

# TEXAS ETHICS COMMISSION

**IN THE MATTER OF** § **BEFORE THE**  
§  
**ORIGINAL AUSTIN GUN SHOW, INC.,** § **TEXAS ETHICS COMMISSION**  
§  
**RESPONDENT** § **SC-96049**  
§

## **ORDER and AGREED RESOLUTION**

### **I. Recitals**

The Texas Ethics Commission (the commission) met on November 14, 1997, to consider sworn complaint SC-96049 filed against Original Austin Gun Show, Inc. (the respondent). The complaint was also filed against . A separate Order will be presented to that respondent. A quorum of the commission was present. The commission voted to accept jurisdiction of this complaint. Based on the investigation conducted by commission staff, the commission determined there was credible evidence of a violation of Section 253.094, Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

### **II. Allegations**

1. The complainant alleges that the respondent and a group called prepared and mailed campaign literature endorsing candidates in a city council election without appointing a campaign treasurer or filing any campaign finance reports.
2. The complainant also alleges that the campaign literature failed to include the complete disclosure statement required by Section 255.001, Election Code.
3. The complainant also alleges that the respondent made political expenditures to prepare and mail the campaign literature in violation of Section 253.094, Election Code.

### **III. Facts Supported by Credible Evidence**

Credible evidence available to the commission would support the following findings of fact:

1. The respondent is a Texas corporation.

2. A two-sided postcard was distributed during a city council election. One side of the postcard includes a return address consisting of the respondent's name and address and states that the postcard was paid for by the respondent and that \_\_\_\_\_ recommends certain candidates. The other side of the postcard endorses certain candidates in a city council election. The postcard does not include the words "*political advertising*." The respondent and \_\_\_\_\_ did not appoint a campaign treasurer as a political committee during the election or file any campaign finance reports.
3. An attorney representing the respondent submitted a response in which he states that the respondent financed the printing and mailing of the postcard at the request of an attorney who is associated with \_\_\_\_\_. The respondent's attorney states the respondent had no prior experience in political elections or election law, and knew of no reason they could not comply with the individual's request. The attorney also states that to the extent the respondent violated the Election Code, the violation was not done with the knowledge of its impropriety or intent to disregard the law.
4. In response to this sworn complaint, the attorney associated with \_\_\_\_\_ submitted a response which denies that \_\_\_\_\_ is a political committee and states that it does not meet the political committee definition provided in Title 15, Election Code.
5. The attorney associated with \_\_\_\_\_ states that he compiled and wrote the postcard in question.

#### IV. Conclusions of Law

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

1. A political committee is "a group of persons that has as a principal purpose accepting political contributions or making political expenditures." Section 251.001(12), Election Code.
2. A political committee may not make more than \$500 in political expenditures or accept more than \$500 in political contributions without first appointing a campaign treasurer. Section 253.031, Election Code.
3. An expenditure made in connection with a campaign for elective office or on a measure is a political expenditure. Sections 251.001(7) and (10), Election Code. The expenditures to produce and distribute the postcard were made in connection with campaigns for elective office and are therefore political expenditures.
4. There is insufficient credible evidence to determine whether the cost to produce and distribute the postcard exceeded \$500. Therefore, there is insufficient credible evidence to determine

whether the respondent and treasurer as a political committee.

were required to appoint a campaign

5. The campaign treasurer of a political committee is the entity responsible for filing campaign finance reports. Since a campaign treasurer appointment was not in effect when the expenditure in question was made, the law does not require the respondent to report the expenditure. Thus there is credible evidence that the respondent was not required to file campaign finance reports.
6. The postcard constitutes political advertising because it supports a candidate for election to public office and appears on a flier. Section 251.001(16), Election Code.
7. Political advertising resulting from an agreement to print political advertising must contain a disclosure statement indicating that it is political advertising and the name and the address of the individual who entered into the contract or the person represented. Section 255.001, Election Code.
8. The postcard contains the respondent's name and address but does not provide the words "political advertising."
9. An Ethics Commission rule excepts from the disclosure requirement "political advertising printed on letterhead stationery if the letterhead contains the [name and address of the person who had the political advertising printed]." Sections 26.3 and 26.5, Ethics Commission Rules.
10. A postcard constitutes "letterhead stationery" within the meaning of the rule. The postcard includes the name and address of the person who had the postcard printed. Thus there is credible evidence that no violation of Section 255.001, Election Code, occurred.
11. Section 253.094, Election Code, prohibits a corporation from making a political contribution or expenditure unless it is authorized by Subchapter D, Chapter 253, Election Code.
12. The expenditure to print the postcard at issue constitutes a political expenditure because it was made in connection with a campaign to an elective office. Sections 251.001(7) and (10), Election Code.
13. Subchapter D does not authorize a corporation to make a political expenditure to print a postcard endorsing candidates unless it is to communicate directly with the corporation's stockholders or members, as applicable, or with the families of its stockholders or members. Subchapter D, Chapter 253, Election Code.
14. The postcard was not made to communicate directly with the respondent's stockholders or members or with the families of its stockholders or members. There is credible evidence that

the respondent violated Section 253.094, Election Code, by making a political expenditure that was not authorized by Subchapter D, Chapter 253, Election Code.

### **V. Representations and Agreement by the Respondent**

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits nor denies the facts detailed under Section III and the commission's findings and conclusions of law detailed under Section IV, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondent consents to the entry of this ORDER and AGREED RESOLUTION before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge appointed by the commission, and further waives any right to a post-hearing procedure established or provided by law.
3. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violation detailed in Section IV, Paragraph 14, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

### **VI. Confidentiality**

This ORDER and AGREED RESOLUTION describes an alleged violation that the commission has determined would be neither technical or *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under Section 571.140, Government Code, and may be disclosed by members and staff of the Texas Ethics Commission.

### **VII. Sanction**

After considering the seriousness of the violation described under Section IV, Paragraph 14, including the nature, circumstances, consequences, extent, and gravity of the violation; that no previous violations by this respondent are known to the commission; and after considering the sanction deemed necessary to deter future violations, the commission imposes a \$200 civil penalty for the violation described under Section IV, Paragraph 14.

### **VIII. Order**

The Texas Ethics Commission hereby ORDERS:

1. that the portions of this sworn complaint that allege violations under Section IV, Paragraphs 4, 5, and 10, are dismissed;
2. that this proposed AGREED RESOLUTION be presented to the respondent;
3. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-96049;
4. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$200 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than December 12, 1997; and
5. that the executive director shall promptly refer SC-96049 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-96049 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
Original Austin Gun Show, Inc.

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

Texas Ethics Commission

By: \_\_\_\_\_  
Tom Harrison, Executive Director