

TEXAS ETHICS COMMISSION

IN THE MATTER OF

BARBARA JEAN CARPENTER,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-980440

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 1999, to consider Sworn Complaint SC-980440 filed against Barbara Jean Carpenter, Respondent. A quorum of the commission was present. The commission voted to refuse jurisdiction of the allegation that the respondent is civilly liable for damages under Section 253.131, Election Code, and to accept jurisdiction of the remainder of the allegations. Based on the investigation conducted by the commission staff, the commission determined there was credible evidence of a violation of Sections 253.031(a), 254.031(a)(2), and 254.064, Election Code, and a technical or *de minimis* violation of Section 255.001, Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

1. The complainant alleges that the respondent accepted campaign contributions and made campaign expenditures without having a campaign treasurer appointment on file.
2. The complainant alleges that the respondent failed to fully and accurately report a loan made by the respondent to her campaign and that, by accepting the loan, the respondent accepted an illegal corporate contribution.
3. The complainant alleges that the respondent improperly listed the business addresses of several contributors and that, by accepting these contributions, the respondent accepted illegal corporate contributions. The complainant also alleges that the respondent failed to disclose the occupations of these contributors.
4. The complainant alleges that the respondent failed to include a correct political advertising disclosure statement in a newspaper advertisement and concealed the true source of the advertisement.

5. The complainant alleges that the respondent failed to report in-kind contributions in the form of newspaper advertisements supporting the respondent's candidacy.
6. The complainant alleges that the respondent failed to timely file a campaign finance report due eight days before a runoff election.
7. The complainant alleges that the respondent improperly reported certain political expenditures as reimbursements to individuals.
8. The complainant alleges that the respondent failed to include the political advertising disclosure statement on political advertising supporting the respondent's candidacy.
9. The complainant alleges that the respondent accepted an illegal corporate contribution in the form of an in-kind contribution, and failed to report this contribution and the expenditures related to this contribution.

III. Facts Supported by Credible Evidence

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

1. The respondent filed an appointment of campaign treasurer on January 27, 1998, which disclosed that she was a candidate for city council in a May 2, 1998, election.
2. The respondent filed a 30-day before election report on April 2, 1998, in which she disclosed that she accepted seven contributions totaling \$2300 between January 20 and 26, 1998, one week before filing her appointment of campaign treasurer.
3. The respondent submitted to the commission a response to this complaint in which the respondent acknowledged that she participated in campaign activity before appointing a campaign treasurer. The respondent swears that she had not run for public office before, was not aware of the laws in this area, did not intend to violate these laws, and that she filed a campaign treasurer appointment as soon as she became aware of this requirement. The respondent also noted that she reported the activity that occurred before filing a campaign treasurer appointment on her campaign finance reports, providing full disclosure and evidence that there was no intent to violate the law.
4. The respondent's 30-day before election report disclosed that the respondent made a \$600 personal loan to her campaign on January 20, 1998. The respondent's 30-day before election report disclosed the source of the loan (herself), the amount of the loan, the date the loan was made, that interest was not being charged, and that there was no maturity date, collateral or guarantors in connection with the loan.

5. With regard to the loan disclosed on the respondent's 30-day before election report, the complainant alleges that because "the respondent is a self employed, incorporated individual . . . the appearance exists that this loan was made by this individual as a corporation." The complainant submitted no evidence to support this allegation.
6. In response to this complaint, the respondent swears that the loan reported on her 30-day before election report came from personal funds and not business funds.
7. The respondent's 30-day before election report disclosed that the respondent accepted contributions from 15 individuals. The respondent provided an address for each contributor. The respondent did not list the occupations of any of the contributors included in this report.
8. In the complaint, the complainant swears that ten of the addresses provided for contributors on the respondent's 30-day before election report are the contributors' business addresses.
9. The complainant alleges that because the respondent provided business addresses for these contributors, the appearance exists that these contributions were illegal corporate contributions. The complainant submitted no evidence to support this allegation.
10. The respondent swears that none of her campaign funds have come from a corporation.
11. The complainant alleges that a political advertisement was placed in a local newspaper on behalf of the respondent on or about April 6, 1998. The complainant alleges that the advertisement did not fully disclose that the advertisement was paid for by both an individual who was contributing to the respondent's campaign and also by the respondent. The complainant did not provide a copy of this advertisement with this complaint.
12. In response to this allegation, the respondent swears that the advertisement at issue was paid for in full by the individual listed in the disclosure statement, not by her campaign, and that the disclosure statement was therefore correct.
13. The complainant provided copies of nine political advertisements supporting the candidacy of the respondent that were published in a local newspaper between May 8 and May 29, 1998. Each advertisement includes a political advertising disclosure statement that discloses that each advertisement was paid for by a different individual. All of the advertisements list the same post office box address in the political advertising disclosure statement. According to the complainant, this post office box belongs to the respondent's campaign treasurer.
14. In response to this complaint, the respondent swears that she had no prior knowledge of these advertisements.

