

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
H. ADONN SLONE,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-990826

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on October 8, 1999, and voted to accept jurisdiction of Sworn Complaint SC-990826 filed against H. Adonn Slone, Respondent. The commission met again on October 11, 2002, to consider Sworn Complaint SC-990826. 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 Sections 255.001 and 255.007, 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 either made direct expenditures as an individual in opposition to a ballot measure, or made political expenditures exceeding \$500 on behalf of a political committee without having a campaign treasurer appointment on file. The complainant also alleges that the respondent failed to file the appropriate campaign finance reports. The complainant further alleges that the respondent failed to include the political advertising disclosure statement and right-of-way notice on political advertising signs and other campaign communications, and that the respondent misrepresented the identity and true source of political advertisements. Finally, the complainant alleges that the respondent violated the Code of Fair Campaign Practices and made misrepresentations of fact in a newspaper article written by the respondent.

### III. Facts Supported by Credible Evidence

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

1. On May 1, 1999, the City of Santa Fe held an election on a sales tax increase.
2. The complainant estimated that the respondent, either individually or on behalf of a group called Citizens Against Tax Increases, made approximately \$800 in expenditures opposing the measure.

3. Citizens Against Tax Increases did not file a campaign treasurer appointment, and no campaign finance reports were filed on behalf of that group.
4. The respondent did not file any campaign finance reports disclosing direct campaign expenditures.
5. The respondent submitted an affidavit dated May 5, 2000, in response to this complaint in which he swore that Citizens Against Tax Increases was a committee composed of himself and two other individuals with the same last name as the respondent. The respondent swore that the committee intended to oppose a tax increase proposed by the city.
6. The respondent further swore that he did not keep an account of the money spent since he did not believe it was necessary, but also swore that the total expenditures did not exceed \$500.
7. In an earlier unsworn letter dated October 28, 1999, the respondent stated that he understood Title 15, Election Code, did not apply “to people exercising their First Amendment rights of free speech, i.e. supporting/opposing governmental action.” In the same letter, the respondent also stated that he did not seek or receive any contributions to support his opposition to the increase in the sales tax and that he did not form a committee.
8. When commission staff questioned his contradictory statements, the respondent submitted an affidavit dated October 26, 2000, in which he swore that, “As I now understand committee’s [sic] we certainly had a political committee. I am at a loss to explain why in a letter dated October 28, 1999 I stated, ‘I did not form a committee.’ The only rational [sic] I can think of now is that my understanding of what is a political committee has changed since October 1999. When we decided to oppose the tax increase, I thought Title 15 applied to candidates running for office and for political committees supporting or working against candidates. I had no intention to attempt to mislead the Texas Ethics Commission. I have attempted to cooperate fully and truthfully with the commission.”
9. With the sworn complaint, the complainant included a copy of an article that appeared in the April 28, 1999, edition of a local newspaper. The front page article is titled, “Is it Economic Development or Special Interest Projects?” and the respondent’s name appears as the author of the article under the words “special report.”
10. The complainant alleges that the article is biased and should have appeared on the newspaper’s editorial page.
11. In an unsworn letter the respondent stated that he did not pay to have the article printed and that when he released the article to the newspaper, he had no control over whether it would be printed and where it would appear.

12. The complaint also included a copy of a newspaper advertisement opposing the measure in which the respondent is listed as the treasurer for Citizens Against Tax Increases. That advertisement ran in the same edition of the newspaper as the respondent's article and did not include the words "political advertising" nor did it include an address.
13. The respondent did not address this allegation in his sworn responses or unsworn letter. In a telephone conversation with staff, the respondent stated that he placed the advertisement in the newspaper on behalf of the committee. The telephone number listed for the newspaper is not in service.
14. The complaint also included a sign opposing the tax increase and photographs of signs posted on a telephone pole and held by individuals in what appears to be a parking lot near a polling place. The sign does not include a political advertising disclosure statement or right-of-way notice.
15. The respondent swore that he handwrote the right-of-way notice and information about who printed the signs on as many signs as he could locate. The respondent refers to the signs as "[m]y signs" in his sworn response.
16. The complaint also included a copy of a postcard urging the reader to vote against the tax increase. The postcard includes the name "Citizens Against Tax Increases" as the sender and includes an address for this group.
17. Staff asked the respondent to provide more information about expenditures made on behalf of Citizens Against Tax Increases.
18. The respondent responded in a letter received February 5, 2001, saying that he had no idea that records of expenditures should be kept and that he had looked for receipts but had been unable to find any. He said that at the time they opposed the sales tax, he thought the Election Code applied to candidates running for office but not citizens voicing their opinions on tax increases.
19. Because the respondent could not find any records relating to the expenditures made on behalf of the committee, he was unable to comply with staff's request to provide more information regarding those expenditures.

