

TEXAS ETHICS COMMISSION

IN THE MATTER OF § **BEFORE THE**
FREECE R. ELLIOTT, § **TEXAS ETHICS COMMISSION**
RESPONDENT § **SC-93019, SC-93023, and SC-93025**
§

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission ("commission") met on September 2, 1993, to consider sworn complaints SC-93019, SC-93023, and SC-93025 filed against Freece R. Elliott, (the "Respondent"). A quorum of the commission was present.

The commission found that the allegations against Respondent in SC-93019 are identical to the facts and violations alleged against this same Respondent named in SC-93023 and SC-93025, and therefore consolidated SC-93019, SC-93023, and SC-93025.

The commission next met on January 27, 1994, to consider sworn complaints SC-93019, SC-93023, and SC-93025. A quorum of the commission was present.

Based on an investigation conducted by commission staff to date, the commission determined there was credible evidence of a violation of laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to Respondents.

II. Facts Supported by Credible Evidence

Credible evidence available to the commission would support the following findings of fact:

1. Respondent is a partner in 2100 Place, a Texas General Partnership, which owns a building located in the Crosby Municipal Utility District (the "Crosby MUD"). In the spring of 1993, the Crosby MUD held two elections concerning the same bond measure, the first on March 6, 1993, and the second on May 22, 1993.
2. In connection with these elections, the partnership of which Respondent is a partner, using partnership resources, printed material that opposed the bond elections. The printed material was then mailed to customers of the Crosby MUD. The first material (captioned "IMPORTANT NOTICE") was mailed on or about March 4, 1993. The second material (captioned "IMPORTANT NOTICE—ROUND TWO") was mailed on or about April 4, 1993. The partnership made expenditures to print and mail this printed material.
3. Neither of the two mailouts by Respondent stated that the material was political advertising. The first material indicated "THIS MESSAGE WAS SENT TO YOU BY 2100 PLACE." The second indicated "THIS LETTER WAS SENT TO YOU BY THE OWNERS OF 2100 PLACE WHO ARE FREECE R. ELLIOTT AND DONNA S. HEINLEIN."
4. The partnership's expenditures in connection with the two mailouts were in excess of \$100.00.

5. No sworn report of contributions and expenditures was filed with the secretary of the Crosby MUD by the partnership in connection with the partnership expenditures to oppose the two bond proposals.

III. Conclusions of Law

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

1. By mailing material that opposed passage of the bonds, Respondent made a political expenditure in connection with two bond elections held by the Crosby MUD, as the term "political expenditure" and related terms are defined by § 251.001, *Texas Election Code*.
2. By spending an amount in excess of \$100.00, and not filing any reports with the Crosby MUD, Respondent violated § 253.062, *Texas Election Code*.
3. Each mailout opposing the bond measures was "political advertising," as that term is defined by Election Code, § 251.001(16) (Definitions):

(16) "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:

- (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or*
- (B) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication.*

Each mailout did appear in a "pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication."

4. Because Respondent did not enter into a contract to print, publish, or broadcast the mailouts opposing the bond measures, Respondent was not in violation of § 255.001, *Texas Election Code*.

IV. Representations and Agreement by Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. Respondent neither admits nor denies the facts detailed under Section II and the commission's findings and conclusions of law detailed under Section III, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. Respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. Respondent waives any right to a hearing before the commission or an administrative law judge appointed by the commission, and further waives any right to a post-hearing procedure established or provided by law.
3. Respondent acknowledges that § 253.062, *Texas Election Code*, requires a person who makes direct political expenditures from his own property in excess of \$100.00 to comply with Chapter 254 of the Election Code as if he were a campaign treasurer of a political committee. Respondent agrees to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, Respondent understands and agrees that the commission will consider the Respondent to have committed the

violation detailed in Section III if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the Respondent.

V. Confidentiality

This ORDER and AGREED RESOLUTION describes an alleged violation that the commission has determined would be neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under *Texas Government Code, § 571.140(b)*, and may be disclosed by members and staff of the Texas Ethics Commission.

VI. Sanction

After considering the seriousness of the alleged violation described under Sections II and III, including the nature, circumstances, consequences, extent, and gravity of the violation; that no previous violations by this Respondent are known to the commission; and the sanction deemed necessary to deter future violations; the commission imposes a civil penalty of \$100.00 for the violation described under Section III.

VII. Order

The Texas Ethics Commission hereby ORDERS:

- (1) that this proposed AGREED RESOLUTION be presented to Respondent;
- (2) that the executive director shall promptly refer SC-93019, SC-93023, and SC-93025 to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if Respondent does not agree to the disposition of SC-93019, SC-93023, and SC-93025 as proposed in this ORDER and AGREED RESOLUTION.
- (3) that if Respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete disposition of SC-93019, SC-93023, and SC-93025; and
- (4) that Respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original together with payment of the \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, no later than March 10, 1994.

AGREED to by Respondent on this _____ day of _____, 1993.

FREECE R. ELLIOTT, RESPONDENT

EXECUTED ORIGINAL received by the commission on: _____
DATE

**JOHN STEINER
EXECUTIVE DIRECTOR
TEXAS ETHICS COMMISSION**