

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
BILLY SIMONS,	§	TEXAS ETHICS COMMISSION
	§	
RESPONDENT	§	SC-95025
	§	

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (“commission”) met on April 19, 1996, to consider sworn complaint SC-95025 filed against BILLY SIMONS (“respondent”). A quorum of the commission was present.

Based on the investigation conducted by commission staff to date, the commission determined there was credible evidence of a violation of Election Code section 253.062 (Direct Expenditure Exceeding \$100), a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to respondent.

II. Facts Supported by Credible Evidence

Credible evidence available to the commission would support the following findings of fact:

1. The respondent, an individual acting alone and not in concert with other persons, made approximately \$1,100 in direct campaign expenditures in connection with an August 13, 1994, city bond election. He admits making those expenditures in a deposition submitted as evidence. The respondent did not file contribution and expenditure reports concerning those expenditures.
2. As evidence that the respondent was a member of a specific-purpose committee, the complainant submitted two political advertising fliers in support of the complainant’s allegations that the respondent was acting in concert with other persons as a political committee. Although one flier listed the names of several persons, including the respondent, as having paid for the political advertising, the commission received no other evidence that the respondent was acting in concert with others. In fact, the political advertising indicated that the persons named were acting individually.

III. Conclusions of Law

The facts described in Section II would support the following findings and conclusions of law:

1. If a person not acting in concert with other persons makes a direct campaign expenditure in excess of \$100, that person is required to file a contribution and expenditure report as if that person were the campaign treasurer of a specific-purpose committee. *See* Elec. Code, § 253.062.

There is credible evidence that the respondent violated this provision by making more than \$100 in direct campaign expenditures and not filing a contribution and expenditure report in connection with the August 13, 1994, election.

2. Election Code section 254.031 (General Contents of Reports) requires that certain information be provided by any person required to file reports under that section. Election Code section 254.121 (Additional Contents of Reports) requires certain additional information be provided by any person required to file reports as a political committee.

There is credible evidence that no reports were filed during the reporting periods

3. A group of persons acting in concert with each other with a principal purpose of making political expenditures or accepting political contributions in support of or opposition to a measure is a specific-purpose political committee. *See* § 251.001(12),(13), Election Code. A specific-purpose committee may not accept more than \$500 or spend more than \$500 without first appointing a campaign treasurer. *See* § 253.031(b), Election Code.

There is insufficient credible evidence that the respondent was acting in concert with other persons as a political committee.

IV. Representations and Agreement by Respondent

By signing this *ORDER and AGREED RESOLUTION* and returning it to the commission:

1. Respondent neither admits nor denies the facts detailed under Section II and the commission's findings and conclusions of law detailed under Section III, and consents to the entry of this *ORDER and AGREED RESOLUTION* solely for the purpose of resolving and settling this sworn complaint.
2. Respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. Respondent waives any right to a hearing before the commission or an

administrative law judge appointed by the commission, and further waives any right to a post-hearing procedure established or provided by law.

3. Respondent acknowledges that the above sections require the respondent to comply with the mandates of title 15 of the Texas Election Code. Respondent agrees to fully and strictly comply with these requirements of the law.
4. Notwithstanding any other provisions of this *ORDER and AGREED RESOLUTION*, Respondent understands and agrees that the commission will consider the respondent to have committed the violation detailed in Section III if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

V. Confidentiality

This *ORDER and AGREED RESOLUTION* describes an alleged violation that the commission has determined would be neither technical nor *de minimis*. Accordingly, this *ORDER and AGREED RESOLUTION* is not confidential under Texas Government Code section 571.140(b), and may be disclosed by members and staff of the Texas Ethics Commission.

VI. Sanction

After considering the seriousness of the violations described under Sections II and III, including the nature, circumstances, consequences, extent, and gravity of the violation; that no previous violations by this respondent are known to the commission; and the sanction deemed necessary to deter future violations, the commission imposes a \$200 civil penalty for the violations described under Section III.

VII. Order

The Texas Ethics Commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to respondent;
2. that if respondent consents to the proposed AGREED RESOLUTION, this *ORDER and AGREED RESOLUTION* is a final and complete resolution of SC-95025;
3. that respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original together with payment for the \$200

civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 17, 1996; and

4. that the executive director shall promptly refer SC-95025 to the commission or an administrative law judge to conduct hearings and to propose findings of fact and conclusions of law in accordance with law if respondent does not agree to the resolution of SC-95025 as proposed in this *ORDER and AGREED RESOLUTION*.

AGREED to by Billy Simons, on this the _____ day of _____, 199__.

BILLY SIMONS, RESPONDENT

EXECUTED ORIGINAL received by the commission on _____, 199__.

**TOM HARRISON
EXECUTIVE DIRECTOR**