

TEXAS ETHICS COMMISSION

IN THE MATTER OF

PHILLIP BRYANT,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31912187

FINAL ORDER

I. Recitals

The Texas Ethics Commission (Commission) met on February 24, 2022, to consider sworn complaint SC-31912187 at a formal hearing held in accordance with Sections 571.061, 571.121, 571.126 through 571.132, 571.137, and 571.139 of the Government Code. A quorum of the Commission was present and proceeded with the formal hearing in the respondent's absence.

II. Allegations

The complaint alleged that the respondent: 1) did not include on political advertising the required disclosure statement, in violation of Section 255.001 of the Election Code; 2) did not file a campaign treasurer appointment for Harris County Democratic News, an alleged political committee, in violation of Section 252.001 of the Election Code; and 3) accepted campaign contributions or made or authorized campaign expenditures on behalf of Harris County Democratic News at a time when a campaign treasurer appointment for the alleged political committee was not in effect, in violation of Section 253.031 of the Election Code.

The Commission also considered whether the respondent failed to file a response to the sworn complaint in violation of Section 571.1242 of the Government Code.

III. Findings of Facts

The evidence admitted in the formal hearing or officially noticed supports the following findings of fact:

1. Sworn complaint SC-31912187 was filed on December 23, 2019.
2. The complaint alleged that the respondent, as a registered agent of Harris County Democratic News ("HCDN") and Harris County Black Democratic News ("HCBDN") had formed a political committee, named Harris County Democratic News, failed to file a campaign treasurer appointment for HCDN, and accepted campaign contributions or made or authorized campaign expenditures on behalf of HCDN without a campaign treasurer appointment in effect. The complaint further alleged that the campaign contributions and expenditures were related to a series of endorsement mailers that were published under the name Harris County Black Democratic News and distributed on or about November 27, 2019, and that the mailers did not have a political advertising disclosure statement.

3. The respondent did not submit a response to the sworn complaint.
4. The Commission held a preliminary review hearing on December 1, 2020. At the conclusion of the preliminary review hearing the Commission found credible evidence that the respondent did not include a disclosure statement on the political advertising mailers, in violation of Section 255.001 of the Election Code, and that the respondent failed to submit a response to the complaint, in violation of Section 571.1242 of the Government Code. The Commission took no action on the allegations regarding Sections 252.001 and 253.031 of the Election Code.
5. At the preliminary review hearing, the respondent testified that he did not submit a response to the complaint because he believed that HCDN/HCBDN was a news organization and the Commission lacked jurisdiction over news organizations.
6. The Commission ordered a formal hearing after the Commission and respondent were unable to settle and resolve the sworn complaint following the preliminary review hearing. The formal hearing was originally scheduled for June 17, 2021.
7. On March 11, 2021, Commission staff filed a motion for a subpoena for the owner of Minuteman Press Northwest, the company that had published the mailers, for the production of all invoices, receipts, checks, purchase orders, and written communications (including emails) related to, or involving, both Eric Dick and/or Phillip Bryant between September 1, 2019, through December 15, 2019, and to secure the appearance and testimony of the owner at the formal hearing. The motion was granted on March 17, 2021.
8. On April 14, 2021, Commission staff filed a motion for continuance to give third party-witnesses time to comply with the issued subpoenas. The motion was granted on April 19, 2021, and the formal hearing was rescheduled for the next Commission meeting following the June 17, 2021 meeting.
9. On June 17, 2021, Commission staff filed a second motion for subpoena for the owner of Minuteman Press Northwest for the production of all invoices, receipts, checks, purchase orders, and written communications (including emails) related to, or involving, both Eric Dick and/or Phillip Bryant between September 1, 2019, through December 15, 2019, and to secure the appearance and testimony of the owner at the formal hearing. The motion was granted on June 25, 2021.
10. On July 29, 2021, the third party witness complied with the subpoena that was issued on June 25, 2021, and produced 232 files from Minuteman Press, and a properly executed business records affidavit.
11. On August 2, 2021, Commission staff filed a motion to pre-admit evidence and the record. The respondent did not respond to the motion.

