

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CHARLES SUDERMAN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-211272

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on January 11, 2002, and voted to accept jurisdiction of Sworn Complaint SC-211272 filed against Charles Suderman, respondent, two other individuals and a committee. The commission met again on October 11, 2002, to consider Sworn Complaint SC-211272. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of a violation of Section 253.062, 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 made expenditures exceeding \$100 in connection with a city election and failed to file reports of those expenditures, or, alternatively, that the respondent and two other individuals made joint expenditures as a political committee totaling more than \$500 in connection with the election at a time when a campaign treasurer appointment for the committee was not in effect.

III. Facts Supported by Credible Evidence

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

1. According to records on file with the city secretary, the required number of the qualified voters of the City of Dickinson petitioned the city council to hold an election for the purpose of increasing the minimum salaries applicable to five categories of city police officers—patrol, sergeant, detective, captain, and dispatcher. The voters prepared, circulated, and filed their petition following the statutory procedures set out at Section 141.034, Local Government Code. These procedures require that a petition to increase the minimum salaries of the members of a city's police department designate the names of five qualified voters to act as a petitioners committee authorized to negotiate with the governing body of the city. They give the city's governing body one of three options when such a petition is filed,

namely, adopt the proposed salaries, propose an alternative, or call an election. Additionally, they provide that the governing body “shall confer with the committee of petitioners designated in the petition” if the governing body proposes an alternative. In this case, the city council proposed an alternative, the petitioners committee rejected the council’s alternative, and thereafter the council called an election. The election was ordered by a resolution passed on March 13, 2001, and it was held on May 5, 2001. The following proposition was submitted to the city’s qualified voters at the election:

- O FOR Adoption of the proposed minimum salaries applicable
- O AGAINST to the following members of the Dickinson Police Department.

The voters passed the proposition, 1,023 to 792.

2. Before the election, various communications supporting the salary proposition were disseminated to the public using different media. An ad, signed by “Charles Suderman, Petitioner’s Committee Chairman,” was published in a local newspaper on May 4, 2001, the day before the election. The ad entreats taxpayers to hold taxing entities responsible for how they spend tax dollars, asks why the mayor and city council were unwilling to look at alternatives other than raising taxes or cutting city services to fund pay raises for members of the police department, lists the total compensation paid to various city officials, and asks, “If it is good enough for them, why should we not be able to give this to the Police Department personnel also?” Yard signs were printed and distributed to proposition supporters. The signs encourage voters to “VOTE FOR PAY RAISE - - MAY 5th,” and they include the following disclosure statement, “PD POL ADV [name and address of an individual other than the respondent.]” Fliers were mailed to residents. The fliers declare that “while you’re sleeping, only 3 Dickinson police officers protect a community of over 17,000 citizens” due to low pay and high turnover; they exhort voters to “Vote for your LOCAL POLICE DEPARTMENT Saturday May 5, 2001”; and they include the following disclosure statement, “Paid Political Advertising by [name and address of an individual other than the respondent.]” Finally, the complaint alleged that “several large highway signs were displayed in the city,” but no photographs of the signs were submitted with the complaint.
3. The respondent swore as follows in his response to the complaint:

After being involved with a Citizens Police Academy and attending the Dickinson City Council meetings for approximately 18 months, I could see that the Police officers, who put their lives on the line everyday for the citizens of Dickinson, were not being treated fairly by the Dickinson City administration. The Petitioner’s Committee was formed and a petition was circulated. During the time the petition was being circulated, the Petitioner’s Committee was authorized by the Dickinson Police Officer’s Association to act as a negotiating team to try and reach a compromise with the City of Dickinson. The effort was to no avail. By this time, there were signs appearing around the city to vote NO for the pay raise. *There was no*

political action committee formed for the “FOR” cause. Yard signs appeared FOR the pay raise. Larger signs appeared Against the pay raise. I took it upon myself to purchase and mount several large signs in favor of the pay raise action. I paid for these signs out of my own pocket with NO outside money, either solicited or donated. I felt that this was my **right** as a citizen to voice my opinion.

The ‘political advertisement’, which [the complainant] brought up, was nothing of the sort. As I stated above, I had been attending the City Council meeting for approximately 18 months and had asked a number of tough questions of our Mayor and Council to which I had received either no answer OR a typical ‘run around’ answer that politicians give when they are not really wanting to say any thing for which they can be held accountable. The ad, which I ran in the Galveston Daily News, was paid for totally by me. It was done as an ‘OPEN LETTER to the Citizens of Dickinson’ in order to try to motivate some of them into becoming involved in their City government. The Police Officer’s Pay Raise was but one of the items which was mentioned in the article. If you notice, in the article, I stated that items were “In my Opinion”. The article was originally submitted for the editorial section, but was too long and would have had to have been edited. I chose to pay the cost personally and have it run in its entirety.

The yard signs, I cannot address as I have never met and do not know [one of the other individual respondent’s]. The first time that I saw his name was when I saw the yard signs for the first time.

As for the mail-outs [fliers] that [the complainant] sent to you, I cannot address them either as I have no knowledge of how they came into being.

(Emphasis in original.)

4. According to the city secretary, no campaign finance reports were filed by the respondent, and no campaign treasurer appointment or campaign finance reports were filed by the petitioners committee.

