

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RICHARD CARLILE,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-270446

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2008, to consider sworn complaint SC-270446. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.001, 253.031(a), 255.001, 255.006, 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 file a campaign treasurer appointment. The complaint also alleges that the respondent accepted a political contribution or made a political expenditure without a campaign treasurer appointment in effect. The complaint also alleges that the respondent failed to include a disclosure statement and highway right-of-way notice on political advertising signs. Additionally, the complaint alleges that the respondent represented in a campaign communication that he held a public office that he did not hold at the time of the representation.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful non-incumbent candidate for the City of Callisburg city council, in the May 12, 2007, election.
2. The respondent filed an application for a place on the ballot on February 22, 2007.
3. On or about April 10, 2007, the respondent placed signs around Callisburg.
4. The complaint included a copy of a sign that states, "Richard Carlile City Council."

5. The respondent's unsworn response states, "In reference to our telephone conversation on Friday 4-27-07, relating to my illegal signs for campaigning, I received a letter from the city on Monday and promptly removed my signs that day."
6. On September 7, 2007, the commission received from the respondent a copy of a campaign finance report that disclosed a \$40 political expenditure from personal funds for "sign." The report does not disclose the date or the payee of the expenditure. The report left blank the spaces to disclose political contributions and total political expenditures. On September 20, 2007, the commission received from the respondent a campaign finance report designated as a final report that disclosed total political expenditures of \$40, and zero political contributions and political contributions maintained. The commission notified the respondent that the report that he filed with the commission must be filed with the local filing authority. Subsequently, the commission received from the local filing authority copies of a campaign treasurer appointment and a final campaign finance report that the respondent filed locally on September 26, 2007. The campaign finance report is the same as the September 20, 2007, report that the respondent sent to the commission.

IV. Findings and Conclusions of Law

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

1. A person who takes any affirmative step toward gaining nomination or election to public office, including filing an application for a place on the ballot, is a candidate for purposes of title 15 of the Election Code. ELEC. CODE § 251.001(1)(b). A candidate must file an appointment of a campaign treasurer. ELEC. CODE § 252.001. 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(a).
2. The evidence shows that the respondent did not have a campaign treasurer appointment in effect when he filed his application for a place on the ballot on February 22, 2007, and that he did not file a campaign treasurer appointment until September 26, 2007 (after the election). Thus, the respondent did not file a campaign treasurer appointment as a candidate in the May 2007 election. The evidence shows that the respondent made a \$40 political expenditure for signs before the May 2007 election at a time when he had no campaign treasurer appointment in effect. Therefore, there is credible evidence that the respondent violated sections 252.001 and 253.031(a) of the Election Code.
3. 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).

4. “Political advertising” means, in pertinent part, a communication supporting or opposing a candidate for nomination or election to a public office that appears in a billboard or other sign, or similar form of written communication. ELEC. CODE § 251.001(16)(B).
5. Each political advertising sign designed to be seen from a road is required to include the highway right-of-way notice. ELEC. CODE § 255.007.
6. The sign at issue contained express advocacy that supported a candidate for election to a public office. Thus, the sign was political advertising. The sign did not include a political advertising disclosure statement or highway right-of way notice. The evidence indicates that the respondent was responsible for the sign at issue. Therefore, there is credible evidence that the respondent violated sections 255.001 and 255.007 of the Election Code.
7. A person is prohibited from knowingly entering into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made. A person is prohibited from knowingly representing in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. A person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks, and the political advertising or campaign communication states the public office sought but does not include the word “for” in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. ELEC. CODE § 255.006.
8. The evidence indicates that the respondent did not hold the office that he was seeking and that he failed to include the word “for” on his political advertising signs to clarify that he did not hold the office that he was seeking. Therefore, there is credible evidence that the respondent violated section 255.006 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 person who takes any affirmative step toward gaining nomination or election to public office, including filing an application for a place on the

ballot, is a candidate for purposes of title 15 of the Election Code. The respondent also acknowledges that a candidate must file an appointment of a campaign treasurer. 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. The respondent also acknowledges that 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. The respondent also acknowledges that each political advertising sign designed to be seen from a road is required to include the highway right-of-way notice. The respondent also acknowledges that a person is prohibited from knowingly entering into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made. The respondent also acknowledges that a person is prohibited from knowingly representing in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. The respondent also acknowledges that a person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks, and the political advertising or campaign communication states the public office sought but does not include the word "for" in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. 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-270446.

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

Richard Carlile, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director