

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BARBARA A. TAGUE,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2610195

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 2, 2007, to consider sworn complaint SC-2610195. A quorum of the commission was present. The commission determined that there is credible evidence that the respondent violated 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 failed to properly report political expenditures for political advertising.

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 Tomball City Council in May 2005 and May 2006. The complaint involves newspaper advertising that supported the respondent as a candidate.
2. The complaint alleges that the cost of the newspaper advertising is readily determinable when the advertisement is placed and that the respondent failed to timely report political expenditures for political advertising in newspapers during her 2005 and 2006 campaign for city council.
3. The respondent asserts that she knew the cost of the advertisement when she received the bill and reported the expenditure accordingly. The respondent contacted the commission for advice and she believed that she did not have to report the expenditures for the political advertising until she received the bill.

Failure to Timely Report Political ExpendituresPolitical Expenditures in 2005

4. The complaint alleges that the respondent failed to timely report political expenditures for political advertising in connection with her campaign for city council in May 2005.
5. The respondent placed an advertisement in a local newspaper owned by Houston Community Newspapers.
6. A copy of a bill from Houston Community Newspaper to Downtown Tomball Merchants dated May 31, 2005, includes a charge for political advertising for the respondent totaling \$380.40. The advertisement was originally billed to the Downtown Tomball Merchants Association (DTMA) on May 4, 2005.
7. The evidence indicates that due to a billing error the respondent did not receive a bill from Houston Community News until August 2005, after the end of the July 2005 semiannual reporting period. The respondent reported the expenditure on her January 2006 semiannual report.
8. The respondent also placed advertisements in the Tomball Magnolia Tribune in April and May 2005. The advertisements supported her candidacy in the city council election held on May 7, 2005. The complaint alleges that the respondent should have reported these expenditures on her 30-day or 8-day pre-election report or, at the very latest, on the July 2005 semiannual report.
9. The evidence indicates that the respondent received a bill from the Tomball Magnolia Tribune in the amount of \$3,985 for "Tomball City Council Campaign ads." The respondent received the bill on June 28, 2005. On her January 2006 semiannual report the respondent reported an in-kind contribution dated July 20, 2005, to pay the total cost of the advertisements. The respondent did not report the political expenditure on any of her campaign finance reports.

Political Expenditures in 2006

10. The complaint alleges that the respondent failed to disclose on her 8-day pre-election report expenditures for political advertisements placed in newspapers in connection with the May 13, 2006, city council election.
11. The respondent reported political expenditures for "newspaper advertising" on her July 2006 semiannual report only. She reported a \$2,813.09 political expenditure on June 6, 2006, to Tomball Magnolia Tribune, and a \$1,150 political expenditure dated June 9, 2006, to Houston Community Papers.

12. The evidence indicates that the respondent received bills from each newspaper after the reporting period for the 8-day pre-election report.
13. A billing statement dated May 15, 2006, from the Tomball Magnolia Tribune lists three invoices from 2006 dated April 19, April 27, and May 4, for \$558.90, \$652.05, and \$1,602.14, respectively. No payments were made as of the date of the bill and the total unpaid balance was \$2,813.09. The respondent's July 2006 semiannual report disclosed a single political expenditure of \$2,813.09 for the advertisements.
14. The complaint alleges all of the expenditures should have been reported on the 8-day pre-election report. The reporting period for that report was April 4, 2006, through May 3, 2006.

Failure to Timely Report Political Contributions

2005 Political Contributions

15. The complaint alleges that the respondent failed to timely report a \$3,985 political contribution for political advertising in connection with her May 2005 campaign for city council.
16. The evidence indicates that the respondent ran multiple political advertisements in local newspapers in April and May 2005.
17. The evidence indicates that the respondent accepted a \$3,985 in-kind contribution on July 20, 2005, and reported that contribution on her January 2006 semiannual report.

2006 Political Contributions

18. The complaint also alleges that the respondent's July 15, 2006, semiannual report discloses \$3,963 in political expenditures for political advertising that were actually in-kind contributions from third parties, and that the respondent failed to disclose those contributions.
19. The evidence does not show that third parties paid for the political advertising at issue.

