

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BETTY D. CALLAWAY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-200744

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-200744 filed against Betty D. Callaway, Respondent. The commission met again on February 8, 2002, to consider Sworn Complaint SC-200744. 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 253.062 and 254.124, Election Code, and committed a technical or *de minimis* violation of Section 255.001, 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:

1. failed to properly report a direct campaign expenditure; and
2. failed to include the proper political advertising disclosure statement in political advertising.

III. Facts Supported by Credible Evidence

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

1. The respondent purchased a political advertisement that was published in a local newspaper on March 1, 2000. The advertisement opposed a city council person who was running for re-election in a municipal election held on May 6, 2000. The advertisement contained a partial political advertising disclosure statement stating that it was "Paid for

- by Betty Callaway, concerned citizen.” The advertisement did not state that it was political advertising and did not include an address.
2. The complainant swears that according to a conversation with the general manager of the newspaper that published the advertisement, the respondent’s advertisement cost \$142 to publish. Commission staff contacted the newspaper regarding advertising costs. Based on advertising rate information obtained from newspaper staff, the charge for the advertisement at issue would have been \$148.50.
 3. In response to this complaint, the respondent submitted a sworn statement in which she swears that she placed this political advertisement on her own.
 4. According to information obtained from the city and provided by the complainant, the respondent did not file any campaign finance reports with the city disclosing the political expenditure for the March 1, 2000, political advertisement.

IV. Findings and Conclusions of Law

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

1. A direct campaign expenditure is an expenditure that is made in connection with a campaign for an elective office or on a measure and that does not constitute a campaign contribution by the person making the expenditure. Sections 251.001(7) and (8), Election Code.
2. An individual not acting in concert with another person may make one or more direct campaign expenditures in an election from the individual’s own property that exceed \$100 if the individual complies with Chapter 254, Election Code, as if the individual were the campaign treasurer of a political committee, and the individual receives no reimbursement for the expenditures. Section 253.062, Election Code.
3. A campaign treasurer for a political committee that supports or opposes a candidate or measure is required to file pre-election campaign finance reports due 30 days and 8 days before the election. Section 254.124, Election Code.
4. The respondent’s purchase of the political advertisement published on March 1, 2000, was a direct campaign expenditure because it was an expenditure made in connection with a campaign for an elective office, and because it was not a campaign contribution to either a candidate or a political committee. There is no evidence that the respondent was acting with anyone else and, in fact, the respondent swears that she placed the advertisement on her own.
5. There is credible evidence that the respondent spent over \$100 to purchase the political advertisement.

6. Because the respondent, acting on her own, made a direct campaign expenditure that exceeded \$100, the respondent was required to comply with Chapter 254, Election Code, as if she were the campaign treasurer of a political committee, including filing campaign finance reports due 30 days and 8 days before the election. *See* Sections 253.062 and 254.123, Election Code.
7. The expenditure for the March 1, 2000, political advertisement occurred during the period that would normally be covered by a 30-day before election report. *See* Section 254.123, Election Code.
8. Because the respondent did not file any campaign finance reports disclosing her direct campaign expenditure, there is credible evidence that the respondent violated Sections 253.062 and 254.124, Election Code.
9. 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.
10. The March 1, 2000, advertisement purchased by the respondent was a political advertisement because it opposed a candidate for elective office and was published, in return for consideration, in a newspaper. Section 251.001(16), Election Code.
11. Because the advertisement and the sworn statements of the respondent indicate that the respondent purchased the advertisement, there is credible evidence that the respondent entered into a contract or agreement to publish the advertisement. Because the advertisement does not indicate that it is political advertising and does not include an address, there is credible evidence that the respondent committed a technical or *de minimis* 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. 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 8 and 11, 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 \$100 civil penalty for the violation described under Section IV, Paragraph 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-200744;
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 \$100 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-200744 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-200744 as proposed in this ORDER and AGREED RESOLUTION.

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

Betty D. Calloway, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director