

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOHN HAMMOND,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-980656

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 14, 1998, and voted to accept jurisdiction of Sworn Complaint SC-980656 filed against John Hammond, Respondent. The commission met again on October 8, 1999, to consider Sworn Complaint SC-980656. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of a violation of Section 253.097, Election Code, credible evidence of no violation of Sections 253.094, 254.123, 254.124, and 255.001, Election Code, and insufficient evidence of a violation of Sections 252.001 253.031, and 254.031, 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 (*a*) produced and distributed a letter that supported bond propositions and opposed candidates without including a political advertising disclosure statement in the letter, (*b*) made expenditures for the letter without appointing a campaign treasurer or filing campaign finance reports as a political committee, and (*c*) used corporate funds or resources to produce or distribute the letter in violation of the restrictions on corporate political contributions and expenditures.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent is an individual who signed a letter and filed a campaign finance report on behalf of a corporation. The corporation is hereinafter called "Friendswood." The letter supported three bond propositions and the campaign finance report disclosed corporate political expenditures in connection with an election on those propositions.

2. The three bond propositions were submitted to the voters of a municipal utility district in a May 2, 1998, bond election. Each proposition, if passed, would have authorized the board of directors of the district to issue bonds for the purpose of reimbursing real estate developers a portion of their estimated construction costs for water, wastewater, and drainage facilities designed to serve specific planned developments within the district: Proposition 1 would have authorized the district to issue bonds in the amount of \$37.6 million; Proposition 2, in the amount of \$14.3 million; and Proposition 3, in the amount of \$21.5 million. All three propositions failed.
3. The letter supporting the bond propositions was disseminated to voters residing within a single subdivision.
4. The letter referred to “factions against the bond election” without naming them, but did not identify any candidates or expressly call for a candidate’s election or defeat. The letter advocated the passage of Propositions 1, 2, and 3. It was printed on the letterhead of Friendswood, dated April 23, 1998, and signed by the respondent who stated through his attorney that he signed the letter as an employee of Friendswood and not in an individual capacity.
5. Friendswood is a Texas for-profit corporation.
6. Staff wrote to the respondent’s attorney requesting clarification concerning whether the respondent had knowledge of any similar letters that were disseminated by persons other than Friendswood in support of the bond propositions, and if so, whether Friendswood was acting in concert with any of those persons, but neither the respondent’s attorney nor the respondent has replied.
7. According to records on file with the municipality district, Friendswood would have been authorized to receive developer reimbursement in the principal amount of \$2,081,330 on passage of Proposition 1; \$1,712,880 on passage of Proposition 2; and \$2,992,245 on passage of Proposition 3.
8. The bond election was held on May 2, 1998. Friendswood filed a campaign finance report with the municipal utility district on September 10, 1998, after this complaint was filed. The report was signed by the respondent and it disclosed two expenditures on Schedule F: one in the amount of \$11,453.24 made to Sykes Communications on May 11, 1998, for “Newspaper Ads and Signs”; and another in the amount of \$550 made to an unidentified payee, on an unidentified date, for “Postage and Stationery.”
9. It is not clear whether the \$550 amount actually represents an aggregate total of separate expenditures that were not required to be itemized, or whether the amount represents a single expenditure that was required to be itemized and failed to include the date, payee name, and payee address. The cover sheet, however, appears to reference the \$550 amount in its total of unitemized expenditures. Staff wrote to the respondent’s attorney requesting clarification

concerning the \$550 expenditure or expenditures and also requesting copies of the newspaper ads that were the subject of the \$11,453.24 expenditure, but neither the respondent's attorney nor the respondent has replied.

IV. Findings and Conclusions of Law

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

1. The complainant alleges that the respondent failed to appoint a campaign treasurer or file reports as a political committee. "Political committee" means a group of persons that has as a principal purpose accepting political contributions or making political expenditures. Section 251.001(12), Election Code. "Person" includes a corporation. Section 311.005(2), Government Code (Code Construction Act). A political committee must appoint a campaign treasurer, and the campaign treasurer must file campaign finance reports, if the committee makes or authorizes political expenditures, or accepts political contributions, totaling more than \$500. Section 253.031, Election Code.
2. The respondent, who signed the letter that was printed on Friendswood's letterhead, stated through his attorney that his actions were taken as an employee of Friendswood. Although there were ample opportunities for coordinated expenditures by, and cooperation between, Friendswood and other persons who were interested in the bond propositions, there is insufficient evidence that Friendswood was part of a political committee and, even if it was, there is insufficient evidence that the corporation was part of a political committee that crossed a \$500 threshold. Accordingly, there is insufficient evidence of a violation of Sections 252.001 and 253.031, Election Code, for failure to file a campaign treasurer appointment. The campaign treasurer of a political committee is required to file campaign finance reports. Sections 254.123 and 254.124, Election Code. Because a campaign treasurer appointment was not in effect, there is credible evidence of no violation of those reporting requirements.
3. The bond propositions were measures because they were proposals submitted in an election for an expression of the voters' will. Section 251.001(19), Election Code. A corporation not acting in concert with another person that makes direct campaign expenditures from its own property in connection with an election on a measure must report those expenditures as if it were the campaign treasurer for a political committee. Sections 253.062 and 253.097, Election Code.
4. A "direct campaign expenditure" is a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. Section 251.001(8), Election Code. Under Ethics Commission rules, a direct campaign expenditure includes an expenditure that is made in connection with a measure and that is not a contribution to a political committee supporting the measure. Section 20.1, Ethics Commission Rules.

