

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOHN RAPKOCH,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2611236

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 28, 2007, to consider sworn complaint SC-2611236. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.062 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 knowingly accepted political contributions totaling more than \$500 or made political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for a political committee was not in effect, and failed to comply with the reporting requirements applicable to a political committee. In the alternative, the complaint alleges that the respondent made direct campaign expenditures exceeding \$100 without filing the required campaign finance reports. The complaint also alleges that the respondent failed to include a political advertising disclosure statement and 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 complaint alleges that the respondent acted on behalf of a political committee to accept political contributions and make political expenditures for advertisements in connection with a city bond election in Weatherford, Texas.
2. The complaint alleges that, in the alternative, the respondent acted alone but failed to file the required campaign finance reports disclosing his expenditures for the advertisements.
3. The complainant submitted copies of ten political advertisements published in the Weatherford Democrat newspaper regarding the city bond election, which he alleges the

- respondent caused to be published without the proper disclosure statement. A number of the advertisements said to vote no on three measures and to vote yes on a fourth measure.
4. The complainant also submitted photographs of one side of six political signs regarding the city bond election, which he alleges the respondent caused to be distributed without the proper disclosure statement or right-of-way notice. The signs state: “VOTE NO, NO MORE TAXES, 28 MILLION BOND ELECTION IS EXCESSIVE, NOV.7.”
 5. The evidence indicates that the respondent acted alone in making the expenditures related to the signs and advertisements at issue.
 6. On June 5, 2007, the respondent filed a campaign finance report with the city secretary of Weatherford disclosing that he had made an expenditure of \$913.75 on October 19, 2006, an expenditure of \$1,082.50 on October 30, 2006, and an expenditure of \$962.63 on November 1, 2006. The expenditures in connection with the November 2, 2006, city bond election totaled \$2,958.88.
 7. With respect to the signs and newspaper advertisements, the evidence indicates that the sign company neglected to print the disclosures on the respondent’s signs, that the newspaper neglected to print the disclosure statement on one of his advertisements, and that some of the newspaper advertisements had incomplete disclosure statements.

IV. Findings and Conclusions of Law

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

1. “Political committee” means a group of persons that has as a principal purpose accepting political contributions or making political expenditures. ELEC. CODE § 251.001(12).
2. “Political expenditure” means a campaign expenditure or an officeholder expenditure. ELEC. CODE § 251.001(10).
3. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. ELEC. CODE § 251.001(7).
4. 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. ELEC. CODE § 253.031(b).
5. For each election in which a specific-purpose committee supports or opposes a candidate or measure, the committee’s campaign treasurer is required to file two campaign finance reports. ELEC. CODE § 254.124(a).

6. The expenditures at issue were made in connection with a measure election, and, thus, were campaign expenditures.
7. The evidence indicates that the respondent was not acting in concert with anyone else. Thus, there was no requirement that the respondent file a campaign treasurer appointment for a political committee or file campaign finance reports for a political committee. Therefore, there is credible evidence that the respondent did not violate sections 253.031(b) or 254.124(a) of the Election Code.
8. 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 or measures if the individual complies with chapter 254 of the Election Code as if the individual were the campaign treasurer of a political committee and the individual receives no reimbursement for the expenditures. An individual making expenditures under section 253.062 of the Election Code is not required to file a campaign treasurer appointment. ELEC. CODE § 253.062.
9. The evidence indicates that the respondent acted on his own and made expenditures from his own property on the measure election for ten newspaper advertisements and a number of political advertising signs. The expenditures for the advertisements were campaign expenditures because the advertisements opposed the measures. In several instances the newspaper advertisements supported a measure as well. Thus, there is credible evidence that the expenditures were direct campaign expenditures exceeding \$100. Therefore, the respondent was required to comply with the reporting requirements of chapter 254 of the Election Code as if he were the campaign treasurer of a political committee.
10. For each election in which a specific-purpose committee supports or opposes a measure, the committee's campaign treasurer is required to file two reports. The first report is required to be filed by the 30th day before election day. The report covers the period through the 40th day before election day. The second report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. ELEC. CODE § 254.124.
11. The election was held on November 7, 2006. The fortieth day before the election was September 28, 2006. The evidence does not show that the respondent made any political expenditures in connection with the bond election on or before September 28, 2006. Therefore, there is no evidence that the respondent was required to file a 30-day pre-election report.
12. The report filed by the respondent is evidence that the respondent was required to file an 8-day pre-election report to disclose the political expenditure of \$913.75 that he made on October 19, 2006, in connection with the bond election. That report is also evidence that the

- respondent was required to file a January 2007 semiannual report to disclose the political expenditures he made on October 30, 2006, and November 1, 2006, in connection with the bond election. There is credible evidence that the respondent violated section 253.062 of the Election Code by failing to timely file an 8-day pre-election report and a January 2007 semiannual report.
13. 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, in pertinent part, the full name of the person who paid for the advertising. ELEC. CODE § 255.001(a).
 14. “Political advertising” means, in pertinent part, a communication supporting or opposing a measure that: in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or appears: in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or on an Internet website. ELEC. CODE § 251.001(16).
 15. The respondent’s advertisements published in the newspaper and signs are political advertising because they are communications that expressly advocated a vote for one bond measure and a vote against three bond measures.
 16. The complaint alleges that the political advertisements were required to state the name of a political committee and the name of the campaign treasurer of the political committee.
 17. The evidence indicates that the respondent was not acting as part of a political committee but was acting on his own behalf. Therefore, there was no requirement for the respondent to include the name of a political committee on the political advertisements. There is no statutory requirement that a political advertising disclosure statement include the name of a campaign treasurer.
 18. The remaining question is whether the law requires an individual who publishes or distributes political advertising that supports or opposes a measure to include a political advertising disclosure statement. Based upon the United States Supreme Court decision of *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), and Texas Attorney General Opinion No. JC-0243 (2000), an individual acting alone cannot be required to include a political advertising disclosure statement on political advertising that supports or opposes a measure only. Therefore, there is credible evidence that the respondent did not violate section 255.001 of the Election Code.
 20. The following notice is required to 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).

21. “Political advertising sign” means a written form of political advertising designed to be seen from a road. ELEC. CODE § 255.007(e).
22. The respondent’s signs are political advertising signs and therefore were required to include the right-of-way notice.
23. Although the evidence indicates that the respondent’s signs did not include the right-of-way notice, the sign company failed to print the notice on the signs. The evidence does not show that the lack of notice caused the signs to be illegally placed. Therefore, there is credible evidence that the respondent committed a technical or *de minimis* violation of 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 or measures if the individual complies with chapter 254 of the Election Code as if the individual were the campaign treasurer of a political committee and the individual receives no reimbursement for the expenditures. The respondent also acknowledges that the following notice is required to 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.” 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 \$200 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-2611236.

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

John Rapkoch, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director