

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ALFRED LACY,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-2805230

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2009, to consider sworn complaint SC-2805230. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 255.001 and 255.004 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that Concerned Citizens of Gladewater made a political expenditure for newspaper advertisements at a time when it did not have a campaign treasurer appointment in effect, and failed to file campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The complaint included a copy of a newspaper advertisement that compared two opposing candidates for mayor, listing all of the “empty promises” made by one candidate in comparison to all of the accomplishments of the other candidate.
2. The advertisement encouraged readers to remember what the candidate with the accomplishments had done for the community when they voted for mayor.
3. The advertisement disclosed that it was political advertising paid for by Concerned Citizens of Gladewater and provided a mailing address.

4. The commission sent the notice of complaint to Concerned Citizens of Gladewater at the address provided on the advertisement.
5. In response to the notice, the respondent swore that he was not a member of a political committee, and that he paid for the advertisements at issue from his personal funds.
6. The respondent provided a copy of a receipt from a newspaper for the cost of the political advertising at issue. The receipt indicated that on May 5, 2008, the respondent paid \$441 in cash to a newspaper to place the advertisement.

IV. Findings and Conclusions of Law

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

Failure to File Campaign Treasurer Appointment

1. Each candidate and each political committee shall appoint a campaign treasurer. ELEC. CODE § 252.001.
2. A political committee may not knowingly accept political contributions totaling more than \$500 or make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. ELEC. CODE § 253.031.
3. The respondent made the political expenditure at issue as an individual, not as a member of a political committee. Thus, the respondent was not required to file a campaign treasurer appointment for a political committee. Therefore, there is credible evidence of no violation of sections 252.001 and 253.031 of the Election Code.

Failure to File Campaign Finance Reports

4. An individual not acting in concert with another person may make one or more direct campaign expenditures in an election from the individual's own property that exceed \$100 on any one or more candidates or measures if the individual files campaign finance reports as if the individual were a campaign treasurer of a specific-purpose committee, and the individual receives no reimbursement for the expenditures. An individual making expenditures under this section is not required to file a campaign treasurer appointment. ELEC. CODE § 253.062; Ethics Commission Rules § 22.5(b).
5. A direct campaign expenditure is a campaign expenditure that does not constitute a contribution by the person making the expenditure. A campaign expenditure is not a contribution from the person making the expenditure if it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made. Ethics Commission Rules § 20.1 (5).

6. For each election in which a specific-purpose committee supports or opposes a candidate or measure, the committee's campaign treasurer shall file two reports. ELEC. CODE § 254.124(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day, covering the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day. *Id.* § 254.124(b). The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.124(c). If a specific-purpose committee supports or opposes a candidate or measure in an election after a reporting period prescribed by Subsection (b) or (c), the first report must be received by the authority with whom the report is required to be filed not later than the regular deadline for the report covering the period during which the committee becomes involved in the election. The period covered by the first report begins the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable. *Id.* § 254.124(d).
7. The respondent, as an individual not acting in concert with another person, purchased political advertising using his own personal funds.
8. The respondent made the expenditure at issue on May 5, 2008, during the period covered by the July 2008 semiannual report. Thus, the respondent was not required to file pre-election reports. Therefore, there is credible evidence of no violation of section 254.124 of the Election Code.

Failure to Include the Required Disclosure Statement on Political Advertising and Failure to Disclose the True Source of a Communication

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.
10. Political advertising is a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television. ELEC. CODE § 251.001(16).

11. 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. *Id.* § 255.004(b).
12. A campaign communication is 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).
13. The newspaper advertisement disclosed that it was political advertising paid for by Concerned Citizens of Gladewater and provided a mailing address.
14. The advertisement compared two candidates for mayor and asked the reader to remember one of the candidates and all he had done for the community when voting. Thus, the advertisement supported one candidate over another, and was both political advertising and a campaign communication.
15. The respondent admitted that he paid for the political advertising, and that there was no group of citizens involved with the expenditure. Thus, the disclosure statement failed to indicate the full name of the person who actually paid for the political advertising and disclosed a non-existent group of citizens as being responsible for the advertisement. Therefore, there is credible evidence of violations of sections 255.001 and 255.004 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 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. 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 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 \$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-2805230.

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

Alfred Lacy, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director