

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MICHAEL CASTLEBERRY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2506128

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on November 1, 2005, to consider sworn complaint SC-2506128. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.129 and 254.031 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 give written notice of a change in status from a specific-purpose committee to a general-purpose committee in violation of section 254.129 of the Election Code. The complaint also alleges that the respondent filed reports that omitted required information in violation of section 254.031 of the Election Code. Additionally, the complaint alleges that the respondent failed to file 30-day and 8-day pre-election reports for the May 2005 election in violation of section 254.124 or 254.154 of the Election Code.

III. Facts Supported by Credible Evidence

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

1. The respondent was campaign treasurer for a locally filing specific-purpose political committee that was formed to support four candidates for city offices who were unsuccessful in the May 2004 election. After the 2004 election, the committee filed neither a dissolution report nor a notice of change in status and did not amend its campaign treasurer appointment to indicate a new specific-purpose.

2. The committee's website at the time the complaint was filed included their mission statement indicating future intent to support candidates, a link to PayPal for soliciting donations, and a link to another group that is supporting a petition for a recall election. Additionally, e-mails were sent out in March, April, and May 2005 from the secretary and group administrator of the committee encouraging committee members to support the recall efforts.
3. The complaint included copies of two newspaper advertisements in a local, weekly newspaper, which ran before the May 7, 2005, election, that indicated their source as the committee and states that they were "paid for by [committee name]."
4. The respondent submitted a letter from the committee chairman explaining that he placed and paid for the advertisements on his own, and that he included the committee's name in an attempt to disclose his affiliation with the committee and prevent being accused of hiding that affiliation.
5. The respondent admits that he inadvertently omitted the "contributions maintained" on the April 15, May 7, and July 15, 2004, reports. He also reported expenditures of 47cents omitted from the April 15 report and \$1,614.32 omitted from the May 7 report. The respondent states that he believed all pages of the May 7 report had been filed, but noticed the last page missing when he was auditing the reports in preparing his response to the complaint.
6. The complainant alleges that the committee actively endorsed and contributed financially to voting measures in 2005, and therefore should have filed 30-day and 8-day pre-election reports.
7. The committee's campaign finance reports and bank statements indicate that the committee made no expenditures and received no contributions in connection with the May 7, 2005, election.

IV. Findings and Conclusions of Law

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

1. A campaign treasurer of a specific-purpose committee that becomes a general-purpose committee is required to deliver written notice of the change in status stating that future reports will be filed with the Ethics Commission. Ethics Commission Rules § 20.313(d). Such notice shall be delivered not later than the next deadline for filing a report that occurs after the change in status and that would apply to the committee if the committee had not changed its status. ELEC. CODE § 254.129.

2. A general-purpose committee is a political committee that has among its principal purposes: supporting or opposing two or more candidates who are unidentified or are seeking offices that are unknown; or one or more measures that are unidentified; or assisting two or more officeholders who are unidentified. ELEC. CODE § 251.001(14).
3. By changing its operation to that of a general-purpose committee, the committee should have filed a notice of their change in status with the local filing authority by the deadline for their next report, which was July 15, 2005. This complaint was filed on June 15, 2005, and on July 15, 2005, the committee filed a specific-purpose committee campaign finance report with the local filing authority without a notice of their change of status. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.129 of the Election Code.
4. Each campaign finance report must include the total amount of political contributions maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8). Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
5. Because of the omitted “contributions maintained” on three reports and the omitted expenditures on the May 2004 report, there is credible evidence of a violation of section 254.031 of the Election Code.
6. A specific-purpose committee is required to file pre-election reports for each election in which they support or oppose a candidate or measure. ELEC. CODE § 254.124 A general-purpose committee must file pre-election reports for each election in which the committee is involved. ELEC. CODE § 254.154.
7. A general-purpose committee is not required to file campaign finance reports until it has filed a campaign treasurer appointment with the Ethics Commission, and is not required to file a campaign treasurer appointment before it exceeds \$500 in political expenditures or political contributions. Ethics Commission Rules § 20.313(e).
8. Because the committee had become a general-purpose committee but had not exceeded the \$500 threshold and had filed no treasurer appointment with the commission, it was not required to file the July 2005 campaign finance report. Therefore, there is credible evidence of no violation of section 254.124 or 254.154 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 specific-purpose committee that changes operation to that of a general-purpose committee must file a notice of their status change with the local filing authority. The respondent also acknowledges that each campaign finance report of a committee must include the total amount of contributions maintained as of the last day of the reporting period and must include each political expenditure over \$50 with the full name and address of the person to whom the expenditure is made, the date and purpose of the expenditure. 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 for the violations described under Sections III and IV.

The commission also requires the respondent to file a notice of change in status from a specific-purpose committee to a general-purpose committee with the local filing authority stating that any future reports will be filed with the Ethics Commission. Alternately, rather than filing a change in status notice, the respondent may properly disburse any remaining funds and file a final report to dissolve the specific-purpose committee.

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-2506128.

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

Michael Castleberry, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director