

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CATHEY C. MCKINNEY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31006188

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 7, 2010, to consider sworn complaint SC-31006188. 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, and credible evidence of technical or *de minimis* violations of section 255.004 of the Election Code, laws 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 improperly made political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent is an individual that resides in Texarkana.
2. The complaint alleged that the respondent, as campaign treasurer of a political committee, made two political expenditures of \$1,288.32 each to publish two advertisements in a local newspaper.
3. The first advertisement was published on April 25, 2010, and the second was published on May 7, 2010.
4. The respondent paid for the advertising.

5. The advertisements listed the respondent's name on the disclosure statement as chairman of the "Friends of Texarkana College." No committee by that name is on file with the commission or with the political subdivision at issue.
6. In response to the complaint, the respondent acknowledged that she paid for the advertisements and did not dispute the alleged cost of each advertisement. The respondent swore that she never formed a political committee and that she paid for the political advertisements out of her personal funds. The respondent further swore that an employee at the newspaper where the political advertisements were printed advised her to identify herself as "chairman" of the "Friends of Texarkana College" in the disclosure statement.

IV. Findings and Conclusions of Law

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

1. A direct campaign expenditure is a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. ELEC. CODE § 251.001(8).
2. 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 files campaign finance reports as if the individual were a campaign treasurer of a political committee and the individual receives no reimbursement for the expenditures. ELEC. CODE § 253.062. For a May 8, 2010, election, the campaign treasurer of a political committee that made expenditures on or about April 25, 2010, and May 7, 2010, would be required to file an 8-day pre-election report as well as a July 2010 semiannual report. ELEC. CODE §§ 254.063, 254.064.
3. The evidence indicated that the respondent, acting as an individual, made direct campaign expenditures for the political advertisements. The direct expenditures exceeded \$100. The first expenditure was made during the period covered by the 8-day pre-election report. The second expenditure was made during the period covered by the July 2010 semiannual report. The respondent was required to file campaign finance reports as if she was the campaign treasurer of a political committee. The respondent did not file any report disclosing the expenditures. Therefore, there is credible evidence of violations of section 253.062 of the Election Code.
4. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source. ELEC. CODE § 255.004.
5. The advertisements at issue indicated that a political committee for which the respondent was the chair paid for the advertisements at issue. No such committee existed and the

respondent paid for the advertisement as an individual. Although the respondent's name did appear in the disclosure, the true source of the advertisement was not clearly disclosed. Therefore, there is credible evidence of technical or *de minimis* violations 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 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 files campaign finance reports as if the individual were a campaign treasurer of a political committee, and the individual receives no reimbursement for the expenditures. The respondent also acknowledges that a person commits an offense if, with intent to injure a candidate or influence the result of an election, the person represents in a campaign communication that the communication emanates from a source other than its true source. 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 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-31006188.

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

Cathey C. McKinney, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director