

TEXAS ETHICS COMMISSION

IN THE MATTER OF
PEGGY A. ARMSTRONG,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-210209

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 6, 2001, and voted to accept jurisdiction of Sworn Complaint SC-210209 filed against Peggy A. Armstrong, Respondent. The commission met again on August 10, 2001, to consider Sworn Complaint SC-210209. 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 violations of Section 253.097, Election Code, a law 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 the respondent, as a campaign treasurer of a specific-purpose committee, made political expenditures in excess of \$500 when the specific-purpose committee had no campaign treasurer appointment on file. The complainant further alleges that respondent failed to timely file an 8-day before election campaign finance report and failed to disclose the source of funds used for political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent is the secretary/treasurer and a director of a for-profit corporation, A & D Interests, Inc. Records from the secretary of state's office show that the respondent's husband is the president and a director of the corporation, and there are no other officers or directors of the corporation.
2. On January 2, 2001, a campaign treasurer appointment was filed naming the respondent as the campaign treasurer of a specific-purpose committee that opposed a measure on the ballot in a municipal election held in Dickinson, Texas. The campaign treasurer appointment listed the name of the committee, "The Committee For Responsible Government," and listed an address and phone number that is the address and phone

- number of A & D Interests, Inc., the corporation for which the respondent is an officer and a director.
3. The election was held on January 20, 2001, and the ballot measure, which the committee opposed, was successful.
 4. On January 25, 2001, the respondent filed a campaign finance report for the committee which was marked as the committee's 8-day before election report. The report itemized political expenditures totaling \$48,929.43. The report disclosed that nine political expenditures totaling \$15,937.21 were made between December 14, 2000, and December 29, 2000, before the respondent had filed a campaign treasurer appointment for the committee. The cover sheet of the report disclosed that the committee accepted political contributions of \$48,929.43, but the source, dates, or individual amounts of these contributions were not itemized.
 5. In response to the complaint, the respondent submitted a sworn statement in which she explained that she became involved in the election because her husband's business was a "target" of the municipal ballot measure.
 6. The respondent swears that she has "never been involved in a political situation before and did not even know what a Specific-Purpose Committee was or that one was needed to expend money to promote our position. When I learned that such a committee was necessary, our corporation that owns the . . . business had already spent its own money."
 7. The respondent swears that "no contributions have ever been received from third parties. The only money ever spent was by our business." The respondent swears that she did not report the name and address of the person making contributions and the dates of the contributions because she "was under the mistaken belief that since no one was contributing money except us, then there was nothing to report. . . . I just didn't realize there was a difference between the committee and our business as it relates to the moneys used."
 8. With respect to the late report, the respondent acknowledges that she did not file the report on time and swears that it was unintentional. The respondent states that although it is "not an excuse," she swears she was busy with business matters and that she is uncertain whether she realized at the time that a report was due. She swears that she did not know or intentionally violate the rules.

IV. Findings and Conclusions of Law

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

1. A political committee is defined as “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.
2. Although the respondent indicates in her response to this complaint that she believed a specific-purpose political committee was necessary, because the corporation was the sole “person” making political expenditures, the corporation did not constitute “a group of persons” and therefore was not a political committee. Although the respondent and her spouse assisted in the corporation’s efforts, both the respondent and her spouse are the sole officers and directors of the corporation and therefore are agents of the corporation. Further, a husband and wife acting in concert cannot be required to form a political committee in order to make direct campaign expenditures. *Osterberg v. Peca*, 12 S.W.3d 31 (Tex. 2000).
3. A political committee may not knowingly accept political contributions or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. Section 253.031(b), Election Code.
4. Because the corporation was the sole “person” making direct campaign expenditures, the corporation did not constitute a political committee and was not subject to Section 253.031(b), Election Code. Therefore, there is credible evidence that the respondent did not violate Section 253.031(b), Election Code.
5. 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 makes the expenditures in accordance with the direct campaign expenditure statutes as if the corporation were an individual. Section 253.097, Election Code.
6. A direct campaign expenditure is defined as a campaign expenditure that does not constitute a campaign contribution to a candidate or a political committee by the person making the expenditure. Section 251.001(3) and (8), Election Code.
7. The political expenditures made by the respondent’s corporation in opposition to the ballot measure were not campaign contributions to either a candidate or political committee, and thus were direct campaign expenditures. Therefore, the respondent’s corporation was required to comply with the direct expenditure statutes as if the corporation were an individual.

