

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
BILL BUNCH AND	§	
SAVE OUR SPRINGS ALLIANCE, INC.,	§	TEXAS ETHICS COMMISSION
	§	
RESPONDENTS	§	SC-260372 and SC-2605135

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 28, 2007, to consider sworn complaints SC-260372 and SC-2605135. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.097, 253.062, and 255.001 of the Election Code, laws administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this resolution to the respondents.

II. Allegations

Sworn complaint SC-260372 alleges that Respondent Save Our Springs Alliance, Inc., (SOSA) failed to properly file campaign finance reports of direct expenditures.

Sworn complaint SC-2605135 alleges that Respondent Bunch made political expenditures and accepted political contributions that exceeded \$500 for a political committee that did not have a campaign treasurer appointment (CTA) in effect, failed to timely file campaign finance reports, and failed to include a political advertising disclosure statement on political advertising. The complaint alleges that if there was no political committee then Respondent Bunch failed to properly file campaign finance reports of direct expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondents are a nonprofit corporation and its executive director.

2. The complaints arise from the circulation of a petition that resulted in charter amendments being placed on the ballot for a May 13, 2006, city election, and the campaign to pass the amendments.
3. In November 2005, SOSA contracted with a consultant to manage gathering petition signatures for two potential amendments to the charter of the City of Austin.
4. On February 13, 2006, a specific-purpose political committee, Clean Water Clean Government PAC (CWCG PAC) was established with Respondent Bunch as assistant campaign treasurer.
5. Also on February 13, 2006, an in-kind contribution of \$74,168.56 was made from SOSA to CWCG PAC, reflecting the cost associated with SOSA's efforts to gather petition signatures.
6. On April 13, 2006, CWCG PAC filed a 30-day pre-election report with the city clerk. The report disclosed an in-kind political contribution of \$74,168.56 from SOSA for "Charter Amendment Petitions."
7. Attached to the report is an affidavit signed by Respondent Bunch which details SOSA's expenditures from October 2005 through February 2006 that made up the in-kind contribution.

Allegations that SOSA was a Political Committee

8. Sworn complaint SC-2605135 alleges that the respondents formed a political committee that accepted political contributions and made political expenditures in excess of \$500 without a CTA in effect. The complaint also alleges that the committee failed to file the January 2006 semiannual campaign finance report and the 30-day pre-election report due on April 13, 2006.
9. The complaint is based on the activity by SOSA between October 2005 and February 2006 in connection with the election on city charter amendments held on May 13, 2006. The evidence indicates that SOSA made political expenditures of \$74,168.56 during this period for efforts to gather petition signatures to place the charter amendments on the ballot.

Failure to File Reports of Direct Campaign Expenditures

10. Sworn complaints SC-260372 and SC-2605135 both allege that if SOSA acted alone then the expenditures for efforts to collect signatures and prepare petitions for city charter amendments were direct campaign expenditures for which SOSA was required to file campaign finance reports.

11. CWCG PAC filed a campaign treasurer appointment on February 13, 2006, with the Austin City Secretary. On April 13, 2006, CWCG PAC filed a 30-day pre-election report that disclosed an in-kind contribution from SOSA on February 13, 2006, in the amount of \$74,168.56.
12. As noted, details of the expenditures by SOSA that constituted the in-kind contribution were in an affidavit attached to the report. The expenditures were for petition activities to place the charter amendments on the ballot. Respondent Bunch signed the affidavit.
13. SOSA did not file a January 2006 semiannual campaign finance report, a 30-day pre-election report, or 8-day pre-election report in connection with the expenditures.
14. At the time the expenditures were made, Respondent Bunch, as its executive director, was an officer of SOSA.
15. Respondent Bunch states that SOSA believed, based in part on legal advice, that the expenses related to the petitions did not have to be disclosed until the petitions were actually submitted to the city and certified as valid.
16. Respondent Bunch states that SOSA made the determination to submit the petitions in mid-February 2006 after the city and a private entity failed to take action that SOSA desired.
17. Respondent Bunch asserts that there was no attempt to hide SOSA's activities.
18. The \$74,168.56 in expenditures was reported as an in-kind contribution from SOSA on CWCG PAC's 30-day pre-election report and included a detailed itemization from SOSA that is not required by statute.

Political Advertising Disclosure Statement

19. Sworn complaint SC-2605135 alleges that the Clean Water Clean Government PAC (CWCG PAC) failed to include properly worded disclosure statements on political advertising.
20. The allegations are based on advertising signs, a campaign website, and flyers mailed out by the SPAC in connection with the measure election.
21. The complaint included a copy of the flyer which asks the reader to vote for two propositions. The advertisement contained the following disclosure statement: "Brought to you by the Clean Water Clean Government PAC, Kathy Mitchell, Treasurer, P.O. Box 685286, Austin, TX 78768." Respondent Bunch was the assistant treasurer of CWCG PAC.

22. In their response, the respondents acknowledge that the advertisements did not say “political advertising,” but assert that the advertisements and disclaimer that is present makes clear to the reader that it is political advertising and that CWCG PAC was responsible for the advertising.

