

ETHICS ADVISORY COMMISSION HEARING

MINUTES

Friday, September 5, 2003, Room 6ES

Members Present: Daniel Perez, Chair
Calvin Bluiett, Vice-Chair
Rebecca B. Bergstresser
Jim Clark
Margaret Donnelly
Linda Sorrells
Gloria Tarpley

Staff Present: Shirley Acy, City Secretary
Tom Perkins, City Attorney's Office
Jesus Toscano, City Attorney's Office
Jason Schuette, City Attorney's Office
Gwen Satterthwaite, City Attorney's Office
Lisa Christopherson, City Attorney's Office
Michelle M. Calloway, City Secretary's Office
Debbie Brown, City Secretary's Office
Yolanda Hernandez, City Secretary's Office
Richard Etheridge, City Secretary's Office

Respondents: Mayor Laura Miller
Steven Wolens, Attorney
Crayton Webb
Morris (Woody) Petty
John Briscoe
Marion Ward, Court Reporter

Complainants: Lovie Lipscomb
Heath Harris, Attorney
Albert Lipscomb, advisor

The meeting was called to order at 9:20 a.m.

Chair Perez asked everyone to identify themselves for the record.

Chair Perez swore in Morris Petty, Laura Miller and Mary Hasan.

Chair Perez allowed Attorney Heath Harris to offer his opening statement. Chair Perez asked Attorney Steve Wolens if he would like to make a brief statement. Attorney Wolens passed.

Chair Perez swore in James Roque and Glenda Aguirre.

Chair Perez asked Crayton Webb, Morris Petty and John Briscoe if they wanted to make a statement. They declined.

The Chair asked the City Attorney's Office if Mr. Briscoe was covered under the ethics code since he was currently not a city employee. City Attorney Jesus Toscano advised that he was not covered for purposes of this particular alleged violation.

Commissioner Tarpley moved to dismiss the complaint against Mr. Briscoe since he is not a city employee for lack of standing. Vice-Chair Bluiett seconded the motion. Attorneys Harris and Wolens did not have any comments on the motion. Motion passed unanimously.

Attorney Wolens introduced the following motions for dismissal in part of Mrs. Lovie Lipscomb's sworn complaint against Mayor Laura Miller, Crayton Webb and Morris Petty.

- 1) The original and amended complaints are defective
- 2) The amended complaint was not sworn to under penalty of perjury under 12A-26.

Attorney Wolens further requested that the complaint be dismissed against Woody Petty and Crayton Webb.

During the debate on Attorney Wolens motion for dismissal, Vice-Chair Bluiett moved to go into executive session to confer with the city attorney. Motion seconded by Commissioner Tarpley and adopted on a divided vote with Commissioner Clark voting no (6-1). Attorney Wolens objected to the executive session, on the basis that the hearing is an open, public meeting and that discussion with the City Attorney should take place publicly. Chair Perez called a recess at 10:13 a.m. to meet under Section 551.071 of the Texas Government Code (Open Meetings Act) to seek the city attorney's legal advice concerning the motion before the commission and the code of ethics and its implementation.

Following the executive session, the Ethics Commission reconvened in open session at 10:42 a.m.

During debate on Attorney Wolens motion for dismissal, Vice-Chair Bluiett moved to deny the motion and to proceed with the hearing. Commissioner Donnelly seconded the motion. The motion passed unanimously.

Attorney Wolens introduced his second motion to dismiss the complaint against everyone except Mayor Miller due to lack of jurisdiction. Vice-Chair Bluiett moved to deny the motion made by Attorney Wolens and to proceed with the hearing. Commissioner Tarpley seconded the motion. The motion passed unanimously.

Attorney Wolens called James Roque, supervisor in Equipment and Building Services (EBS), as his first witness with no objection from Attorney Harris, Mr. Webb or Mr. Petty. Attorney Wolens, Ethics Advisory Commissioners and Attorney Harris proceeded to ask questions and receive testimony from Mr. Roque. After the examination and cross-examination, Mr. Roque was released as a witness.

The Chair called for a recess at 12:05 p.m.

The commission reconvened in open session at 12:57 p.m. Chair Perez asked Attorney Wolens to continue with his defense.

Commissioner Clark moved to take the matter to dismiss against Mayor Miller and Mr. Webb under advisement and proceed with the evidentiary hearing. Motion died for lack of a second.

Commissioner Clark moved to dismiss the complaint against Morris Petty. Chair Perez asked Attorney Harris if he would agree to dismiss the complaint against Morris Petty. He agreed to withdraw the complaint.

Attorney Wolens introduced exhibit 1, May 16, 2003 EAC Preliminary Panel agenda, EAC May 16, 2003 revised agenda, EAC May 16, 2003 draft minutes, June 5, 2003 EAC Preliminary Panel agenda and EAC June 5, 2003 draft minutes into the record.

The Commission voted on Attorney Wolens' request to dismiss the complaint against Crayton Webb. The motion failed on a 5-2 divided vote with Chair Perez and Commissioner Clark voting to dismiss.

Attorney Wolens made a motion to dismiss the complaint against Mayor Miller on the following seven points:

- 1) The law is incorrectly stated**
- 2) The facts in the complaint were unsupported**
- 3) The facts were controverted by affidavits from Kirk Yunc, Mayor Miller and Crayton Webb**
- 4) The preliminary panel never addressed the two fact statements addressed in the complaint**
- 5) The preliminary panel looked at violations that were never alleged as violations**
- 6) There is no basis in fact or law**
- 7) The preliminary panel never determined the two elements for it to get to the full hearing**

With no further discussion, Chair Perez called for a vote on Attorney Wolens' motion to dismiss the complaint against Mayor Miller. The motion failed with 6 members voting against the motion and Commissioner Clark abstaining.

Attorney Harris called Paulus Armstrong, security guard, EBS Department as his first witness. Chair Perez swore in Mr. Armstrong. Attorney Harris, Ethics Advisory Commissioners and Attorney Wolens proceeded to ask questions and receive testimony from Mr. Armstrong. After the examination and cross-examination, Mr. Armstrong was released as a witness.

Attorney Harris called Glenda Aguirre, scheduling secretary for Mayor Miller as a witness. Attorney Harris, Ethics Advisory Commissioners and Attorney Wolens proceeded to ask questions and receive testimony from Ms. Aguirre.

Attorney Wolens introduced the following exhibits into the record: exhibit 3, affidavit dated August 28, 2003 from Glenda Aguirre; exhibit 4, affidavit dated September 4, 2003 from Olivia Mora; exhibit 5, leave record for David Ashwood; affidavit dated July 14, 2003 from Glenda Aguirre into the record.

After examination and cross-examination, Ms. Aguirre was released as a witness. Both parties reserved the right to recall the witness.

The meeting adjourned at 3:26 pm.