

TEXAS ETHICS COMMISSION

IN THE MATTER OF
WRIGHT GORE III AND
WESTERN SEAFOOD CO.,
RESPONDENTS

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-250586

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on September 21, 2006, to consider sworn complaint SC-250586. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.004, 253.094 and 253.031 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondents, Western Seafood Co. and Wright Gore III, made political expenditures in excess of \$500 without first filing a campaign treasurer appointment, made political expenditures with corporate funds, misrepresented the true source of a campaign communication and misrepresented their identity in campaign communications, 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 complaint relates to a dispute between a local family corporation, and the City of Freeport and the Freeport Economic Development Corporation (FEDC). The dispute arose because the city and the FEDC wish to develop waterfront property in Freeport into a marina. The respondents oppose the development because they own property that the city and FEDC indicate is needed for the project and will take by eminent domain if necessary.
2. The complaint alleges that the respondents made political expenditures related to a successful petition drive that required the issue of whether to dissolve the FEDC to be placed on the November 8, 2005, ballot. The measure failed by 21 votes.

3. The complaint also alleges that the respondents used corporate funds to purchase political advertising in support of candidates in the 2004 and 2005 municipal elections.
4. According to records of the Texas Secretary of State, Western Seafood Co. is a domestic business corporation.
5. Wright Gore III is a company representative.
6. On June 20, 2005, the respondents submitted a sworn response denying the allegations.
7. The complainant submitted an affidavit from a person who identifies herself as the publisher of "The Sentinel," the newspaper that published the advertisements which the complaint alleges were paid for with corporate funds. The affidavit states that during the May 2005 Freeport city election Wright Gore III placed advertisements for a candidate for mayor. The affidavit states that Respondent Gore paid for previous advertisements with a check from Western Seafood, Inc. The affiant states that she contacted Respondent Gore and questioned the use of a corporate check to pay for a candidate advertisement and that Respondent Gore e-mailed her "to use the \$1,000 to pay for the ads for Steve Lupton."
8. The affidavit was provided to Respondent Gore. Respondent Gore made an unsworn reply and provided a copy of a canceled check for \$1,300 drawn on a personal account and receipts from the Freeport Sentinel. The check is drawn on the account of Wright Gore Jr. The respondent is Wright Gore III. The check is dated May 7, 2005, and there are four invoices dated April 8, April 20, and April 27 (2), 2005, totaling \$1,300. There is no single invoice or invoices totaling \$1,000 for advertisement for Steve Lupton.
9. Respondent Gore did not submit a response to written follow-up questions seeking to clarify the respondents' role in purchasing the advertisements and to clarify precisely which advertisements were paid for using the funds represented by the copy of the check he submitted. Respondent Gore was asked to respond by September 7, 2006, but he did not.
10. A website named "scandalinfreeport.com" was created on February 29, 2004, and lists Wright Gore as the registrant with an address of P.O. Box 903, Freeport TX 77541. The registrant organization is listed as "No To Freeport Marina Scandal." The web page discusses the eminent domain issue but does not mention any candidate or measure. The web page asks the reader to visit the new website, "STOP the EDC.com" (which was created in March 2005). The complaint alleges that the respondents made the expenditure for the web page using corporate funds and had no campaign treasurer appointment in effect.
11. A door hanger that included the website address "scandalinfreeport.com" was distributed in the city. It warned the reader about the city's use of eminent domain. The door hanger discusses the eminent domain issue but does not mention any candidate or measure. The

complaint alleges that the respondents made the expenditure for the door hanger using corporate funds and had no campaign treasurer appointment in effect.

12. On May 9, 2004, two newspaper advertisements were published supporting Juana Andujo, a city council candidate. One included the website address "Juana4WardC.com." The website address was created on April 22, 2004, and lists Wright Gore as the registrant, with an address of P.O. Box 903, Freeport TX 77542. The registrant organization is listed as "Juana for City Council, Ward C." The complaint alleges that the respondents made the expenditure for the advertisement and had no campaign treasurer appointment in effect. The complaint alleges that the respondents paid for the advertisements with a corporate check and that the advertisement did not include a political advertising disclosure statement.
13. On May 9, 2004, a newspaper advertisement was published supporting Larry McDonald, city council candidate. The advertisement included a disclosure statement indicating that someone other than the respondents paid for the advertisement. The complaint alleges that the political advertising disclosure statement was false. The complaint alleges that the respondents used corporate funds to pay for the advertisement and that the advertisement misrepresents a person's identity and the advertisement's true source.
14. On April 8 and 15, 2005, newspaper advertisements supporting Steve Lupton were published. The advertisements include political advertising disclosure statements indicating that they were paid for by the candidate's campaign. The complaint alleges that the political advertising disclosure statement was false. The complaint alleges that the respondents used corporate funds to pay for the advertisements and that the advertisements misrepresent a person's identity and its true source.
15. On April 15 and 20, 2005, newspaper advertisements were published opposing the FEDC and the marina project. The advertisements included the website address "STOPtheEDC.com." The advertisements also include a political advertising disclosure statement that reads, "Pol. Ad. Paid for by the Committee To Preserve Freeport Property and Jobs, Wright Gore, Treas. P.O. Box 903, Freeport TX 77542."

