

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
PROPERTY OWNERS ASSOCIATION	§	TEXAS ETHICS COMMISSION
POLITICAL COMMITTEE OF	§	
WASHINGTON COUNTY,	§	
	§	
RESPONDENT	§	SC-2209111

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 11, 2002, and voted to accept jurisdiction of Sworn Complaint SC-2209111 filed against Property Owners Association Political Committee of Washington County. The commission met again on April 11, 2003, to consider Sworn Complaint SC-2209111. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of violations of sections 253.031, 253.037, and 255.001 of the 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.

II. Allegations

The complainant alleged that the respondent committee accepted political contributions and made political expenditures exceeding \$500 at a time when the committee did not have a campaign treasurer appointment on file, failed to abide by the restrictions on contributions and expenditures applicable to a general-purpose committee, failed to maintain records of all reportable activity, failed to file campaign finance reports, and failed to include a complete disclosure statement on political advertising.

III. Facts Supported by Credible Evidence

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

1. The complaint arises from an election held November 5, 2002, to create a groundwater district in Washington County, which has a population of approximately 30,000.
2. The complainant alleged two possible names for the respondent: the Washington County Property Owners Association or the Property Owners Association of Washington County.

3. The evidence shows that the respondent is the Property Owners Association Political Committee of Washington County.
4. The complainant submitted copies of communications that he alleges were political advertising – a letter and a "Fact Sheet," a newspaper advertisement published August 26, 2002, and a newspaper advertisement published September 9, 2002.
5. The letter and "Fact Sheet" contain information about the water district measure, and a membership application for the Washington County Property Owners Association. Both the letter and "Fact Sheet" discuss the proposed water district in detail, but the communications do not ask the reader to support or oppose the proposed water district.
6. The newspaper advertisement that was published on August 26, 2002, announced a meeting of the Washington County Property Owners Association. The advertisement does not express support or opposition to the proposed measure.
7. The newspaper advertisement that was published on September 9, 2002, includes a statement that the reader should oppose the water district.
8. The evidence shows that the committee was responsible for the expenditures for the communications discussed above.
9. The communications do not contain a statement indicating that they are political advertising and do not contain either the full name and address of the individual who entered into the contract or agreement to have the communications published, or the full name and address of the person the individual represents.
10. On December 16, 2002, the commission received a copy of a letter that the complainant submitted to his local county attorney. The letter referenced this sworn complaint and alleged that the committee had not reported receipts and that a loan was not properly reported as paid or outstanding.
11. The additional allegation was considered a supplement to the complaint and the respondent was provided notice.
12. The respondent committee began filing reports with the commission as early as January 1992.
13. According to commission records, the original treasurer passed away and the committee became inactive in March 1999. The reports filed between January 1992 and March 1999 show no contributions or expenditures.

14. At the time the complaint was filed the committee had no treasurer appointment on file and was still in inactive status.
15. A new campaign treasurer appointment was filed on October 8, 2002.
16. On October 25, 2002, the committee's new treasurer filed an 8-day pre-election report.
17. The report included activity beginning September 27, 2002. The report disclosed \$2,882.30 in political contributions and \$15,950.01 in political expenditures for the reporting period.
18. On November 1, 2002, the committee filed a report marked as a 30-day pre-election report. That report included activity beginning July 1, 2002, through September 26, 2002. The 30-day pre-election report disclosed \$18,360 in political contributions, \$10,812.32 in political expenditures, and a loan of \$5,250.
19. Together, the reports disclosed that between July 1, 2002, and the filing of a new treasurer appointment on October 8, 2002, the committee accepted \$20,277.30 in political contributions as well as a \$5,250 loan, and made \$14,709.13 in political expenditures.

