

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ROGER E. CASEY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-210648

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 10, 2001, and voted to accept jurisdiction of Sworn Complaint SC-210648 filed against Roger E. Casey, Respondent. The commission met again on January 11, 2002, to consider Sworn Complaint SC-210648. 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 Sections 253.031(b), 253.037(a), 254.151(4), and 254.154(c), 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 complaint alleges that the respondent, as the campaign treasurer of a general-purpose political committee:

1. made political expenditures at a time when the committee's campaign treasurer appointment had been filed for less than 60 days and before the committee had accepted contributions from at least 10 persons;
2. filed a 30-day before election report that covered an incorrect period of time;
3. failed to provide detailed information regarding political expenditures that exceeded \$50;
4. filed a late 8-day before election report;
5. filed a late 8-day before runoff election report; and
6. failed to indicate the name of each identified candidate or classification by party of candidates supported by the committee.

III. Facts Supported by Credible Evidence

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

1. The respondent is the campaign treasurer of a general-purpose political committee that filed its campaign treasurer appointment on April 4, 2001.
2. At the time the committee filed its campaign treasurer appointment, the respondent also filed a 30-day before election report in connection with a municipal election that was being held on May 5, 2001. The report disclosed one political contribution in the amount of \$100 and a \$400 loan to the committee from the same individual who made the political contribution to the committee. The report also disclosed \$466.27 in total unitemized political expenditures.
3. On May 21, 2001, the respondent filed an 8-day before election report. The 8-day before election report was filed 24 days after the April 27, 2001, filing deadline. It disclosed two political contributions totaling \$600. Additionally, the report disclosed an expenditure (reported as both a political and non-political expenditure) in the amount of \$183.54.
4. The respondent received a notice from the Ethics Commission of an administrative penalty for filing the late 8-day before election report. The administrative penalty for the late report was waived by the Executive Director of the Ethics Commission under Ethics Commission Rules, however, because the respondent had not received notice of filing deadlines or confirmation of the committee's campaign treasurer appointment until after the due date for the 8-day before election report.
5. On May 25, 2001, the respondent timely filed an 8-day before run-off election report. The run-off election was held on June 2, 2001. The 8-day before run-off election report disclosed two political contributions totaling \$300 and \$791.79 in expenditures (reported as both political and non-political expenditures).
6. On July 10, 2001, the respondent timely filed a July 15 semiannual report. The semiannual report disclosed six political contributions totaling \$270 and \$75.97 in expenditures (reported as non-political expenditures).
7. The committee's first expenditures were made for a March 30, 2001, mail-out that included a voter registration card and a flier encouraging city residents to register to vote and listing issues of concern. Following the voter registration mail-out, the committee made expenditures to distribute an "issue statement" and "door hangers." Both of these documents identify a specific candidate and support that candidate.

8. The respondent reported making a total of \$1,517.57 in expenditures (reported as both political and non-political expenditures) and accepting a total of \$1,270 in political contributions other than pledges or loans.
9. In response to this complaint, the respondent submitted an affidavit in which he swears that this committee was formed for the purpose of generating interest in a local municipal mayoral and city council election. He swears that the committee intended to get citizens to register to vote and to publicize certain issues that they felt were important. He swears that he was unfamiliar with the laws regulating political committees and did not intend to mislead or defraud anyone with respect to any errors he may have made. The respondent points out that he did not receive from the Ethics Commission confirmation of his campaign treasurer appointment and other information explaining his duties as the campaign treasurer of the political committee until May 24, 2001, after the election. The respondent also questions whether the expenditures made and the contributions accepted by the political committee were, in fact, political expenditures and political contributions.

IV. Findings and Conclusions of Law

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

1. A general-purpose committee may not make or authorize political expenditures totaling more than \$500 unless the committee has (1) filed its campaign treasurer appointment not later than the 60th day before the date the expenditure is made that causes the total expenditures to exceed \$500, and (2) accepted political contributions from at least 10 persons. Sections 253.031(b) and 253.037(a), Election Code. *See also* Ethics Advisory Opinion No. 161 (1993).
2. A political expenditure is defined as a campaign expenditure or an officeholder expenditure. Section 251.001(10), Election Code. A campaign expenditure is an expenditure made in connection with a campaign for an elective office or on a measure. Section 251.001(7), Election Code.
3. In Ethics Advisory Opinion 37 (1992), the commission found that an expenditure made by a corporation for a non-partisan notice informing employees about an election and encouraging people to register to vote was not a political expenditure because it “is not made in connection with a campaign for an elective office or on a measure, nor is it an officeholder expenditure.”
4. The expenditures made by the respondent’s political committee in connection with the voter registration mail-out are not political expenditures because they were not made in connection with a campaign for elective office or on a measure.

