

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JACK HAIGH,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-280123

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 4, 2008, to consider sworn complaint SC-280123. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.031 and 255.006 of the Election Code, and section 571.1242 of the Government 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 made political expenditures without a campaign treasurer appointment in effect, represented in a campaign communication that he held a public office that he did not hold at the time the representation was made, and failed to include the highway right-of-way notice on political advertising signs.

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 trustee in the November 6, 2007, Bolivar Peninsula Special Utility District (BPSUD) election and was a candidate for the same position in the November 2008 election.
2. The complaint includes a copy of a photograph of a sign that states in part, "Jack HAIGH BPSUD DIRECTOR." The photograph shows one side of the sign and that side does not include the highway right-of-way notice. The complaint also includes a copy of an advertisement published in the October 2007 edition of The Beach Triton newspaper that states in part, Vote for Jack Haigh Candidate for Director, Bolivar Peninsula Special Utility District (BPSUD). The advertisement also states, "Political ad paid for by Jack Haigh for BPSUD Water Board Committee, Larry Rhoden, Treasurer."

3. The local filing authority verified that the respondent did not file a campaign treasurer appointment or any campaign finance reports for the November 6, 2007, election until March 10, 2008.
4. On August 28, 2007, the respondent filed an application for a place on the ballot for director in the November 6, 2007, BPSUD election. On March 10, 2008, the respondent filed a campaign treasurer appointment. On that date the respondent also filed a campaign finance report for the November 6, 2007, election covering the period from September 1, 2007, through March 5, 2008. The report disclosed that on September 25, 2007, the respondent accepted a \$100 political contribution and \$100 in political contributions of \$50 or less, unless itemized. The report disclosed that on September 28, 2007, the respondent made political expenditures from personal funds of \$250 for a newspaper advertisement and \$711.25 on October 10, 2007, for campaign signs. The report also disclosed total political expenditures of \$50 or less, unless itemized of \$27.50. The respondent's political expenditures totaled \$988.75.
5. The respondent received the sworn complaint notice on April 18, 2008. The notice stated that the respondent was required to respond within 25 business days from receipt of the notice. The respondent failed to respond.

IV. Findings and Conclusions of Law

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

Accepting Contributions/Making Expenditures without a Campaign Treasurer Appointment in Effect

1. A "candidate" is defined as a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include, in pertinent part, the filing of an application to be placed on the ballot. ELEC. CODE § 251.001(1)(B).
2. Each candidate shall appoint a campaign treasurer and may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE §§ 252.001, 253.031.
3. The respondent was a candidate for title 15 purposes no later than August 28, 2007, when he filed an application for a place on the ballot. The evidence indicates that the respondent did not file a campaign treasurer appointment until March 10, 2008. The evidence indicates that the respondent accepted a political contribution and made political expenditures before that date. Thus, the evidence indicates that the respondent accepted political contributions and made political expenditures at a time when he did not have a campaign treasurer appointment

in effect. Therefore, there is credible evidence of a violation of section 253.031 of the Election Code.

Misrepresentation of Office Held

4. A person may not knowingly represent in a campaign communication that the candidate holds a public office that the candidate does not hold at the time the representation is made. ELEC. CODE § 255.006(b). A person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks and the political advertising or campaign communication states the public office sought but does not include the word “for” in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. ELEC. CODE § 255.006(c).
5. 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).
6. The complaint alleges that the respondent’s sign represented that the respondent held a public office that he did not hold at the time that the representation was made. The sign includes the respondent’s name and the office sought but does not include the word “for” preceding the office sought. Thus, the sign represents that the respondent is currently a BPSUD director. Therefore, there is credible evidence that the respondent violated section 255.006 of the Election Code.

Failure to Include Highway Right-of Way Notice on Political Advertising Sign

7. Political advertising means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a public office, or a measure that, in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television, or appears in a pamphlet, circular, flier, billboard, or other sign, bumper sticker, or similar form of written communication, or on an Internet website. ELEC. CODE § 251.001(16).
8. The following notice must be written on each political advertising sign: “NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY.” A person commits an offense if the person knowingly enters into a contract to print or make a political advertising sign that does not contain the required notice or instructs another person to place a political advertising sign that does not contain the required notice. ELEC. CODE § 255.007.
9. The complaint alleges that the respondent failed to include the highway right-of-way notice on his sign. The photograph submitted with the sworn complaint shows one side of a sign

that does not include the highway right-of-way notice. The statute does not specify where the notice must appear. The evidence is insufficient to show that the notice is not on the other side of the sign. Therefore, there is insufficient evidence that the respondent violated section 255.007 of the Election Code.

Failure to Respond to Notice of Sworn Complaint

10. A respondent must respond to the notice of a Category Two violation not later than the 25th business day after the date the respondent receives the notice. Failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. GOV'T CODE § 571.1242(a)(c).
11. The respondent received the sworn complaint notice on April 18, 2008. The notice stated that the respondent was required to respond within 25 business days from receipt of the notice. The respondent failed to respond within that time period and has not responded as of the date of this order. Therefore, there is credible evidence of a violation of 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 each candidate shall appoint a campaign treasurer and may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. The respondent also acknowledges that a person may not knowingly represent in a campaign communication that the candidate holds a public office that the candidate does not hold at the time the representation is made. The respondent also acknowledges that a person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks and the political advertising or campaign communication states the public office sought but does not include the word "for" in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. The respondent also acknowledges that a respondent must respond to the notice of a Category Two violation not later than the 25th business day after the date the respondent receives the notice. 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. No 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 no 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-280123.

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

Jack Haigh, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director