

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
DIONNE L. ROBERTS,	§	TEXAS ETHICS COMMISSION
	§	
RESPONDENT	§	SC-971175
	§	

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 17, 1998, to consider sworn complaint SC-971175 filed against Dionne L. Roberts (the respondent). A quorum of the commission was present. The commission voted to accept jurisdiction of this complaint. Based on the investigation conducted by the commission staff, the commission determined there was credible evidence of a violation of Section 254.064, Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent violated the Election Code by failing to timely file an 8-day before election report. The complainant also alleges that the respondent failed to include the required disclosure statement on political advertising that supported her candidacy.

The respondent alleges that the complainant filed a frivolous complaint.

III. Facts Supported by Credible Evidence

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

1. At all times relevant to this complaint, the respondent was a candidate in the November 4, 1997, election for city council. The respondent was opposed in this election by one or more opponents whose names appeared on the ballot.
2. On November 6, 1997, the respondent filed a report with the city secretary that was marked as an 8-day before the November 4, 1997, election report. The report was due on October 27, 1997.

3. In response to this complaint, the respondent submitted an affidavit in which she acknowledged that the report was filed late. The respondent also states that she pled *nolo contendere* to criminal charges brought against her for the late filing and that she was assessed a \$250 fine. The respondent stated that she did not intentionally violate the filing requirements, and explained that the report was filed late due to her busy schedule, lack of staff, and the small amount of contributions raised during the reporting period.
4. The complainant submitted with this complaint a copy of a political advertisement in the form of a half-page flier that supports the respondent's candidacy, as well as the candidacy of six other candidates for different elected city offices. At the bottom of the advertisement is the statement "LABOR DONATED," but the advertisement does not indicate that it is political advertising, nor does it include the name or address of the person who entered into the contract or agreement to print the advertisement.
5. In response to this complaint, the respondent submitted an affidavit in which she denied that she distributed the advertisement or caused the advertisement to be distributed. The respondent did not confirm or deny whether she entered into an agreement to print the political advertisement, but argued that there is no evidence to support the allegation against her.

IV. Conclusions of Law

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

1. A candidate who has an opponent whose name appears on the ballot is required to file a campaign finance report not later than the eighth day before election day. Section 254.064(c), Election Code. Because the respondent was a candidate in the November 4, 1997, election and had one or more opponents whose name appeared on the ballot, she was required to file a report not later than October 27, 1997. The respondent did not file the report until November 6, 1997. Thus, there is credible evidence that the respondent violated Section 254.064(c).
2. Section 255.001(a), Election Code, requires a disclosure statement on political advertising resulting from a contract or agreement to print the political advertising. The political advertisement must disclose that it is political advertising and include the name and address of the individual who entered into the contract or agreement to print the advertisement or the name and address of the person that individual represents. The person who enters into the printing contract or agreement is responsible for including the political disclosure statement. The political advertising at issue in this complaint does not contain the required disclosure statement. The respondent generally denies that she distributed the advertisement or caused the advertisement to be distributed, but does not state whether or not she entered into a contract or agreement to print the advertising. There is insufficient credible evidence that the respondent violated Section 255.001(a), Election Code.

3. Section 571.176, Government Code, and Section 12.35, Ethics Commission Rules, provide that a frivolous complaint must be groundless and brought in bad faith, or must be groundless and brought for purposes of harassment. Because the complaint is not groundless, by definition it is not frivolous.

V. Representations and Agreement by the Respondent

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

1. The respondent 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 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 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. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violation detailed in Section IV, Paragraph 1, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

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 violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation; that no previous violations by this respondent are known to the commission; after considering the sanction deemed necessary to deter future violations; and after considering that the respondent has already been assessed a criminal penalty for the violation, the commission imposes no civil penalty for the violation described under Section IV, Paragraph 1.

VIII. Order

The Texas Ethics Commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that the respondent's frivolous complaint allegation be dismissed;
3. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-971175;
4. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 15, 1998; and
5. that the executive director shall promptly refer SC-971175 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 does not agree to the resolution of SC-971175 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 1998.

Dionne L. Roberts, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

DATE

Texas Ethics Commission

Tom Harrison, Executive Director