

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
VIRGINIA “GINGER” SIMONSON,	§	
CAMPAIGN TREASURER, FLOWER	§	TEXAS ETHICS COMMISSION
MOUND CARES PETITION	§	
ASSOCIATION,	§	
	§	
RESPONDENT	§	SC-31004100

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2011, to consider sworn complaint SC-31004100. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.001, 253.031, 255.001, and 255.007 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 the respondent: 1) did not appoint a campaign treasurer for a political committee, 2) made political expenditures and accepted political contributions for a political committee, at a time when a campaign treasurer for the committee was not in effect, 3) did not file pre-election campaign finance reports, 4) did not include a political advertising disclosure statement in political advertising, and 5) did not 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 the founding member and contribution and expenditure decision maker for Flower Mound Cares Petition Association (FMCPA), a specific-purpose political committee in Flower Mound, Texas that has now dissolved.

2. The complaint was based on communications on FMCPA's website, an advertisement displayed in a local newspaper, and signs displayed in the city of Flower Mound. The complaint alleged that the respondent knowingly accepted political contributions totaling more than \$500 and made or authorized political expenditures totaling more than \$500 for a political committee at a time when a campaign treasurer appointment for the committee was not in effect, did not file campaign finance reports, did not include a political advertising disclosure statement in political advertising, and did not include the highway right-of-way notice on political advertising signs.
3. The complaint included photographs of a mobile advertising display that read, "Flower Mound Cares Petition YOU can help us get our last 800 signatures" with information about where to sign the petition. The complaint also included photographs of yard signs that read: "SAVE OUR AIR & WATER STOP TOXIC GAS FACILITIES" (with information about where to sign the petition) and "Just Say NO to Urban Gas Drilling." None of the signs contained a political advertising disclosure statement or right-of-way notice. The complaint also included a copy of a newspaper advertisement signed by "Flower Mound Cares Petition" and a copy of a "press release" from FMCPA's website that describes the petition supported by the group. The site states that the petition supports a proposed ordinance to declare a "moratorium on the approval of permits for new pipelines and centralized collection facilities . . . suspend[ing] approvals for such facilities pending . . . further public hearings" in Flower Mound."
4. FMCPA filed an appointment of a campaign treasurer by a specific-purpose committee on March 31, 2010, with the local filing authority, naming the respondent as treasurer. The treasurer appointment identifies the committee's purpose to "overturn, modify, or otherwise limit applications of Att. 34."
5. On July 15, 2010, the respondent filed a campaign finance report with the local filing authority that identified support of a "[p]roposed measure to overturn, modify or otherwise limit Art. III, Section 34-454 FM Code of Ordinances." The report disclosed total political contributions of \$16,042.19, and total expenditures of \$11,293.86. Approximately \$18,100 in political contributions (\$3,000 of which was a loan by an individual), and approximately \$10,190 in political expenditures disclosed dates prior to March 31, 2010.
6. In response, the respondent swore that FMCPA is a political committee formed to support "an identified measure, which included the circulation and submission of a petition to determine whether a proposal must be submitted to the voters." She swore that the committee first formed on February 10, 2010, to "overturn modify or otherwise limit the application of Article 34 and associated Land Use amendments passed by the Flower Mound Town Council on January 21, 2010 . . ." and swore that the committee had no intention of placing a measure on the May 2010 ballot, but hoped for a special election sometime thereafter.

7. The respondent swore that she first became aware that FMCPA “might constitute a political committee” in late March 2010 and met with an attorney who advised her to file locally as a committee. She admitted that the committee did accept political contributions and made political expenditures exceeding \$500 prior to the filing of a campaign treasurer appointment, but swore that she appointed a treasurer as soon as she “became aware” of the requirement to file and that she did so prior to the filing of the complaint. She asserts that she did not knowingly violate the relevant statutes and that she did not have “knowledge of this law nor intent to violate the spirit of this law when we exceeded the \$500 threshold.”
8. The respondent admitted that the committee authorized and paid for the website, newspaper ad, and mobile advertising. She admitted that some of the yard signs at issue may have been made by a committee volunteer who was reimbursed by the committee. The respondent swore that the committee did authorize other yard signs, and provided the commission with a photograph of signs made as an in-kind contribution to the committee (the sign did not contain a political advertising disclosure statement or right-of-way notice). The respondent stated that their signs were not the same as those referenced in the complaint, and that they are listed in a different format.
9. On July 15, 2010, the respondent filed a dissolution report for the committee.

