

TEXAS ETHICS COMMISSION

IN THE MATTER OF
TERRY L. JACOBSON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-211171

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on January 11, 2002, and voted to accept jurisdiction of Sworn Complaint SC-211171 filed against Terry L. Jacobson, Respondent. The commission met again on July 12, 2002, to consider Sworn Complaint SC-211171. 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 Section 20.309(7), Ethics Commission Rules, a rule administered and enforced by the commission. The commission mailed a proposed Order and Agreed Resolution to the respondent on July 19, 2002. In response, the respondent requested that the commission reconsider its proposed resolution. The commission met on August 16, 2002, and considered the respondent's request. 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 is the campaign treasurer of a specific-purpose committee that accepted political contributions and made political expenditures when the committee had no campaign treasurer appointment on file. The complainant further alleges that the campaign treasurer appointment filed by the committee was incomplete, that the reports required by Section 254.124, Election Code, were not filed, and that political advertising signs distributed by the committee did not include the right-of-way notice required by Section 255.007, Election Code.

III. Facts Supported by Credible Evidence

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

1. On November 6, 2001, Navarro County held a non-binding referendum election to create a county court-at-law.
2. In the days leading up to the election, signs, postcards, and letters seeking a yes vote on the referendum were distributed throughout the community. Those materials contain a political

- advertising disclosure statement that includes the name of a committee, but the signs do not appear to contain a right-of-way notice.
3. The county clerk received the committee's campaign treasurer appointment on October 30, 2001.
 4. The campaign treasurer appointment shows that the respondent appointed himself as the campaign treasurer for the committee.
 5. The campaign treasurer appointment also shows that sections 1, 13, and 14 of the form were not completed.
 6. The respondent submitted a sworn response dated December 7, 2001, in which he swears that in mid-September 2001, he received a \$500 contribution check that he deposited on September 20, 2001.
 7. The respondent swears he received no other contributions until November 19, 2001, when he received two \$100 contributions.
 8. The respondent swears that before the election he wrote only one check on the committee's behalf for \$25 to pay for mailing labels.
 9. The respondent swears that in late October 2001, he had only received the single \$500 contribution.
 10. The respondent swears that he spoke with commission staff and understood that if he did not file the campaign treasurer appointment more than 10 days before the election, he would not have to file any pre-election reports.
 11. The county clerk's records show that the respondent filed a campaign treasurer appointment on October 30, 2001, three days after the end of the filing period for the 8-day report.
 12. The committee's January 2002 semiannual report shows an in-kind contribution for \$631.10 in the form of campaign signs, but the donor is listed as anonymous.
 13. The respondent swears that he did not know who had paid for the campaign signs supporting the measure, and that the person who coordinated the sign work only had a bill from the printing company marked paid and showing that the signs were paid for in October 2001.
 14. The respondent swears he "was not involved in ordering the signs, had no knowledge of who actually made the signs, where they were purchased, how the colors were chosen and I had nothing to do with what information was to be placed on the signs [and] [a]ll of that was handled by other individuals who were in favor of the County Court at Law."

15. The respondent swears that after he filed the January semiannual report he received an invoice from the person who actually paid for the signs, and who was now seeking reimbursement.
16. The respondent submitted a copy of an invoice in the amount of \$631.10 that shows the signs were sold to the committee on October 23, 2001, and paid for on that same date.
17. The respondent submitted two supplemental affidavits.
18. Other than the evidence filed with the complaint, the complainant had no additional evidence to submit.
19. The respondent has consistently denied that he knew of the expenditure, the amount of the expenditure, or who made or authorized the expenditure, before he filed the campaign treasurer appointment for the committee.
20. The second supplemental affidavit included receipts for expenditures and the affidavit of a person who had some knowledge with regard to the printing of the signs.
21. In the most recent affidavit, the respondent swears that "I requested additional information regarding the cost of the signs on several different occasions, beginning shortly after the election." The information he received from the third party affiant was that all she had was an invoice marked paid, but that it did not show who had paid for the signs. The respondent reported that amount on the January 2002 semiannual report.
22. The respondent swears that before the election he spoke with a political consultant about election strategy and was referred to a second consultant. He swears he never discussed the costs involved with either consultant.
23. The respondent swears he made several attempts to contact the second consultant about signs, but was unsuccessful so he asked the third party affiant to contact the second consultant about political advertising signs.
24. Both the respondent and the third party affiant swear that the third party affiant was the person who discussed the signs with the second consultant.
25. The third party affiant states that she assisted the consultant with the design of the signs, but she denies that she had any knowledge about the cost of the signs or who was supposed to pay for them.
26. Both the third party affiant and the respondent swear that they did not know until after the election how much the signs cost.

27. The third party affiant swears that the invoice she received after the election was marked "paid," but that she had no knowledge with regard to who paid for the signs.
28. The third party affiant swears that the respondent asked her to get copies of the bill, and that sometime in January she received another copy of the bill which she forwarded to the respondent. The respondent included copies of the invoices with his most recent supplemental affidavit. He swears that he did not see these until February 2002, and that one of the bills included the costs for the signs that had been paid up front by the consultant in October 2001.

