

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JAMES KEVIN COLE,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-200741

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on September 11, 2000, and voted to accept jurisdiction of Sworn Complaint SC-200741 filed against James Kevin Cole, Respondent. The commission met again on February 8, 2002, to consider Sworn Complaint SC-200741. 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 that the respondent violated Sections 252.001, 253.031(b), and 255.004, Election Code, and committed technical or *de minimis* violations of Section 255.001, Election Code, laws administered and enforced by the commission. The commission also determined that there is credible evidence that the respondent did not violate Sections 254.121, 254.124, and 254.128, 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 acted together with other individuals as a political committee and:

1. accepted political contributions and made political expenditures exceeding \$500 without filing a campaign treasurer appointment;
2. failed to disclose the person appointing the committee's campaign treasurer;
3. failed to disclose the committee's full name;
4. failed to provide notice to candidates and officeholders regarding political expenditures;
5. failed to properly report a political expenditure relating to a March 8, 2000, political advertisement;
6. failed to timely file a campaign finance report;

7. failed to include the proper political advertising disclosure statement in political advertising; and
8. misrepresented the true source and misrepresented the identity of the source of political advertising.

III. Facts Supported by Credible Evidence

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

1. The respondent, together with other individuals, formed a specific-purpose political committee named "FOC PAC." The political committee's purpose was to oppose a candidate for city council and to oppose four ballot measures that would amend the city charter in Pearland, Texas. The election for the city council candidate and the ballot measures was held on May 6, 2000.
2. On April 28, 2000, eight days before the election, the political committee filed with the municipal filing authority a campaign treasurer appointment for a specific-purpose political committee. On the same date, the committee's 8-day before election report was also filed.
3. The committee's campaign finance report disclosed that prior to filing its campaign treasurer appointment, between April 10, 2000, and April 28, 2000, the committee made 10 political expenditures totaling \$2,710.39 and accepted six political contributions totaling \$3,000.
4. In May 2000, shortly after the political committee filed its campaign treasurer appointment and 8-day before election report, the city's police department began an investigation into whether the committee had violated any campaign finance laws. The complainant submitted a copy of the police investigation report with this complaint. The complaint includes sworn statements given by the respondent and John Robert Bowman, who was also involved with the political committee.
5. The respondent and Mr. Bowman swear in their police statements that they decided to get involved in the election to oppose the city charter amendments and to oppose a candidate for city council.
6. The respondent swears in his police statement that "around the first of March 2000," his spouse, Lisa D. Anderson Cole, ran an advertisement in a local newspaper opposing a candidate for city council. The advertisement was published on March 8, 2000.

7. Mr. Bowman also provided information in his police statement regarding the March 8, 2000, advertisement. In his police statement, Mr. Bowman swears that he and the respondent decided to buy an advertisement in a local newspaper “around the first of March” and that the respondent paid \$224 for the advertisement “with his own money.”
8. The March 8, 2000, advertisement included a partial political advertising disclosure statement indicating that it was “Paid for by L.D. Anderson.” The advertisement did not specifically state that it was a “political advertisement,” nor did it include an address. Voter registration information available to the public discloses that “L.D. Anderson” are the initials and maiden name of the respondent’s spouse, Lisa D. Anderson Cole. The expenditure for the March 8, 2000, political advertisement was not included in the political committee’s 8-day before election report.
9. The next political activity involving members of the political committee occurred on April 10, 2000. The respondent swears in his police statement that on April 10, 2000, he gave \$500 in cash to Mr. Bowman, who took out advertisements in two newspapers, spending approximately \$500.
10. Mr. Bowman swears in his police statement that on April 14, 2000, he “brought ads for [two newspapers] spending approximately \$500.00.” In the political committee’s 8-day before election report, the committee disclosed two political expenditures on April 10, 2000, to two newspapers in the amounts of \$224 and \$250 and described the purpose of the expenditures as “Newspaper Ad.”
11. The complainant submitted a copy of a political advertisement that he indicates was published on April 12, 2000, and that opposes a city council candidate. The disclosure statement on the advertisement includes the words “Paid Pol. Adv. by L.D. Anderson” and includes an address. Voter registration information available to the public discloses that the address provided in the disclosure statement was the address of the mother of Lisa D. Anderson Cole.
12. Between April 10, 2000, and April 28, 2000, the political committee continued to make political expenditures totaling \$2,710.39, and accepted political contributions totaling \$3,000. According to the sworn police statements given by the respondent and Mr. Bowman, Mr. Bowman received all the money for the political committee, including \$2,000 in cash given by the respondent and his spouse, and \$500 in cash from another individual.
13. On April 27, 2000, the campaign treasurer of the political committee signed the committee’s campaign treasurer appointment form and campaign finance report. The respondent swears in his police statement that he “filled out the financial report and H.N. Hamilton [the committee’s campaign treasurer] signed it.” Mr. Bowman swears in his