12. The respondent filed a motion for continuance on August 18, 2021, which was granted on August 18, 2021. The formal hearing was reset to December 9, 2021.
13. On October 13, 2021, the Commission, on its own motion, continued the formal hearing until February 24, 2022.
14. On December 8, 2021, the Commission granted a motion consolidating sworn complaint SC-31912187 with sworn complaint SC-31912186 (filed against Eric Dick), and a motion requesting a subpoena for the respondent to appear at the formal hearing.
15. Service of the subpoena was attempted three times. Commission staff filed a motion for substituted service on January 26, 2022, which was granted on January 27, 2022. The Commission subpoena was served on February 3, 2022, by substituted service.
16. On February 14, 2022, the Commission granted staff's unopposed motion to pre-admit formal hearing evidence and the record.
17. The respondent did not appear at the formal hearing.
18. The mailers (Exhibit A) were distributed on or about November 27, 2019, under the names of Harris County Black Democratic News and Harris County Democratic News without a political advertising disclosure statement.
19. The pre-admitted evidence included a Facebook posting that the respondent made admitting that he, through HCBDN, published and distributed the endorsement mailers. The respondent also testified at the preliminary review hearing that he was responsible for the mailers.
20. The business records from Minuteman Press Northwest show that the publishing and distribution of the mailers was organized and paid for by Eric Dick, who is one of the candidates that appeared on the mailer. The records also confirm the respondent had some involvement in the printing and distribution of the mailers.
21. The pre-admitted evidence also showed that it cost \$25,909.07 to print and distribute the mailers at issue, and that a total of 110,789 mailers went out without a political advertising disclosure statement.

IV. Conclusions of Law

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

1. Disposition of this case is within the jurisdiction of the Commission. Tex. Gov't Code § 571.061.

2. The respondent received legally sufficient notice of the formal hearing, which met the requirements of Section 12.173(b) of the Ethics Commission Rules. *Id.* §§ 571.126, 571.032, 2001.051, 2001.052.
3. 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. Tex. Elec. Code § 255.001(a).
4. Political advertising that is authorized by a candidate shall be deemed to contain express advocacy. *Id.* § 255.001(b).
5. Section 255.001 of the Election Code does not apply to circulars or flyers that cost in the aggregate less than \$500 to publish and distribute. § 255.001(d)(3).
6. A “flier” is an advertising circular, and a “circular” is a paper (such as a leaflet) intended for wide distribution. MERRIAM-WEBSTER’S DICTIONARY (March 9, 2021).
7. Political advertising means, in relevant part, a communication supporting or opposing a candidate for nomination or election to a public office that, in return for consideration, is published in a newspaper, magazine, or other periodical, or appears in a pamphlet, circular, flier, billboard, or similar form of written communication. Tex. Elec. Code §251.001(16).
8. Express advocacy can be inferred from the inclusion of words such as “vote for,” “elect,” “support,” “defeat,” “reject,” or “Smith for Senate,” but is not limited to communications that use those words. Political Advertising, What You Need to Know (Revised January 1, 2017).
9. An advertisement includes express advocacy or its functional equivalent “if the ad is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 469-70 (2007).
10. Each candidate and each political committee shall appoint a campaign treasurer as provided by Chapter 252 of the Election Code. Tex. Elec. Code § 252.001.
11. 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. *Id.* § 253.031(b).
12. If the alleged violation is a Category Two violation, the respondent must respond to the notice required by Section 571.123(b) not later than the 25th business day after the date the respondent receives the notice. Tex. Gov’t Code § 571.1242(a). A respondent’s failure to timely respond as required by Subsection (b) is a Category One violation. *Id.* § 571.1242(c).

13. The response required by Section 571.1242 of the Government Code must be in writing; admit or deny the allegations set forth in the complaint; and be signed by the respondent. 1 Tex. Admin. Code § 12.52(a).
14. If a respondent does not submit a response within the time period prescribed by Section 571.1242 of the Government Code, the Commission may issue an order imposing a civil penalty for failure to file a response. *Id.* § 12.52(a).
15. The respondent argues that he was exempt from the requirement to include a disclosure statement on the flyers because Harris County Democratic News is a news publication. However, respondent's argument fails on two fronts. First, even if the mailers were part of a periodical news publication, they were published in return for consideration, as the evidence shows that Eric Dick paid for the printing and distribution of the mailers, and thus, they required a political advertising disclosure statement. Second, the mailers are circulars or fliers, as they were standalone sheets intended for wide distribution, not part of a larger periodical.
16. In the past, the Commission has found express advocacy when the advertising was "susceptible or no reasonable interpretation other than as an appeal to vote against the individual." *In re Burrige*, SC-31005160 (2013).
17. Endorsing a candidate in an election is expressly advocating for that candidate's election. The endorsement mailers expressly advocate for the election of Eric Dick to Houston City Council, At-Large, Position 5, among other clearly identified candidates. The mailers contain the words "Endorsement Announcement" and the pictures, names, and positions of the candidates endorsed. The mailers both contain a notice that the voters are allowed to take the mailer into the voting booth. The mailers do not contain other material or information that would make it susceptible to any reasonable interpretation other than to support, and an appeal to vote for, Eric Dick and the other identified slate of candidates. Therefore, the endorsement mailers contain express advocacy.
18. The mailers cost \$25,909.07 to publish and distribute, and therefore the exception under Section 255.001(d)(3) of the Election Code for circulars or fliers that cost less than \$500 is inapplicable.
19. The respondent was the registered agent of HCDN and HCBDN. His testimony from the preliminary review hearing and his social media posts show he claims responsibility for the mailers. The emails from Minuteman Press Northwest show that he is at least partially responsible for the publishing and distribution of the mailers, and that he provided the initial design of the mailers.

