

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JAY LORETTA MASTERSON,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2610201

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 11, 2007, to consider sworn complaint SC-2610201. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 255.001, 255.004, and 255.007 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint as to the respondent 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 include the right-of-way notice on political advertising, and misrepresented her identity in and the true source of campaign communications. The complaint also alleges that the respondent made political expenditures with corporate funds.

III. Facts Supported by Credible Evidence

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

1. The complaint arises from a recall election held in Aransas Pass on November 4, 2006, and focuses on communications related to that election.
2. The complaint is based on a website with pages urging people to vote against the recall and listing the accomplishments of the mayor and mayor pro tem. The complaint is also based on billboards, signs, and a newspaper advertisement supporting the officeholders and opposing their recall in the recall election.
3. One of the billboards at issue included a disclosure statement that read, "Political ad paid by Friends of Aransas Pass Citizens for Smartgrowth, P.O. Box 1583 AP, TX 78335."

4. The other billboard at issue did not originally have a disclosure statement, but one was later added that read, "PD Pol Adv by Aransas Pass Citizens for Smart Growth, P.O. Box 1583 AP, TX 78335." The remaining signs, and the newspaper advertisement, include that same disclosure.
5. The signs, billboards and newspaper advertisement include the web address "www.aransaspascitizens.com."
6. The organization name and administrator name for the website is not the respondent but is that of a person in Miami, Florida.
7. Neither the billboards nor signs included the highway right-of-way notice.
8. Records of the Texas Office of the Secretary of State show that "Aransas Pass Citizens for SmartGrowth, Inc.," is an existing domestic nonprofit corporation and list the respondent as a director.
9. The evidence does not show that the corporation ever engaged in any corporate activity or that it had its own funds.
10. The evidence shows that a group named "Aransas Pass Citizens for SmartGrowth" existed before it filed the papers to incorporate as a nonprofit corporation.
11. The evidence indicates that the respondent was acting as part of the group "Aransas Pass Citizens for SmartGrowth" with respect to the billboards, signs, and newspaper advertisement.
12. The evidence indicates that the respondent had some responsibility with respect to the billboards and signs at issue.
13. In a sworn statement, the respondent acknowledged that she initially did not know about the disclosure statement requirements but that when she found out about the requirements she paid for revised sheets for the billboards that included the disclosure statements. She goes on to state that she paid for labels to affix to other signs in order to comply with the statutes.

IV. Findings and Conclusions of Law

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

1. Political advertising is defined, in relevant part, as a communication supporting or opposing a candidate for nomination or election to a public office or a measure that appears in a billboard or other sign or on an Internet website. ELEC. CODE § 251.001(16).

2. A corporation or labor organization may not make a political contribution or political expenditure in connection with a recall election, including the circulation and submission of a petition to call an election. ELEC. CODE § 253.094.
3. A person may not knowingly cause to be published, distributed, or broadcast political advertising that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the advertising or the candidate or committee authorizing the advertising. ELEC. CODE § 255.001.
4. 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.
5. 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.
6. Each political advertising sign designed to be seen from a road is required to include the right-of-way notice. ELEC. CODE § 255.007.
7. There is no evidence to show that the corporation at issue had its own funds or paid for any of the political advertising at issue. Therefore, there is insufficient evidence that the respondent violated section 253.094 of the Election Code.
8. The evidence indicates that the respondent was not responsible for the website.
9. There is evidence that the group "Aransas Pass Citizens for Smart Growth" existed before the filing of incorporation papers.
10. The billboard advertising, signs, and newspaper advertisement supported officeholders subject to a recall election. Thus, those communications were political advertising.
11. The evidence indicates that the respondent was involved, as part of "Aransas Pass Citizens for Smart Growth," in purchasing the billboard advertising and other signs, and had some responsibility for their lack of political advertising disclosure statements and highway right-of-way notices. (The evidence indicates that the respondent had some responsibility for the newspaper advertisement, however, it included a disclosure statement). Therefore, there is credible evidence that the respondent violated sections 255.001 and 255.007 of the Election Code.

12. One of the billboards indicated it was paid for by “Aransas Pass Citizens for Smart Growth.” There is evidence that the group existed and that members of the group were responsible for the signs. Thus, using the group’s name would not misrepresent the identity of a person or the true source of the communication.
13. The other billboard indicated it was paid for by “Friends of Aransas Pass Citizens for Smart Growth.” There is no evidence that a group named “Friends of Aransas Pass Citizens for Smart Growth” existed. Thus, the disclosure statement indicated that the communication emanated from a source other than its true source. Therefore, there is credible evidence that the respondent violated section 255.004 of the Election Code with respect to that billboard.
14. The communications did not make a representation with respect to a person’s identity. Therefore, there is credible evidence that the respondent did not violate section 255.005 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 person may not knowingly cause to be published, distributed, or broadcast political advertising that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the advertising or the candidate or committee authorizing the advertising. The respondent acknowledges that each political advertising sign designed to be seen from a road is required to include the right-of-way notice. The respondent further acknowledges that 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, and that 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. 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 \$500 civil penalty.

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-2610201 as to the respondent.

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

Jay Loretta Masterson, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director