

# TEXAS ETHICS COMMISSION

**IN THE MATTER OF**

**LINDA WAGNER,**

**RESPONDENT**

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**BEFORE THE**

**TEXAS ETHICS COMMISSION**

**SC-980105**

## **ORDER and AGREED RESOLUTION**

### **I. Recitals**

The Texas Ethics Commission (the commission) met on June 12, 1998, to consider sworn complaint SC-980105 filed against Linda Wagner (the respondent). A quorum of the commission was present.

The commission voted to refuse jurisdiction of the allegation that the respondent violated Canon 5(2)(ii) (Refraining From Inappropriate Political Activity), Code of Judicial Conduct, and to accept jurisdiction of the remaining allegations of this complaint. Based on the investigation conducted by commission staff, the commission determined there was credible evidence of violations of Sections 253.031 and 255.006, 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**

1. The complainant alleges that the respondent, a candidate for county judge, violated the Election Code by making a campaign expenditure at a time when a campaign treasurer appointment was not in effect.
2. The complainant also alleges that the respondent violated the Election Code by misrepresenting her identity in a campaign communication.
3. The complainant also alleges that the respondent violated the Election Code by stating in a campaign communication the public office she sought without using the word “for” to clarify that she did not hold that office.
4. The complainant also alleges that the respondent used campaign material that misrepresented, distorted, or otherwise falsified the facts in violation of Section 258.004, Election Code.

5. The complainant also alleges that the respondent violated Canon 5(2)(ii) (Refraining From Inappropriate Political Activity), Code of Judicial Conduct, by knowingly or recklessly misrepresenting her identity, qualifications, present position, or other facts concerning herself as a candidate.

### **III. Facts Supported by Credible Evidence**

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

1. At all times relevant to this complaint, the respondent was a candidate for county judge in the primary election held on March 10, 1998.
2. The respondent filed her campaign treasurer appointment with the county clerk on December 31, 1997.
3. The respondent made expenditures in November 1997 to purchase card stock to be used to print cards urging voters to vote for her for county judge.
4. The respondent's campaign cards state her name and then give the name of the office she is seeking without using the word "for" to clarify that she does not hold that office. The respondent swears that she did not know the word "for" was required on her cards. She swears that she promptly added the word "for" to her campaign cards when she learned about the new law.

### **IV. Conclusions of Law**

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

#### *Appointment of a campaign treasurer:*

1. A candidate may not knowingly make a campaign expenditure at a time when a campaign treasurer appointment is not in effect. Section 253.031(a), Election Code.
2. A "campaign expenditure" is an expenditure made in connection with a campaign for elective office. Section 251.001(7), Election Code.
3. Expenditures to buy card stock to print cards urging voters to vote for a candidate constitute campaign expenditures because they are expenditures made in connection with an election. The respondent made campaign expenditures in November 1997 but did not file her campaign treasurer appointment until December 31, 1997. Thus, there is credible evidence that the respondent violated Section 253.031(a), Election Code.

*Misrepresentation of identity:*

4. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person misrepresents his identity in political advertising or a campaign communication. Section 255.005(a), Election Code.
5. The respondent did not misrepresent her name on her campaign cards, and therefore there is credible evidence that the respondent did not violate Section 255.005(a), Election Code.

*Misleading use of office title:*

6. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. A person represents that a candidate holds a public office the candidate does not hold if: (1) the candidate does not hold the office that the candidate seeks; and (2) the political advertising or campaign communication states the public office sought but does not use the word “for” to clarify that the candidate does not hold that office. Section 255.006, Election Code.
7. The respondent’s campaign cards state her name and then give the name of the office she is seeking without using the word “for” to clarify that she does not hold that office. Therefore, there is credible evidence that the respondent violated Section 255.006, Election Code.

*Code of Fair Campaign Practices:*

8. The Fair Campaign Practices Act does not create a civil cause of action for enforcement of that Act. Section 258.009, Election Code.

*Code of Judicial Conduct:*

9. Sections 571.061 and 571.121(b), Government Code, limit the commission’s sworn complaint jurisdiction.
10. The commission does not have jurisdiction over the allegation that the respondent violated Canon 5(2)(ii) (Refraining From Inappropriate Political Activity), Code of Judicial Conduct.

**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 and AGREED RESOLUTION 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 3 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, Paragraphs 3 and 7, including the nature, circumstances, consequences, extent, and gravity of the violations; 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 no civil penalty for the violations described under Section IV, Paragraphs 3 and 7.

### **VIII. Order**

The Texas Ethics Commission hereby ORDERS:

1. that the portions of this sworn complaint that allege violations as described in Section II, Paragraphs 2, 4, and 5, 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-980105;
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 July 10, 1998; and

5. that the executive director shall promptly refer SC-980105 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-980105 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on: \_\_\_\_\_  
DATE

\_\_\_\_\_  
Linda Wagner

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_  
DATE

Texas Ethics Commission

By: \_\_\_\_\_  
Tom Harrison, Executive Director