

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JUAN CANTU,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2609188

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 2, 2007, to consider sworn complaint SC-2609188. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 253.031 of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegation

The complaint alleges that the respondent made political expenditures at a time when a campaign treasurer appointment for his candidacy was not in effect.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for city council place 5.
2. The respondent filed an application for a place on the ballot for city council place 5 on August 29, 2006. The complaint alleges that the following day the respondent started putting up his political signs. The signs at issue have the names of two candidates, and a disclosure statement that reads, "POL. ADV. PAID FOR BY CANDIDATES."
3. The respondent filed his appointment of campaign treasurer on September 1, 2006. The respondent submitted an affidavit stating that to the best of his knowledge the campaign signs were not available for display until September 1 or 2 because the signs had not been printed. The affidavit states that the printer first sent some "proof signs" for approval on September 1 or 2. The respondent states that the signs at issue in the complaint were the "proof" signs provided by the printer. He also states he received the full sign order later in September.

IV. Findings and Conclusions of Law

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

1. Each candidate shall appoint a campaign treasurer. ELEC. CODE § 252.001. Under title 15 of the Election Code, a candidate is defined, in relevant part, as a person who knowingly and willingly takes affirmative action for the purpose of gaining election to public office. Examples of affirmative action are the filing of an application for a place on the ballot and the making of a campaign expenditure. ELEC. CODE § 251.001(1)(B) and (G).
2. The respondent filed an application for a place on the ballot on August 29, 2006. Therefore, he was a candidate for title 15 of the Election Code purposes. The respondent was required to file a campaign treasurer appointment as a candidate, which he did on September 1, 2006.
3. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE § 253.031(a).
4. "Expenditure" means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. ELEC. CODE § 251.001(6). "Campaign expenditure" means an expenditure made by any person in connection with a campaign for an elective office or on a measure. ELEC. CODE § 251.001(7).
5. The evidence indicates that the respondent put the signs at issue up no later than September 1 or 2, 2006.
6. The respondent swears that the signs at issue were samples or "proof" signs provided by the printer and that the remainder of his sign order was delivered later in the month. The disclosure statement on the signs indicates that the respondent and another candidate paid for the signs. For the candidate to have the sample signs on September 1 or 2, 2006, as he indicates in his statement, he would had to have either paid for the signs, or made an agreement to pay for the signs, before either date. Thus, the respondent would have made a political expenditure before he filed his appointment of campaign treasurer. Therefore, there is credible evidence of a violation of section 253.031(a) 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 or 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 this sworn complaint.

- 2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
- 3. The respondent acknowledges that a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. The respondent agrees to comply with this requirement of the law.

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 of the 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, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 civil penalty for the violation described under Sections III and IV.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-2609188.

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

Juan Cantu, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director