

TEXAS ETHICS COMMISSION

IN THE MATTER OF
DARIUS R. MAGGI,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-961221

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 14, 1998, to consider sworn complaint SC-961221 filed against Darius Maggi (the respondent). A quorum of the commission was present. The commission voted to accept jurisdiction of this complaint. Based on the investigation conducted by commission staff, the commission determined there was credible evidence of a violation of Sections 253.062 and 255.004, Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent operated a political committee and exceeded \$500 in political expenditures without having filed a campaign treasurer appointment or campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent purchased an advertisement that supported a candidate for state representative. The advertisement listed the names of numerous individuals (including the respondent) in support of the candidate for state representative. The advertisement included a political advertising disclosure statement, which stated that it was paid for by “Sherman and Denison Area Texans For Lawsuit Reform” and listed the respondent’s office address.
2. In telephone conversations between the attorney for the respondent and commission staff, the attorney for the respondent acknowledged that the respondent purchased the advertisement at issue. The attorney stated that the respondent acted by himself when purchasing the

advertisement and that the respondent obtained the other names that appear in the advertisement from information provided by a general-purpose political committee.

3. In response to this complaint, the respondent submitted an affidavit stating that “the ad that is the subject of the complaint ran once. After the ad ran once I canceled further publications. Less than \$500 was raised and/or expended in this effort.”
4. According to information obtained from the Sherman Herald Democrat, the advertisement that is the subject of this complaint ran on November 3, 1996. Rate information provided by the newspaper indicates the charge for running this advertisement would have been approximately \$472.50.
5. According to information obtained from the Gainesville Daily Register, the advertisement that is the subject of this complaint ran on November 3, 4, and 5, 1996. Rate information obtained from the newspaper indicates the charge for running these advertisements would have been approximately \$646.34.
6. The commission has no record of campaign finance reports having been filed by the respondent, either in his individual capacity or under the name of Sherman and Denison Area Texans For Lawsuit Reform.

IV. Conclusions of Law

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

1. A campaign expenditure includes an expenditure made by any person in connection with a campaign for an elective office. Section 251.001(7), Election Code. A direct campaign expenditure means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. Section 251.001(8), Election Code. A campaign expenditure is not a contribution from the person making the expenditure if it is made without the prior consent or approval of the candidate on whose behalf the expenditure was made. Section 20.1, Ethics Commission Rules.
2. An individual not acting in concert with another person may make a direct campaign expenditure in an election that exceeds \$100 if the individual receives no reimbursement for the expenditure, and if the individual complies with Chapter 254, Election Code, as if the individual were a campaign treasurer of a political committee. Section 253.062, Election Code.
3. The respondent was not acting in concert with another person when he made campaign expenditures from his own property exceeding \$100 in an election for a candidate for state

representative. The respondent was therefore required to comply with Chapter 254, Election Code, as if he were the campaign treasurer of a political committee.

4. A campaign treasurer of a specific-purpose committee is required to file pre-election reports in connection with each election in which the committee supports or opposes an opposed candidate, as well as semiannual reports. Sections 254.123 and 254.124, Election Code.
5. A committee supporting a candidate for state representative would file its reports with the commission. Sections 252.005, 252.006, and 254.130, Election Code.
6. There is credible evidence that the respondent violated Section 253.062, Election Code, by failing to file a report with the commission reporting the respondent's direct campaign expenditures.
7. Political advertising includes a communication supporting a candidate for public office that, in return for consideration, is published in a newspaper. Section 251.001(16), Election Code.
8. The advertisements purchased by the respondent were political advertising because they supported a candidate for public office and in return for consideration were published in newspapers.
9. A person, with intent to influence the result of an election, may not enter into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source. Section 255.004, Election Code.
10. Because the advertising purchased by the respondent stated that it was paid for by "Sherman and Denison Area Texans for Lawsuit Reform" when it was actually purchased by the respondent, there is credible evidence that the respondent violated Section 255.004, Election Code.

V. Representations and Agreement by the Respondent

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

1. The respondent neither admits nor denies the facts detailed under Section III and the commission's findings and conclusions of law detailed under Section IV, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The 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. The 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. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations detailed in Section IV, Paragraphs 5 and 9, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

VI. Confidentiality

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

VII. Sanction

After considering the seriousness of the violations described under Section IV, including the nature, circumstances, consequences, extent, and gravity of the violation; that no previous violations by this respondent are known to the commission; and after considering the sanction deemed necessary to deter future violations, the commission imposes a civil penalty of \$300 for the violations described in Section IV, Paragraphs 5 and 9.

VIII. Order

The Texas Ethics Commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-961221;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and payment of the civil penalty of \$300 to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than September 11, 1998; and
4. that the executive director shall promptly refer SC-961221 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the

respondent does not agree to the resolution of SC-961221 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 1998

Darius Maggi, Respondent

EXECUTED ORIGINAL received by the commission on: _____
DATE

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director