5. Because Friendswood's expenditures were made to support the bond propositions, and because those expenditures were not contributions to a political committee, the expenditures were direct campaign expenditures that Friendswood was required to report as if it were the campaign treasurer for a political committee.
6. The campaign treasurer for a political committee would have been required to file a semiannual report by July 15, 1998, if the committee made political expenditures beginning on April 23, 1998, and ending on June 30, 1998 (the reporting period for that semiannual report). Section 254.123, Election Code. The letter was dated April 23, 1998, and it is possible that the expenditures for the letter were made on that date. The respondent reported that the expenditures for the newspaper ads and signs were made on May 11, 1998.
7. The cover sheet of the respondent's report shows that it covers the period beginning on March 24, 1998 (the first day of the period covered by the 8-day before election report) and ending on May 12, 1998 (the day after the date of the \$11,453.24 expenditure). In order to determine whether the 8-day before election report was due, staff wrote to the respondent requesting clarification concerning the date on which Friendswood exceeded \$100 in expenditures in connection with the May 2, 1998, bond election and the date of the corporation's first expenditure made in connection with that election, but neither the respondent's attorney nor the respondent has replied. The date of the letter that is the subject of this complaint—April 23, 1998—is some evidence that expenditures for the letter had been made at least by that date. April 23, 1998, is the day after the last day that would have been covered in an 8-day before election report.
8. There is no evidence that Friendswood exceeded \$100 in expenditures in a pre-election reporting period and, therefore, no evidence that Friendswood was required to file a pre-election report. There is credible evidence that Friendswood incurred the \$11,453.24 expenditure for the newspaper ads and signs in the July semiannual reporting period and, therefore, was required to file the July semiannual report. Friendswood's report was not filed, however, until September 10, 1998. Therefore, there is credible evidence that the report was filed late in violation of Section 253.097, Election Code.
9. The campaign treasurer for a political committee would have been required to itemize political expenditures exceeding \$50 made during a reporting period. Section 254.031, Election Code. Because the cover sheet for Friendswood's report appears to reference the \$550 amount in its total of unitemized expenditures and there is no evidence that the amount actually represents a single expenditure other than its inclusion on Schedule F, there is insufficient evidence that Friendswood was required to itemize the \$550 amount and, therefore, insufficient evidence of a violation of Section 254.031, Election Code.
10. Corporate political contributions to a candidate for elective public office are prohibited under Subchapter D, Chapter 253, Election Code. Section 253.094, Election Code. The office of director of a municipal utility district is an elective public office.

11. The letter printed on Friendswood's letterhead advocates the passage of the bond propositions and refers to "factions against the bond election" without naming them. The election on the bond propositions was also an election for directors of the municipal utility district, and some of the candidates for the office of director campaigned against the bond propositions. But the letter does not identify any candidates or expressly call for a candidate's election or defeat. Therefore, there is credible evidence that the expenditures for the letter were made to support the bond propositions and not to oppose candidates.
12. A corporation not acting in concert with another person may make one or more direct campaign expenditures from its own property in connection with an election on a measure if the corporation reports those expenditures as if it were the campaign treasurer for a political committee. Sections 253.062 and 253.097, Election Code. As noted above, there is insufficient evidence that Friendswood was acting in concert with another person to make expenditures supporting the bond propositions, and credible evidence that Friendswood filed a report—albeit a late report—disclosing those expenditures. Therefore, there is credible evidence that the expenditures made by Friendswood were permissible direct campaign expenditures, and there is credible evidence of no violation of Section 253.094, Election Code.
13. Political advertising includes a communication that supports a measure and appears in a pamphlet, circular, flier, or similar form of written communication. Section 251.001(16), Election Code. The bond propositions are measures because they are proposals submitted in an election for an expression of the voters' will. Section 251.001(19), Election Code. The letter that was printed on Friendswood's letterhead is political advertising because it is a written communication similar to a pamphlet, circular, or flier and it supports the bond propositions.
14. A person may not enter into a contract or other agreement to print, publish, or broadcast political advertising that does not (a) indicate in the advertising that it is political advertising by including the words "political advertising" or the abbreviation "pol. adv." and (b) disclose the full name and address of the individual who personally entered into the contract or agreement with the printer or publisher or the person that individual represents. Section 255.001, Election Code.
15. The letter that was printed on Friendswood's letterhead discloses Friendswood's full name and address and is signed by the respondent. It does not use the words "political advertising" or the abbreviation "pol. adv." The evidence is not clear whether the respondent or someone else entered into the contract to print the letter, but it is clear that the person represented by that individual was Friendswood.
16. Political advertising printed on letterhead stationery that discloses the full name and address of the person represented by an individual who personally contracted for it is not required to include the words "political advertising" or the abbreviation "pol. adv." Section 26.5, Ethics

Commission Rules. Therefore, there is credible evidence of no violation of Section 255.001, Election Code.

V. Representations and Agreement by Respondent

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

1. The respondent neither admits nor denies the facts described under Section III and the commission's findings and conclusions of law described 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, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that a corporation that is not acting in concert with another person and that makes direct campaign expenditures exceeding \$100 from the corporation's own property in connection with an election on a measure must report those expenditures as if the corporation were the campaign treasurer for a political committee. The respondent further acknowledges that the campaign treasurer for a political committee would be required to file timely campaign finance reports. The respondent agrees to fully and strictly comply with this requirement of the law.
4. 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 violation described under Section IV, Paragraphs 5, 6, 7, and 8, 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 a 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 of the Government Code, and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, after considering the fact that no previous violations by this respondent are known to the commission, and after considering

the sanction necessary to deter future violations, the commission imposes a \$750 civil penalty for the violation described under Section IV, Paragraphs 5, 6, 7, and 8.

VIII. Order

The 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-980656;
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 the \$750 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than November 5, 1999; and
4. that the executive director shall promptly refer SC-980656 either to 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-980656 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 1999.

John Hammond, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director