IV. Findings and Conclusions of Law

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

1. The threshold question is whether the respondent acted with another person or persons as a political committee. A “political committee” is a group of persons that has as a principal purpose accepting political contributions or making political expenditures. Section 251.001(12), Election Code. If two or more persons act in concert to make political

expenditures, they constitute a political committee under the Election Code even if they do not commingle their funds and even if they do not understand the consequences the Election Code will attach to their concerted actions. "Political expenditures" include "campaign expenditures," and "campaign expenditures" include expenditures made by any person in connection with a campaign on a measure. Section 251.001(7) and (10), Election Code. The salary proposition was a measure because it was a proposal submitted in an election for an expression of the voters' will. Section 251.001(19), Election Code. Thus the expenditures for the newspaper ad, for the yard signs, for the fliers, and for the large highway signs were campaign expenditures and, therefore, political expenditures because they were made in connection with an election on a measure. The critical question then is whether the respondent was acting in concert with other individuals or with the petitioners committee to make those expenditures.

2. *As to the newspaper ad and the large highway signs:* The respondent swears that he paid for the newspaper ad and for several large signs supporting the salary proposition. In a telephone conversation with staff, the respondent said that he made two expenditures for the signs, one on April 19, 2001, in the amount of \$337.84, and another on April 23, 2001, in the amount of \$386.10, and he said that he made the expenditure for the newspaper ad on May 3, 2001, in the amount of \$370.88. He further said that he made an additional expenditure for thank-you banners on May 8, 2001, in the amount of \$96.53. Thus there is credible evidence that the respondent made expenditures for the newspaper ad and for the large signs. The ad was signed, "Charles Suderman, Petitioner's Committee Chairman." According to records on file with the city secretary, the respondent was a member of the petitioners committee that was designated as required by statute in the salary petition filed with the city, and the other individuals at issue in this complaint were not members of that committee. The purpose of the petitioners committee, however, was not to accept political contributions or make political expenditures, but it was to negotiate with the city council if the council opted to propose an alternative. Moreover, the respondent swears that he ran the ad and that the ad was "paid for totally by me." In addition, the respondent swears that he took it upon himself to purchase and mount the large signs in favor of the salary proposition. Thus there is credible evidence that the respondent was acting alone and not in concert with other individuals or with the petitioners committee to make expenditures for the newspaper ad and for the large highway signs.
3. An individual who makes direct campaign expenditures exceeding \$100 from the individual's own property in connection with an election on a measure must report those expenditures as if the individual were the campaign treasurer for a political committee. Section 253.062, Election Code. A "direct campaign expenditure" is a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. Section 251.001(8), Election Code. Under Ethics Commission Rules a direct campaign expenditure includes an expenditure that is made in connection with a measure and that is not

a contribution to a political committee supporting the measure. Section 20.1, Texas Ethics Commission Rules. Therefore, the respondent's expenditures for the newspaper ad and the large signs were direct campaign expenditures.

4. The campaign treasurer for a political committee would have been required to file an 8th day before election report by April 27, 2001, and a July semiannual report by July 16, 2001, if the committee made expenditures in the reporting periods covered by those reports. The 8th day before election report covered the period beginning on March 27, 2001, and ending on April 25, 2001, and the July semiannual report covered the period beginning on April 26, 2001, and ending on June 30, 2001. The respondent's expenditures for the signs in the amounts of \$337.84 and \$386.10 were both made in the period covered by the 8th day before election report and the respondent's expenditure for the newspaper ad in the amount of \$370.88 was made in the period covered by the July semiannual report. Therefore, the respondent exceeded \$100 in expenditures in connection with the May 5, 2001, election on April 19, 2001, and he was required to file both the 8th day before election report and the July semiannual report. There is credible evidence that the reports were not filed and thus credible evidence that the respondent violated Section 253.062, Election Code. A person filing with the Ethics Commission would be subject to an administrative penalty in the amount of \$10,000 for the late 8th day before election report and \$100 for the late July semiannual report. The Ethics Commission may consider the amount of the administrative penalty in determining the amount of the fine to be assessed in a sworn complaint proceeding. The respondent has no history of previous violations and has cooperated fully with staff's investigation to resolve this sworn complaint. Without the respondent's cooperation, staff would not have been able to determine the dates and amounts of his expenditures.
5. *As to the yard signs and the fliers:* The respondent swears that he was not responsible for the yard signs or the fliers. Therefore, there is credible evidence that the respondent did not act in concert with other individuals at issue in this complaint or with the petitioners committee to make expenditures for the yard signs and the fliers and credible evidence that the respondent did not make direct campaign expenditures for the fliers. Thus there is credible evidence that the respondent did not violate Section 252.001, 253.031, or 253.062, Election Code, as to the yard signs or the fliers.

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 and 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 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, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that an individual who makes direct campaign expenditures exceeding \$100 from the individual's own property in connection with an election on a measure must report those expenditures as if the individual were the campaign treasurer for a political committee. The respondent agrees to fully and strictly comply with this requirement of the law.
4. 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 described under Section IV, Paragraph 4, 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 a violation that the commission has determined is 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 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, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$400 civil penalty for the violation described under Section IV, Paragraph 4.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-211272 as to the respondent;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$400 civil penalty to the

Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than November 8, 2002; and

- 4. that the executive director shall promptly refer SC-211272 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-211272 as proposed in this ORDER and AGREED RESOLUTION.

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

Charles Suderman, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director