

TEXAS ETHICS COMMISSION

IN THE MATTER OF
PETER MORRISON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2807279

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2009, to consider sworn complaint SC-2807279. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 253.062 of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent failed to disclose political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent held the office of Lumberton Independent School District (LISD) trustee during the period at issue.
2. The complaint included copies of two mail-outs and a newspaper advertisement.
3. The mail-outs referred to the May 2008 school bond and school board elections.
4. One mail-out referred to the upcoming school bond election, and indicated that the passage of the school bond would increase taxes. The mail-out also listed four candidates seeking election to the school board and indicated which candidates opposed or supported a tax increase. The mail-out indicated that the two challengers opposed the school bonds.

5. Another mail-out indicated that the respondent opposed the school bonds and identified the two school board candidates who opposed the school bonds. In the mail-out the respondent stated that he would be voting against the bond issues and encouraged the reader to vote no on the bonds.
6. The newspaper advertisement, which was published on April 28 and May 7, 2008, stated that it was not the right time to ask taxpayers for additional money. The advertisement, titled, "Why I Voted Not Right Now on the LISD Bonds," encouraged the reader to vote no on May 10th, and identified two school board candidates who opposed a tax increase.
7. On March 9, 2007, the respondent filed an application for a place on the LISD general election ballot, and a campaign treasurer appointment.
8. The respondent was an opposed candidate in the May 2007 election and filed pre-election reports for that election.
9. The respondent was not an opposed candidate in the May 2008 election and did not file pre-election reports for that election.
10. The respondent filed the July 2008 semiannual report, which covered the period of January 1, 2008, through June 30, 2008.
11. The report disclosed two \$314 expenditures to a newspaper for the purpose of "ad." The report disclosed that the expenditures were made on April 15 and 30, 2008.
12. The report also disclosed three expenditures to USPS for the purpose of "postage." The report disclosed that one expenditure to USPS was made on April 23, 2008, for approximately \$1,140, one expenditure was made on April 25, 2008, for approximately \$740, and one of expenditure was made on May 1, 2008, for approximately \$740.
13. The total political expenditures disclosed on that report was \$3,695.53, and the political expenditure that appeared to be related to the communications at issue totaled approximately \$3,250.
14. The local filing authority provided copies of all campaign finance reports from 2007 through 2008 for the two candidates that the mail-outs indicated opposed the school bond. Neither candidate's reports disclosed an in-kind contribution or notice of direct expenditure from the respondent.
15. The respondent swore that he made the expenditures for the newspaper advertisement and mail-outs at issue as an officeholder "to communicate with my constituents about important issues surrounding the May 10, 2008 election."

16. The respondent swore that he “did not mention these expenditures to any candidate before making them.”
17. The 30-day pre-election report for the May 2008 election was due on April 10, 2008, and covered the period of January 1, 2008, through March 31, 2008.
18. The 8-day pre-election report was due on May 2, 2008, and covered the period of April 1, 2008, through April 30, 2008.

IV. Findings and Conclusions of Law

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

1. “Candidate” means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office. ELEC. CODE § 251.001(1). Examples of affirmative action include the filing of a campaign treasurer appointment, and the filing of an application for a place on the ballot. *Id.* § 251.001(1)(A)(B).
2. In addition to other required reports, an opposed candidate is required to file reports 30-days and 8-days before an election. ELEC. CODE § 254.064.
3. 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 if the total expenditures on any one or more candidates or measures do not exceed \$100 and the individual receives no reimbursement for the expenditures. ELEC. CODE § 253.061.
4. 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 as if the individual were a campaign treasurer of a specific-purpose political committee, and the individual receives no reimbursement for the expenditures. ELEC. CODE § 253.062; Ethics Commission Rules § 22.5.
5. “Direct campaign expenditure” means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. ELEC. CODE § 251.001(8). A campaign expenditure is not a contribution from the person making the expenditure if it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made, or it is made in connection with a measure, but is not a political contribution to a political committee supporting or opposing the measure. *See* Ethics Commission Rules § 20.1(5).

6. “Expenditure” means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. ELEC. CODE § 251.001(6).
7. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. ELEC. CODE § 251.001(7).
8. The campaign treasurer of a specific-purpose committee is required to file two reports for each election in which the specific-purpose committee supports or opposes a candidate or measure. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day, covering the period beginning the day the committee’s campaign treasurer appointment is filed or the first day after the period covered by the committee’s last required report, as applicable, and continuing through the 40th day before election day, and the second report must be received by the authority with whom the 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.
9. The respondent became a candidate not later than March 9, 2007, when he filed a campaign treasurer appointment and an application to be placed on the ballot.
10. The respondent was not an opposed candidate in the May 2008 election. Therefore, he was not required to file pre-election reports for the May 2008 election as a candidate.
11. However, the respondent made campaign expenditures from his own property that exceeded \$100 for political advertising in connection with the May 2008 school bond and school board elections.
12. The respondent was not acting in concert with another person when he made the expenditures at issue.
13. The expenditures at issue constituted direct campaign expenditures because they were expenditures made in connection with a campaign for a candidate or measure that did not constitute campaign contributions.
14. Thus, the respondent was required to file campaign finance reports as if he were the campaign treasurer of a specific-purpose committee.
15. The respondent’s July 2008 semiannual report disclosed that none of the direct campaign expenditures at issue were made during the period covered by the 30-day pre-election report.

16. That report disclosed that four direct campaign expenditures, totaling approximately \$2,500, were made during the period covered by the 8-day pre-election report. Thus, the respondent was required to file an 8-day pre-election report disclosing the four direct campaign expenditures.
17. The respondent did not file an 8-day pre-election report. Therefore, there is credible evidence of a violation of section 253.062 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 as if the individual were a campaign treasurer of a specific-purpose political committee, and the individual receives no reimbursement for the expenditures. 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-2807279.

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

Peter Morrison, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director