

TEXAS ETHICS COMMISSION

IN THE MATTER OF
PAULA BORING STAKES,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-970315

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 14, 1997, to consider sworn complaint SC-970315 filed against Paula Boring Stakes (the respondent). A quorum of the commission was present. The commission voted to refuse jurisdiction of allegations of violations that occurred before March 31, 1995. The commission voted to accept jurisdiction of the remainder of the allegations. Based on the investigation conducted by commission staff, the commission determined there was credible evidence of violations of Sections 254.031, 254.063, and 254.064, 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 violated Title 15, Election Code, by:

- (1) accepting a campaign contribution at a time when a campaign treasurer appointment was not in effect;
- (2) failing to timely file required campaign finance reports;
- (3) failing to report political contributions and political expenditures as required;
- (4) failing to maintain a record of all reportable activity during the period from February 24, 1995, through November 18, 1996;
- (5) failing to have the required political disclosure statement printed on her political advertising for her 1995 and 1996 campaigns; and
- (6) failing to have the required right-of-way notice printed on her political advertising signs for her 1995 and 1996 campaigns.

III. Facts Supported by Credible Evidence

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

1. At the times relevant to this complaint, the respondent was a candidate for city council in elections held in 1991, 1993, and 1995, and a candidate for mayor in an election held in 1996. She was a successful candidate in the 1991, 1993, and 1996 elections.
2. The respondent filed her first campaign treasurer appointment as a candidate for city council on February 21, 1991. She filed no campaign finance reports in 1991, 1992, 1993, 1994, or 1995.
3. The respondent filed another campaign treasurer appointment as a candidate for city council on February 24, 1995, and elected modified reporting. No campaign finance reports were filed.
4. The respondent filed another campaign treasurer appointment as a candidate for mayor on February 20, 1996, and elected modified reporting. The respondent became ineligible for modified reporting by exceeding \$500 in activity and timely filed a 30-day before election report on April 4, 1996.
5. The respondent's 30-day before election report for the May 4, 1996, election lists a \$100 contribution and gives the date simply as "February 1996."
6. The respondent timely filed an 8-day before election report on April 26, 1996, and timely filed a semiannual report on July 15, 1996. The respondent marked the semiannual report as a final report, which terminated her campaign treasurer appointment.
7. The respondent's 30-day before election report for the 1996 election did not cover the proper reporting period, and the contribution and expenditure totals on her 8-day before election report and July 15, 1996, semiannual report are cumulative totals of contributions and expenditures from earlier reporting periods.
8. On November 18, 1996, the respondent filed three reports that attempted to cover reporting periods that she had not previously covered. One was marked as the July 15, 1991, semiannual report and covered from February 21, 1991, through November 18, 1996. One was marked as the July 15, 1993, semiannual report and covered from February 25, 1993, through November 18, 1996. One was marked as the July 15, 1995, semiannual report and covered from February 24, 1995, through November 18, 1996. The respondent reported no activity for those periods. All three reports were marked as final reports.
9. The respondent had fliers in her 1995 and 1996 campaigns that supported her candidacy. The fliers do not contain the disclosure statement. The respondent swears that previous council members shared their home computers with the respondent to create the fliers.
10. The respondent swears that the political advertising signs for her 1995 campaign were donated signs left over from 1989.

11. The respondent swears that the political advertising signs for her 1996 campaign were ordered through a friend over the telephone. When the signs were received they did not notice that the signs were missing the proper notification. She swears that when it was brought to her attention that the proper notification was missing, she had labels with the proper notification printed and affixed to all signs immediately.

IV. Conclusions of Law

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

Allegation relating to accepting a campaign contribution before filing a campaign treasurer appointment:

1. A candidate is prohibited from knowingly accepting a campaign contribution at a time when a campaign treasurer appointment is not in effect. Section 253.031(a), Election Code. The respondent's 30-day before election report for the May 4, 1996, election lists a \$100 contribution and gives the date simply as "February 1996." Because the respondent never terminated her 1991 campaign treasurer appointment, an appointment was in effect during all of February 1996. Thus, there is credible evidence that the respondent did not violate Section 253.031(a), Election Code.

Allegations relating to the failure to timely file required campaign finance reports before March 31, 1995:

2. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Section 12.5(3), Ethics Commission Rules. A person commits an offense that is a Class C misdemeanor if the person knowingly fails to file a campaign finance report on time or fails to include required information in a campaign finance report. Section 254.041, Election Code. The statute of limitations for Class C misdemeanors is two years from the date of the commission of the offense. Article 12.02, Code of Criminal Procedure. The complaint was filed March 31, 1997; any alleged offenses that occurred before March 31, 1995, are therefore not within the commission's sworn complaint jurisdiction.

Allegations relating to the failure to timely file required campaign finance reports on or after March 31, 1995:

3. An opposed candidate may elect modified reporting if the candidate does not intend to accept more than \$500 in political contributions or make more than \$500 in political expenditures in connection with an election. Subchapter G, Chapter 254, Election Code.
4. The respondent filed a campaign treasurer appointment on February 24, 1995, as a candidate for city council member in the May 9, 1995, city election and elected modified reporting in accordance with Section 254.181, Election Code. The respondent was required to file semiannual reports by July 15, 1995, and January 15, 1996. Section 254.063, Election Code. The respondent failed to timely file these reports. There is credible evidence that the

respondent violated Section 254.063, Election Code, by failing to timely file the July 15, 1995, and the January 15, 1996, semiannual campaign finance reports.

