

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOHN RAPKOCH
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2604127

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 14, 2006, to consider sworn complaint SC-2604127. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 255.001, 255.004 and 254.031 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 respondent failed to include disclosure statements on political advertising, failed to report political contributions, and failed to properly report 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 a hospital board.
2. The respondent published four newspaper advertisements. Three of the advertisements included a disclosure statement indicating that they were paid for by a political committee. A fourth advertisement did not include a disclosure statement. None of the advertisements included language to indicate that it was political advertising.
3. The respondent also placed campaign signs that include a disclosure statement indicating that they were paid for by a political committee.
4. The hospital district records show that the political committee named in the advertisements filed a campaign treasurer appointment form on April 13, 2005. The stated purpose of the committee was to inform voters about Proposition One, a local bond election. The form has not been amended to change the purpose of the political committee. The committee last filed

a campaign finance report on April 29, 2005, and none of these reports show expenditures made for the above-mentioned political advertisements.

5. The evidence indicates that the respondent paid for the campaign signs and newspaper advertisements in question.
6. The respondent disclosed the expenditures for political advertising on “Schedule F,” titled “Political Expenditures,” of his 8-day pre-election campaign finance report.
7. The respondent swore that he paid all expenditures from personal funds. The respondent swore that he received no campaign contributions during the period in question. There is no evidence that he sought a reimbursement for the expenditures.

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, 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.
2. The advertisements at issue are communications supporting a candidate for election to a public office that in return for consideration were published in a newspaper or appeared in a sign. Therefore, the communications are political advertising. ELEC. CODE § 251.001(16).
3. Copies of the advertisements show that the respondent failed to include a complete disclosure statement by omitting the words “political advertisement” on three of the newspaper advertisements in question. Therefore, there is credible evidence of a violation of section 255.001 of the Election Code.
4. “Campaign communication” means 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). Therefore, the communications at issue are also campaign communications. A person commits an offense if, with intent to 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(b).
5. The respondent improperly identified who paid for three of the newspaper advertisements and the signs. The respondent admits that he paid for the advertisements. While he included his name on the disclosure statements, the respondent attributed the advertisements to a

political committee affiliated with the respondent. Therefore, there is credible evidence of a violation of section 255.004(b) of the Election Code.

6. Title 15 of the Election Code requires that a candidate report all political contributions and expenditures, including political expenditures made from personal funds. ELEC. CODE § 254.031.
7. The respondent received no political contributions during the time period in question. Therefore, there is credible evidence that the respondent did not violate section 254.031 of the Election Code by failing to properly report political contributions.
8. On the reporting form, a candidate may report a political expenditure from personal funds either on Schedule G of Form C/OH or on Schedule E, which is the schedule for reporting loans. ELEC. CODE §§ 253.035(h), 253.0351.
9. The respondent reported political expenditures on Schedule F and failed to indicate that the expenditures were made from personal funds. Therefore, there is credible evidence that the respondent violated section 254.031 of the Election Code by failing to properly report political expenditures.

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 person may not knowingly cause to be published or distributed political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the advertising. The respondent acknowledges that it is a violation of the Election Code if, with intent to influence the result of an election, a person knowingly represents in a campaign communication that the communication emanates from a source other than its true source. The respondent further acknowledges that political expenditures made from personal funds must be reported on Schedule G, titled "Political Expenditures Made From Personal Funds," or on Schedule E, the schedule for reporting loans.
4. 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. 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 \$400 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-2604127.

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

John Rapkoch, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director