With respect to the April 15, 2005, advertisement, the complaint alleges that the respondents paid for the advertisement using corporate funds, and at a time when the committee had no campaign treasurer appointment in effect.

With respect to the April 20, 2005, advertisement the complaint alleges that the respondents made the expenditure for the advertisement and had no campaign treasurer appointment in effect.

16. The website address, "StoptheEDC.com," was created on March 1, 2005, and lists Wright Gore as the registrant with an address of P.O. Box 903, Freeport TX 77541. The registrant organization is listed as "No To Freeport Marina Scandal."

17. The "StoptheEDC.com" website included information about signing the petition to dissolve the FEDC.
18. On April 22, 2005, a newspaper advertisement was published that questions why the complainant has not supported a public vote on the marina project. The advertisement also includes a political advertising disclosure statement that reads, "Pol. Ad. Paid for by the Committee To Preserve Freeport Property and Jobs, Wright Gore, Treas. P.O. Box 903, Freeport TX 77542." The complaint alleges that the respondents paid for the advertisement using corporate funds.
19. A letter dated May 1, 2005, that included a copy of a petition to call an election to dissolve the FEDC and a DVD was mailed to residents of Freeport. The letter was on letterhead stationery that reads "Committee To Preserve Freeport Property and Jobs, Box 903, Freeport TX 77542-0903," and was signed by Wright Gore. The complaint alleges that the letter did not have a political advertising disclosure statement, and that the expenditures for it were made when the committee had no treasurer appointment in effect.
20. A billboard in Freeport displayed the message: "STOPtheEDC.com Because Nobody in Freeport is Safe."
21. The post office box address for "Committee To Preserve Freeport Property and Jobs" is the same as that for Western Seafood Co. and the same as that used by the respondents in correspondence with the commission.

IV. Findings and Conclusions of Law

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

Corporate Political Expenditures

1. A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by chapter 253, subchapter D, of the Election Code. ELEC. CODE § 253.094. An officer, director, or other agent of a corporation or labor organization who commits an offense under this subchapter is punishable for the grade of offense applicable to the corporation or labor organization. ELEC. CODE § 253.095. A person may not knowingly make or authorize a political expenditure in violation of chapter 253 of the Election Code. ELEC. CODE § 253.004.
2. A corporation or labor organization may make campaign contributions from its own property in connection with an election on a measure only to a political committee for supporting or opposing measures exclusively. ELEC. CODE § 253.096.

3. A corporation or labor organization not acting in concert with another person may make one or more direct campaign expenditures from its own property in connection with an election on a measure if the corporation or labor organization abides by the statutory guidelines applicable to an individual who makes direct political expenditures. ELEC. CODE § 253.097.
4. The complaint alleges that the respondents made political expenditures using corporate funds. A corporation may not make a political contribution to a candidate or make a political expenditure to support or oppose a candidate. A corporation may make a political contribution to a political committee that is only involved in measure elections, and may make direct political expenditures to support or oppose a measure if it files the proper campaign finance reports. The evidence is insufficient to show that the corporation made direct campaign expenditures to support a measure.
5. With respect to the May 2004 newspaper advertisements there is insufficient evidence to show that the respondents made political contributions to the candidates referenced or that either respondent made political expenditures to support those candidates.
6. With respect to the April 2005 newspaper advertisements for Steve Lupton, the complainant provided an affidavit from the newspaper publisher stating that Respondent Gore authorized the payment for the advertisement using corporate funds. The letter and cancelled check submitted by the respondent to address this allegation did not directly address the allegation. Respondent Gore did not respond to written questions seeking a clarification. Therefore, there is credible evidence that the respondents violated sections 253.004 and 253.094 of the Election Code.

Political Advertising Disclosure Statement

7. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising, the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001.
8. Political advertising is a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that in return for consideration, is published in a newspaper, magazine, or other periodical, or is broadcast by radio or television, or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication, or on an Internet website. ELEC. CODE § 251.001(16).
9. With respect to the May 9, 2004, newspaper advertisements supporting Juana Andujo, the communications at issue support a candidate for election to public office and, thus, falls within the definition of political advertising. There was no political advertising disclosure

statement on the communications. However, there is insufficient evidence to show that the respondents made the expenditures for the communications. Therefore, there is insufficient evidence that the respondents violated section 255.001 of the Election Code.

10. With respect to May 1, 2005, letter that is on "Committee To Preserve Freeport Property and Jobs" letterhead, the letter supports a measure and, thus, falls within the definition of political advertising. Political advertising on letterhead stationery is not required to include a political advertising disclosure statement if the letterhead contains the full name of the person who paid for the political advertising, or the political committee authorizing the political advertising. Ethics Commission Rules § 26.1. Therefore, with respect to the May 1, 2005, letter, there is credible evidence that the respondents did not violate section 255.001 of the Election Code.

