

TEXAS ETHICS COMMISSION

IN THE MATTER OF
NORMAN HARGRAVE,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-220678

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 12, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220678 filed against Norman Hargrave. The commission met again on April 10, 2003 to consider Sworn Complaint SC-220678. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of a violation of sections 253.062 and 255.001 of the 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 made a direct campaign expenditure that exceeded \$100 and did not file the required campaign finance reports, and failed to include a disclosure statement on political advertising.

III. Facts Supported by Credible Evidence

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

1. The allegations in this complaint arose from an election that was held May 4, 2002, in Baytown.
2. This complaint involves communications distributed by mail, published in a newspaper, and posted on a website. The complainant submitted copies of the communications.
3. The respondent submitted a sworn response through his attorney in which he states that he was responsible for the communications.
4. The respondent asserts that the communications do not support or oppose any candidates or officeholders and are protected free speech.

5. The respondent asserts that the complaint is frivolous.
6. There are communications that advertise an essay contest, seek candidates to run for public office, and announce a website chat room office.
7. One newspaper communication states, "The first step toward solving these problems is to change the mayor, city council, and city manager!" Staff research shows that the cost to publish that communication in the newspaper would have exceeded \$100.
8. The respondent was also responsible for a website on which various communications were published.
9. The general purpose of the website appears to be to serve as a forum for airing complaints about city government.
10. One section of the website was titled "Recent Letters To The Webmaster."
11. The letters posted there are generally critical of the city, but one is critical of the individuals responsible for the website for not revealing their identity.
12. The responses to the letters were from the "Democratic Webmaster," who the evidence shows is the respondent.
13. One response states, "We do in fact need change. If you will follow our site for the next few months before the election, I feel like you will be chanting, 'we need change, we need change, we need change!' and will help to elect all new council persons as well as a new mayor."

IV. Findings and Conclusions of Law

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

Letter and newspaper advertisements

1. "Political advertising" is defined in relevant part as a communication that supports or opposes a candidate, public officer, or political party and that, in return for consideration, is published in a newspaper, magazine, or other periodical or that appears in a pamphlet, circular, flier, sign, or similar form of written communication. Elec. Code § 251.001(16).
2. A person may not enter into a contract or agreement to print or publish political advertising that does not indicate that it is political advertising and that does not indicate the full name

- and address of the person who entered into the contract or agreement with the printer or publisher or the full name and address of the person that individual represents. *Id.* § 255.001.
3. The communications that advertise an essay contest, seek candidates to run for public office, and announce a website chat room office do not expressly support or oppose any candidates or public officers. Thus they do not meet the definition of political advertising and no disclosure statement was required. Therefore, there is credible evidence that those communications do not violate section 255.001 of the Election Code.
 4. An individual not acting in concert with another person is required to report a direct campaign expenditure exceeding \$100 as if the person were the treasurer of a specific-purpose committee. Elec. Code § 253.062.
 5. Because the communications that advertise an essay contest, seek candidates to run for public office, and announce a website chat room are not political advertising, the expenditures related to those exhibits were not political expenditures, and were not required to be reported by the respondent. Therefore, there is credible evidence that the respondent did not violate section 253.062 of the Election Code.
 6. The communication stating, “The first step toward solving these problems is to change the mayor, city council, and city manager!” that was published in the newspaper clearly opposes candidates and elected officials.
 7. Because that communication opposed public officers or candidates for elective public office or public officers and was published in exchange for consideration in a newspaper, it constituted political advertising and was required to carry a disclosure statement. Elec. Code § 255.001.
 8. The advertisement stated, "Paid for by a concerned citizen," but it did not include a statement that the advertisement was political advertising, the name of the individual who entered into the contract or agreement to publish the advertisement, the name of the person that individual represents, or an address for either the individual or the person represented. *Id.* § 255.001. Therefore, there is credible evidence that the respondent violated section 255.001 of the Election Code.
 9. The cost for the advertisement exceeded \$100, and the evidence shows that the respondent paid for the advertisement. Therefore, the respondent was required to file a campaign finance report, in this case a 30-day pre-election report, as if he were the treasurer of a specific-purpose committee.

10. The respondent did not file a campaign finance report disclosing the expenditure. Therefore, there is credible evidence that the respondent violated section 253.062 of the Election Code, with respect to that advertisement.

Website

11. Political communications available on the Internet may constitute political advertising.
12. The letters section of the website included a number of letters, one of which was critical of the sponsors of the website, thus suggesting that the website might have been intended to serve as a forum for airing different points of view.
13. The respondent's response to that critical letter makes clear that he does not support the current mayor and council members.
14. The evidence does not show, however that the website, taken as a whole, opposed specific candidates. Therefore, there is credible evidence the respondent did not enter into an agreement to publish political advertising on the website in violation of section 255.001 of the Election Code.
15. Because the evidence does not show that the respondent entered into an agreement to publish political advertising on the website, the evidence does not show that the expenditure for the website was a political expenditure. Therefore, there is credible evidence that the respondent violated section 253.062 of the Election Code.

Frivolous Complaint

16. The respondent alleges that the complainant filed a frivolous complaint.
17. A frivolous complaint is a complaint that is groundless and brought in bad faith or is groundless and brought for purposes of harassment. GOV'T CODE § 571.176.
18. The complaint is not groundless because there is credible evidence that the respondent violated section 255.001 of the Election Code. Since the complaint is not groundless, by definition it is not frivolous.

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 a person may not enter into a contract or agreement to print or publish political advertising that does not indicate that it is political advertising and that does not indicate the full name and address of the person who entered into the contract or agreement with the printer or publisher or the full name and address of the person that individual represents. The respondent further acknowledges that an individual not acting in concert with another person is required to report a direct campaign expenditure exceeding \$100 as if the person were the treasurer of a specific-purpose committee. 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 8 and 10, 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 \$300 civil penalty for the violations described under Section IV, Paragraphs 8 and 10.

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-220678;
- 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 \$300 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 9, 2003; and
- 4. that the executive director shall promptly refer SC-220678 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-220678 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2003.

Norman Hargrave, Respondent

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

By: _____
Karen Lundquist, Executive Director