

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JERRY RUSS,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-290484

FINAL ORDER

The Texas Ethics Commission, having heard this case and voting to find a violation of laws under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The respondent is Jerry Russ, whose last known mailing address is P. O. Box 1389, Trinity, Texas 75862-1389. A sworn complaint was filed with the Texas Ethics Commission against the respondent on April 27, 2009. The Notice of Hearing was mailed to the respondent on January 4, 2010, by certified mail, return receipt requested, restricted delivery, and by delivery confirmation.
2. The preliminary review hearing was held on February 11, 2010, at 11:00 a.m., by the Texas Ethics Commission in Austin, Texas.
3. The respondent did not file a reply to the Notice of Hearing and did not appear at the hearing.
4. The respondent was a candidate for the Trinity Memorial Hospital District board of directors in the May 2009 election and currently holds that office.
5. The complaint alleged that, prior to the election, the respondent distributed business cards through a local restaurant that did not include a political advertising disclosure statement. The business cards stated, "Elect JERRY RUSS," and indicated that the respondent was a write-in candidate for position nine of the hospital district in the May 2009 election. The business cards did not include a political advertising disclosure statement.
6. On May 1, 2009, the commission sent a notice of sworn complaint to the respondent by certified mail. The notice of sworn complaint stated that the complaint would be processed as a Category One violation and that the respondent was required to respond to an allegation of a Category One violation not later than 10 business days from the date he received notice of the sworn complaint. The notice stated that failure to respond would constitute a separate violation for which a separate civil penalty may be assessed.

7. On May 21, 2009, the notice of sworn complaint was returned to the commission as unclaimed.
8. On May 21, 2009, commission staff contacted the respondent by telephone regarding the returned notice of sworn complaint. The respondent stated that he was not going to respond to the sworn complaint.
9. On May 22, 2009, the commission resent the notice of sworn complaint to the respondent by certified mail and delivery confirmation. United States Postal Service records indicated the notice of sworn complaint was delivered to the respondent's address on May 27, 2009.
10. The respondent did not file a response.
11. The local filing authority provided a copy of the respondent's campaign treasurer appointment signed March 11, 2009. The respondent elected modified reporting. The respondent did not file any campaign finance reports.

Conclusions of Law

1. Disposition of this case is within the jurisdiction of the Texas Ethics Commission. GOV'T CODE § 571.061.
2. The respondent received legally sufficient notice of the hearing in this case. GOV'T CODE § 571.032 and 1 TAC § 12.21. The hearing was held in accordance with section 12.23, 1 Texas Administrative Code.

Disclosure Statement

3. 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, in pertinent part, the full name of the person who paid for the political advertising. ELEC. CODE § 255.001(a). In 2003, section 255.001 of the Election Code was amended to state, in pertinent part, that the section does not apply to circulars or flyers that cost in the aggregate less than \$500 to publish and distribute. *Id.* § 255.001(d)(3). The Election Code does not define circulars or flyers.
4. Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy. *Id.* § 255.001(b).
5. Political advertising means, in pertinent part, 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 appears in a pamphlet, circular, flyer, billboard or other sign, bumper sticker, or similar form of written communication. *Id.* § 251.001(16)(B)(i).
6. Candidate means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. *Id.* § 251.001(1).
 7. In Ethics Advisory Opinion No. 435 (EAO 435), the commission stated that political advertising in the form of business cards must include a political advertising disclosure statement. Ethics Advisory Opinion No. 435 (2001).
 8. The respondent distributed business cards that expressly advocated support for him as a candidate for public office. Thus, the communications were political advertising. The business cards did not contain a political advertising disclosure statement. Although EAO 435 stated that political advertising business cards must include a political advertising disclosure statement, that opinion was adopted before section 255.001(d)(3) of the Election Code became effective in 2003. The business cards at issue may be considered a type of circular or flyer. There was no evidence that the respondent spent over \$500 to publish and distribute the business cards at issue. Therefore, there was insufficient evidence that the respondent violated section 255.001(a) of the Election Code.

Response to Sworn Complaint

9. A respondent must respond to the notice of a Category One violation not later than the 10th business day after the date the respondent receives the notice. Failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. GOV'T CODE § 571.1242(c).
10. The respondent received the notice of sworn complaint on May 27, 2009. The notice stated that the respondent was required to respond within 10 business days from receipt of the notice. The respondent failed to respond. Therefore, there was credible evidence of a violation of section 571.1242(c) of the Government Code.
11. The Texas Ethics Commission may impose a sanction against the respondent of not more than \$5,000 or triple the amount at issue, whichever amount is greater. *Id.* § 571.173

Therefore, the Texas Ethics Commission orders that:

1. The respondent pay to the Texas Ethics Commission, within 30 days of the date of this order, a civil penalty in the amount of \$500.

Order Date: _____

FOR THE COMMISSION

David A. Reisman
Executive Director
Texas Ethics Commission