

TEXAS ETHICS COMMISSION

IN THE MATTER OF § BEFORE THE
§
COLLEYVILLE CITIZENS FOR § TEXAS ETHICS COMMISSION
FINANCIAL SOUND & ETHICAL CITY §
GOVERNMENT and, FRANK BAKER, III, §
§
RESPONDENTS § SC-230524

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 10, 2003, and voted to accept jurisdiction of Sworn Complaint SC-230524 filed against Colleyville Citizens for Financial Sound & Ethical City Government and Frank Baker, III, respondents. The complaint was also filed against three other individuals. The commission met again on January 9, 2004, to consider Sworn Complaint SC-230524. A quorum of the commission was present at both meetings. As to Colleyville Citizens for Financial Sound & Ethical City Government, the commission determined that there is credible evidence of violations of sections 253.031, 253.037, and 255.005 of the Election Code, laws administered and enforced by the commission. As to Frank Baker, III, the commission determined that there is credible evidence of a violation of section 254.031 of the 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 respondents.

II. Allegations

The complainant alleges that the respondents violated title 15 of the Election Code by:

- Making a political contribution or political expenditure before the 60-day waiting period expired;
- Making a political contribution before accepting contributions from at least 10 persons;
- Accepting a contribution from a corporation;
- Failing to provide the date certain expenditures were made;
- Failing to cover the proper reporting period; and
- Misrepresenting the political committee's identity in campaign communications.

III. Facts Supported by Credible Evidence

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

1. On May 1, 2001, the respondent committee filed a campaign treasurer appointment as a general-purpose political committee named "Colleyville Citizens for Financial Sound and Ethical City Government."
2. The political committee named Frank Baker, III, as its campaign treasurer.
3. Mr. Baker filed a July 2001 semiannual report for the committee covering January 16, 2001, through July 15, 2001. The report shows that on May 2, 2001, the respondent committee accepted three contributions totaling \$3,000. One of the contributions was for \$1,000 and was reported to be from a business entity. The report also includes two expenditures totaling \$1,234.71 but does not include the date that the expenditures were made.
4. Mr. Baker filed a January 2002 semiannual report for the committee covering July 16, 2001, through January 15, 2002. The report includes a \$100 expenditure and two contributions totaling \$1,572.85.
5. Mr. Baker filed a July 2002 semiannual report for the committee covering January 15, 2002, through July 15, 2002. The report includes contributions totaling \$2,432.74 and expenditures totaling \$3,051.75.
6. Mr. Baker filed a January 2003 semiannual report for the committee covering July 15, 2002, through January 14, 2003, with no reportable activity.
7. Mr. Baker filed a combined July 2003 semiannual report and a dissolution report for the committee covering January 15, 2003, through July 15, 2003. The report includes contributions totaling \$600 and expenditures totaling \$600.
8. In response to this complaint, Mr. Baker filed a corrected July 2001 semiannual report for the committee to disclose that the \$1,000 contribution originally reported as being from a business entity was actually from an individual. The corrected report also shows that the two expenditures (totaling \$1,237.71) were made on May 17, 2001.
9. The respondent committee produced advertisements supporting and opposing candidates during a November 2001 and a May 2002 election. The advertisements stated that they were paid for by "Citizens for Financially Sound Ethical Government" and included the name and address of Mr. Baker.
10. In response to this complaint, Mr. Baker filed a sworn statement in which he states that the only decision makers were he and his wife.

IV. Findings and Conclusions of Law

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

Allegations 1 and 2 - Sixty-day waiting period and contributions from at least 10 persons:

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. ELEC. CODE §§ 253.031(b) and 253.037(a).
2. The respondent committee filed a campaign treasurer appointment as a general-purpose committee on May 1, 2001. The 60th day from that date is June 30, 2001. The evidence shows that on May 17, 2001, the respondent committee made two expenditures totaling \$1,237.71. The evidence also shows that up to that date the respondent committee had accepted contributions from only three persons.
3. Therefore, there is credible evidence that the respondent committee made more than \$500 in expenditures before it had a campaign treasurer appointment on file for 60 days and before it accepted contributions from at least 10 persons in violation of sections 253.031 and 253.037 of the Election Code.