15. The respondent's 8-day before runoff election report is marked as having been received by the city secretary at 5:04 p.m. on the date on which it was due.
16. In response to this complaint, the respondent swears that she hand-delivered the report to the city hall at 4:58 p.m., according to her watch and the clock in her car.
17. In the respondent's 8-day before election and 8-day before runoff election reports, the respondent disclosed three expenditures in which individuals were listed as the payees and the purpose of the expenditure was reported as "reimbursement" for certain named items, such as "wooden stakes," "nails," "staples," and "staple gun."
18. The complainant submitted with this complaint three campaign brochures, a flier, and two letters from other individuals supporting the respondent's candidacy.
19. Each brochure is printed on a single, double-sided page and has a political advertising disclosure statement on one side of the page. The disclosure statement includes the words "Political advertisement paid for by [the respondent's] Campaign," the name of the respondent's campaign treasurer, and the city and state in which the respondent lives. The disclosure statement does not include a specific address for the respondent. Each of the brochures, however, includes a return address that lists a post office box.
20. The flier that was submitted with this complaint includes the following political advertising disclosure statement: "Political advertisement paid for by [the respondent's] Campaign." The flier does not include a specific address.
21. The letters that were submitted with this complaint do not contain a political advertising disclosure statement. Both letters, however, are written on letterhead stationery and contain the author's name and address.
22. The respondent submitted with this complaint photographs of a banner supporting the respondent's candidacy. In the photographs, the banner is hanging from a parked semitrailer truck that has the name of an excavation company painted on the side of the truck. The name of the excavation company includes the word "Inc."
23. In response to this complaint, the respondent swears that the banner was hung in the position shown in the photographs for only "a few days." The respondent further swears that the individual who granted her permission to hang the banner has told her that he did so as an individual and not as a corporate officer of the company that owned the truck. The respondent swears that the individual has told her that he never intended for that permission to be considered an act of the corporation, although it involved corporate property. The respondent further swears that this individual states that he was willing to grant other candidates permission to hang their banners on the trailer had they asked. The respondent

swears that the individual who granted her this permission believes that there was no commercial value transferred by allowing the respondent to hang the banner on the truck and that he did not consider this to be a campaign contribution. Finally, the respondent states that even if the granting of permission to hang the banner constitutes a corporate contribution, the respondent swears that she did not knowingly accept a political contribution that she knew at the time to be in violation of the Election Code.

24. The respondent's reports do not disclose an in-kind contribution consisting of the permission to display the banner from the corporate semitrailer truck.
25. In response to this complaint, the respondent provided copies of the invoice for the banner which was hung from the corporate semitrailer truck at issue. The respondent disclosed the expenditure for this banner in the her 8-day before election report.

IV. Findings and Conclusions of Law

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

1. A candidate may not knowingly accept a campaign contribution or make a campaign expenditure at a time when a campaign treasurer appointment is not in effect. Section 253.031(a), Election Code.
2. Because the respondent's 30-day before election report discloses that the respondent accepted campaign contributions before filing an appointment of campaign treasurer, there is credible evidence that the respondent violated Section 253.031(a), Election Code.
3. An opposed candidate must file a report not later than the 30th day before election day. Section 254.064, Election Code. The report must disclose the amount of loans made during a reporting period, including the date the loans are made, the interest rate, the maturity date, the name and address of the person or financial institution making the loans, and information concerning the collateral and guarantors of the loans, if any. Section 254.031(a)(2), Election Code.
4. With regard to the \$600 loan disclosed on the respondent's 30-day before election report, the respondent disclosed all required information. Thus, there is credible evidence that the respondent did not violate Sections 254.031(a)(2) and 254.064, Election Code.
5. A corporation, other than certain financial institutions, may not make a political contribution, including a loan, to a candidate or officeholder. Section 253.094, Election Code. *See also* Section 251.001(2), Election Code.

