

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RODNEY FOWLER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2507145

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 27, 2006, to consider sworn complaint SC-2507145. A quorum of the commission was present. 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 resolution to the respondent.

II. Allegations

The complaint alleges that the respondent, a candidate for Cleburne City Council, failed to include political advertising disclosures on political advertising and failed to properly report political contributions and political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for Cleburne City Council in the May 7, 2005, election.
2. The newspaper advertisements at issue did not contain a political advertising disclosure statement.
3. With respect to the advertisements published on April 21 and April 24, 2005, in the Cleburne Eagle News, the advertisements included the required disclosure statement when they were submitted to the newspaper.
4. The disclaimer was mistakenly left off the political advertisements by the newspaper.

5. The newspaper ran a correction on April 26, 2005, stating that the disclosure was left off the advertisement due to a typographical error.
6. With respect to April 21, April 28, and May 5, 2005, advertisements in the Cleburne Eagle News, the respondent did not report any expenditure for those advertisements.
7. As of August 29, 2005, the respondent swears that he does not know the amount of the bill.
8. The owner of the newspaper submitted an affidavit swearing that the newspaper had not yet sent any invoice to the respondent for the political advertising at issue.
9. The respondent also submitted a supplemental affidavit in which he states that he did not know how much the expense for the advertisement was at the time of the report at issue.
10. With respect to the April 24, 2005, advertisement in the Cleburne Times-Review, the respondent submitted an affidavit of the person who took the advertisement to the newspaper. That person swears that he and two other people paid for the advertisement. The respondent did not participate in the creation or writing of the advertisement. The respondent did not have any prior knowledge or give prior consent for the advertisement at issue.

IV. Findings and Conclusions of Law

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

1. A person may not knowingly cause to be published political advertising containing express advocacy that does not contain a political advertising disclosure. ELEC. CODE § 255.001.
2. Political advertising is defined as a communication supporting or opposing a candidate for public office that in return for consideration is published in a newspaper. ELEC. CODE § 255.001(16).
3. Political advertising that is authorized by a candidate is deemed to contain express advocacy. ELEC. CODE § 255.001(b).
4. The advertising published on April 21 and April 24, 2005, supported the respondent. Thus, it was political advertising.
5. The political advertising published on April 21 and April 24, 2005, expressly asked the reader to elect the respondent. Therefore, the political advertising contained express advocacy and was required to include a political advertising disclosure statement.

6. The evidence shows that the advertising published on April 21 and April 24, 2005, contained the necessary disclosure when they were submitted to the newspaper.
7. The newspaper inadvertently left the disclosure off of the political advertising published on April 21 and April 24, 2005. Thus, the respondent did not knowingly cause political advertising to be published without the required disclosure. Therefore, there is credible evidence of no violation of section 255.001 of the Election Code.
8. 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. ELEC. CODE § 254.031.
9. An “expenditure” is a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. ELEC. CODE § 251.001(6).
10. For reporting purposes, a political expenditure is made when the amount is readily determinable by the person making the expenditure. ELEC. CODE § 254.035.
11. Although the respondent did not receive an invoice for the advertising during the period in question, the respondent could have determined the amount by asking the newspaper to tell him the cost. Thus, the expenditure was readily determinable and required to be reported. There is no evidence that the respondent reported the expenditures. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.
13. A political contribution is a direct or indirect transfer of money, goods, services, or any other thing of value. ELEC. CODE § 251.001.
14. 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.
15. A direct campaign expenditure, in contrast to a contribution, is a campaign expenditure supporting a candidate that is made without the prior consent or approval of the candidate supported. Ethics Advisory Opinion No. 331 (1996).
16. In this case various third parties independently purchased the April 24, 2005, advertisement in the Cleburne Times-Review that supported the respondent.
17. The respondent did not give prior consent or approval for the political advertising. Thus the expenditures made by the third parties are not political contributions to the respondent.

18. Because the political expenditure at issue was not made by the respondent, and was not a political contribution to the respondent, he was not required to report it. Therefore, there is credible evidence of no violation of section 254.031 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 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 on each campaign finance report a candidate must disclose the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period. The respondent further acknowledges that for reporting purposes, a political expenditure is considered to have been made when the amount is readily determinable by the person making the expenditure. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes a violation 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 violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$200 civil penalty for the violation 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-2507145.

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

Rodney Fowler, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director