IV. Findings and Conclusions of Law

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

Campaign treasurer appointment

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.
2. A political committee may not knowingly accept contributions or make or authorize political expenditures exceeding \$500 unless a campaign treasurer appointment is in effect. If a committee does not exceed the \$500 contribution or expenditure threshold, it is not required to file a campaign treasurer appointment. Section 253.031(b), Election Code.
3. A political expenditure is defined as a campaign expenditure or an officeholder expenditure. Section 251.001(10), Election Code.
4. The expenditures for election signs, postcards, and letters were campaign expenditures because they were expenditures made in connection with a campaign for a measure. Section 251.001(7), Election Code.
5. For purposes of reporting under Chapter 254, Election Code, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. Section 254.035, Election Code.
6. The respondent swears that he did not know who purchased the signs when he filed the January 2002 semiannual report.
7. In order for the respondent to have violated the prohibition against making political expenditures in excess of \$500 at a time when no campaign treasurer was in effect, the evidence must show that the respondent knew of the expenditure and that the amount was

readily determinable by him before October 30, 2001, the date on which he filed the committee's campaign treasurer appointment.

8. In the respondent's second supplemental affidavit, he reiterates that he had no involvement with the signs, and never saw the actual bill for the signs or other costs associated with the election until February 2002.
9. The complete invoice for the signs the respondent submitted was from a political consultant, and the evidence indicates that the political consultant paid for the signs up front, and then later submitted the bill to the committee to seek reimbursement for the cost of the signs. The invoice shows that the second political consultant billed the committee for the total cost of the signs (printing, stakes, nails, shipping, etc).
10. The evidence shows that the respondent and third party affiant discussed obtaining some political advertising signs, but the evidence does not show that the respondent actually knew that any expenditures had been made for political advertising signs before he appointed himself as campaign treasurer.
11. The respondent and third party affiant both swear that they received the actual invoices for the signs after the election and did not know the costs until that time. The invoices for other items, such as post cards, postage, labels, and mailing supplies, all show billing dates after the committee filed its campaign treasurer appointment.
12. The evidence does not show that the respondent or the committee knew the amount of the expenditures, or when the actual expenditures were made, until after the respondent's appointment as campaign treasurer. Therefore, there is credible evidence that the respondent did not violate Section 253.031, Election Code.

Incomplete campaign treasurer appointment

13. The campaign treasurer appointment for a specific-purpose committee supporting or opposing a county measure election must include a description of each measure supported or opposed, and an indication whether the committee supports or opposes the measure. Section 20.309, Ethics Commission Rules.
14. Section 14 on the campaign treasurer appointment requires the disclosure of the information, and that section is blank.
15. Therefore, there is credible evidence that the respondent failed to fully complete the campaign treasurer appointment, which requires a description of the measure supported or opposed by the committee, as well as an indication of whether the committee supports or opposes the measure, be stated on the campaign treasurer appointment, and thus violated Section 20.309(7), Ethics Commission Rules.

Campaign finance reports

16. The campaign treasurer of a political committee must file reports detailing the committee's political contributions and expenditures. The reports are due semiannually as well as 30 days and 8 days before elections in which the committee is involved. Sections 254.123 and 254.124, Election Code.
17. If a campaign treasurer appointment is filed after the end of a reporting period, the next report due would cover the time between the appointment of a campaign treasurer and the end of that reporting period. Sections 254.123 and 254.124, Election Code.
18. The 30-day and 8-day before the election reports were not required because the campaign treasurer appointment was filed after the end of the reporting period for those reports. Therefore, there is credible evidence that the respondent did not violate Section 254.124, Election Code.

Right-of-way notice

19. "Political advertising" is defined in relevant part as a communication that supports or opposes a measure and that appears in a sign. Section 251.001(16), Election Code.
20. A "measure" is a question or proposal submitted in an election for an expression of the voters' will. Section 251.001(19). Holding an election for voters to approve or disapprove the creation of a county court-at-law is a measure election.
21. The signs at issue in this case are political advertising because they support a measure.
22. A political advertising sign must contain a notice stating that a violation of state law occurs if the sign is placed in a highway right-of-way. Section 255.007(a), Election Code.
23. A person may not knowingly enter into a contract to print or make a political advertising sign that does not contain the right-of-way notice, nor may a person instruct another person to place a political advertising sign that does not contain that notice. Section 255.007(b), Election Code.
24. The sign in the photograph submitted with the complaint does not have a right-of-way notice.
25. The respondent swears that he did not have the signs printed or distributed, and the evidence does not show that the respondent entered into a contract or agreement to print the signs, or that he instructed another to place the signs.

26. Since a third party had the signs printed, there is credible evidence that the respondent did not violate Section 255.007(b)(1), Election Code, and insufficient evidence that the respondent violated Section 255.007(b)(2), 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. The respondent acknowledges that the campaign treasurer appointment for a specific-purpose committee supporting or opposing a county measure election must include a description of each measure supported or opposed and an indication whether the committee supports or opposes the measure. 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 violation described under Section IV, Paragraph 15, 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 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-211171;
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 September 13, 2002; and
4. that the executive director shall promptly refer SC-211171 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-211171 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day _____, 20__.

Terry L. Jacobson, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director