

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ROBERT "BOB" WILLIS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2611235

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 21, 2007, to consider sworn complaint SC-2611235. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.062, 254.128, 254.124, 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 proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to properly deliver a written notice to a candidate regarding a direct campaign expenditure, failed to properly notify a candidate of a political expenditure made on behalf of the candidate, failed to properly file campaign finance reports, and failed to include a highway right-of-way notice on political advertising.

III. Facts Supported by Credible Evidence

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

1. The respondent is a County Commissioner of Polk County.
2. The allegations concern political expenditures made for a billboard advertisement that supported Judge Elizabeth Coker, an incumbent candidate for judge of the 258th Judicial District in the November 7, 2006, general election.
3. According to the complaint, the billboard was 10' x 32' in size and was on display beside a highway from the end of July 2006 through November 6, 2006. The billboard included a photograph of the candidate and advocated her re-election. The billboard also stated "Political Ad Paid for by Bob Willis."

4. In response to the complaint, the respondent swears that he made “two direct expenditures supporting a candidate for District Judge” and that he filed reports with the county clerk of Polk County “properly reporting those expenditures.”
5. After the complaint was filed, the respondent filed 30-day and 8-day pre-election reports with the county clerk of Polk County on December 19, 2006. The 30-day pre-election report disclosed a \$1,500 political expenditure to “Sign Ad” for the purpose of “Billboard Rental” on August 1, 2006. The 8-day pre-election report disclosed a political expenditure of \$444.63 to “Phil Smith” for the purpose of “Fish Fry” on October 7, 2006. The respondent filed the reports as if he were filing as the campaign treasurer of a specific-purpose political committee and the reports indicated that the purpose was to support the candidate.
6. According to the respondent’s reports and sworn statements, the expenditures were direct expenditures made to benefit the candidate.
7. The billboard did not include a highway right-of-way notice. The respondent admits that the notice was not printed on the billboard.

IV. Findings and Conclusions of Law

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

1. 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 if: (1) the individual complies with chapter 254 of the Election Code as if the individual were a campaign treasurer of a specific-purpose political committee; and (2) the individual receives no reimbursement for the expenditures. ELEC. CODE § 253.062(a), Ethics Commission Rules § 22.5(b)(2).
2. A direct campaign expenditure means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. ELEC. CODE § 251.001(8). 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).
3. A campaign expenditure means, in pertinent part, an expenditure made by any person in connection with a campaign for an elective office. ELEC. CODE § 251.001(7).
4. An expenditure means, in pertinent part, 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).

5. A campaign contribution means, in pertinent part, a contribution to a candidate that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3).
6. 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).
7. If a specific-purpose political committee makes political expenditures for a candidate or officeholder, the committee's campaign treasurer shall deliver written notice of that fact to the affected candidate or officeholder not later than the end of the period covered by the report in which the reportable activity occurs. *Id.* § 254.128(a).
8. For each election in which a specific-purpose political committee supports or opposes a candidate or measure, the committee's campaign treasurer shall file two reports. *Id.* § 254.124(a). The first report shall be filed not later than the 30th day before election day. The report 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 shall be filed not later than the eighth day before election day. The report covers the period beginning on the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.124(c).
9. There is credible evidence that the expenditure for the billboard was a direct expenditure to benefit the candidate.
10. The expenditure for the billboard supported a candidate in the general election and was in excess of \$100. There is no evidence that the respondent was reimbursed for the expenditure. Thus, the respondent was required to deliver to the candidate a written notice of the fact that he made the expenditure not later than the end of the period covered by the report in which the reportable activity occurred.
11. The campaign treasurer of a specific-purpose political committee that supported the candidate, who was opposed in the November 7, 2006, general election, would have been required to file a 30-day pre-election report on October 10, 2006, and an 8-day pre-election report on October 30, 2006. The period covered by the 30-day pre-election report was from July 1, 2006, to September 28, 2006. The expenditure occurred on August 1, 2006. Thus, the respondent was required to deliver a written notice to the candidate by September 28, 2006. The respondent admitted that he failed to notify the candidate of the expenditure. Therefore, there is credible evidence that the respondent violated section 254.128(a) of the Election Code.

12. In order to properly make a direct campaign expenditure in connection with an election from his own property that exceeded \$100 on a candidate, the respondent was required to comply with chapter 254 of the Election Code as if he were a campaign treasurer of a specific-purpose political committee. By failing to properly deliver written notice to the candidate regarding the expenditure, the respondent failed to comply with chapter 254 of the Election Code. Therefore, there is credible evidence that the respondent violated section 253.062(a) of the Election Code.
13. A person may not knowingly make or authorize a political expenditure in the name of or on behalf of another unless the person discloses in writing to the person on whose behalf the expenditure is made the name and address of the person actually making the expenditure in order for the person on whose behalf the expenditure is made to make the proper disclosure. ELEC. CODE § 253.001(b).
14. There is no evidence that the respondent made the expenditure for the billboard in the name of, or on behalf of, the candidate or another person. Thus, the respondent was not required to provide his name and address to the candidate by making the expenditure. Therefore, there is credible evidence that the respondent did not violate section 253.001(b) of the Election Code.
15. The respondent made a political expenditure in excess of \$100 on August 1, 2006, to support an opposed candidate in the general election. Thus, the respondent was required to file 30-day and 8-day pre-election reports as if he were the campaign treasurer of a specific-purpose political committee on October 10 and October 30, 2006. The evidence shows that the respondent did not file the reports until December 19, 2006. Therefore, there is credible evidence that the respondent violated sections 254.124(b) and (c) of the Election Code.
16. In order to properly make a direct campaign expenditure in connection with an election from his own property that exceeded \$100 on a candidate, the respondent was required to comply with chapter 254 of the Election Code as if he were a campaign treasurer of a specific-purpose political committee. By failing to properly file the pre-election campaign finance reports, the respondent failed to comply with chapter 254 of the Election Code. Therefore, there is credible evidence that the respondent violated section 253.062(a) of the Election Code.
17. 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.” ELEC. CODE § 255.007(a). “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).
18. The respondent paid for the billboard at issue, which was located beside a highway. Thus, the billboard was a “political advertising sign” in which the notice was required. The

billboard did not include the required notice. Therefore, there is credible evidence that the respondent violated section 255.007(a) 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 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 if: (1) the individual complies with chapter 254 of the Election Code as if the individual were a campaign treasurer of a specific-purpose political committee; and (2) the individual receives no reimbursement for the expenditures. The respondent also acknowledges that if a specific-purpose political committee makes political expenditures for a candidate or officeholder, the committee's campaign treasurer shall deliver written notice of that fact to the affected candidate or officeholder not later than the end of the period covered by the report in which the reportable activity occurs; that, for each election in which a specific-purpose political committee supports or opposes a candidate or measure, the committee's campaign treasurer shall file a report not later than the 30th day before election day and not later than the eighth day before election day; and that a highway right-of-way notice must be included on a written form of political advertising that is designed to be seen from a road. 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-2611235.

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

Robert "Bob" Willis, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director