#### **IV. Findings and Conclusions of Law**

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

##### **Reporting Allegations**

1. A group of persons that has as a principal purpose making political expenditures or accepting political contributions in support of or opposition to a measure is a political committee. Section 251.001(12), Election Code.

2. A political committee may not make more than \$500 in political expenditures or accept more than \$500 in political contributions without first appointing a campaign treasurer. Section 253.031, Election Code.
3. Once a political committee files a campaign treasurer appointment, the campaign treasurer must file periodic reports of contributions and expenditures. Sections 254.123 and 254.124, Election Code.
4. A person may not knowingly make or authorize a direct campaign expenditure unless otherwise authorized by law. Section 253.002, Election Code.
5. A person who makes an expenditure in connection with a measure is making a direct campaign expenditure if the expenditure is not made as a political contribution to a political committee. Section 251.001(8), Election Code; Section 20.1, Ethics Commission Rules.
6. An individual not acting in concert with another person may make one or more direct campaign expenditures from the individual's own property that exceed \$100 on any measure if the individual files reports as if he were a campaign treasurer for a political committee and if the individual receives no reimbursement for the expenditures. Section 253.062, Election Code.
7. The threshold issue in this complaint is whether the respondent was acting alone or acting on behalf of a political committee.
8. If the respondent acted alone and spent more than \$100 in connection with the election but did not make a contribution to a political committee, he is required to disclose his political expenditures as if he were the campaign treasurer of a political committee. Section 253.062, Election Code.
9. If the respondent and others acted as a political committee, the committee is required to file a campaign treasurer appointment before accepting more than \$500 in political contributions or making more than \$500 in political expenditures. Section 253.031(b), Election Code.
10. In the respondent's unsworn response to this complaint, he stated that he did not believe that Title 15, Election Code, applied to persons exercising their First Amendment rights to support or oppose governmental action. The respondent also stated that he did not form a committee and that he did not seek or receive any contribution to support his opposition to the increase in the sales tax.
11. In his sworn responses, the respondent swears that Citizens Against Tax Increases was a committee of three individuals and that the committee intended to oppose a tax increase proposed by the city.

12. The respondent swears he had misunderstood what constituted a political committee.
13. Based on the respondent's sworn statements, there is credible evidence that the respondent was a member of a political committee. Because of the fact that he is unable to produce records showing the amount of the expenditures at issue, there is insufficient evidence that the respondent, as a member of the political committee, violated Section 253.031(b), Election Code, by failing to appoint the committee's campaign treasurer before the committee exceeded \$500 in expenditures.
14. Because the evidence shows that the respondent was a member of a committee, he was not required to file a report under Section 253.062, Election Code, as an individual making a direct campaign expenditure. Therefore, there is credible evidence of no violation of Section 253.062, Election Code.

#### **Political Advertising Disclosure Statement and Right-of-Way Notice Allegations**

15. "Political advertising" is defined in relevant part as a communication supporting or opposing a measure that is published in a newspaper in return for consideration or that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. Section 251.001(16), Election Code.
16. The sign and postcard constitute political advertising because they oppose a ballot measure and appear in a sign or other form of written communication.
17. The newspaper advertisement constitutes political advertising because it opposes a ballot measure and was published in a newspaper in return for consideration.
18. A person may not enter into a contract or other agreement to print political advertising that does not indicate that it is political advertising and that does not contain the full name and address of the individual who entered into the contract or agreement with the printer, or the full name and address of the person that individual represents. Section 255.001(a), Election Code.
19. An Attorney General opinion determined that Section 255.001(a), Election Code, cannot constitutionally be enforced against a private individual who creates or distributes anonymous printed material from his own resources advocating a position on an issue, rather than the choice of a particular candidate, in an election. Tex. Att'y Gen. Op. No. JC-0243 (2000). Under that opinion, Section 255.001, Election Code, may be applied to the respondent because he swore that he was acting on behalf of a political committee and not acting as a private individual.
20. The postcard contains the name and address of the committee but does not contain the words "political advertising."

