

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JACK R. BEARD,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-980657

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 9, 1998, and voted to accept jurisdiction of Sworn Complaint SC-980657 filed against Jack R. Beard, Respondent. The commission met again on October 8, 1999, to consider Sworn Complaint SC-980657. 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 253.062, Election Code, credible evidence of no violation of Sections 253.094, 254.123, 254.124, and 255.001, Election Code, and insufficient credible evidence of a violation of Sections 252.001 and 253.031, 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 printed a letter supporting bond propositions on the letterhead of a corporation and who made expenditures to have the letter copied and distributed.
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. A letter supporting the bond propositions was disseminated to voters residing within selected subdivisions. The letter was printed on the letterhead of a corporation, hereinafter called "Belmont."
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 and 2 and stated that Proposition 3 "may be a candidate for a future bond election."
5. Belmont is either a Texas for-profit corporation or a Florida for-profit corporation that had a certificate of authority to do business in Texas: the name of the Texas corporation is "Belmont Management Corporation of Texas" and the name of the Florida corporation is "Belmont Management Corporation." The respondent was a co-owner and an officer or director of both Belmont Management Corporation of Texas and Belmont Management Corporation, and the letterhead on which the respondent's letter was printed is inscribed with the name, "Belmont Management Corporation."
6. According to records on file with the municipal utility district, Belmont would not have been authorized to receive any developer reimbursement on passage of any one of the three bond propositions.
7. The letter printed on Belmont's letterhead was dated April 22, 1998, and it was signed by the respondent who, in a sworn response to this complaint, stated that he signed the letter as an individual and not on behalf of the corporation. The respondent further swore that he had knowledge of a similar letter first written by someone else in support of the bond propositions and that he used that letter to prepare his own letter because the other letter was well written.
8. In addition, the respondent stated that Belmont was the managing partner of the developer that developed the two subdivisions in which his letter was distributed; that he was an owner of Belmont; that he generated Belmont's letterhead from his home computer and used it only to help the residents of the two subdivisions identify him as the individual who wrote the letter; and that he paid \$43.30 to have the letter copied and an additional \$100 to have it distributed to the front doors of residents within the two subdivisions.

9. According to records on file with the County Clerk of Harris County and the municipal utility district, if Proposition 1 had passed, Kirby Lake Development, Ltd., a limited partnership, would have been authorized to receive developer reimbursement in the principal amount of \$614,000. The respondent was a limited partner in that limited partnership. He was also the executive manager of Harbour Cove Development, LLC, a limited liability company that was the managing general partner for the limited partnership.
10. After this complaint was filed, the respondent filed a campaign finance report with the municipal utility district. The report disclosed the expenditures that the respondent made to copy and distribute the letter printed on Belmont's letterhead and included the following statement: "FILED PURSUANT TO SECTION 253.062, ELECTION CODE." The respondent reported his expenditures for the letter as direct campaign expenditures that he made as an individual not acting in concert with another person under Section 253.062, Election Code.

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. 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. The expenditures for the letter were campaign expenditures and, therefore, political expenditures because they were made in connection with an election on a measure. Section 251.001(7), (10), Election Code.
2. "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). Therefore, the initial question is whether the respondent acted alone or as part of a group to make the expenditures for the letter.
3. The respondent was the executive manager of the limited liability company that was managing general partner for a limited partnership. There is insufficient evidence to determine whether the respondent was also acting in that capacity for the purpose of making expenditures to copy and distribute the letter that was printed on Belmont's letterhead, although the limited partnership clearly had an interest in passing Proposition 1 and there were certainly opportunities for coordinated expenditures by, and cooperation between, the limited partnership, the respondent, and others who were interested in the bond propositions.
4. The respondent swears: "I was not acting on behalf of Belmont Management Corp., Taxpayer No. 3-01133-5777-3 or Belmont Management Corp. of Texas, Taxpayer No. 1-76-0354855-7 in printing or delivering the letter attached to the complaint and dated April 22, 1998. In printing and delivering the letter, I was not acting in any representative capacity for either of these companies."

5. An individual who is not acting in concert with another and who makes direct campaign expenditures exceeding \$100 from the individual's own property in connection with an election on a measure must report those expenditures as if the individual were the campaign treasurer for a political committee. Section 253.062, Election Code. 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, Texas Ethics Commission Rules. Therefore, the expenditures made by the respondent to copy and distribute the letter were direct campaign expenditures.
6. The campaign treasurer for a political committee would have been required to file an 8-day before election report by April 24, 1998, if the committee made political expenditures in the reporting period for that report, which began on March 24, 1998, and ended on April 22, 1998. The campaign finance report filed by the respondent discloses a \$100 expenditure made on April 22, 1998, for the purpose of distributing copies of the letter, in addition to \$43.30 in expenditures, which the respondent stated that he made earlier for the copy costs. Therefore, the respondent exceeded \$100 in expenditures in connection with the May 2, 1998, bond election on April 22, 1998, and was required to file the 8-day before election report by April 24, 1998.
7. The respondent's report was not filed, however, until July 31, 1998. Therefore, there is credible evidence that the report was filed late and credible evidence of a violation of Section 253.062, Election Code. A person filing with the commission would be subject to a fine in the amount of \$5,000 for the late 8-day before election report. Section 571.173, Government Code; Sections 18.85 and 18.87, Ethics Commission Rules.
8. The complainant alleges that the respondent used corporate resources to print or distribute the letter. The respondent, however, swears that he was acting as an individual and not on behalf of Belmont in printing or delivering the letter. Therefore, there is credible evidence that the expenditures for the letter were made by the respondent and not by Belmont and credible evidence of no violation of the prohibition against corporate political expenditures.
9. 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 letter that was printed on Belmont's letterhead is political advertising because it is a written communication similar to a pamphlet, circular, or flier and it supports the bond propositions.
10. 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.

11. The letter that was printed on Belmont's letterhead discloses the full name and address of the respondent, and the respondent is the individual who personally entered into the contract to copy the letter. Political advertising printed on letterhead stationery that discloses the full name and address of the individual who personally entered into the contract or agreement with the printer or publisher 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 an individual who is not acting in concert with another and who makes direct campaign expenditures exceeding \$100 from the individual's own property in connection with an election on a measure must report those expenditures as if the individual were the campaign treasurer for a political committee, and that the campaign treasurer for a political committee that is required to file pre-election reports must file those reports by the 30th and the 8th day before the election. 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, 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 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, and 7.

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-980657;
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-980657 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-980657 as proposed in this ORDER and AGREED RESOLUTION.

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

Jack R. Beard, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director