5. The expenditures made by the political committee in connection with the “issue statement” and “door hangers” are political expenditures because both of these documents identify a specific candidate and support that candidate. Thus, these expenditures are political expenditures that count towards the \$500 threshold in Section 253.031(b), Election Code.
6. Although the political committee’s campaign finance reports do not directly associate specific expenditures with the specific documents that were distributed by the committee, the reports and the respondent’s response to this complaint clearly indicate that the committee made political expenditures totaling more than \$500 through May 29, 2001.
7. At the time the committee exceeded \$500 in political expenditures, the committee’s campaign treasurer appointment had not been on file for at least 60 days. Additionally, the committee reported accepting political contributions from 6 persons through May 25, 2001. (The committee accepted political contributions from 5 additional persons between June 15 and June 18, 2001.)
8. There is credible evidence that the political committee of which the respondent is the campaign treasurer violated Sections 253.031(b) and 253.037(a), Election Code, by making political expenditures exceeding \$500 at a time when the committee’s campaign treasurer appointment had not been on file at least 60 days and when the committee had not accepted political contributions from at least 10 persons.
9. The campaign treasurer of a political committee that supports or opposes a candidate or a measure in an election is required to file a 30-day before election report. Sections 254.154(a) and (b), Election Code.
10. The 30-day before election report covers the period beginning the day the committee’s campaign treasurer appointment is filed or the first day after the period covered by the committee’s last required report, as applicable, and continuing through the 40th day before the election. Section 254.154(b), Election Code.
11. A campaign finance report that is required to be filed under Chapter 254, Election Code, must include the amount of political expenditures made during a reporting period that in the aggregate exceed \$50, as well as the name and address of the person to whom the payment is made, and the date and purpose of the expenditure. Section 254.031(a)(3), Election Code.
12. The 40th day before the May 5, 2001, municipal election was March 26, 2001. Because the respondent’s political committee filed its campaign treasurer appointment after March 26, 2001, the last day covered by a 30-day before election report, the committee was not required to file a 30-day before election report.

13. Because the political committee was not required to file the 30-day before election report, the requirements in Sections 254.031(a)(3) and 254.153(b), Election Code, relating to providing detailed information and the periods covered by a 30-day before election report, do not apply to the respondent. Thus, there is credible evidence that the respondent did not violate Sections 254.031(a)(3) and 254.153(b), Election Code.
14. The campaign treasurer of a political committee that supports or opposes a candidate or a measure during the period beginning on the 39th day before an election and continuing through the 10th day before the election is required to file a report due 8 days before the election. *See* Sections 254.154(a) and (c), Election Code; Section 20.425, Ethics Commission Rules.
15. The political committee in this complaint supported a mayoral candidate in an election held on May 5, 2001, by making political expenditures during the period covered by the 8-day before election report. Accordingly, an 8-day before election report was due on April 27, 2001. The respondent filed the 8-day before election report on May 21, 2001, 24 days late. Because the respondent filed a late 8-day before election report, there is credible evidence that the respondent violated Section 254.154(c), Election Code.
16. The administrative penalty for the late 8-day before election report was waived by the Executive Director of the Ethics Commission under Ethics Commission Rules, because the respondent had not received notice of filing deadlines or confirmation of the committee's campaign treasurer appointment until after the due date for the 8-day before election report. For those reasons, the commission imposes no civil penalty in this sworn complaint for filing the late 8-day before election report.
17. The campaign treasurer of a political committee that supports or opposes a candidate or a measure in an election and an ensuing runoff election is required to file a report due 8 days before the runoff election. Section 254.154(e), Election Code.
18. The respondent's political committee supported a mayoral candidate in a run-off election held on June 2, 2001. On May 25, 2001, the respondent timely filed an 8-day before run-off election report. Accordingly, there is credible evidence that the respondent did not violate Section 254.154(e), Election Code.
19. Each report filed by the campaign treasurer of a general-purpose committee is required to include the name of each identified candidate or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate or classification by party of candidates. Section 254.151(4), Election Code.
20. The respondent's political committee made political expenditures for two direct mail pieces that supported the candidacy of a mayoral candidate. The respondent did not

indicate in the political committee's campaign finance reports that the committee supported the mayoral candidate by either identifying the candidate or by party classification. Thus, there is credible evidence that the respondent violated Section 254.151(4), 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, 15, 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 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 \$200 civil penalty for the violations described under Section IV, Paragraphs 8 and 20. No civil penalty is imposed for the violation described under Section IV, Paragraph 15.

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-210648;
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 February 8, 2002; and
4. that the executive director shall promptly refer SC-210648 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-210648 as proposed in this ORDER and AGREED RESOLUTION.

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

Roger E. Casey, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director