police statement that he picked up a packet of campaign finance documents from the city and that he “gave the packet to Kevin who filled it out. Kevin then went over it with Mr. Hamilton. I did not witness when the report was signed.”

14. The line on the campaign treasurer appointment form to disclose the name of the person appointing the campaign treasurer was left blank. The name of the committee listed on both the campaign treasurer appointment and campaign finance report is “FOC PAC.” The campaign treasurer appointment and the campaign finance report were filed on April 28, 2000.
15. In their police statements, the respondent and Mr. Bowman both swear that Mr. Bowman contacted a staff attorney at the Ethics Commission to obtain advice regarding the campaign finance laws. The police statements of the respondent and Mr. Bowman do not state the specific date when Mr. Bowman contacted the staff attorney, but Mr. Bowman swears that he asked the staff attorney “what we needed to do as we were getting ready to spend more than \$500.” Therefore, based on the statements of the respondent and Mr. Bowman, and based on the political committee’s activity, the call to the Ethics Commission staff attorney would appear to have been made in early April 2000. Mr. Bowman swears that during this call he asked the staff attorney when the committee needed to file its campaign treasurer appointment. Mr. Bowman swears that the staff attorney said it could be filed “any time.” Mr. Bowman swears that he interpreted that to mean that the political committee could file its campaign treasurer’s appointment with the campaign finance report.
16. The police statements of the respondent and Mr. Bowman also indicate that Mr. Bowman made a second call to the Ethics Commission staff attorney. Mr. Bowman swears that during this call he asked the staff attorney if there were any limits on political contributions, and that he was told that there weren’t any limits except in connection with judicial candidates.
17. After the political committee filed its campaign treasurer appointment and campaign finance report, the city’s police department began its investigation of the committee’s activities. The investigation was forwarded to the district attorney’s office. The matter was then forwarded to the Office of the Attorney General, and the criminal complaints were eventually “no billed” with no further action being taken.
18. In response to this complaint, the respondent submitted two sworn statements to the Ethics Commission.
19. With respect to the political advertisements published on March 8 and April 10, 2000, the respondent swears that the advertisements were paid for by himself and his spouse, but also involved Mr. Bowman. Referring to himself, his spouse, and Mr. Bowman, the respondent swears that “[e]verything we did concerning the campaign was done as a

- group.” The respondent swears that “[w]e spent about \$230 on each ad for a total of \$460.”
20. With respect to the allegation that the respondent failed to disclose the name of the person who appointed the political committee’s campaign treasurer, the respondent swears that on April 12, 2000, he contacted and spoke with Mr. Hamilton about serving as the committee’s campaign treasurer. The respondent swears that on the following day, Mr. Hamilton called the respondent and agreed to serve as the political committee’s campaign treasurer. Regarding filling out the campaign treasurer appointment form and providing the name of the person appointing the treasurer, the respondent swears that he “was not aware that this needed to be done. Mr. Hamilton filled out the form and signed it. I never looked at it that closely.”
 21. With respect to making political contributions in cash, the respondent swears that he gave cash to the political committee because the committee did not have a checking account and because he and Mr. Bowman were not aware that there were any limits on cash contributions.
 22. With respect to the allegations concerning disclosure of the political committee’s full name, the respondent explains in his sworn statement that two newspapers who published stories concerning the political committee referred to the committee’s name as “Friends of the City” PAC. The respondent swears that he told one reporter “how does anybody know what FOC stands for? It could stand for Frustrate Outraged Citizens or any number of other things.” The respondent swears, however, that the true name is FOC PAC as represented on political advertisements and campaign finance documents.
 23. The respondent swears that the political committee relied on information provided by Ethics Commission staff, which “was not accurate and led to many of these problems. It was our intent to do everything right, that is why we were in contact with the [commission] so many times over a 2 week period.” The respondent also notes that the city failed to provide the political committee with a copy of the Fair Campaign Practices Act, and indicates that had the city done so, it may have helped the committee avoid problems. The respondent swears that the complaint is “politically motivated” and that at no time did he knowingly or intentional violate the rules and laws of the Texas Election Code.

