

TEXAS ETHICS COMMISSION

IN THE MATTER OF
TERRY W. MOSIER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-211273

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-211273 filed against Terry W. Mosier, Respondent. The commission met again on April 12, 2002, to consider Sworn Complaint SC-211273. 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 253.062 and 255.004, 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 is the chairman of a specific-purpose committee that accepted political contributions and made political expenditures in excess of \$500 dollars when the committee had no campaign treasurer appointment on file. The complainant further alleges that the respondent failed to file reports and keep records required by Chapter 254, Election Code.

III. Facts Supported by Credible Evidence

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

1. On August 11, 2001, the Matagorda County Navigation District No. 1 held a bond election seeking voter approval to issue bonds to finance port improvements.
2. In the days leading up to the election, newspaper advertisements appeared advocating the defeat of the bonds. Two of the newspaper advertisements contained political advertising disclosure statements that included the name of a committee and that listed the

- respondent as its chairman. Two advertisements contained a political advertising disclosure statement with the same committee name but listed a person who was not the respondent as the committee's secretary.
3. The complainant submitted evidence that shows the dates of publication and cost of the advertisements as follows: July 25, 2001 (\$145), August 1, 2001 (\$438), and two advertisements on August 8, 2001 (\$438 and \$45). The total cost of the advertisements was \$1,066.
 4. The complainant swears that on August 16, 2001, he sent a letter to the respondent asking him to file a campaign treasurer appointment and campaign finance reports, but he received no response.
 5. The navigation district's board secretary submitted a letter to the commission stating that as of January 28, 2002, neither the respondent nor the committee whose name appeared in the advertisements had filed any documents with the navigation district.
 6. The respondent filed an affidavit in which he swears that he placed the advertisements in the newspaper at his sole expense and that he did not seek contributions to pay for the advertisements.
 7. The respondent swears that no committee existed as defined by the Election Code, and that no group of persons ever existed whose purpose was accepting political contributions or making campaign expenditures.
 8. The respondent swears that he was the committee and that the person whose name appears on some of the advertising as the secretary of the committee was paid by the respondent to assist him in gathering information concerning the district's meetings.
 9. The respondent swears that he alone put the information together for printing the advertisements.

IV. Findings and Conclusions of Law

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

Campaign Treasurer Appointment/Direct Expenditure

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 political contributions or make or authorize political expenditures exceeding \$500 unless a campaign treasurer appointment is in effect. Section 253.031(b), Election Code.
3. The campaign treasurer appointment for a specific-purpose committee supporting or opposing a navigation district bond measure must be filed with the secretary of the navigation district. Section 252.007, Election Code.
4. The respondent made expenditures for advertising. The expenditures were campaign expenditures because they were made in connection with a campaign to oppose a measure. Section 251.001(3), Election Code.
5. The total cost for the advertisements was approximately \$1,066, well over the \$500 expenditure threshold that triggers the requirement that a committee file a campaign treasurer appointment.
6. The respondent swears that he acted alone in placing the advertisements and that no actual committee existed.
7. The complainant did not have evidence to show that there was a group of persons acting as a committee and to refute the statement of the respondent.
8. A direct campaign expenditure is a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. Section 251.001(8), Election Code; Section 20.1(8), Ethics Commission Rules.
9. An individual not acting in concert with another person may make one or more direct campaign expenditures that exceed \$100 on a measure only if the individual complies with the reporting requirements under Chapter 254, Election Code, as if the individual were the campaign treasurer of a political committee, and the individual receives no reimbursement. Section 253.062, Election Code.
10. The respondent's sworn statements indicate that he did make direct campaign expenditures in connection with an election by purchasing political advertising.
11. The cost of the advertisements exceeded \$100.
12. Two of the expenditures for political advertising were made during the reporting period for the 8-day before the election report, and therefore the respondent was required to file a report by August 3, 2001, showing those expenditures.

13. Two of the expenditures for political advertising were made after the end of the 8-day before the election reporting period, and therefore the respondent was required to file a report by January 15, 2002, showing those expenditures.
14. The respondent did not file any reports with the navigation district. Therefore, there is credible evidence that the respondent violated Section 253.062, Election Code.

Recordkeeping Required

15. The campaign treasurer of a specific-purpose committee must maintain a record of all reportable activity. Section 254.001(b), Election Code.
16. A person making direct expenditures that exceed \$100 must maintain records as if the person were the treasurer of a specific-purpose committee. Section 253.062, Election Code.
17. There is no evidence that the respondent failed to keep records of his direct expenditures. Therefore, there is no credible evidence that the respondent violated Section 254.001, Election Code.

True Source of Political Advertising

18. A campaign communication is a written or oral communication relating to a campaign on a measure. Section 251.001(17), Election Code. A person may not, with intent to influence the result of a measure election, knowingly represent in a campaign communication that the communication emanates from a source other than its true source. Section 255.004(b), Election Code.
19. The newspaper advertisements at issue in this complaint constitute campaign communications because they are written communications relating to a campaign on a measure.
20. The political advertising disclosure statement included in each newspaper advertisement states that the advertisement was "[p]aid for by the Committee to Raise Public Awareness . . ."
21. The respondent swears in his affidavit that there was no committee as the term is defined by the Election Code.
22. Stating that the advertisement was placed by a committee, when in fact no such committee existed, was a representation that the advertisement emanated from a source

other than its true source. Therefore, there is credible evidence that the respondent violated Section 255.004, 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 an individual not acting in concert with another person may make one or more direct campaign expenditures that exceed \$100 on a measure only if the individual complies with the reporting requirements under Chapter 254, Election Code, as if the individual were the campaign treasurer of a political committee, and the individual receives no reimbursement. The respondent further acknowledges that a person may not, with intent to influence the result of a measure election, knowingly represent in a campaign communication that the communication emanates from a source other than its true source. The respondent agrees to fully and strictly comply with these requirements 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 violations described under Section IV, Paragraphs 14 and 22, 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 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 \$500 civil penalty for the violations described under Section IV, Paragraphs 14 and 22.

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-211273;
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 \$500 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 10, 2002; and
4. that the executive director shall promptly refer SC-211273 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-211273 as proposed in this ORDER and AGREED RESOLUTION.

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

Terry W. Mosier, Respondent

EXECUTED ORIGINAL received by the commission on: _____
Texas Ethics Commission

By: _____
Tom Harrison, Executive Director