

TEXAS ETHICS COMMISSION

IN THE MATTER OF

CONCERNED TAXPAYERS OF
HALTOM CITY,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31808300

FINAL ORDER

The Texas Ethics Commission (Commission), having heard this case and voting to find violations of laws under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact and Conclusions of Law

1. The respondent is Concerned Taxpayers of Haltom City, a political committee. The respondent distributed political advertising mailers opposing two bond measures in connection with the May 5, 2018, election. Some of the mailers did not contain a political advertising disclosure statement.
2. The first Notice of Hearing was sent to the respondent on January 8, 2020, by United States Postal Service (USPS) delivery confirmation. The USPS confirmed delivery on January 10, 2020. A second Notice of Hearing was sent to the respondent by delivery confirmation on January 24, 2020. The USPS confirmed delivery on January 27, 2020. Both notices were sent to the address provided by the complainant, which is the same address the respondent used in the disclosure statement on its political advertising.
3. The first Notice of Hearing and second Notice of Hearing were also provided to Nikki Brown, Ricky Brown, Gary Nunn, and Willis O'Dell, four individuals identified as acting on behalf of the respondent. Each of the four individuals was provided with the opportunity to appear at the preliminary review hearing or submit a statement to be used as evidence at the hearing. Each individual was also notified that failure to appear or provide written evidence could result in an order granted by default for which each individual could be personally liable for any violations committed by the respondent.
4. The preliminary review hearing was held on February 27, 2020, by the Commission in Austin, Texas.
5. No person on behalf of the respondent filed a response to the notices of hearing or appeared at the hearing.

6. Willis O'Dell filed two sworn statements in response to the notices of hearing and appeared at the hearing.
7. The sworn complaint was filed against the respondent on August 27, 2018. The complaint alleged that the respondent: 1) did not file a campaign treasurer appointment, and accepted political contributions and/or made or authorized political expenditures at a time when a campaign treasurer appointment for the committee was not in effect, in violation of sections 252.001 and 253.031 of the Election Code; and 2) did not include on political advertising a disclosure statement, in violation of section 255.001 of the Election Code.
8. The Notice of Complaint was sent to the respondent by USPS certified mail, return receipt requested, on September 4, 2018. The USPS confirmed delivery on September 19, 2018. No person on behalf of the respondent filed a response to the sworn complaint. Furthermore, no person on behalf of the respondent responded to messages left by telephone from Commission staff.
9. The Commission shall administer and enforce, among other laws, Title 15 of the Election Code. GOV'T CODE § 571.061(a). Disposition of this case is within the jurisdiction of the Commission.
10. A notice required to be sent to a respondent under chapter 571 of the Government Code shall be sent to the address provided by the complainant or to the address most recently provided by the respondent. ETHICS COMMISSION RULES § 12.21(b).
11. The respondent received legally sufficient notice of the February 27, 2020, preliminary review hearing in this case.
12. If a respondent fails to appear at a hearing, the Commission may proceed in the respondent's absence and may find credible evidence of the violations alleged in the complaint and may issue a final order imposing a civil penalty. *Id.* § 12.23. The February 27, 2020, preliminary review hearing was held in accordance with section 12.23 of the Ethics Commission Rules.

Description of Political Advertising

13. Three separate political advertising mailers (hereafter referred to as Mailer #1, Mailer #2, and Mailer #3) are at issue.
14. The heading printed on the face of each mailer was "CONCERNED TAXPAYERS of Haltom City." Mailer #1 on its face contained the phrase, "Pol adv paid for by CONCERNED TAXPAYERS of Haltom City, 4807 NE 28th St., Haltom City, TX 76117." Mailer #1 stated, "PLEASE VOTE "NO" ON PROPOSITIONS A AND B." Mailer #2 and Mailer #3 stated, "VOTE NO ON BOND PROPOSITIONS A AND B."

Political Contributions and/or Expenditures without a Campaign Treasurer Appointment

15. The complaint alleged that the respondent was a specific-purpose committee that accepted political contributions and/or made or authorized political expenditures in excess of \$500 for 3,000 mailers opposing two bond measures sent between April 5, 2018, and May 5, 2018, at a time when a campaign treasurer appointment for the committee was not in effect.
16. Each of the three mailers was stamped with a different U.S. postage paid permit number (hereafter referred to as Permit #1, Permit #2, and Permit #3). In response to a request by Commission staff under the Freedom of Information Act, the USPS provided the names of the three mail houses (hereafter referred to as Mail House #1, Mail House #2, and Mail House #3) who paid for postage under those permit numbers and the amount paid.
17. USPS records show that Mail House #1 paid fees of \$225 on September 24, 2017, and \$225 on October 21, 2017, for mailing costs using Permit #1.
18. USPS records show that Mail House #2 paid fees of \$225 on May 30, 2018, \$225 on July 25, 2018, and \$225 on August 1, 2018, for mailing costs using Permit #2.
19. USPS records show that Mail House #3 paid fees of \$225 on August 7, 2018, and \$225 on August 22, 2018, for mailing costs using Permit #3.
20. In response to written questions from Commission staff, each mail house described the goods and services it provided for the mailers, stated the amount each was paid to produce and distribute the mailers, and identified the individuals who made and/or authorized expenditures for the mailers.