20. Since the mailers were circulars or fliers that contained express advocacy and cost more than \$500 to publish and distribute, they required a political advertising disclosure statement. Because the respondent was involved in the production of the mailers, he knowingly caused the political advertising to be published and distributed. The mailers did not have a political advertising disclosure statement. Therefore, the Commission finds by a preponderance of the evidence that the respondent violated Section 255.001 of the Election Code.
21. The respondent received legally sufficient notice of the sworn complaint and did not submit a written response. Therefore, the Commission finds by a preponderance of the evidence that the respondent violated Section 571.1242 of the Government Code.
22. The Commission makes no finding of a violation of Sections 252.001 and 253.031 of the Election Code.

V. Default Judgment

1. The formal hearing was held in person and by video teleconference on February 24, 2022, at the State Capitol Extension, Room E1.014, in Austin, Texas. The respondent failed to appear at the hearing.
2. If a respondent to whom a notice of hearing with factual allegations is served or provided fails to appear for the hearing, the Commission may proceed in the respondent's absence on a default basis. 1 Tex. Admin. Code § 12.173(a). A default proceeding under this section requires adequate proof of the following: the notice of hearing to the respondent stated that the allegations listed in the notice could be deemed admitted and that the relief sought in the notice of hearing might be granted by default against the party that fails to appear at the hearing, the notice of hearing satisfies the requirements of Sections 2001.051, 2001.052, and 571.126 of the Government Code; and the notice of hearing was received by the defaulting party, or as authorized by Chapter 571 of the Government Code and this chapter, sent by regular mail or by certified mail, restricted delivery, return receipt requested, to the party's last known address as shown by the Commission's records. *Id.* §12.127(b).
3. Notice of formal hearing was sent to the respondent on December 15, 2021, by United States Postal Service (USPS) delivery confirmation. The notice stated that the hearing would be held on February 24, 2022, at 4:00 p.m. at the State Capitol Extension, Room E1.014, in Austin, Texas. The notice also stated that the allegations listed in the notice could be deemed admitted as true and that the relief sought in the notice of hearing might be granted by default against the party that fails to appear at the hearing. USPS records show the notice was delivered on December 17, 2021.

4. The Commission staff's witness list was sent to the respondent on January 25, 2022, by USPS delivery confirmation. USPS records show the witness list was delivered by mail on January 28, 2022. Copies of the documents staff expected to be introduced as exhibits at the hearing were sent to the respondent via USPS delivery confirmation and email on August 2, 2021. USPS records show delivery was attempted on August 5, 2021.
5. The respondent was served by substituted service with a subpoena to appear at the formal hearing on February 3, 2022. The subpoena stated that the hearing would be held on February 24, 2022, at 4:00 p.m. at the State Capitol Extension, Room E1.014, in Austin, Texas.
6. The Commission finds that the notices sent to the respondent of the February 24, 2022 formal hearing met all requirements of Section 12.173(b) of the Ethics Commission Rules and that the respondent received legally sufficient notice. Tex. Gov't Code §§ 571.126, 571.032, 2001.051, 2001.052; 1 Tex. Admin. Code §§ 12.103, 12.173. The respondent did not respond to the notice of formal hearing or appear at the hearing, despite being under subpoena to do so. Having received legally sufficient notice of the formal hearing, the Commission proceeded in default pursuant to Section 12.173 of the Ethics Commission Rules, deems certain allegations in the notice admitted, and issues this Final Order.

VI. Confidentiality

This final order is not confidential under Sections 571.132 and 571.140 of the Government Code and may be disclosed by members and staff of the Commission.

VII. Sanction

After considering the nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$6,000 civil penalty.

Date: _____

FOR THE COMMISSION

Randall H. Erben
Vice-Chair
Texas Ethics Commission