

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
CEE COMMITTEE,	§	TEXAS ETHICS COMMISSION
ERNEST H. JASKA, CHAIRMAN,	§	SC-970530
WALTER SOUKUP, VICE-CHAIRMAN,	§	
JOHN PAUL ENDERS, TREASURER,	§	
GERALD BARAK, SR., and	§	
RAYMOND HOLY, SR.,	§	
RESPONDENTS	§	

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 14, 1997, to consider sworn complaint SC-970530 filed against the CEE Committee (the respondent group), which consists of Ernest H. Jaska, Chairman; Walter Soukup, Vice-Chairman; John Paul Enders, Treasurer; Gerald Barak, Sr.; and Raymond Holy, Sr. A quorum of the commission was present. The commission voted to refuse jurisdiction of the allegations of violations of Sections 254.231 and 254.232, Election Code, relating to liability for damages to opposing candidates and to the state. The commission voted to accept jurisdiction of the remainder of the allegations. Based on the investigation conducted by commission staff, the commission determined there was credible evidence that the respondent group violated Sections 252.001 and 253.031(b), Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent group.

II. Allegations

1. The complainant alleges that a group composed of five named individuals violated numerous provisions of the campaign finance laws. Specifically, she alleges that the respondent group is a political committee that knowingly made or authorized political expenditures totaling more than \$500 without first appointing a campaign treasurer.

2. The complainant also alleges that the individual identified on political advertising as the group's treasurer failed to file required campaign finance reports and failed to deliver written notice to candidates for whom the group made political expenditures.
3. The complainant further alleges that the failure of the group's treasurer to report campaign expenditures makes the treasurer liable for damages to each opposing candidate whose name appears on the ballot and makes the treasurer liable in damages to the state.
4. Finally, the complainant alleges that the respondent group failed to include the required right-of-way notice on eleven 4' X 8' political advertising signs designed to be seen from a road.

III. Facts Supported by Credible Evidence

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

1. The respondent group made more than \$500 in political expenditures on political advertising in the form of a billboard, yard signs, and newspaper advertisements supporting three candidates for school board trustee. All of the political advertisements disclose the name of the respondent group. Most of the political advertisements list the same five individuals and refer to these individuals as a committee.
2. The respondent group did not file a campaign treasurer appointment.
3. Some of the political advertising that included the respondent group's name failed to include an address in the political disclosure statement.

IV. Conclusions of Law

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

1. A "political committee" is defined as a group of persons that has as a principal purpose accepting political contributions or making political expenditures. Section 251.001(12), Election Code. The individuals comprise a group with a principal purpose of making political expenditures and therefore constitute a political committee.
2. A political committee is required to appoint a campaign treasurer before the committee makes or authorizes political expenditures totaling more than \$500. Sections 252.001 and 253.031(b), Election Code. The respondent group failed to file a campaign treasurer appointment before exceeding \$500 in political expenditures. There is credible evidence that the respondent group violated Sections 252.001 and 253.031(b), Election Code.
3. The campaign treasurer of a political committee is the entity responsible for filing campaign finance reports and for delivering certain written notices to affected candidates and officeholders. Since a campaign treasurer appointment was not in effect, the law does not require the respondent group to report expenditures or to deliver those written notices. Thus,

there is credible evidence that the respondent group was not required to file campaign finance reports or to deliver those written notices.

4. The campaign treasurer of a political committee who fails to report a campaign contribution or campaign expenditure is liable for damages to each opposing candidate whose name appears on the ballot. Section 254.231, Election Code. The Ethics Commission does not have authority to award damages; rather, a candidate would have to file a civil suit.
5. The campaign treasurer of a political committee who fails to report a political contribution or political expenditure is liable in damages to the state in the amount of triple the amount not reported that is required to be reported. Section 254.232, Election Code. The Ethics Commission's specific authority to impose penalties is provided by Section 571.173, Government Code, and not Section 254.232, Election Code.
6. Political advertising is defined in pertinent part as a communication supporting a candidate for election to public office that, in return for consideration, is published in a newspaper or that appears on a flier or billboard. Section 251.001(16), Election Code. The respondent group's newspaper advertisements and signs constitute political advertising.
7. A person who enters into a contract or agreement to print political advertising must include a political disclosure statement. Section 255.001, Election Code. Although not alleged, the evidence submitted by the complainant shows that the respondent group failed to comply with this requirement because its address is missing from the billboard and from several advertisements. There is credible evidence that the respondent group violated Section 255.001, Election Code.
8. A right-of-way notice is required on all political advertising signs designed to be seen from a road. Section 255.007, Election Code. There is insufficient credible evidence that the respondent group violated Section 255.007, Election Code.

V. Representations and Agreement by the Respondent Group

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

1. The respondent group neither admits nor denies the facts detailed under Section III and the commission's findings and conclusions of law detailed under Section IV, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondent group 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. The respondent group 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. The respondent group acknowledges that Sections 252.001 and 253.031(b), Election Code, require a political committee to appoint a campaign treasurer before the committee makes or authorizes political expenditures totaling more than \$500. The respondent group agrees to fully and strictly comply with this requirement of the law.
4. The respondent group acknowledges that Section 255.001, Election Code, requires a person who enters into a contract or agreement to print political advertising to include a political disclosure statement including the person's address. The respondent group agrees to fully and strictly comply with this requirement of the law.
5. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent group understands and agrees that the commission will consider the respondent group to have committed the violations detailed in Section IV, Paragraphs 2 and 7, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent group.

VI. 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 Section 571.140, Government Code, and may be disclosed by members and staff of the Texas Ethics Commission.

VII. Sanction

After considering the seriousness of the violations described under Section IV, including the nature, circumstances, consequences, extent, and gravity of the violation; that no previous violations by this respondent group are known to the commission; and after considering the sanction deemed necessary to deter future violations, the commission imposes a \$300 civil penalty for the violation described under Section IV, Paragraph 2.

VIII. Order

The Texas Ethics Commission hereby ORDERS:

1. that the portions of this sworn complaint that allege violations under Section IV, Paragraphs 3, 4, 5, and 8, are dismissed;
2. that this proposed AGREED RESOLUTION be presented to the respondent group;
3. that if the respondent group consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-970530;

4. that the respondent group may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and payment of the \$300 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than December 12, 1997; and
5. that the executive director shall promptly refer SC-970530 to either the commission or 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 the respondent group does not agree to the resolution of SC-970530 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent group on this _____ day of _____, 1997.

CEE Committee, Respondent Group

EXECUTED ORIGINAL received by the commission on: _____
DATE

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director