

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
NANCY POGUE ALLEN,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-2611240

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) held a preliminary review hearing on October 25, 2007, to consider sworn complaint SC-2611240. A quorum of the commission was present. The commission determined that there is credible evidence that the respondent violated section 571.1242 of the Government 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 made political expenditures using corporate funds and failed to include a political advertising disclosure statement on political advertising.

### III. Facts Supported by Credible Evidence

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

1. The respondent is the public relations person for Aransas Pass Development Group which has its office in Aransas Pass, Texas.
2. On September 14, 2006, a district court ordered that a recall election be held on November 4, 2006, regarding two Aransas Pass city council members.
3. The complainant submitted a copy of an October 18, 2006, The Aransas Pass Progress newspaper advertisement. The advertisement states in part: "Vote Against Recall of Jesus R. Galvan, Against Recall of Dorothy Roberts." At the bottom of the advertisement is the statement: "Pd. Pol. Adv by Citizens for SmartGrowth PO Box 1583 Aransas Pass TX 78335." The complainant states that the publisher of The Aransas Pass Progress told him that the respondent paid cash for the advertisement.

4. The complaint alleges that “Citizens for SmartGrowth” is “Aransas Pass Citizens for SmartGrowth,” a non-profit Texas corporation. The complaint alleges that, on behalf of “Aransas Pass Citizens for SmartGrowth,” the respondent used corporate funds to purchase a political advertisement in connection with the recall election.
5. The complaint also alleges that the respondent violated section 255.001 of the Election Code by not accurately identifying who paid for the advertisement. The complaint alleges that the disclosure statement on the advertisement at issue discloses “Citizens for SmartGrowth” as the person responsible for the advertisement instead of “Aransas Pass Citizens for SmartGrowth.”
6. The address on the “Certificate of Formation Nonprofit Corporation” for “Aransas Pass Citizens for SmartGrowth, Inc.” is the same address disclosed on the advertisement at issue.
7. As of October 19, 2006, “Citizens for SmartGrowth” had not filed a campaign treasurer appointment or campaign finance reports with the city. An appointment of campaign treasurer for a general-purpose committee has not been filed with the Ethics Commission for “Citizens for SmartGrowth.”
8. This sworn complaint is a Category Two complaint. The respondent signed for receipt of a copy of the sworn complaint on December 5, 2006. The respondent filed a response to the sworn complaint on August 20, 2007,

#### **IV. Findings and Conclusions of Law**

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

1. Political advertising means, in pertinent part, a communication supporting or opposing a measure that, in return for consideration, is published in a newspaper. ELEC. CODE § 251.001(16).
2. Measure means a question or proposal submitted in an election for an expression of the voter’s will. ELEC. CODE § 251.001(19).
3. The recall election sought an expression of the voter’s will with respect to two elected officials. Therefore, the election was a measure election. The advertisement at issue opposed the recall of the officials. Therefore, the advertisement was political advertising.
4. Political expenditure means a campaign expenditure or an officeholder expenditure. ELEC. CODE § 251.001(10).
5. Campaign expenditure means, in pertinent part, an expenditure made by any person in connection with a campaign on a measure. ELEC. CODE § 251.001(7).
6. The expenditure for the political advertisement was a campaign expenditure because it was made in connection with a campaign on a measure.

7. A corporation may not make a political contribution or political expenditure in connection with a recall election. ELEC. CODE § 253.094(b).
8. A person may not knowingly make or authorize a political expenditure in violation of chapter 253 of the Election Code. ELEC. CODE § 253.004(a).
9. 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 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(a).
10. The advertisement states that it was paid for by “Citizens for SmartGrowth.” There is some evidence that the respondent paid for the advertisement at issue and that the respondent paid for the advertisement on behalf of “Citizens for SmartGrowth.”
11. The evidence does not show that the respondent used corporate funds to pay for the political advertisement.
12. The evidence does not show that the respondent was responsible for an improper disclosure statement. Therefore, there is insufficient evidence to show that the respondent violated sections 253.094(b), 253.004, or 255.001 of the Election Code.

#### **Failure to Respond to Sworn Complaint Notice**

13. A respondent must respond to a Category Two sworn complaint within 25 business days from the date the respondent receives the sworn complaint. A respondent’s failure to timely respond is a Category One violation. GOV’T CODE § 571.1242.
14. The respondent received the sworn complaint on December 5, 2006. More than 25 business days passed before the respondent filed a response on August 20, 2007. Therefore, there is credible evidence that the respondent violated section 571.1242 of the Government 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 respondent must respond to a Category Two sworn complaint within 25 business days from the date the respondent receives the sworn complaint. The respondent agrees to comply with this requirement of the law.

### **VI. Confidentiality**

This order and agreed resolution describes a violation 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 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 \$100 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-2611240.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Nancy Pogue Allen, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director