

TEXAS ETHICS COMMISSION

IN THE MATTER OF
AMY'S ICE CREAMS, INC.,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-270562 AND 2706135

FINAL ORDER

I. Recitals

On May 1, 2007, sworn complaint SC-270562 was filed with the Texas Ethics Commission (the commission). On June 12, 2007, sworn complaint SC-2706135 was filed with the commission. On February 12, 2009, the commission held a preliminary review hearing. After the completion of the preliminary review hearing, the commission was unsuccessful in resolving and settling the sworn complaints. The commission ordered that a formal hearing be held before the commission. On August 6, 2009, the commission held a formal hearing to consider sworn complaints SC-270562 and SC-2706135. A quorum of the commission was present. The respondent received legally sufficient notice of the hearing. The respondent was not present. The respondent's counsel was present.

II. Findings of Fact

1. The respondent is Amy's Ice Creams, Inc., a corporation located in Austin, Texas, that also operates under the assumed name of "Amy's Ice Creams."
2. Sworn complaint SC-270562 alleged that the respondent made political contributions to Amelia ("Amy") Simmons in support of her campaign for West Lake Hills City Council in an election held on May 12, 2007, by permitting its letterhead, envelopes, and corporate logo to be used by Ms. Simmons for political advertising.
3. A letter was distributed in West Lake Hills, printed on the respondent's corporate letterhead, and mailed using the respondent's envelopes. The letter was postmarked in Austin, Texas, on April 27, 2007.
4. The letter included several paragraphs concerning Ms. Simmons's campaign, background, qualifications, and reasons for running for city council. The letter also stated, "Many of you may be familiar with my company, but I would like to share with you the qualities that believe I [sic] lend to Amy's Ice Creams' success. I believe these qualities will enable me to be a fine City Council person." The signature of the letter stated: "Amy Simmons, Candidate for Place 3, West Lake Hills City Council." The letter also stated, "Please feel free to contact me with specific questions" at an e-mail address that was owned by the respondent and that forwarded e-mail messages to Ms. Simmons's personal e-mail address.

5. The letterhead included a logo of the brand “Amy’s Ice Creams.” The letter also included an image of a cow that appears in the respondent’s corporate advertising and an advertising slogan. The bottom of the letter included the respondent’s corporate headquarters address, telephone numbers, and Internet website address. The envelope included two images of the cow that include the corporate “Amy’s Ice Creams” logo, the corporate slogan, and the corporate address.
6. According to records of the Texas Secretary of State (SOS), the respondent was incorporated in March 1993 and Ms. Simmons was named as a director. Ms. Simmons is the founder, treasurer, director, and registered agent of the respondent and was indicated as the respondent’s president in a Texas Franchise Tax Public Information Report filed with the SOS on or about May 14, 2007.
7. SOS records indicate that Ms. Simmons filed an application for registration of a trademark for the word “AMYS” and that the trademark was approved on February 18, 1986. Ms. Simmons also filed applications for renewal of the trademark with the Texas Secretary of State on February 16, 1996, and December 22, 2005.
8. Ms. Simmons had permission from an officer of the respondent to utilize the logo “Amy’s” and to use the respondent’s letterhead stationery.
9. Sworn complaint SC-2706135 alleged that the respondent made a political contribution to Ms. Simmons’s campaign by permitting a truck to remain parked near a polling location in West Lake Hills during the election, and by permitting a second truck to remain parked outside the polling place during part of election day and driven throughout the city on election day. Both of the trucks bore the respondent’s corporate logo and corporate slogan. One of the trucks also displayed a political advertising sign that stated, “Amy Simmons for City Council.”
10. Sworn complaint SC-2706135 also alleged that the respondent made a political contribution to Ms. Simmons by permitting the use of its name, logo, and ice cream for a “block party” held on April 21, 2007. A flyer included with the complaint stated, “Amy is having a block party!” and offered “Free Amy’s Ice Cream,” activities, and a meeting with Ms. Simmons.
11. Ms. Simmons filed a July 2007 semiannual campaign finance report covering the period from May 5 to July 16, 2007, that disclosed a political expenditure of \$399.10 to the respondent on July 16, 2007. The purpose of the expenditure indicated that \$100 was for “truck rental,” \$252.40 was for “ice cream purchase,” and \$46.70 was for “stationary [sic] purchase.” Ms. Simmons’s reports disclosed no additional reimbursements to the respondent or political expenditures related to the use of corporate assets.
12. The complainant testified at the formal hearing that he received the letter at issue at his home on April 28, 2007; obtained the flyer at issue in West Lake Hills around the date of the

election in May 2007; and personally observed the trucks at issue in West Lake Hills on election day.

13. The respondent was not present at the formal hearing and submitted no written testimony as evidence.

III. Conclusions of Law

1. Disposition of this case is within the jurisdiction of the Texas Ethics Commission. GOV'T CODE § 571.061.
2. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094(a). Subchapter D, chapter 253, Election Code, does not authorize a corporation to make a political contribution to a candidate or to make a political expenditure to support a candidate by providing assets or resources to a candidate for campaign purposes.
3. A political contribution means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
4. A campaign contribution means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(3).
5. A contribution means, in pertinent part, a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2).
6. A political expenditure means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
7. A campaign expenditure means, in pertinent part, 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 in connection with a campaign for an elective office. *Id.* §§ 251.001(6), (7).
8. "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. *Id.* § 251.001(6).
9. The respondent provided assets to Ms. Simmons with the knowledge that the assets would be used by her campaign. Ms. Simmons, as an agent and officer of the respondent, authorized the use of the respondent's assets for her own campaign and accepted the use of the assets as a candidate.

10. Campaign finance reports filed by Ms. Simmons disclosed expenditures to the respondent for a truck rental, ice cream, and stationery on July 16, 2007, more than two months after the election, and after the dates that the sworn complaints were filed. The reports disclosed no expenditures for the use of the respondent's name, logo, or slogan.
11. The respondent provided the use of its letterhead, envelopes, trucks, and ice cream to Ms. Simmons with the intent that they be used in connection with her campaign for elective office. Therefore, with respect to the letterhead, envelopes, trucks, and ice cream, the commission determined by a preponderance of the evidence that the respondent violated section 253.094(a) of the Election Code by making an unlawful political contribution.
12. The respondent provided intangible goods or things of value to Ms. Simmons by permitting its name, logo, and slogan to be used for Ms. Simmons's campaign. The name, logo, and slogan were included on the letterhead and envelope used by Ms. Simmons for political advertising and were included on the respondent's trucks that were provided to Ms. Simmons's campaign. Ms. Simmons did not pay the respondent for the use of those assets. The respondent provided those assets to Ms. Simmons with the intent that they be used in connection with her campaign for elective office. Therefore, with respect to the use of the corporate name, logo, and slogan, the commission determined by a preponderance of the evidence that the respondent violated section 253.094(a) of the Election Code by making an unlawful political contribution.

IV. Confidentiality

The final order entered by the commission after the completion of a formal hearing on these complaints describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this final order is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

V. Sanction

The commission imposes a \$1,000 civil penalty against the respondent. The commission orders that the respondent pay the penalty within 30 days of the date of this order.

Date: _____

FOR THE COMMISSION

David A. Reisman
Executive Director
Texas Ethics Commission