

TEXAS ETHICS COMMISSION

IN THE MATTER OF
TERRY J. DAVIS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31006179

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 23, 2011, to consider sworn complaint SC-31006179. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 255.001(a) 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 alleges that the respondent failed to properly disclose his address and telephone number and his campaign treasurer's address and telephone number in a campaign treasurer appointment and failed to include a disclosure statement and highway right-of-way notice in 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 successful candidate for director of the Southern Montgomery County Municipal Utility District (SMCMUD) in an election held on May 8, 2010.

Campaign Treasurer Appointment Information

2. The complaint included a copy of the respondent's campaign treasurer appointment filed with the local filing authority. The copy submitted with the complaint did not include the candidate's mailing address or telephone number or the campaign treasurer's street address or telephone number. The appointment named the respondent as campaign treasurer.

3. In response to the allegations, the respondent swore that he listed his complete mailing address and the campaign treasurer's address and phone number in his reports. He submitted an affidavit signed by an individual who was the general manager and public information coordinator for the district, who swore that, on or about May 17, 2010, he received a request for information for campaign treasurer appointments and campaign finance reports filed by all officeholders and candidates for the district from 2008 to 2010. He swore that he provided copies of the information to the requestor, but that the home addresses and home telephone numbers were redacted from the documents in accordance with sections of the Public Information Act that permit the information to be withheld.
4. The general manager and public information coordinator for the district provided attachments with his affidavit that included a copy of the original documents at issue that included the address and telephone number for both the candidate and campaign treasurer.

Disclosure and Notice on Political Advertising Signs

5. The complaint alleged that the respondent did not include a political advertising disclosure statement or highway right-of-way notice on political advertising signs. The complaint included a picture of a sign that read:

ELECTION
Saturday, May 8, 2010 at 25212 I-45
Three Positions To Fill

Re-Elect

1. Al Newton
2. Bruce Harrison
3. Terry Davis

To your SMCMUD Board of Directors

6. The sign did not include a disclosure statement or highway right-of-way notice.
7. The respondent acknowledged the violations and swore that his oversight was "due to ignorance" and that he "did not commit this violation knowingly or with intent."

IV. Findings and Conclusions of Law

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

Campaign Treasurer Appointment Information

1. A campaign treasurer appointment by a candidate must include, in pertinent part, the candidate's telephone number. ELEC. CODE § 252.0032(a)(1).
2. A campaign treasurer appointment must also include, in pertinent part, the campaign treasurer's residence or business street address and telephone number. *Id.* §§ 252.002(2), (3); Ethics Commission Rules §§ 20.205(6), (7).
3. "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office. ELEC. CODE § 251.001(1).
4. The respondent was a candidate for director of the district in a May 8, 2010, election and filed a campaign treasurer appointment on or about March 4, 2010. The complaint alleged that the appointment did not disclose the respondent's address and telephone number as a candidate or the campaign treasurer's address or telephone number. However, that information was included when the respondent originally filed his campaign treasurer appointment with the district and was redacted from the appointment when the district provided a copy of it to the public. Therefore, there is credible evidence that the respondent did not violate sections 252.0032(a)(1) or 252.002(a) of the Election Code or section 20.205 of the Ethics Commission Rules in connection with the campaign treasurer appointment.

Disclosure and Notice on Political Advertising Signs

5. 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).
6. 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).
7. 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.

8. “Political advertising sign” means a written form of political advertising designed to be seen from a road but does not include a bumper sticker. *Id.* § 255.007(e).
9. The respondent’s political advertising signs did not include a political advertising disclosure statement or highway right-of-way notice. Therefore, there is credible evidence that the respondent violated 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 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 the highway right-of-way notice must be written on each political advertising sign. 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-31006179.

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

Terry J. Davis, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director