21. An Ethics Commission rule excepts from the disclosure requirement “political advertising printed on letterhead stationery if the letterhead contains the [name and address of the entity represented by the individual who contracted with the printer].” Section 26.5, Ethics Commission Rules.
22. The commission has determined in the past that a postcard constitutes “letterhead stationery” within the meaning of the rule. The postcard includes the name and address of Citizens Against Tax Increases, the entity represented by the individual who contracted with the printer. Thus, there is credible evidence of no violation of Section 255.001, Election Code, as to the postcard.
23. The newspaper advertisement states that it is paid for by the Citizens Against Tax Increases, A. Slone, Treasurer. The advertisement does not include an address or the words “political advertising.” The respondent did not address this allegation in his sworn response or in his unsworn letter.
24. In a telephone conversation with staff, the respondent stated that he placed the newspaper advertisement on behalf of the committee. Therefore, there is credible evidence that the respondent committed a technical or *de minimis* violation of Section 255.001, Election Code, by failing to include a complete disclosure statement in the newspaper advertisement.
25. The complainant alleged that the newspaper article written by the respondent was biased and should have appeared on the editorial page.
26. The respondent stated that he submitted the article that appeared in the local newspaper and that he did not pay the newspaper to print the article. The respondent also stated that he had no control over whether the article would be published or where it would appear in the newspaper. There is no evidence to refute those statements.
27. Because the respondent did not pay the newspaper to print the article, the newspaper article is not political advertising and is not required to include the disclosure statement. Therefore, there is credible evidence of no violation of Section 255.001, Election Code, as to the newspaper article.
28. Political advertising signs designed to be seen from a road are required to include the right-of-way notice. Section 255.007, Election Code.
29. A person may not knowingly enter into an agreement to print political advertising signs that do not contain the political advertising disclosure statement or the right-of-way notice. Sections 255.001(a) and 255.007(b), Election Code.
30. Although the respondent swears that he handwrote the right-of-way notice and information about who paid for the signs on the signs he was able to locate, the sign submitted with the complaint does not include a political advertising disclosure statement or the right-of-way

notice. Therefore, there is credible evidence that the respondent entered into an agreement with the printer to produce political advertising signs that did not include the political advertising disclosure statement or right-of-way notice in violation of Sections 255.001 and 255.007, Election Code.

### **Identity and True Source of Political Advertisement Allegations**

31. A person may not, with intent to injure a candidate or influence the result of an election, 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, or knowingly represent in a campaign communication that the communication emanates from a source other than its true source. Section 255.004, Election Code.
32. A person may not, with intent to injure a candidate or influence the result of an election, misrepresent the person's identity or, if acting as an agent, misrepresent the identity of the agent's principal, in political advertising or a campaign communication. Section 255.005, Election Code.
33. In Ethics Advisory Opinion No. 404 (1998), the commission determined that a political committee may use its name in the political advertising disclosure statement required by Section 255.001, Election Code, even if the committee has not yet filed a campaign treasurer appointment.
34. The respondent swears that he is a member of a political committee, Citizens Against Tax Increases, and that he took action on behalf of that committee. Both the newspaper advertisement and postcard provide that committee's name in the political advertising disclosure statement.
35. There is credible evidence that the respondent is an agent of that committee. Therefore, there is credible evidence that the respondent did not violate Section 255.005, Election Code, by misrepresenting the identity of the committee in the political advertising disclosure statement.
36. The newspaper advertisement and postcard disclosed the committee as the source of the communication, and thus as to the newspaper advertisement and the postcard, there is credible evidence of no violation of Section 255.004, Election Code.
37. The sign as originally printed did not make any representation as to the source of the sign, and the respondent swears that he handwrote the committee's information on the signs that he could locate. Thus, as to the sign, there is credible evidence of no violation of Section 255.004, Election Code.

**Code of Fair Campaign Practices Act Allegation**

38. The complainant alleges that the respondent violated the Fair Campaign Practices Act, Chapter 258, Election Code.
39. The Fair Campaign Practices Act does not create a civil cause of action for enforcement of that Act.

**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 person may not enter into a contract or other agreement to print political advertising that does not indicate that it is political advertising and that does not contain the full name and address of the individual who entered into the contract or agreement with the printer, or the full name and address of the person that individual represents. The respondent further acknowledges that political advertising signs designed to be seen from the road must include the right-of-way notice. 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 violations described under Section IV, Paragraphs 24 and 30, 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, 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 \$200 civil penalty for the violation described under Section IV, Paragraph 30.

### 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-990826;
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 \$200 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than November 8, 2002; and
4. that the executive director shall promptly refer SC-990826 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-990826 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
H. Adonn Sloan, Respondent

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

Texas Ethics Commission

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