

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

ALFRED WILLIS ARMSTRONG, JR.,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31005168

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2011, to consider sworn complaint SC-31005168. A quorum of the commission was present. The commission determined that there is credible evidence of a technical or *de minimis* violation of section 255.001 of the Election Code and credible evidence of a violation of section 254.031 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 did not include a political advertising disclosure statement on political advertising and did not disclose political expenditures on his 8-day pre-election report for the May 2010 election.

### III. Facts Supported by Credible Evidence

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

1. The respondent is from Victoria, Texas.
2. The allegations relate to an election held on May 8, 2010. The complaint alleged that the respondent failed to include a political advertising disclosure statement on two newspaper advertisements. The complaint also alleged that the respondent failed to disclose on his 8-day pre-election report, political expenditures for the newspaper advertising.

**Political Advertising Disclosure Statement**

3. At issue are advertisements that appeared in two different newspapers on different dates.
4. The first advertisement appeared in the April 2010 edition of the Revista de Victoria, a local monthly newspaper. The advertisement read “Will Armstrong for Mayor,” with smaller print on the bottom stating “Paid for by Will Armstrong Campaign.”
5. The second advertisement at issue appeared in the April 30, 2010, edition of the Victoria Advocate, a daily local newspaper. The top half of the advertisement read “VOTE WILL ARMSTRONG FOR MAYOR A MAYOR THAT WORKS for YOU!” and included a photograph of the respondent and his family and the bottom included voting information and a statement from the respondent. The lower left side of the advertisement also stated “Paid for by Will Armstrong Campaign.”

**Reporting Political Expenditures**

6. The complaint alleged that the respondent failed to report political expenditures for the newspaper advertisements at issue in this sworn complaint on his 8-day pre-election report, in violation of section 254.031(a)(3) of the Election Code.
7. At issue are political expenditures to Revista de Victoria and the Victoria Advocate. The complaint alleges that political expenditures for the advertisements published in those newspapers were readily determinable prior to the end of the reporting period covered by the 8-day pre-election report for a May 2010 election and were required to be included in that report.
8. On April 29, 2010, the respondent filed an 8-day pre-election report for a May 8, 2010, city election covering from March 30, 2010, through April 28, 2010. The report itemized approximately \$1,540 in political expenditures. The report did not disclose political expenditures to Revista de Victoria or the Victoria Advocate.
9. As a result of this complaint, the respondent filed a correction to his 8 day pre-election report for the May 2010 election on June 15, 2010. The correction included a Schedule F (used for political expenditures) and disclosed three political expenditures that were not previously reported. The first was a \$225 expenditure to the “ReVista de Victoria Newspaper” dated April 16, 2010. The second was a \$135.31 expenditure to “Instant Copy + Printing” dated April 9, 2010. The final one was a \$1,313.20 expenditure to the “Victoria Advocate” dated April 28, 2010.

#### IV. Findings and Conclusions of Law

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

##### Political Advertising Disclosure Statement

1. 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).
2. “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 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 or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication or on an Internet website. *Id.* § 251.001(16).
3. The advertisements at issue were communications that supported the respondent as a candidate for nomination or election to a public office and were published in a newspaper in return for consideration. Therefore, the advertisements constituted political advertising. The political advertising contained express advocacy and was therefore required to include a political advertising disclosure statement. Although the advertising at issue included a disclosure statement, the disclosure statement did not indicate that the advertising was political advertising. However, it was clear from the face of the advertising that it was political advertising. Therefore, there is credible evidence of a technical or *de minimis* violation of section 255.001 of the Election Code.

##### Reporting Political Expenditures

4. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. ELEC. CODE § 254.064(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. The report covers the period beginning the day the candidate’s campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed, as applicable, and continuing through the 40th day before election day. ELEC. CODE § 254.064(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. ELEC. CODE § 254.064(c).

5. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
6. The period covered by the respondent's 8-day pre-election report was from March 30, 2010, through April 28, 2010. The respondent did not disclose three political expenditures totaling approximately \$1,670 that were required to be disclosed on his originally filed 8-day pre-election report. The amount of the undisclosed expenditures is more than the total amount of expenditures originally reported (\$1,540). There is credible evidence of a violation of section 254.031(a)(3) 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 also acknowledges that a campaign finance report must include, for all political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made and the dates and purposes of the expenditures.

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-31005168.

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

\_\_\_\_\_  
Alfred Willis Armstrong, Jr., Respondent

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

Texas Ethics Commission

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