IV. Findings and Conclusions of Law

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

1. A political committee is a group of persons that has as a principal purpose accepting political contributions or making political expenditures. ELEC. CODE § 251.001(12).
2. “Person” means an individual, representative, corporation, association, or other entity or any agency or instrumentality of federal, state, or local government. Ethics Commission Rules § 6.1(13).
3. Each political committee shall appoint a campaign treasurer. ELEC. CODE § 252.001.
4. A specific-purpose political committee for supporting or opposing a measure must file its campaign treasurer appointment with the secretary of the governing body of the political subdivision if the measure is to be submitted at an election ordered by an authority of a political subdivision other than a county. ELEC. CODE § 252.007.
5. A political committee may not knowingly accept political contributions totaling more than \$500 or make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. ELEC. CODE § 253.031.
6. The campaign treasurer of a specific-purpose committee shall file a semiannual report not later than January 15. ELEC. CODE § 254.123(c).
7. For each election in which a specific-purpose committee supports or opposes a candidate or measure, the committee’s campaign treasurer shall file a report not later than the 30th day before election day. ELEC. CODE § 254.124(b).
8. Political expenditure means a campaign expenditure or an officeholder expenditure. ELEC. CODE § 251.001(10).
9. Campaign expenditure means, in pertinent part, an expenditure made by any person in connection with a campaign on a measure. ELEC. CODE § 251.001(7).

10. A measure is a question or proposal submitted in an election for an expression of the voters' will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will. ELEC. CODE § 251.001(19).
11. SOSA is a person for purposes of these statutes. The evidence indicates that SOSA made expenditures totaling \$74,168.56 related to a charter amendment petition.
12. The purpose of the petition was to place the proposed charter amendments on the ballot in an election for an expression of the voters' will. Therefore, the expenditures were campaign expenditures for a measure.
13. A political committee must be a group of persons that has a principal purpose accepting political contributions or making political expenditures.
14. The evidence indicates that the expenditures at issue were made by SOSA, not acting in concert with another person. Thus, a political committee did not make the expenditures. Therefore, there is credible evidence of no violation of sections 252.001, 252.007, 253.031, 253.003, 253.004, 254.123, and 254.124 of the Election Code.
15. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D of the Election Code. ELEC. CODE § 253.094(a).
16. A corporation not acting in concert with another person may make one or more direct campaign expenditures in connection with an election on a measure if the corporation makes the expenditures in accordance with section 253.062 of the Election Code as if the corporation were an individual. ELEC. CODE § 253.097.
17. An individual may make one or more direct campaign expenditures in an election that exceed \$100 on any one or more measures if the individual complies with chapter 254 of the Election Code as if the individual were a campaign treasurer of a political committee and the individual receives no reimbursement for the expenditures. ELEC. CODE § 253.062(a).
18. The evidence indicates that SOSA, not acting in concert with another person, made \$74,168.56 in expenditures from November 2005 through February 2006 in connection with the May 13, 2006, measure election. Thus, the expenditures were direct campaign expenditures.
19. In order to comply with chapter 254 of the Election Code, a corporation making direct campaign expenditures that exceed \$100 must file campaign finance reports as if the corporation were the campaign treasurer of a political committee.

20. Based on the expenditure dates disclosed in the affidavit from SOSA that was included with CWCG PAC's 30-day pre-election report, a political committee involved in the election at issue would have been required to file campaign finance reports on January 17, 2006, April 13, 2006, and May 5, 2006.
21. SOSA made direct campaign expenditures during the reporting periods for the January 17, 2006, semiannual campaign finance report and April 13, 2006, 30-day pre-election report. SOSA did not file campaign finance reports for those periods.
22. Although there were no political expenditures during the reporting period for the May 5, 2006, 8-day pre-election report, technically, that report was required because the filing of a 30-day pre-election report by a committee triggers the filing of an 8-day pre-election report, even if there is nothing to disclose. ELEC. CODE § 254.124(c).
23. An officer, director, or other agent of a corporation who commits an offense is punishable for the grade of offense applicable to the corporation. ELEC. CODE § 253.095.
24. Respondent Bunch, as an officer of the corporation that failed to file reports of direct campaign expenditures is liable for the same offenses. Therefore, in regards to the Respondents SOSA and Bunch, there is credible evidence of a violation of sections 253.097 and 253.062 of the Election Code.
25. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the political committee authorizing the political advertising. ELEC. CODE § 255.001(a).
26. Political advertising that is authorized by a political committee shall be deemed to contain express advocacy. ELEC. CODE § 255.001(b).
27. The flyer asks the reader to vote for two propositions, thus, it is political advertising. Respondent Bunch acknowledges that the other materials are also political advertising.
28. The disclosure statements on the political advertising distributed by the CWCG PAC indicated the full name of the political committee, but did not expressly state that it was political advertising.
29. Respondent Bunch was the assistant treasurer of the SPAC. Had these allegations been the only allegations raised in this complaint, the commission would have issued an Assurance of Voluntary Compliance. Therefore, regarding Respondent Bunch, there is credible evidence of a technical or *de minimis* violation of 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 respondents neither admit nor deny the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consent to the entry of this order and agreed resolution solely for the purpose of resolving these sworn complaints.
2. The respondents consent to this order and agreed resolution and waive any right to further proceedings in this matter.
3. The respondents acknowledge that a corporation not acting in concert with another person may make one or more direct campaign expenditures in connection with an election on a measure if the corporation makes the expenditures in accordance with section 253.062 of the Election Code as if the corporation were an individual. The respondents also acknowledge that a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the political committee authorizing the political advertising. The respondents agree to comply with these requirements of the law.

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, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty on Respondent Bunch.

VIII. Order

The commission hereby orders that if the respondents consent to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-260372 and SC-2605135.

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

Save Our Springs Alliance, Inc., Respondent

Bill Bunch, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director