

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JAMES T. DEATS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-220679

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 16, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220679 filed against James T. Deats, Respondent. The commission met again on December 13, 2002, to consider Sworn Complaint SC-220679. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of a violation of Section 253.062, 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. Allegation

The complainant alleges that the respondent, a former elected city official, made a direct campaign expenditure that exceeded \$100 and failed to file the required campaign finance report.

III. Facts Supported by Credible Evidence

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

1. On May 4, 2002, Dickinson, Texas held an election.
2. The complainant alleges that before the election the respondent made a direct campaign expenditure that exceeded \$700 for political advertising and did not file the required campaign finance reports.
3. The complainant submitted a copy of the communication at issue as well as a news story that reports that the respondent said he was responsible for the mailer.
4. The respondent submitted a copy of the communication and an affidavit in which he swears, "My understanding of the Sec. 253.062 is that anyone [sic] individual that spends in excess of \$100.00 must file a disclosure. The letter was sent out April 23, 2002 and the disclosure filed with the Dickinson City Sec. on July 12th 3 days before the July 15th deadline.

Therefore I contend I an [sic] in compliance with Section 253.062. Enclosed is a copy of the report."

5. The report enclosed by the respondent was date-stamped July 12, 2002, and the cover sheet discloses total political expenditures of \$830. There were no schedules detailing the expenditure or expenditures.
6. A copy of the same report was obtained from the city secretary and it too contained no detailed disclosure.
7. On November 12, 2002, the respondent filed a corrected report with a Schedule F attached detailing expenditures totaling \$830 and disclosing that the expenditures were made on April 18, 2002, but not including the name of the candidate benefited or the office sought.

IV. Findings and Conclusions of Law

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

1. The expenditures for the letter at issue were campaign expenditures because they were made to oppose a candidate in connection with a campaign for elective public office. Section 251.001(7), Election Code.
2. 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.
3. Expenditures for the letter were direct campaign expenditures because they were campaign expenditures supporting a candidate that were made without the prior consent or approval of the candidate supported. Ethics Advisory Opinion No. 331 (1996).
4. An individual not acting in concert with another person may make one or more direct campaign expenditures that exceed \$100 on any one or more candidates 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.
5. The complainant alleges, and the respondent confirms, that the respondent acted alone in making the expenditures.
6. The expenditures for the political advertising totaled \$830. Therefore, the respondent was required to file campaign finance reports as if he were the treasurer of a specific-purpose committee. Section 253.062, Election Code.

7. The treasurer of a specific-purpose committee must file reports semiannually and by the 30th and 8th day before an election in which the committee is involved. Sections 254.123 and 254.124, Election Code.
8. If a specific-purpose committee supports or opposes a candidate after the end of the reporting period for a prescribed report, the campaign treasurer shall disclose the committee's expenditures for supporting or opposing that candidate no later than the next regular reporting deadline. Section 254.124, Election Code.
9. The election date was May 4, 2002. Therefore, the 30-day pre-election report was due April 4, 2002, and the reporting period for that report ended March 25, 2002. The 8-day pre-election report was due April 26, 2002, and the reporting period for that report ended April 24, 2002.
10. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. Section 254.031(3), Election Code.
11. The report must also include the name of a candidate who benefits from a direct campaign expenditure and the office that candidate seeks. Section 254.031(7), Election Code.
12. The respondent originally contended that he was in compliance with the reporting requirements because he filed a report on July 12, 2002, before the deadline for a semiannual report, disclosing \$830 in political expenditures.
13. The July 12, 2002, report did not provide detailed disclosure for the expenditures.
14. On November 12, 2002, the respondent filed a corrected report with a Schedule F attached detailing expenditures totaling \$830 and disclosing that the expenditures were made on April 18, 2002, within the period for the 8-day before the election report.
15. The corrected report did not include the name of the candidate who benefited or the office that candidate sought.
16. Because the expenditures the respondent made were within the reporting period for the 8-day pre-election report, the respondent should have filed a report by the April 26, 2002, deadline.
17. The respondent did not file the report by that deadline. Therefore, there is credible evidence that the respondent violated Section 253.041, 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 any one or more candidates 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 agrees to 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 17, 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 17.

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-220679;
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 January 10, 2003; and
4. that the executive director shall promptly refer SC-220679 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-220679 as proposed in this ORDER and AGREED RESOLUTION.

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

James T. Deats, Respondent

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

By: _____
Karen Lundquist, Executive Director