

# **Village of Wimberley**

City Hall, 13210 Ranch Road 12

## **Ethics Commission**

Minutes of Special Called Meeting, May 17, 2005

Commission called to order by Chairman John Meyer at 5:34 p.m. Present were Commissioners Patrick Fain, Dan Jackson, Jenelle Flocke, Terrie Bursiel, and Earl McArthur.

Chairman Meyer explained that Cindy Colvert, City Secretary, would be taking minutes of the meeting, since Commissioner Lynda Thornton Morgan, who usually took the minutes, was absent.

Chairman Meyer stated the purpose of the meeting as printed in the Agenda under Consider & Act: "Preliminary Determination as to whether the facts alleged in a complaint received by the Village constitutes a violation of the Ordinance No. 2002-002 (Code of Governmental Ethics)."

Chairman Meyer then closed the Open Meeting at 5:37 p.m. and the Commission convened into Executive Session according to Texas Government Code, Section 551.071, private consultation between the Ethics Commission and its Attorney seeking advice about matters in which the duty of the Attorney to the Governmental Body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Open Meeting Law; and according to Texas Government Code, Section 551.074, to hear a complaint or charge against an officer or employee.

The Open Session reconvened at 6:12 p.m. The Commission requested a five (5) minute recess. At 6:20 p.m. the meeting reconvened. Commissioner Flocke recused herself from the proceedings, since her husband serves on the Zoning Board of Adjustment. The respondent to the complaint, Herschel P. McCullough, requested that Commissioner Flocke remain in the room during the Open Session.

Chairman Meyer gave copies of the complaint to the Commissioners for each to read. City Attorney Patty Akers explained the role of the Ethics Commission in evaluating the complaint. She stated that Mr. McCullough was entitled, but not required, to make a statement. Chairman Meyer asked Mr. McCullough if he desired to make a statement. Mr. McCullough responded in the affirmative and was asked to do so.

Mr. McCullough addressed the Commission. He asked why a complaint to the Texas State Ethics Commission was presented to the Ethics Commission of the Village. Patty Akers responded that this was an attachment to the complaint and was presented to the Commissioners as originally submitted by the Complainant.

Mr. McCullough provided answers to the three (3) allegations in the complaint as follows:

**Allegation #1:** Candidate failed to report a contribution of \$1,000 from a Political Action Committee:

- Mr. McCullough stated the contribution is shown in an amended report submitted 05/04/05. Mr. McCullough received the check on 04/20/05 but did not accept or deposit any checks, until 05/03/05.
- Mr. McCullough stated the packet given to candidates by the City was extensive, and that he had to go to the Texas Ethics Commission website for necessary forms. He provided a packet to Commissioners with accompanying instruction guide. Mr. McCullough explained use of the guide and asked that the Commissioners note on page 11, under 4, the distinction in date of contribution acceptance.
- Mr. McCullough stated he did not get the report filed by the date deadline, but came in later to file the report, and filed an amended report form at a later date.

**Allegation #2:** Candidate listed a campaign treasurer on signs and printed campaign material different from person named on Campaign Treasurer Form:

- Mr. McCullough stated the person listed is Liz Sterrett. Liz and Stan Sterrett are married; they decided Stan would make a better treasurer; Stan signed an amendment and the signs were printed with Stan's name on them.

**Allegation #3:** Candidate filed Campaign Finance Report due April 28, 2005 on May 3, 2005:

- Mr. McCullough stated the report filed does show this. Amended report shows all contributions (copies presented to commissioners).

Mr. McCullough concluded by stating that he believes he has done nothing meriting these charges.

Chairman Meyer clarified that the role of the Ethics Commission at this meeting was only to determine if a violation of the Ethics Code could have occurred. If the Commission determined that a violation could have occurred then they would schedule a future meeting to hear evidence regarding the complaint. The Commissioners then entered into discussion as to whether a violation of the Ethics Code could have been

committed by Mr. McCullough, or if he had erred in his campaign filings.

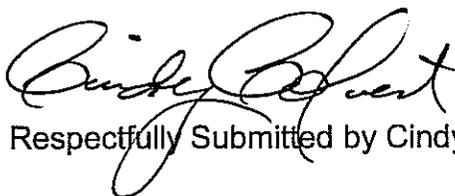
In regard to Allegation #1, the Commissioners thought that Mr. McCullough's statement of contributions as shown in the amended report was basis for dismissal.

In regard to Allegation #2, the Commissioners decided that the allegation was not considered as basis for an ethics charge, since an amendment was filed.

In regard to Allegation #3, it was noted that the Texas Election Code allows for a late filing.

Patrick Fain made a motion to dismiss all three (3) allegations and not go forward from this point. Terrie Bursiel seconded the motion. Chairman Meyer asked that the commissioners state their name as they voted. Patrick Fain, Dan Jackson, Earl McArthur, Terrie Bursiel, and John Meyer voted. The motion carried unanimously.

Patrick Fain made a motion for the meeting to adjourn. Earl McArthur seconded the motion. The meeting adjourned at 6:53 p.m.

  
Respectfully Submitted by Cindy Colvert

*approved,*  
