

**BOARD OF ETHICS
PANEL MEETING
MEETING MINUTES
March 6, 2019**

A Panel of the Board of Ethics of the City of Denton, Texas convened to conduct a Preliminary Assessment in compliance with the City of Denton's Ethic Ordinance Section 2-280 on Wednesday, March 6, 2019 at 5:30 p.m. in the Finance Conference Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Lara Tomlin, Interim Chair; Deborah Cosimo, and Ron Johnson

STAFF PRESENT: Umesh Dalal, City Auditor; Betsy Snodgrass, Administrative Assistant

COUNCIL MEMBERS:

OTHERS: Herbert Prouty, Outside Counsel representing the Alan Bojorquez Firm, Peggy Heinkel-Wolfe, Pati Haworth

Lara Tomlin, Interim Chair of the City of Denton Board of Ethics brought the meeting to order at: 5:30 p.m.

ITEM FOR CONSIDERATION

1. Ethics Complaint No. 19-001 filed February 20, 2019, concerning alleged violations of Ethics Ordinance Section 2-273(a)(3)(B).

Lara Tomlin began by referencing Ethics Code Section 2-280 (a) through (c) regarding the procedures in conducting a Preliminary Assessment. She gave a summary of the Complaint 19-001 against chairperson Jesse Davis filed by Council Member Paul Meltzer. She stated that the panel is to consider whether the Complaint is actionable or baseless. Actionable complaints will be returned to the Chairperson for listing on an agenda for a public hearing. Depending on the Panel outcome, the Complainant or Accused has 10 days from written notification to file an appeal with the City Auditor.

Tomlin continued with a description of the Complaint. Council Member Paul Meltzer filed a Complaint that referenced Ethics Code section 2-273 (a)3(B) defining a conflicting interest as a "stake, share, equitable interest, or involvement in an undertaking in the form of" ..." receipt of more than six-hundred dollars (\$600.00) in gross annual income from a Business Entity, as evidenced by a W-2, 1099, K-1, or similar tax form". Tomlin added that the violation is actually addressed in Code Section 2-273 (a)(1).

Meltzer had previously requested an advisory opinion on February 6, 2019 on whether he and Council Member Deb Armintor could deliberate and vote on a polling location at UNT. Armintor and Meltzer's wife are both employed by UNT. The Advisory Opinion panel determined that Meltzer and Armintor voting on a polling place at UNT would be a violation of the Ethics Ordinance. Meltzer's Complaint alleges that Jesse Davis had filed as a candidate for Council Seat District 3 and had a conflicting interest while chairing the Panel that made the Advisory Opinion determination. Meltzer based the Complaint on the receipt of more than \$600.00 that Davis would receive as a Council Member. Tomlin stated that the Panel will now have to decide if Meltzer's Complaint with evidence is actionable.

Tomlin read the definition of pending matter from the Ethics Ordinance: "an application seeking approval of a permit or other form of authorization required by the City, State, or Federal law; a proposal to enter into a contract or arrangement with the City for the provision of goods, services, real property, or other things of value; a case involving the City that is (or is anticipated to be) before a civil, criminal, or administrative tribunal". Tomlin stated that she was not sure whether "administrative tribunal" was applicable in this case and asked the Panel for discussion.

Ron Johnson stated that he does not see it as a pending matter in the context of the Ethics Ordinance, and he does not interpret the Advisory Opinion as an "administrative tribunal". Deborah Cosimo added that the term "administrative tribunal" is not clearly defined. Tomlin thought it may not be a pending matter, but it is not clear.

Tomlin asked that the Panel move on to discuss the conflicts of interest aspect of the Complaint. Cosimo and Johnson agreed to move on. Tomlin stated that Davis is a candidate for City Council but has not received the \$600.00 referenced in the Code as he has not been elected. Section 273 (a)(3)(B) states "...as evidenced by a W-2, 1099, K-1, or similar tax form". Tomlin noted that the proof of payment does not have to be immediately produced as evidence. She added that since Davis is not currently on City Council, he is not in receipt of more than \$600.00 and, therefore; he has no conflict of interest as defined in the Ethics Code.

Johnson agreed that there is clearly no conflict of interest.

Cosimo stated that she did not read it that way. She saw the declaration of Davis' candidacy as an "involvement" per Section 2-273 (a)(3). Johnson asked what benefit Davis has received. Cosimo stated that it may help his candidacy and may be an intangible benefit. Tomlin replied that after May 4th's election, Davis may have an involvement if he wins the election, but he would not be serving on the Ethics Board at that point. There is no way of predicting whether or not he will win. Tomlin stated that they must go by the definition of items "A-F" in Section 2-273 (a)(3) and added that Davis is not currently making \$600.00. Cosimo replied that it may benefit Davis in the future and asked if Davis' candidacy would be an "involvement in an undertaking" as stated in the City's Ethics Code Section 2-273 (a)(3).

Johnson responded that Davis was not deciding on polling places. The prior Advisory Opinion was on whether two Council Members should vote on City polling places. How could it benefit him if he did not know how those two Council Members would be voting? Johnson said that he was quoted correctly in the Denton Record-Chronicle when stating that the Advisory Opinion Panel made the correct decision based on the Ordinance even if it did not make sense. The definition of conflict of interest in the Ordinance needs to change. The Advisory Opinion did not involve the election. It involved two people voting on polling places.

Cosimo stated that she was still feeling uncomfortable and asked if there are red flags with the way the Code is written.

Tomlin stated that the Ordinance is the law that the Council passed. The Board of Ethics must follow the Code as written when making decisions. The Code includes in Section 2-271 with a list of expectations, but they are aspirational and “shall not serve as a basis for a Complaint”. She stated that Davis has not been paid \$600.00 and therefore does not fall under the Ethics Code as having a conflict of interest. Cosimo asked the Panel members for clarity in reference to “involvement in an undertaking” Tomlin responded that the Code states “involvement in an undertaking in the form of any one (1) or more of the following”. It does not state involvement of any kind. Cosimo said that she can see that rational and that the \$600.00 has not happened yet. Johnson stated that he does not see any involvement.

Tomlin asked if there has to be a consensus on the vote as to whether the Complaint is actionable or baseless. Hebert Prouty stated no, just a majority. Cosimo asked about including recommendations in the written decision. Prouty advised the Panel to make the decision on the basis of the Complaint and any recommendations would have to be at a later time. Tomlin added the importance of changing the Ethics Ordinance in the future regarding the definition of conflict of interest.

Tomlin asked for a vote and by a unanimous decision, all agreed that the Complaint was baseless. The Complaint will be dismissed, and Tomlin will send notice to the City Auditor.

Prouty recommended advising the Complainant of their right to appeal. Tomlin noted that the Panel’s determination would need to be filed with the City Auditor and sent to the Chairperson, Complainant, the Accused and the City Attorney with two business days. An appeal would have to be filed within 10 business days. Umesh Dalal agreed and asked if the appeal would go to the full Board of Ethics. Prouty stated that it would be appealed to the full Board. Johnson stated that the way the Code reads, the appeal could happen before the actual hearing. Prouty agreed in reading the Ethics Code Section 2-281 (c) that it could happen that way. Tomlin thought the issue should be addressed in a future meeting.

Meeting adjourned at 6:00 pm.