IV. Findings and Conclusions of Law

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

Political Contributions and Political Expenditures Received or Made by FMCPA Without a Campaign Treasurer Appointment in Effect

1. A contribution means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2).
2. A political contribution means a campaign contribution or an officeholder contribution. A campaign contribution means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* §§ 251.001(5), (3).
3. An expenditure means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).

4. A political expenditure means a campaign expenditure or an officeholder expenditure. A campaign expenditure means an expenditure made by any person in connection with a campaign for an elective office or on a measure. *Id.* §§ 251.001(10), (7).
5. “Political committee” means a group of persons that has as a principal purpose accepting political contributions or making political expenditures. *Id.* § 251.001(12).
6. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252, Election Code. ELEC. CODE § 252.001.
7. A specific-purpose political committee for supporting or opposing a measure must file its campaign treasurer appointment with the secretary of the governing body of the political subdivision if the measure is to be submitted at an election ordered by an authority of a political subdivision other than a county. ELEC. CODE § 252.007.
8. A campaign treasurer appointment takes effect at the time it is filed with the authority specified by chapter 252, Election Code, and continues in effect until terminated. *Id.* § 252.011.
9. 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(b).
10. Although FMCPA filed a campaign treasurer appointment on March 31, 2010, based on amounts disclosed in the committee’s semiannual campaign finance report, the committee accepted political contributions totaling approximately \$18,100 and made political expenditures totaling approximately \$10,190 during the period of time it did not have a campaign treasurer appointment in effect. The respondent was a founding member of the group, FMCPA. FMCPA by its action constituted a political committee. Although the respondent asserts that because she did not know the group constituted a political committee she did not knowingly violate the statute at issue. However, the evidence shows that the respondent knowingly accepted contributions for FMCPA with knowledge that the contribution was offered or given with the intent that it be used in connection with a measure, and made expenditures for FMCPA in connection with a measure. Therefore, there is credible evidence that the respondent violated sections 252.001 and 253.031 of the Election Code.

Filing of Pre-Election Campaign Finance Reports

11. In addition to other required reports, 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. *Id.* § 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 and covers 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 and covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.124(c).

12. FMCPA formed in January 2010, and appointed a campaign treasurer in March 2010. The respondent timely filed a July 2010 semiannual report. The evidence indicated that the committee's activity was not in connection with the May 2010 election, and that the petition sought to call a special election sometime in the future. Therefore, there is credible evidence that the respondent did not violate sections 254.124(b) and 254.124(c) of the Election Code.

Political Advertising Disclosure Statement and Right-Of-Way Notice

13. 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).
14. Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy. *Id.* § 255.001(b).
15. 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. *Id.* § 255.007.
16. "Political advertising sign" means a written form of political advertising designed to be seen from a road. *Id.* § 255.007(e).
17. The respondent admitted that the website, newspaper advertisement, and mobile advertising were authorized and paid for by FMCPA. She acknowledged that some of the yard signs at issue were paid for by the committee as well. Neither the website, newspaper advertisement, nor the mobile advertising at issue included a political advertising disclosure statement. The signs at issue did not include a political advertising disclosure statement or a highway right-of-way notice. Therefore, there is credible evidence of violations of sections 255.001(a) and 255.007 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 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. The respondent also 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, or the political committee authorizing the advertising. The respondent also acknowledges that political advertising signs designed to be seen from a road are required to include the highway right-of-way 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. 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-31004100.

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

Virginia "Ginger" Simonson, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director