Allegations relating to the failure to report political contributions and political expenditures as required by law:

5. A person filing campaign finance reports is required to disclose political contributions accepted and political expenditures made during the reporting period, including the itemization of contributions or expenditures exceeding \$50 in the aggregate, and also including the total amounts of contributions and expenditures. Section 254.031, Election Code.
6. In November 1996 the respondent filed a report covering the periods that should have been covered by the July 1995 and January 1996 reports. The respondent reported no activity for that period. The respondent states that previous council members “shared their homemade wood signs passed down through the years, as well as their home computers to create the literature we had..... Major purchases of signs and materials just did not take place.”

Although the donation of signs constitutes a contribution, it is unclear whether the contribution was accepted during the period covered by the report. Additionally, it is unclear from the respondent’s statement whether any expenditures took place.

There is insufficient credible evidence that the respondent failed to report political contributions and expenditures in connection with this report.

7. The respondent’s 30-day before election report for the 1996 election did not cover the proper reporting period, and the contribution and expenditure totals on her 8-day before election report and July 15, 1996, semiannual report are cumulative totals of contributions and expenditures from earlier reporting periods. There is credible evidence that the respondent violated Sections 254.031, 254.063, and 254.064, Election Code, by failing to properly report political contributions and expenditures.

Allegations relating to the failure to maintain records:

8. Candidates and officeholders are required to maintain records containing the information that is necessary for filing campaign finance reports. Sections 254.001(a) and (c), Election Code. Candidates and officeholders must maintain those “backup records” for two years after the filing deadline for the report to which the records pertain. Section 254.001(d), Election Code. Those “backup records” are not required to be filed with any government authority. There is no credible evidence that the respondent violated Section 254.001, Election Code.

Allegations relating to the failure to include the disclosure statement on political advertising:

9. The respondent’s 1995 and 1996 campaign fliers and signs constitute political advertising because they support a candidate for election to public office and appear on a flier or sign. Section 251.001(16), Election Code.

10. Political advertising resulting from an agreement to print political advertising must contain a disclosure statement indicating that it is political advertising, and must contain the name and address of the individual who entered into the contract or of the person that individual represents. Section 255.001, Election Code.
11. The respondent's 1995 and 1996 campaign fliers do not contain the disclosure statement. The respondent's response states: "previous council members shared their ... home computers to create the literature we had." In light of the United States Supreme Court holding in *McIntyre v. Ohio Elections Commission* (115 S. Ct. 1511 (1995)), the commission finds that the respondent did not violate Section 255.001, Election Code, by failing to include the disclosure statement on fliers made with the help of friends.
12. Because the respondent's signs for her 1995 campaign were donated signs left over from 1989, there is credible evidence that the respondent did not enter into a contract or agreement to have political advertising signs printed for her 1995 campaign, and thus did not violate Section 255.001, Election Code.
13. There is insufficient credible evidence that the respondent violated Section 255.001, Election Code, by entering into an agreement or contract to print political advertising signs for her 1996 campaign that did not include the disclosure statement.

Allegations relating to the failure to include the right-of-way notice on political advertising signs:

14. A person may not knowingly enter into a contract to make or print a political advertising sign that does not contain the right-of-way notice, nor may a person instruct another person to place a political advertising sign that does not contain that notice. Section 255.007(a), Election Code.
15. Because the respondent's signs for her 1995 campaign were donated signs left over from 1989, there is credible evidence that the respondent did not enter into a contract to have those signs printed, and there is no credible evidence that the respondent instructed another to place signs that did not contain the right-of-way notice.
16. There is insufficient credible evidence that the respondent violated Section 255.007, Election Code, by entering into a contract to have signs for her 1996 campaign printed without the right-of-way notice, and there is no credible evidence that the respondent violated Section 255.007, Election Code, by instructing another to place signs that did not contain the right-of-way notice.

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. The respondent acknowledges that Section 254.063, Election Code, requires a candidate to file semiannual reports by July 15 and January 15 each year. Respondent agrees to fully and strictly comply with this requirement of the law.
4. The respondent acknowledges that Sections 254.031, 254.063, and 254.064, Election Code, provide reporting requirements for candidates and officeholders. The respondent agrees to fully and strictly comply with those requirements of the law.
5. 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 4 and 7, 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 alleged violations that the commission has determined would be 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; that the commission has proposed an Order and Agreed Resolution in sworn complaint SC-970310, in which the commission imposes upon this respondent a \$300 civil penalty for the failure to timely file the July 15, 1995, and January 15, 1996, semiannual reports, and the failure to report information as required by law; and after considering the sanction deemed necessary to deter future violations, the commission imposes no civil penalty for the violations described under Section IV, Paragraphs 4 and 7.

VIII. Order

The Texas Ethics Commission hereby ORDERS:

1. that the portions of this sworn complaint that allege violations under Section IV, Paragraphs 1, 2, 6, 8, 11, 12, 13, 15, and 16, are dismissed;

2. that this proposed AGREED RESOLUTION be presented to the respondent;
3. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-970315;
4. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 8, 1998; and
5. that the executive director shall promptly refer SC-970315 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-970315 as proposed in this ORDER and AGREED RESOLUTION.

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

Paula Boring Stakes, Respondent

EXECUTED ORIGINAL received by the commission on: _____.
DATE

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director