Mailer #1

21. Regarding Mailer #1, Mail House #1 provided the design for the mailer, order activity log, order invoice, order payment record, and customer communication log.
22. Nikki Brown ordered production and mailing services online from Mail House #1 on April 15, 2018. She provided the mailing list to Mail House #1. She called Mail House #1 to follow up on the order on April 16, 2018.
23. Mail House #1 confirmed that it produced Mailer #1 mailed under Permit #1. Mail House #1 completed printing of 2,000 mailers on April 17, 2018, delivered the mailers to the post office for mailing on April 18, 2018, delivered approximately 300 unmailed "overs" to Ricky Brown on April 19, 2018, and confirmed the mailing was complete on April 23, 2018.
24. Mail House #1 stated that the total cost for printing, mailing, and tax was \$1,116.04. Mail House #1 produced an invoice dated April 19, 2018, for the aforesaid amount, which was billed to and paid by Nikki Brown. Nikki Brown submitted payment online using a credit card under her name.

Mailer #2

25. Regarding Mailer #2, Mail House #2 provided the design for the mailer, written communications from Nikki Brown and Gary Nunn, and an invoice to Nikki Brown.
26. Nikki Brown first contacted Mail House #2 on April 19, 2018, via email, forwarded draft text and artwork for the mailer from Gary Nunn to Mail House #2, requested the mail house's assistance with the artwork, and inquired, "What size political mailer do you recommend as most effective?" She informed Mail House #2 of the time frame for "this group" that wanted the mailer, and included "our first mailer," which was Mailer #1, as an attachment with her communications.
27. On April 20, 2018, Mail House #2 sent proofs to Nikki Brown. Nikki Brown informed Mail House #2 that Gary Nunn had four changes to the draft mailer. She received and reviewed the revisions to the mailer.
28. On April 20, 2018, Mail House #2 informed Nikki Brown that the cost would be \$3,100 with tax for print, letter shop, and postage costs for 11,707 mailers. Nikki Brown stated that she was "getting the cost approved" and was "putting in" \$1,500." Later on April 20, 2018, she stated, "it's a go!"
29. On April 23, 2018, Mail House #2 informed Nikki Brown that the order for Mailer #2 mailed under Permit #2 was processed and waiting on credit card payment. Nikki Brown provided her credit card and debit card, authorizing Mail House #2 to place \$3,000 on her debit card and \$100 on her credit card. Mail House #2 provided an invoice for \$3,106.24 paid by Nikki Brown on April 23, 2019.

Mailer #3

30. Regarding Mailer #3, Mail House #3 provided the design for the mailer, written communications from Ricky Brown, Nikki Brown, and Gary Nunn with the design attached, production ticket, data processing ticket, invoice, and sworn statement by the mail house's agent.
31. Documents provided by Mail House #3 show that on April 26, 2018, Nikki Brown forwarded the design for Mailer #3 to Gary Nunn, who forwarded it to Ricky Brown, who then forwarded it to Mail House #3.
32. The agent for Mail House #3 swore that Willis O'Dell and Ricky Brown in person requested printing and mailing of 1,744 mailers on April 26, 2018. The agent further swore that on the same date, Willis O'Dell and Ricky Brown provided the artwork for the mailer via email, and Willis O'Dell provided the mailing list.
33. In response to written questions from Commission staff, the agent for Mail House #3 stated that Willis O'Dell made or authorized payment for Mailer #3, and that Ricky Brown and Willis O'Dell paid for all services and postage totaling \$1,020 in cash.

