

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JIM BLAIR, and
NELDA LUCE BLAIR,

RESPONDENTS

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2604105 AND SC-2604129

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 28, 2006, to consider sworn complaints SC-2604105 and SC-2604129. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 253.002 and 253.062 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 respondent.

II. Allegations

The two complaints allege that the respondents published and mailed political advertising supporting candidates for the March 2006 primary election and the April 2006 runoff election. The complaints allege that the respondents spent in excess of \$500 on their political mailings without appointing a campaign treasurer for a political committee, and made improper direct campaign expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondents in each complaint are a husband and wife.
2. The respondents published and mailed communications supporting candidates in the March 2006 primary and April 2006 run-off elections.
3. The first mailing encourages recipients to vote at specified voting locations in the March 2006 primary election and requests that recipients vote for 31 Texas candidates from justices of the peace to the governor. The communication was mailed on or about February 22, 2006.

4. The second mailing encourages recipients to vote at specified voting locations in the April 2006 runoff election and requests that the recipients vote for three candidates in the April 11, 2006, runoff election. The communication was mailed on or about April 1, 2006.
5. The mailings at issue cost \$1,447.08.
6. The respondents swear that they do not meet the definition of a political committee.
7. Furthermore, the respondents swear that under the Texas Supreme Court case of *Osterberg v. Peca*, they were not required to file a campaign treasurer appointment for a political committee, and that they were not required to file campaign finance reports as if they were a political committee.

IV. Findings and Conclusions of Law

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

1. Each candidate and each political committee shall appoint a campaign treasurer as provided by this chapter. ELEC. CODE § 252.001.
2. 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.
3. In *Osterberg v. Peca*, 12 S.W. 3d 31, (Tex. 2000), a married couple acted in concert to publish political advertising. In deciding the case, the Texas Supreme Court held that it would be an unconstitutional infringement on associational rights to require a husband and wife who act in concert to file a campaign treasurer appointment and form a political committee in order to make direct campaign expenditures. Therefore, there is credible evidence of no violation of sections 252.001 and 253.031 of the Election Code for not filing a campaign treasurer appointment for a political committee.
4. Unless otherwise authorized, a person may not knowingly make or authorize a direct campaign expenditure. ELEC. CODE § 253.002.
5. A direct campaign expenditure, in contrast to a contribution, is a campaign expenditure supporting a candidate that is made without the prior consent or approval of the candidate supported. Ethics Advisory Opinion No. 331 (1996).
6. Except as otherwise provided by law, an individual not acting in concert with another person may make one or more direct campaign expenditures in an election from the individual's

- own property that exceed \$100 on any one or more candidate or 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. Chapter 254 of the Election Code requires campaign treasurers of political committees to file campaign finance reports.
7. *Osterberg* does not hold that section 253.062 of the Election Code is unconstitutional as applied here. In fact, in *Osterberg* the court specifically stated, “We conclude that, as applied to the Osterbergs, the reporting requirements and the private civil enforcement provisions pass constitutional muster.” *Osterberg v. Peca* 12 S.W. 3d 31, 35 (Tex. 2000).
 8. Political advertising is a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure, that in return for consideration is published in a newspaper, magazine, or other periodical, or is broadcast by radio or television, or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication, or on an Internet website. ELEC. CODE § 251.001(16).
 9. The two mailings were written communications that were similar in form to a pamphlet, circular, or flier and supported candidates for election to public office. Therefore, the two mailings are political advertising.
 10. The evidence indicates that the respondents did not act in concert with any other person. Therefore, the expenditures for the mailings were direct campaign expenditures.
 11. The respondents’ direct campaign expenditures exceeded \$1,400. Because their direct campaign expenditures exceeded \$100 the respondents were required to file campaign finance reports. The respondents did not file campaign finance reports to disclose their political expenditures. Therefore, there is credible evidence of a violation of section 253.062 of the Election Code.
 12. Because the respondents made direct campaign expenditures and did not comply with the reporting requirements of section 253.062 of the Election Code, there is credible evidence of a violation of section 253.002 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 this sworn complaint.

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 an individual not acting in concert with another person may make one or more direct campaign expenditures in an election from the individual's own property that exceed \$100 on any one or more candidate or 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. The respondents agree to comply with this requirement 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 \$250 civil penalty per respondent for the violations described under Sections III and IV.

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-2604105 and SC-2604129.

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

Jim Blair, Respondent

Nelda Luce Blair, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director