

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

BARBARA DANE SWADLING,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2606167

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on June 28, 2007, to consider sworn complaint SC-2606167. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.001, 252.002, 252.005, 253.003, 253.004, and 253.031 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, as a candidate for election to the board of the Mustang Special Utility District failed to file a campaign treasurer appointment. The complaint further alleges that the respondent accepted campaign contributions and made political expenditures at a time when she did not have a campaign treasurer appointment in effect. The complaint further alleges that the respondent represented in campaign communications that the communications emanated from a source other than the true source.

### III. Facts Supported by Credible Evidence

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

1. The respondent was on the May 13, 2006, ballot for the Mustang Special Utility District Board and actively campaigned to be elected to that board.
2. The respondent acknowledged that, based on an incorrect reading of the Election Code, she did not file a campaign treasurer appointment.
3. As a first time candidate, the respondent states that she believed that no campaign treasurer appointment was required since the campaign accepted less than \$500 in political contributions and made less than \$500 in political expenditures.

4. The evidence indicates that the respondent was one of three candidates who together raised an aggregate total of \$400 and spent an aggregate total of \$395.85. On April 23, 2007, the commission received a single campaign finance report for all three candidates. The report was also filed with the local filing authority.
5. The allegations regarding the true source of the communication are based on a website and newspaper articles in which the three candidates cite information about the utility district. The complainant alleges that the information is factually incorrect.
6. The website promotes the respondent's campaign for utility district board. The website also includes a statement that it was paid for by the campaign of the three candidates.
7. The newspaper articles are election guides published by the local paper that consist of statements made by the respondent regarding her qualifications and goals.
8. The complaint alleges that statements made by the respondent in the newspaper articles and the information on the website are factually incorrect and were obtained from a disgruntled board member without further investigation.
9. The evidence indicates that the information on the website was taken from various sources including information published by the utility district.
10. The newspaper articles were based on the respondent's answers to questions posed by the press and the candidate answered the questions based on information known to her at the time.

#### **IV. Findings and Conclusions of Law**

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

1. Each candidate shall appoint a campaign treasurer by including in writing the treasurer's name, address, telephone number, and the name of the person making the appointment. ELEC. CODE §§ 252.001, 252.002.
2. A candidate means a person who knowingly and willingly takes affirmative action for the purpose of gaining election to public office. ELEC. CODE § 251.001(1).
3. A campaign treasurer appointment must be filed with the clerk or secretary of the governing body of the political subdivision or, if the political subdivision has no clerk or secretary, with the governing body's presiding officer, if the appointment is made for candidacy for an office of a political subdivision other than a county. ELEC. CODE § 252.005.

4. The evidence shows that the respondent was a candidate on the May 13, 2006, ballot for the Mustang Special Utility District Board, and, thus, subject to title 15 of the Election Code. As a candidate for local elective office, the respondent was required to file a campaign treasurer appointment with the Mustang Special Utility District.
5. The respondent did not file a campaign treasurer appointment. Therefore, there is credible evidence of a violation of sections 252.001, 252.002, and 252.005 of the Election Code.
6. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE § 253.031.
7. A person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003.
8. A person may not knowingly make or authorize a political expenditure in violation of chapter 253 of the Election Code. ELEC. CODE § 253.004.
9. The respondent admits that she raised political contributions and made political expenditures at a time when she had no campaign treasurer appointment in effect. Therefore, there is credible evidence of a violation of sections 253.031, 253.003, and 253.004 of the Election Code.
10. A person may not knowingly represent in a campaign communication that the communication emanates from a source other than its true source with intent to influence the result of an election. ELEC. CODE § 255.004.
11. A campaign communication is a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure. ELEC. CODE § 251.001(17).
12. The website and articles at issue are campaign communications because they relate to the respondent's campaign for utility district board.
13. Neither the website nor the newspaper articles purport to emanate from a source other than their true source.
14. The website includes a disclosure of the source as the full name of the treasurer of the respondent's campaign.
15. The sources of the newspaper articles are the newspapers themselves rather than the respondent.

16. There is no evidence that the articles at issue were paid for by the respondent or anyone else, and there is no indication that the newspaper attempted to represent that the articles emanated from any other source. Therefore, there is credible evidence of no violation of section 255.004 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 candidate shall appoint a campaign treasurer by including in writing the treasurer's name, address, telephone number, and the name of the person making the appointment, and that a campaign treasurer appointment must be filed with the clerk or secretary of the governing body of the political subdivision or, if the political subdivision has no clerk or secretary, with the governing body's presiding officer, if the appointment is made for candidacy for an office of a political subdivision other than a county. The respondent also acknowledges that a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect, that a person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253 of the Election Code, and that a person may not knowingly make or authorize a political expenditure in violation of chapter 253 of the Election Code. 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-2606167.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Barbara Dane Swadling, Respondent

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

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director