34. In response to the notice of hearing, Willis O'Dell swore that he was not part of the respondent committee or its mailers. He also swore that Ricky Brown alone requested the mailers and paid the full amount of \$1,020. The agent for Mail House #3 provided a second sworn statement to clarify that Ricky Brown went over the "print/mail project" with Mail House #3 and made the cash payment after Willis O'Dell left Mail House #3.
35. At the hearing, Willis O'Dell testified that he did not make or authorize payment for Mailer #3.
36. Mail House #3 printed and mailed the Mailer #3 using Permit #3 on April 27, 2018.
37. Records on file with the City Secretary of Haltom City and the Commission show that CTHC has not filed a campaign treasurer appointment or any campaign finance reports.
38. "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).¹
39. A group has as a principal purpose of accepting political contributions or making political expenditures, including direct campaign expenditures, when that activity is an important or a main function of the group. ETHICS COMMISSION RULES § 20.1(20).
40. Each candidate and each political committee shall appoint a campaign treasurer as provided by this chapter. ELEC. CODE § 252.001.
41. 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. *Id.* § 253.031(b).²
42. Credible evidence shows that the respondent was a group of persons, which accepted political contributions and/or made or authorized political expenditures totaling at least \$5,252.38. Credible evidence also shows that the group of persons included Nikki Brown, Ricky Brown, and Gary Nunn, who acted on behalf of and under the name of the respondent to accept political contributions and/or make or authorize political expenditures for the production and distribution of Mailer #1, Mailer #2, and Mailer #3. Credible evidence shows that the respondent did not file a campaign treasurer appointment at any time. Therefore, there is credible evidence of violations of sections 252.001 and 253.031 of the Election Code.

¹ Effective September 1, 2019, section 251.001(12) of the Election Code is amended to define "political committee," as two or more persons acting in concert with a principal purpose of accepting political contributions or making political expenditures. The term does not include a group composed exclusively of two or more individual filers or political committees required to file reports under this title who make reportable expenditures for a joint activity.

² Pursuant to section 18.31(a) of the Ethics Commission Rules, effective January 1, 2020, the contribution and expenditure threshold requiring a campaign treasurer appointment for a political committee is adjusted to \$870.

43. Credible evidence shows that Willis O'Dell did not accept political contributions and/or make or authorize political expenditures on behalf of or under the name of the respondent for production or distribution of any political advertising mailers. Therefore, credible evidence shows that Willis O'Dell was not an individual responsible for the respondent's violations of sections 252.001 and 253.031 of the Election Code.

Political Advertising Disclosure Statement

44. The complaint alleged that the respondent did not include a political advertising disclosure statement on Mailer #2 and Mailer #3. The complaint included images of Mailer #2 and Mailer #3, which did not contain the disclosure statement.
45. Mail House #2 confirmed that the artwork and changes to the proof for the mailer provided by Nikki Brown and Gary Nunn was used for the final version of Mailer #2, which Nikki Brown approved and accepted. Mailer #2 did not contain a political advertising disclosure statement.
46. Mail House #3 confirmed that the artwork provided by Ricky Brown, Nikki Brown, and Gary Nunn for the mailer was used for the final version of Mailer #3, which Ricky Brown approved and accepted. Mailer #3 did not contain a political advertising disclosure statement.
47. "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or 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).
48. 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 the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. *Id.* § 255.001(a).
49. Credible evidence shows that the respondent did not include a political advertising disclosure statement on Mailer #2 and Mailer #3, which contained an exhortation to vote against two bond measures. Credible evidence also shows that Ricky Brown, Nikki Brown, and Gary Nunn knew the mailers did not contain the disclosure statement when they acted on behalf of the respondent to produce and distribute the mailers. Therefore, there is credible evidence of violations of section 255.001(a) of the Election Code.
50. Because credible evidence shows that Willis O'Dell was not an individual responsible for causing the publication or distribution of any political advertising mailers on behalf of or under the name of the respondent, credible evidence shows that Willis O'Dell was not an individual responsible for failing to include the political advertising disclosure statement

on any of the mailers at issue. Therefore, credible evidence shows that Willis O'Dell was not an individual responsible for the respondent's violations of section 255.001(a) of the Election Code.

Sanction

1. The Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for violation of a law administered and enforced by the Commission. GOV'T CODE § 571.173.
2. The Commission shall consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations; and 5) any other matters that justice may require. *Id.* § 571.177.
3. The harm from the respondent's failure to file a campaign treasurer appointment and disclose at least \$5,252.38 in political contributions and/or political expenditures, the lack of good faith demonstrated by failing to respond to the complaint, and the need to ensure deterrence of future violations are relevant to the appropriate penalty for this sworn complaint. *See id.*
4. Therefore, the Texas Ethics Commission orders that the respondent pay to the Commission, within 30 days of the date of this order, a civil penalty in the amount of \$5,000. If the respondent does not pay the \$5,000 civil penalty within 30 days of the date of this order, then the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

Order Date: _____

FOR THE COMMISSION

Anne Temple Peters
Executive Director
Texas Ethics Commission