IV. Findings and Conclusions of Law

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

1. 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(b), Election Code.

2. The report filed by the committee's campaign treasurer on April 28, 2000, disclosed that before filing its campaign treasurer appointment, between April 10, 2000, and April 27, 2000, the political committee made 10 political expenditures totaling \$2,710.39 and accepted six political contributions totaling \$3,000. (The report disclosed that two contributions of \$500 each were made by the respondent to the committee on April 10, 2000, and April 18, 2000.) Consequently, there is credible evidence that the committee made \$2,710.39 in political expenditures and accepted \$3,000 in political contributions before filing a campaign treasurer appointment.
3. It is clear from the respondent's sworn statements that he was a member of the political committee and was involved in making contributions to the committee and making expenditures on behalf of the committee. Thus, there is credible evidence that the respondent, as a member of the political committee, violated Section 253.031(b), Election Code.
4. A campaign treasurer appointment must include the name of the person making the appointment. Section 252.002(a)(4), Election Code. A political committee is required to file a campaign treasurer appointment that includes the information required by Chapter 252, Election Code. Section 252.001, Election Code.
5. Because the campaign treasurer appointment filed by the committee does not include the name of the person appointing the campaign treasurer, and because the respondent is a member of the committee and participated in the conduct that is the subject of this allegation, there is credible evidence that the respondent, as a member of the committee, violated Section 252.001, Election Code.
6. Each report filed by a campaign treasurer of a specific-purpose political committee must include the committee's full name. Section 254.121, Election Code.
7. Because under Section 254.121, Election Code, the requirement to provide the committee's full name is placed on the campaign treasurer, and because the respondent is not the committee's campaign treasurer, there is credible evidence that the respondent did not violate Section 254.121, Election Code. Additionally, the campaign treasurer appointment, the 8-day before election report, and the political advertisements all list the name of the committee as "FOC PAC." Although the name of the political committee may have been susceptible of different interpretations, the campaign treasurer and the committee consistently referred to the committee as "FOC PAC." "FOC PAC" is the full name of the committee.
8. The campaign treasurer of a specific-purpose committee that accepts political contributions or makes political expenditures for a candidate or officeholder must deliver written notice of that fact to the affected candidate or officeholder not later than the end of the period covered by the report in which the reportable activity occurs. Section