Misrepresentation of Identity/True Source of Communication

11. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source. ELEC. CODE § 255.004.
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. A campaign communication is a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure. ELEC. CODE § 251.001(17).
14. With respect to the newspaper advertisements for Larry McDonald and Steve Upton, the complaint alleges that respondents misrepresented a person's identity in the communications and misrepresented the true source of the communications. The communications support candidates for election to public office. Thus, the communications are both political advertising and campaign communications. The communications include political advertising disclosure statements but the complainant alleges that the disclosure statements are false. If the candidates authorized the advertisements, the disclosure statements were proper. There is no evidence that the candidates did not authorize the advertisements. Therefore, there is insufficient evidence to show that the respondents violated the statutes.

Political Expenditures With No Campaign Treasurer Appointment

15. A political committee must appoint a campaign treasurer before it may knowingly accept political contributions totaling more than \$500 or make or authorize political expenditures totaling more than \$500. at a time when a campaign treasurer appointment for the committee is not in effect. ELEC. CODE §§ 252.001, 253.031. A person may not knowingly make or authorize a political expenditure in violation of chapter 253 of the Election Code. ELEC. CODE § 253.004.
16. A political expenditure includes a campaign expenditure, which is an expenditure made by any person in connection with a campaign for an elective office or on a measure. ELEC. CODE §§ 251.001(7) and (10). A direct campaign expenditure is a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. ELEC. CODE § 251.001(8).
17. The following evidence is relevant to the question of whether the respondents made or authorized a political expenditure in violation of chapter 253 of the Election Code:

As early as February 2004 Respondent Wright Gore III made expenditures connected to the eminent domain issue, as evidenced by his registration of the website "scandalinfreepport.com." The door hangers referenced that website. (Although at that time neither "scandalinfreepport.com" or the door hangers mention any candidate or measure. Therefore, with respect to those communications, the evidence does not show that the respondents made political expenditures.)

Wright Gore created the "STOPtheEDC.com" website in March 2005. After the creation of the "STOPtheEDC.com" website, the "scandalinfreepport.com" website began referring visitors to the "STOPtheEDC.com" website. The "STOPtheEDC.com" website contains information about the petition to dissolve the FEDC.

The Committee To Preserve Freeport Property and Jobs listed the "STOPtheEDC.com" website in its communications. "STOPtheEDC.com" website itself carries the political advertising disclosure statement, "Committee To Preserve Freeport Property and Jobs," Wright Gore Treas. P.O. Box 903, Freeport TX 77542.

The April 15 and 20, 2005, newspaper advertisements oppose the FEDC and the marina project. The advertisements included the website address "STOPtheEDC.com." The advertisements include a political advertising disclosure statement that reads, "Pol. Ad. Paid for by the Committee To Preserve Freeport Property and Jobs, Wright Gore, Treas. P.O. Box 903, Freeport TX 77542." With respect to the April 15, 2005, advertisement.

The April 22, 2005, newspaper advertisement questions why the complainant has not supported a public vote on the marina project. The advertisement includes a political

advertising disclosure statement that reads, "Pol. Ad. Paid for by the Committee To Preserve Freeport Property and Jobs, Wright Gore, Treas. P.O. Box 903, Freeport TX 77542."

Wright Gore signed the letter dated May 1, 2005, that included a copy of a petition to call an election to dissolve the FEDC and a DVD that was mailed to residents of Freeport. The letter was on letterhead stationery that reads "Committee To Preserve Freeport Property and Jobs, Box 903, Freeport TX 77542-0903."

The billboard displayed the message: "STOPtheEDC.com Because Nobody in Freeport is Safe."

The post office box address for "Committee To Preserve Freeport Property and Jobs" is the same as that for Western Seafood Co. and the same as that used by the respondents in correspondence with the commission.

18. An expenditure to support a measure is a campaign expenditure. The term "measure" includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will. ELEC. CODE § 251.001(19).
19. The evidence indicates that the "Committee To Preserve Freeport Property and Jobs" spent more than \$500 related to the petition to call an election to dissolve the FEDC. The evidence indicates that Respondent Gore directed the activities of the committee. Therefore, there is credible evidence that Respondent Gore, knowingly made or authorized political expenditures totaling more than \$500 at a time when the political committee did not have a campaign treasurer appointment in effect in violation of sections 253.004 and 253.031 of the Election Code.

V. Representations and Agreement by Respondent

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 or 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 this sworn complaint.
2. The respondents consent to this order and agreed resolution and waive any right to further proceedings in this matter.
3. The respondents acknowledge that a corporation may not make a political contribution or political expenditure to support a candidate for public office and that a person may not knowingly make or authorize a political expenditure from a corporation to support a candidate. Respondent Gore acknowledges that a person may not make or authorize a

political expenditure for a political committee totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect.

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, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$2,000 civil penalty for the violations described under Sections III and IV.

VIII. Order

The commission hereby orders that if the respondents consent to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-250586.

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

Wright Gore III, Respondent

Western Seafood Co., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director