

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RODNEY BADEN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-250594

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on September 8, 2005, to consider sworn complaint SC-250594. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.001 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

1. The complaint alleges that the respondent violated section 252.001 of the Election Code by failing to appoint a campaign treasurer.
2. The complaint alleges that the respondent violated section 253.031 of the Election Code by making campaign expenditures without first filing a campaign treasurer appointment.
3. The complaint alleges that the respondent violated section 255.001 of the Election Code by failing to include a disclosure statement on political advertising.
4. The respondent alleges that the complainant filed a frivolous complaint.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for mayor in a May 7, 2005, city election.
2. The complaint is based in part on three articles that appeared in a newspaper.

3. The respondent did not pay or give consideration to have the articles published in the newspaper.
4. The first article was a news article about the upcoming mayoral election. The second article was a statement that the respondent originally submitted in response to an inquiry from the newspaper and was rerun by the publisher of the newspaper. The third article was also not paid for by the respondent or his campaign and was submitted to be run as a guest column or guest editorial.
5. The respondent made only a \$25 expenditure for an advertisement that is not at issue in this complaint.
6. The respondent had not appointed a campaign treasurer at the time of that expenditure.

IV. Findings and Conclusions of Law

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

1. Each candidate is required to appoint a campaign treasurer. ELEC. CODE § 252.001. Furthermore, a candidate may not knowingly accept a campaign contribution or make or authorize a political expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE § 253.031(a).
2. The respondent was a candidate in a mayoral election. The respondent did not file a campaign treasurer appointment and he made a \$25 campaign expenditure without first filing a campaign treasurer appointment. Therefore, there is credible evidence that the respondent violated sections 252.001 and 253.031 of the Election Code.
3. 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 and the full name of the person, candidate, or political committee who paid for it. ELEC. CODE § 255.001(a). Political advertising means a communication supporting or opposing a candidate for election to a public office that, in return for consideration, is published in a newspaper. As to all three newspaper articles, there is credible evidence that the articles were not published in return for consideration. Therefore, there is credible evidence that the respondent did not violate section 255.001 of the Election Code.
4. 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. The complaint is not groundless because the evidence submitted with the complaint indicates violations of

sections 252.001 and 253.031 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 or 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 this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a candidate is required to file a campaign treasurer appointment and that a candidate is prohibited from making campaign expenditures without first filing a campaign treasurer appointment. The respondent agrees to comply with these requirements of the law.

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. No 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 no civil penalty for the violations described under Sections III and IV.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-250594.

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

Rodney Baden, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director