8. An individual who is not acting in concert with another and who makes direct campaign expenditures exceeding \$100 from the individual's own property must file campaign finance reports as if the individual were a campaign treasurer of a political committee. Section 253.062(a), Election Code. An individual making direct campaign expenditures is not required to file a campaign treasurer appointment. Section 253.062(b), Election Code.
9. A specific-purpose committee that supports or opposes a measure is required to file two pre-election reports due 30 days and 8 days before an election. Section 254.124, Election Code. For the election held on January 20, 2001, a 30-day before election report was due December 21, 2000, disclosing any reportable political activity occurring on or before December 11, 2000. Section 254.124(b), Election Code. An 8-day before election report was due on January 12, 2001, disclosing any reportable activity occurring on or before January 10, 2001. Section 254.124(c), Election Code.
10. Because the respondent's corporation made direct campaign expenditures in connection with a measure between December 14, 2000, and January 10, 2001, the corporation was required to file an 8-day before election report, due January 12, 2001, as if the corporation was the campaign treasurer of a political committee. The respondent filed a report designated as an 8-day before election report on January 25, 2001, 13 days late.
11. An officer, director, or other agent of a corporation who commits an offense under Subchapter D, Chapter 253, Election Code, regulating corporations and labor unions, is punishable for the grade of offense applicable to the corporation. Section 253.095, Election Code.
12. The respondent acknowledges that she did not file the report on time and swears that it was unintentional. She states that although it is "not an excuse," she was busy with business matters and is uncertain whether she realized at the time that a report was due.
13. Because the respondent's corporation did not timely file the 8-day before election report, there is credible evidence that the respondent, as an officer and director of the corporation, violated Section 253.097, Election Code.
14. A person filing with the commission who filed a late 8-day before election report would be subject to an administrative penalty of \$100 for each day after the deadline that the report was not filed, including the day the late report was filed. Section 18.87, Ethics Commission Rules. The commission may consider the amount of that penalty in determining the amount of the fine to be assessed in a sworn complaint. Section 18.95, Ethics Commission Rules.
15. A person filing a campaign finance report must disclose the full name and address of persons making contributions that were accepted during the reporting period and that

- exceeded \$50, and the dates that the contributions were accepted. Section 254.031(a)(1), Election Code.
16. Because the respondent's corporation was not, in fact, a political committee, but rather was a corporation making direct campaign expenditures from its own funds, there were no contributions to report. The respondent swears that "no contributions have ever been received from third parties" and that "the only money ever spent was by our business." The requirement in Section 254.031(a)(1), Election Code, to report the full name and address of contributors and the date that the contributions were accepted is inapplicable to the respondent or the respondent's corporation. Thus, there is credible evidence that the respondent did not violate Section 254.031(a)(1), Election Code.
 17. Under the direct campaign expenditure reporting requirements, the corporation was required to file campaign finance reports as if the corporation were the campaign treasurer of a political committee. Sections 253.062 and 253.097, Election Code. A campaign finance report filed by a political committee must include the full name and address of the committee. Section 254.121(1), Election Code. In this case, the corporation would be acting as if it were a political committee. Thus, a corporation making direct campaign expenditures is required to disclose its full name and address in the same way that a campaign treasurer of a political committee is required to disclose the committee's full name and address.
 18. The campaign finance report filed by the respondent disclosed the address and phone number of the corporation, but did not disclose the corporation's name or otherwise indicate that the corporation was the source of the direct campaign expenditures. Rather, the campaign finance report simply lists the name of the political committee.
 19. The respondent's sworn response indicates that the respondent was confused regarding the correct reporting procedures and believed that a political committee was necessary. Moreover, the respondent, in fact, filed a campaign treasurer appointment which provided the name of the political committee. These facts may explain why the respondent listed the political committee's name rather than the corporation's name on the campaign finance report. Nonetheless, the corporation was required to file reports as if it were the campaign treasurer of a political committee, and a campaign treasurer of a committee is required to disclose the committee's full name. Section 254.121(1), Election Code. Therefore, there is credible evidence that the respondent, as an officer and director of the corporation, violated Section 253.097, 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 13 and 18, 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, after considering the sanction necessary to deter future violations, and after considering the fact that the commission in SC-210208 imposed a \$1,500 penalty for the same violations described under Section IV, Paragraphs 13 and 18, the commission imposes no fine in SC-210209.

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-210209;

- 3. that the respondent may consent to the proposed AGREED RESOLUTION of SC-210209 only by signing an original of the AGREED RESOLUTION and tendering a \$1,500 civil penalty in SC-210208, as well as signing an original of this document and mailing the signed original to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than September 7, 2001; and
- 4. that the executive director shall promptly refer SC-210209 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-210209 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 200__.

Peggy A. Armstrong, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director