

City of Bastrop, Texas

RESOLUTION NO. R-2017-13

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING REIMBURSEMENT OF LEGAL FEES TO CITY COUNCIL MEMBER GARY SCHIFF INCURRED IN HIS DEFENSE OF ETHICS COMPLAINTS NO. 2016-1 and 2016-3.

WHEREAS, under Division Five of the Code of Ordinances of the City of Bastrop, an Ethics Commission was created to enforce the City of Bastrop's Code of Ethics; and

WHEREAS, any person at any time may file an ethics complaint, regardless of merit, against the Mayor or any member of the City Council or other City official; and

WHEREAS, the Ethics Commission must consider all complaints filed with it so long as the complaint meets the minimal standards set forth in the Code of Ordinances of the City of Bastrop Sec. 1.15.131(a); and

WHEREAS, Council Member Kay McAnally filed two ethics complaints with the City of Bastrop Ethics Commission against Council Member Gary Schiff, which complaints were assigned case number 2016-1 and 2016-3; and

WHEREAS, the alleged acts and omissions which formed the basis of the complaints were alleged to have occurred while Council Member Gary Schiff was acting within the scope of his official duties as a member of the City Council; and

WHEREAS, Article III, Sec. 3.10 of the Bastrop City Charter imposes on the City Attorney the duty to be the legal advisor to and attorney for all officers of the City acting in their official capacities; and

WHEREAS, because of the duties imposed on him by the City Charter, the interim City Attorney would have had a conflict of interest if he represented either Council Member McAnally or Council Member Schiff in the ethics proceeding; and

WHEREAS, because of the interim City Attorney's conflict, in order to defend himself against the complaints and mitigate the damage done by them to his

reputation it was necessary for Council Member Schiff to retain a private attorney at considerable expense to himself; and

WHEREAS, after an extended period of time, Council Member McAnally dismissed one of her complaints against Council Member Schiff and the Ethics Commission found that conduct alleged in the other complaint was not illegal and was not a violation of the City of Bastrop Ethics Ordinance; and

WHEREAS, the Mayor and City Council find that Council Member Schiff was acting in good faith at all times relevant to the ethics complaint; and

WHEREAS, Council Member McAnally could have refrained from filing the complaints or could have dismissed them but did not do so, thereby requiring Council Member Schiff to incur the continued expense of legal representation; and

WHEREAS, the City Council finds that a very significant public interest is served by this resolution because without it, individuals who may desire to run for Mayor or the City Council or accept an appointment to any of the City's Boards and Commissions will be reluctant to consider such service because of the risk of having to pay thousands of dollars to defend against ethics charges that have no merit; and

WHEREAS, under Article III, Section 3.07 of the Bastrop City Charter, "Council Members may receive reimbursement for necessary expenses incurred in the performance of their duties of office,..."; and

WHEREAS, the Attorney General of Texas has ruled repeatedly that the legal expenses of city officials and council members may be reimbursed under the common law when there is no violation found against the city official or council member; and

WHEREAS, the City Council finds that Council Member Schiff has incurred legal fees defending against the ethics complaint in the amount of \$3,362.50 and that these fees are reasonable; and

WHEREAS, the City Council finds that the legal expenses incurred by Council Member Gary Schiff were necessary expenses incurred in the performance of his duties of office;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

1. The City Manager is authorized to cause a reimbursement check to be issued payable to Council Member Gary Schiff in the amount of \$3,362.50 for his necessary legal fees in defending against Ethics Complaints No. 2016-1 and 2016-3.


2. The provisions of this Resolution are intended to be and are severable which means that if any part or provision is found to be illegal or improper, all other parts and provisions will remain in full force and effect.

PASSED AND APPROVED this 28th day of March, 2017.



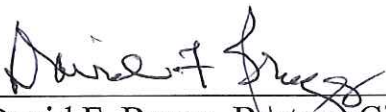
Kenneth Kesselus, Mayor
City of Bastrop, Texas

ATTEST:



Ann Franklin, City Secretary
City of Bastrop, Texas

APPROVED AS TO FORM:



David F. Bragg, Bastrop City Attorney