Allegation 3 - Corporate Contribution:

4. Generally, corporations organized under the Texas Business Corporations Act or the Texas Non-profit Corporations Act may not make political contributions. ELEC. CODE ch. 253, subch. D. A candidate or officeholder may not knowingly accept a political contribution that the candidate or officeholder knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b).
5. The complainant alleges that the \$1,000 contribution disclosed on the respondent's July 2001 campaign finance report is from a corporation. The contribution in question was initially reported as being from a business entity. According to the Secretary of State, that business is not incorporated. Additionally, the respondent filed a corrected July 2001 semiannual report to show that the contribution was from an individual and not from the business entity.
6. Therefore, there is credible evidence that the respondents did not accept a contribution from a corporation in violation of section 253.003 of the Election Code.

Allegation 4 - Dates of Expenditures:

7. If a filer is required to itemize a political expenditure, the filer must report certain details about the expenditure, including the date the expenditure was made. ELEC. CODE § 254.031(a)(3).
8. The evidence shows that on the July 2001 semiannual report, the respondent treasurer failed to report the date of two expenditures. In response to this complaint, the respondent treasurer filed a corrected report to report the missing information.

9. There is credible evidence that the respondent treasurer violated section 254.031 of the Election Code, by failing to provide the date of two expenditures on the original July 2001 semiannual report.

Allegation 5 - Period Covered by Reports:

10. The complainant alleges that the committee's July 2001 semiannual report and January and July 2002 semiannual reports covered the wrong period.
11. The periods indicated by the respondent campaign treasurer as being covered by the reports are not correct. However, the reports do not include activity occurring outside of the required reporting period. Therefore, there is credible evidence that the respondent campaign treasurer did not violate section 254.063 of the Election Code.

Allegation 6 - Misrepresentation of Identity:

12. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person misrepresents the person's identity or, if acting or purporting to act as an agent, misrepresents the identity of the agent's principal, in political advertising or a campaign communication. ELEC. CODE § 255.005.
13. The two advertisements in question constitute campaign communications because they are written communications that relate to an election to a public office. Additionally, the advertisements were distributed shortly before an election and were therefore made with the intent to influence the result of an election.
14. The complainant alleges that the respondent committee misrepresented its identity on the two advertisements in question by calling itself "Citizens for Financially Sound Ethical Government" instead of "Colleyville Citizens for Financial Sound and Ethical City Government," which is the name on the committee's campaign treasurer appointment.
15. Because the first part of the respondent committee's name was omitted from the two advertisements, it may have been difficult to determine the committee's identity. It is the consensus of staff that by using a variation of its name, the respondent committee misrepresented its identity. The advertisements included the name of the respondent campaign treasurer and the committee address as provided on the campaign treasurer appointment. This information could have been used to determine that "Citizens for Financially Sound Ethical Government" was indeed "Colleyville Citizens for Financial Sound and Ethical City Government." Therefore, the respondent committee committed a technical or *de minimis* violation of section 255.005 of the Election Code.

V. Representations and Agreement by Respondents

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondents neither admit nor deny the facts described under Section III and the commission's findings and conclusions of law described under Section IV and consent to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondents consent to the entry of this ORDER and AGREED RESOLUTION before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondents waive any right to a hearing before the commission or an administrative law judge, and further waive any right to a post-hearing procedure established or provided by law.
3. The respondent committee acknowledges that 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. ELEC. CODE §§ 253.031(b) and 253.037(a).
4. The respondent committee acknowledges that a person commits an offense if, with intent to injure a candidate or influence the result of an election, the person misrepresents the person's identity or, if acting or purporting to act as an agent, misrepresents the identity of the agent's principal, in political advertising or a campaign communication. ELEC. CODE § 255.005.
5. The respondent campaign treasurer acknowledges that if a filer is required to itemize a political expenditure, the filer must report certain details about the expenditure, including the date the expenditure was made. ELEC. CODE § 254.031(a)(3).
6. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondents understand and agree that the commission will consider the respondents to have committed the violations described under Sections III and IV, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondents.

VI. Confidentiality

This ORDER and AGREED RESOLUTION describes violations that the commission has determined are 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 and after considering the sanction necessary to deter future violations, the commission imposes a \$200 civil penalty as to the respondent committee for the violations described under Sections III and IV. The commission imposes no penalty as to the respondent treasurer.

VIII. Order

The commission hereby ORDERS:

- 1. that this proposed AGREED RESOLUTION be presented to the respondents;
- 2. that if the respondents consent to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-230524;
- 3. that the respondents 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 6, 2004; and
- 4. that the executive director shall promptly set SC-230524 for a preliminary review hearing if the respondents do not agree to the resolution of SC-230524 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondents on this _____ day of _____, 20____.

Frank Baker, III, Respondent

Colleyville Citizens for Financial Sound &
Ethical City Government, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director