6. A person may not knowingly accept a political contribution the person knows to have been made in violation of Chapter 253, Election Code. Section 253.003(b), Election Code.
7. Because the complainant submitted no evidence to support the allegation that the \$600 loan disclosed on the respondent's 30-day before election report was an illegal corporate contribution, and because the respondent swears that the loan came from personal funds and not business funds, there is credible evidence that the respondent did not violate Section 253.003(b), Election Code.
8. A candidate for city council is not required to disclose the occupation or employer of a contributor. *See* Section 254.031, Election Code. Although the campaign finance report form used by these candidates has spaces for this information, providing the information is optional.
9. Because the respondent was not required to provide the occupations or employers of her contributors, the allegation on its face does not allege a violation of a law or rule administered and enforced by the commission.
10. A candidate who files a campaign finance report must disclose contributions accepted during a reporting period, and for those contributions that in the aggregate exceed \$50, the person must provide the full name and address of the contributor. Section 254.031(a)(1), Election Code. The statute requires that a person provide an "address" and does not specify whether the address may be a home or business address.
11. Because the respondent was not required to provide the home address of her contributors, the allegation on its face does not allege a violation of a law or rule administered and enforced by the commission.
12. Because the complainant submitted no evidence to support the allegation that the respondent accepted illegal corporate contributions based on the alleged fact that she provided the business addresses of certain contributors, there is no credible evidence that the respondent violated Section 253.003(b), Election Code.
13. Political advertising resulting from a contract or agreement to print political advertising must contain a disclosure statement indicating that it is political advertising, and must also contain the name and address of the individual who entered into the contract or of the person that individual represents. Section 255.001, Election Code.
14. A person may not enter into a contract or agreement to print a political advertisement that purports to emanate from a source other than its true source. Section 255.004, Election Code.

15. Because the complainant did not provide a copy of the political advertisement that was alleged to have been placed in a newspaper on behalf of the respondent on or about April 6, 1998, there is no credible evidence of a violation of Sections 255.001 and 255.004, Election Code.
16. A “campaign contribution” is defined, in relevant part, to mean the transfer of money, goods, services, or any other thing of value that is given to a candidate with the intent that it be used in connection with a campaign for public office. Sections 251.001(2) and (3), Election Code.
17. A direct campaign expenditure, in contrast to a contribution, is an expenditure that is made without the prior consent or approval of the candidate on whose behalf the expenditure was made. Section 251.001(8), Election Code, and Section 20.1, Ethics Commission Rules.
18. An opposed candidate must file a report not later than eight days before a runoff election. Section 254.064, Election Code. The report must disclose all contributions (including in-kind contributions) that the candidate accepts during the reporting period. Section 254.031, Election Code.
19. A candidate is required to report a direct campaign expenditure made to support him or her only if the candidate receives notice under certain provisions of the Election Code. Sections 254.061(3) and (4), Election Code.
20. Because the respondent did not give prior consent or approval for the expenditures for the newspaper advertisements published between May 8 and May 29, 1998, expenditures for the advertisements constitute direct campaign expenditures. There is no evidence to indicate that the respondent received notices of these expenditures pursuant to Sections 254.061(3) and (4), Election Code.
21. Because the newspaper advertisements were direct campaign expenditures and not in-kind contributions, the respondent was not required to report these expenditures as in-kind contributions. Thus, there is credible evidence that the respondent did not violate Sections 254.031 and 254.064, Election Code.
22. The deadline for filing a campaign finance report is 5:00 p.m. on the last date by which the report is due. Section 254.037, Election Code.
23. Because there is evidence that the respondent hand-delivered her 8-day before runoff election report to the city secretary’s office before 5:00 p.m. on the date on which it was due, but the city secretary’s markings indicate that the report was filed at 5:04 p.m., there is insufficient credible evidence that the respondent committed a violation of Sections 254.037 and 254.064, Election Code.