IV. Findings and Conclusions of Law

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

Failure to Timely Report Political Expenditures

1. 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, the full name and

address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031. A political expenditure is a campaign expenditure or an officeholder expenditure. ELEC. CODE § 251.001(10). A campaign expenditure is an expenditure made by any person in connection with a campaign for an elective office. ELEC. CODE § 251.001(7). Political advertising is defined, in relevant part, as a communication supporting a candidate for election to a public office that in return for consideration, is published in a newspaper. ELEC. CODE § 251.001(16).

2. All of the advertisements at issue supported the respondent as a candidate for public office and, thus, were political advertising.
3. The expenditures for the political advertisements were made in connection with an election and, thus, were campaign expenditures. A campaign expenditure must be reported in the reporting period in which it is made. ELEC. CODE § 254.031.
4. For reporting purposes, a campaign expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. ELEC. CODE § 254.035(a). If the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received. ELEC. CODE § 254.035(b).
5. The respondent asserts she reported the expenditures when she knew the costs and paid them, i.e. when she received the bill, and believed that this was a proper reporting method. However, even if the respondent did not receive a bill for the advertising until after the reporting period, in each case the respondent could have easily determined the amount by asking the newspaper the costs. Therefore, the amount of each political expenditure for the advertisements was readily determinable prior to receipt of the bill.
6. Even if the respondent believed that she could wait until she received the bill to disclose the political expenditures for the newspaper advertisements, the evidence shows that the respondent's campaign received the bill from the Tomball Magnolia Tribune on June 28, 2005. June 30, 2005, was the last day of the reporting period for the July 2005 semiannual report. ELEC. CODE § 254.063. Therefore, the \$3,985 political expenditure to the Tomball Magnolia Tribune should have been reported no later than the July 2005 semiannual report. The amount was not disclosed as a political expenditure on that or any subsequent report (although she disclosed payment for the political advertising as an in-kind contribution on her January 2006 semiannual report). Therefore, there is credible evidence that the respondent violated section 254.031 of the Election Code.
7. With respect to the advertisement billed to the DTMA, the evidence shows that due to the billing error the respondent did not receive the bill for that advertisement until August 2005. She disclosed the expenditure on her January 2006 semiannual report. Nevertheless, the amount was readily determinable when her campaign placed the advertisement. Therefore, there is credible evidence that the respondent violated section 254.031 of the Election Code.

8. An opposed candidate must file a report due eight days before an election covering the period beginning the 39th day before election day and continuing through the 10th day before election day. ELEC. CODE § 254.064(c).
9. With respect to the 2006 political expenditures for advertisements in the Tomball Magnolia Tribune, the expenditures dated April 19 and 27, 2006, were in the reporting period for the 8-day pre-election report. The May 4, 2006, expenditure was in the July 2006 semiannual reporting period.
10. The respondent disclosed the total of the three expenditures on her July 2006 semiannual report. There is credible evidence that the respondent failed to properly report on the 8-day pre-election report the two political expenditures made during the reporting period for that report. Therefore, there is credible evidence that the respondent violated section 254.031 of the Election Code.
11. With respect to the \$3,985 in political expenditures that the respondent made in 2005, the expenditures were not timely reported on the July 2005 semiannual report even though the respondent received the bill in that reporting period (she showed them as an in-kind contribution on the following report). Therefore, there is credible evidence that the respondent violated section 254.031 of the Election Code.
12. With respect to the remaining 2005 and 2006 political expenditures, there is credible evidence that the respondent violated section 254.031 of the Election Code.
13. A campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031. In addition, each report must include the total amount of political contributions accepted in the reporting period. *Id.*
14. A candidate shall file two reports for each year. The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31. ELEC. CODE § 254.063.
15. The evidence indicates that the respondent received an in-kind contribution in the amount of \$3,985 on July 20, 2005. The respondent reported this contribution on her January 2006 semiannual report.

16. With respect to the alleged unreported political contributions totaling \$3,963 for the May 2006 election, the evidence does not show that the respondent failed to report political contributions.
17. Therefore, with respect to the contributions at issue, there is credible evidence that the respondent did not violate 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 a campaign expenditure must be reported in the reporting period in which it is made, and that a campaign expenditure is considered to have been made when the amount of the expenditure is readily determinable by the person making the expenditure. The respondent agrees to comply with this requirement of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the commission has determined is 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 \$200 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-2610195.

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

Barbara A. Tague, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director