- 254.128, Election Code. A candidate or officeholder who receives the notice is required to include the name of the committee in the candidate or officeholder's campaign finance report. Sections 254.061 and 254.091, Election Code.
9. Because Section 254.128, Election Code, places the requirement to provide the notice of political expenditures and contributions on the campaign treasurer, and because the respondent is not the political committee's campaign treasurer, there is credible evidence that the respondent did not violate Section 254.128, Election Code. Additionally, Section 254.128, Election Code, specifically requires notice only if a political committee has accepted political contributions or has made political expenditures "for" a candidate or officeholder. None of the political expenditures made or the political contributions accepted by the political committee were made "for" a candidate or officeholder, but rather only opposed a candidate (and ballot measures). Therefore, the notice provision in Section 254.128, Election Code, does not apply to the campaign treasurer of this political committee.
 10. With respect to the allegation that the political expenditure for March 8, 2000, political advertisement was not properly reported by the respondent, the campaign treasurer for a specific purpose political committee is required to file the committee's campaign finance reports. Section 254.124, Election Code.
 11. Because the respondent is not the campaign treasurer of the political committee, there is credible evidence that the respondent did not violate Section 254.124, Election Code. Additionally, the political expenditure in connection with this advertisement was made before the political committee appointed a campaign treasurer. The evidence available to the commission indicates that it was not yet necessary for the political committee to file a campaign treasurer appointment because the committee had not yet accepted more than \$500 in political contributions or made more than \$500 in political expenditures.
 12. With respect to the allegation that the respondent failed to file a 30-day before election report, the campaign treasurer of a specific-purpose political committee is required to file a campaign finance report not later than the 30th day before an election. Section 254.124, Election Code. In connection with the May 6, 2000, municipal election, the 30-day before election report would have been due on April 6, 2000.
 13. Because the requirement to file a committee's campaign finance reports is placed on the campaign treasurer, and because the respondent is not the campaign treasurer, there is credible evidence that the respondent did not violate Section 254.124, Election Code. Additionally, because the political committee did not file its campaign treasurer appointment until April 28, 2000, after the date that the 30-day before election report would have been due, that report was not required to be filed. Section 254.124, Election Code.

14. 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. "Person" is defined in relevant part to include any legal entity. Section 311.005(2), Government Code.
15. The political advertisements published on March 8 and April 12, 2000, were political advertisements because they opposed a candidate for elective office and were published in return for consideration in a newspaper. Section 251.001(16), Election Code.
16. Based on the sworn statements contained in the police investigation and the sworn response of the respondent, the respondent acted together with his spouse and Mr. Bowman as a political committee when purchasing these political advertisements because they constituted a group of persons that had as a principal purpose making political expenditures. Section 251.001(12), Election Code. The political committee entered into a contract or agreement to publish these political advertisements.
17. Because the March 8, 2002, political advertisement does not include the words "political advertisement" and because neither the March 8 nor April 12, 2000, political advertisement includes the full name and address of the individual who entered into the contract for the advertisements or the full name and address of the person that individual represents, there is credible evidence that the political committee committed technical or *de minimis* violations of Section 255.001, Election Code. Because the respondent was a member of the committee and participated in the conduct that is the subject of this allegation, there is credible evidence that the respondent committed technical or *de minimis* violations of Section 255.001, Election Code.
18. A person may not, with intent to injure a candidate or influence the result of an election, knowingly represent in a campaign communication that the communication emanates from a source other than its true source. Section 255.004, Election Code. 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 a campaign communication. Section 255.005, Election Code. "Person" is defined in relevant part to include any legal entity. Section 311.005(2), Government Code.
19. The March 8 and April 12, 2000, political advertisements were campaign communications because they are written communications relating to a campaign for election to public office. Section 251.001(17), Election Code.
20. Based on the sworn statements contained in the police statement and the sworn response of the respondent, the respondent acted together with his spouse and Mr. Bowman as a political committee when purchasing the March 8 and April 12, 2000, political

advertisements. The political committee used the respondent's spouse's maiden name on both advertisements and her mother's address on the April 12, 2000, political advertisement to identify the source of the advertisements, which is an incorrect identification of the source of the advertisements. Therefore, there is credible evidence that the committee misrepresented the true source of the political advertisements and violated Section 255.004, Election Code. Because the respondent was a member of the committee and participated in the conduct that is the subject of this allegation, there is credible evidence that the respondent violated Section 255.004, Election Code.

21. Although the respondent's conduct may also constitute a misrepresentation of identity and a violation under Section 255.005, Election Code, the violation for misrepresentation of true source under Section 255.004, Election Code, more specifically applies to the conduct at issue.

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. 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 3, 5, 17, and 20, 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 violations that the commission has determined are 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 violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations, 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 violations described under Section IV, Paragraph 20.

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-200741;
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 March 8, 2002, and
4. that the executive director shall promptly refer SC-200741 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-200741 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2002.

James Kevin Cole, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director