapter 2-7-44(B) the respondent has conceded that a violation was made. Commissioner Greenberg seconded the motion, which passed unanimously by the members present. Voting in favor: Chair Kahle, Vice-Chair Soberon, and Commissioners Danburg, Greenberg, Lerner, McCormick, and Villalobos. Commissioners Ohueri and Ryan recused themselves. Secretary Gober and Commissioner Lari were absent.

Commissioner Villalobos made a motion pursuant to City Code Chapter 2-7-48(C)(1) that a letter of notification be issued as the sanction against Natasha Harper-Madison, which was seconded by Commissioner Danburg.

Chair Kahle made a motion to amend the motion pursuant to City Code Chapter 2-7-48(C)(2) that a letter of admonition be issued as the sanction, which was seconded by Commissioner Greenberg. The motion failed. Outside counsel for the Commission, Austin Kaplan, stated that there were five votes in favor. The names of those voting in favor or against were not announced. Commissioners Ohueri and Ryan recused themselves. Secretary Gober and Commissioner Lari were absent.

A vote was then taken on the original motion by Commissioner Villalobos to issue a sanction of a letter of notification, which had been seconded by Commissioner Danburg. The motion failed on a vote of 4 in favor and 3 against. Voting in favor: Vice-Chair Soberon and Commissioners Danburg, Lerner, and Villalobos; voting against: Chair Kahle and Commissioners Greenberg and McCormick. Commissioners J. Michael Ohueri and Nathan Ryan recused themselves.

Vice-Chair Soberon then made a motion under City Code Chapter 2-7-48(C)(2) to issue a letter of admonition as a sanction; that the language of the letter of admonition hew closely to the language of the Code and not instruct respondent further other than to be mindful of

the various provisions subject of this complaint going forward. The motion was seconded by Chair Kahle.

Commissioner Greenberg stated that she agreed the violation may have been unintentional, but would not say it was minor and made a motion to amend the motion to require that the letter of admonition recommend that the respondent submit corrected January 2019 and July 2019 reports to the City Clerk. Commissioner Danburg seconded the motion. The motion to amend passed on a vote of 6-1. Members voting in favor: Chair Kahle, Vice-Chair Soberon, and Commissioners Danburg, Greenberg, Lerner, and McCormick; voting against: Commissioner Villalobos. Commissioners Ohueri and Ryan recused themselves. Secretary Gober and Commissioner Lari were absent.

Austin Kaplan then restated Vice-Chair Soberon's motion as amended, as follows: for sanctions to be issued under City Code § 2-7-48 and for the letter of admonition to be prepared to closely hew to the language of the Code; that the violation may have been unintentional; that respondent be mindful of the various provisions that are subject of this complaint moving forward; and that the ERC recommends that respondent submit correct and submit to the City Clerk the January 2019 and July 2019 campaign finance reports. The amended motion was seconded by Commissioner Danburg and passed on a vote of 6-1. Members voting in favor: Chair Kahle, Vice-Chair Soberon, and Commissioners Danburg, Greenberg, Lerner, and McCormick; voting against: Commissioner Villalobos. Commissioners Ohueri and Ryan recused themselves. Secretary Gober and Commissioner Lari were absent.

The Commission took a 10-minute recess between 8:34 and 8:44 p.m.

3. JURISDICTIONAL DETERMINATION

Discussion and possible action regarding the following:

The Chair's initial determination that the Commission lacks jurisdiction over a complaint filed by Mackenzie Kelly against Jimmy Flannigan, which alleges a violation of City Code Section 2-1-24 (Conflict of Interest and Recusal).

One speaker spoke on this item.

Commissioner Villalobos made a motion to confirm Chair Kahle's initial finding that the Ethics Review Commission does not have authority to hear the complaint as submitted by Ms. Kelly against Council Member Flannigan, which motion was seconded by Commissioner Ohueri. The motion passed unanimously by the members present. Those voting in favor of the motion: Chair Kahle, Vice-Chair Soberon, and Commissioners Danburg, Greenberg, Lerner, McCormick, Ohueri, Ryan, and Villalobos. Secretary Gober and Commissioner Lari were absent.

4. FINAL HEARING¹

Discussion and possible action regarding the following:

Evidentiary issues and scheduling of final hearing related to a complaint filed by Robert Mark Littlefield against Unconventional Austin SPAC, which complaint alleges violation of City Code Chapter 2-2 (Campaign) Section 2-2-32 (Reporting of Direct Campaign Expenditures).

Chair Kahle recused from participation on this item.

One speaker spoke on this item.

Commissioner Ohueri made a motion that questions be submitted to Ryan Mauldin of Vici Media and allow the response to be in the form of a sworn affidavit or declaration to the following questions:

1. Provide the report for August and September of 2019 from the Facebook ad center and for advertisements and polls, answer and explain:
 - a. The dates the ads and polls ran;
 - b. how much the ads cost (base cost and cost based on number of hits or number of ads viewed);
 - c. how much the polls cost (base cost and cost based on number of polls completed or partially completed);
 - d. the dates the ads and polls were active.
2. What was Vici Media instructed by Unconventional Austin in regard to stopping/ceasing each Facebook poll or advertisement and when was each instruction given to Vici Media by Unconventional Austin (including how the information was communicated and the date of the instruction)?
3. Answer and explain: Did any polls (created by or with the assistance of Vici Media for Unconventional Austin) continue to run after the 61st day prior to the November 5, 2019 election?
4. Answer and explain: Did any ads (created by or with the assistance of Vici Media for Unconventional Austin) continue to run after the 61st day prior to the November 5, 2019 election?
5. Answer and explain: How were the poll questions formulated, including (a) who wrote the questions; (b) were the questions written in consultation with anyone from Unconventional Austin (and identify those persons); and (c) if Vici Media consulted with anyone from Unconventional Austin, explain how Vici Media consulted with Unconventional Austin on the content of the poll questions.

¹ No final hearing will take place due to the chair's granting of a postponement request; however, scheduling and evidentiary issues may be discussed and action may be taken.

The motion was seconded by Commissioner Nathan Ryan. The motion passed unanimously by the members present. Those voting in favor: Vice-Chair Soberon and Commissioners Danburg, Greenberg, Lerner, McCormick, Ohueri, Ryan, and Villalobos. Chair Kahle recused from this item. Secretary Gober and Commissioner Lari were absent.

5. APPROVAL OF MINUTES FOR OCTOBER 9, 2019 AND NOVEMBER 13, 2019 REGULAR COMMISSION MEETING

Commissioner McCormick made a motion to approve the October 9, 2019 minutes, which was seconded by Commissioner Greenberg. The motion passed unanimously by those present. Those voting in favor: Vice-Chair Soberon and Commissioners Danburg, Greenberg, Lerner, McCormick, Ohueri, Ryan, and Villalobos. Chair Kahle; Secretary Gober, and Commissioner Lari were absent.

Commissioner J. Michael Ohueri made a motion to approve the November 13, 2019 minutes, which was seconded by Commissioner McCormick. The motion passed unanimously by those present. Those voting in favor: Vice-Chair Soberon and Commissioners Danburg, Greenberg, Lerner, McCormick, Ohueri, Ryan, and Villalobos. Chair Kahle; Secretary Gober, and Commissioner Lari were absent.

6. FUTURE AGENDA ITEMS

Future agenda items were not discussed.

ADJOURNMENT

Vice-Chair Soberon adjourned the meeting at 9:54 p.m.