24. For political expenditures that in the aggregate exceed \$50 during a reporting period, a candidate filing a report must disclose the full name and address of the persons to whom the expenditures were made, as well as the dates and purposes of the expenditures. Sections 254.031(a)(3) and 254.064, Election Code.
25. Because the respondent disclosed in her 8-day before election and 8-day before runoff election reports the names and addresses of the persons to whom reimbursement expenditures were paid and also provided detailed descriptions of the purposes of the expenditures, there is credible evidence that the respondent did not violate Sections 254.031(a)(3) and 254.064, Election Code.
26. Political advertising is defined, in relevant part, as a communication supporting a candidate for election to a public office that appears in a pamphlet, flier, or similar written communication. Section 251.001(16), Election Code.
27. The brochures, flier, and letters constitute political advertising because they support the respondent's candidacy for city council and appear in the form of a pamphlet, flier, or similar written communication.
28. A person may not knowingly enter into a contract or other agreement to print political advertising that does not contain in the advertising the words "political advertising" or a recognizable abbreviation, as well as the full name and address of the person who entered into the contract or agreement to print the advertising, or the person that individual represents. Section 255.001, Election Code; Section 26.3, Ethics Commission Rules.
29. With regard to the brochures that were submitted by the complainant, because the brochures contain all the information required by Section 255.001, Election Code, there is credible evidence that the respondent did not violate Section 251.001, Election Code.
30. With regard to the flier that was submitted by the complainant, because the flier does not include a specific address there is credible evidence that the respondent committed a technical or *de minimis* violation of Section 255.001, Election Code.
31. Political advertising printed on letterhead stationery is not required to include the disclosure statement if the letterhead includes the name and address of the individual who entered into the agreement with the printer or the name and address of the person that individual represents. Sections 26.3 and 26.5, Ethics Commission Rules.
32. Because under Ethics Commission Rules the letterhead information satisfies the requirements of Section 255.001, Election Code, and because there is no evidence to indicate that the individuals whose names appear in the letterhead were not the persons who entered

- into the contract to print the letters, there is credible evidence that the respondent did not violate Section 255.001, Election Code.
33. A campaign contribution is a transfer of money, goods, services, or any other thing of value given with the intent that it be used in connection with a campaign for elective office. Sections 251.001(2) and (3), Election Code.
 34. A corporation is prohibited from making a political contribution unless it is authorized by Subchapter D, Chapter 253, Election Code. Section 253.094, Election Code. Subchapter D does not authorize a corporation to make political contributions to a candidate. *See* Subchapter D, Chapter 253, Election Code.
 35. A person may not knowingly accept a political contribution that the person knows to have been made in violation of Chapter 253, Election Code. Section 253.003(b), Election Code.
 36. The granting of permission to hang the banner supporting the respondent's candidacy from the corporate semitrailer truck constituted a campaign contribution from the corporation because it was a transfer of a thing of value given with the intent that it be used in connection with a campaign for elective office.
 37. Because the respondent swears that she did not knowingly accept a contribution that she knew at the time to be in violation of the Election Code, there is credible evidence that the respondent did not violate Section 253.003(b), Election Code.
 38. A candidate filing campaign finance reports must include information regarding political contributions accepted and expenditures made during a reporting period. Sections 254.031 and 254.064, Election Code. The report must include the amount of political contributions from each person that exceed \$50 that are accepted during the applicable reporting period, as well as the full name and address of each person making the contributions and the dates of the contributions. Section 254.031(a)(1), Election Code.
 39. Because the respondent did not disclose in her campaign finance reports an in-kind contribution consisting of the permission to display the banner from the corporate semitrailer truck, there is credible evidence that the respondent violated Sections 254.031(a)(1) and 254.064, Election Code.
 40. A candidate filing campaign finance reports must include the amount of political expenditures that in the aggregate exceed \$50 that are made during the applicable reporting period, as well as the full name and address of the person to whom the payment is made, and the date and purpose of the payment. Sections 254.031(a)(3) and 254.064, Election Code.

41. Because the respondent reported in her 8-day before election report the expenditures in connection with the banner at issue, there is credible evidence that the respondent did not violate Sections 254.031(a)(3) and 254.064, Election Code.
42. A person who knowingly makes or accepts a campaign contribution or makes a campaign expenditure in violation of Chapter 253, Election Code, may be liable for damages to opposing candidates. Section 253.131, Election Code.
43. The Ethics Commission does not have authority to award damages under Section 253.131, 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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations described under Section IV, Paragraphs 2, 30, and 39, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

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, consequences, extent, and gravity of the violations, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 civil penalty for the violation described under Section IV, Paragraph 2.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-980440;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than March 12, 1999; and
4. that the executive director shall promptly refer SC-980440 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-980440 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 1999.

Barbara Jean Carpenter, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director