IV. Findings and Conclusions of Law

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

Political expenditures and contributions

1. A political committee is defined as a group of persons that has as a principal purpose accepting political contributions or making political expenditures. Elec. Code § 251.001(12).
2. A political committee may not knowingly accept political contributions or make or authorize political expenditures exceeding \$500 unless a campaign treasurer appointment is in effect. *Id.* § 253.031(b).
3. A general-purpose committee may not knowingly make or authorize a political contribution or political expenditure unless the committee has filed its campaign treasurer appointment not later than the 60th day before the date the contribution or expenditure is made and accepted political contributions from at least 10 persons. *Id.* § 253.037.
4. The campaign treasurer appointment for a general-purpose committee must be filed with the Texas Ethics Commission. *Id.* § 252.009.
5. The evidence shows that the committee made expenditures and accepted contributions in excess of \$500 at a time when it did not have a treasurer appointment on file. Therefore, there is credible evidence that the committee violated section 253.031 of the Election Code.

6. The committee had clearly filed its initial treasurer appointment 60 days before the election in which it was involved. However, the reports filed with the commission indicate that the committee made expenditures in excess of \$500 before it accepted contributions from 10 persons. Therefore, there is credible evidence that the respondent violated section 253.037 of the Election Code.

Reporting

7. The campaign treasurer of a general-purpose committee is responsible for filing the reports required under Chapter 254 of the Election Code, and maintaining records of reportable activity. Elec. Code §§ 254.001, 254.153 and 254.154.
8. The campaign treasurer is the liable party when reports are not filed or are incorrect or when records are not maintained.
9. The current treasurer was not named as a respondent in this complaint. Therefore, the commission does not have jurisdiction to consider the supplemental allegation related to the campaign finance reports, and that allegation is dismissed.

Disclosure statement

10. "Political advertising" is defined in relevant part as a communication that opposes a measure and that is published in a newspaper in return for consideration, or that appears in a pamphlet, circular, flier, or similar form of written communication. Elec. Code § 251.001(16).
11. A person may not knowingly enter into a contract or other agreement to print political advertising that does not indicate that it is political advertising and that does not contain the full name and address of the individual who entered into the contract or agreement with the printer, or the full name and address of the person the individual represents. *Id.* § 255.001.
12. The letter and "Fact Sheet" and advertisement published August 26, 2002, do not support or oppose the measure. Thus, they are not political advertising and no disclosure statement was required. Therefore, there is credible evidence that the respondent did not violate section 255.001 of the Election Code, with respect to the letter and "Fact Sheet," and the August 26, 2002, newspaper advertisement, and the allegations related to those communications are dismissed.
13. The advertisement published in the newspaper on September 9, 2002, clearly asks people to oppose the creation of the water district. Thus, the communication is political advertising.

14. Because the communication is political advertising, it was required to contain a political advertising disclosure statement, which it did not. Therefore, there is credible evidence that the respondent violated section 255.001 of the Election Code.

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 a political committee may not knowingly accept political contributions or make or authorize political expenditures exceeding \$500 unless a campaign treasurer appointment is in effect. The respondent acknowledges that a general-purpose committee may not knowingly make or authorize a political contribution or political expenditure unless the committee has filed its campaign treasurer appointment not later than the 60th day before the date the contribution or expenditure is made and accepted political contributions from at least 10 persons. The respondent further acknowledges that a person may not knowingly enter into a contract or other agreement to print political advertising that does not indicate that it is political advertising and that does not contain the full name and address of the individual who entered into the contract or agreement with the printer, or the full name and address of the person the individual represents. The respondent agrees to fully and strictly comply with these requirements 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 violations described under Section IV, Paragraphs 5, 6, and 14 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 violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under section 571.140 of the Government Code, and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations, 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 \$1,800 civil penalty for the violations described under Section IV, Paragraphs 5, 6, and 14.

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-2209111;
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 \$1,800 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 9, 2003; and
4. that the executive director shall promptly refer SC-2209111 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-2209111 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2003.

Respondent

EXECUTED ORIGINAL received by the commission on: _____.
Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director