

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JULES LAUVE, JR., INC.
AND JULIET STAUDT,

RESPONDENTS

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-980543

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 9, 1999, to consider Sworn Complaint SC-980543 filed against Jules Lauve, Jr., Inc. and Juliet Staudt (Vice President and General Manager), Respondents, and against another corporation. A quorum of the commission was present. The commission voted to accept jurisdiction of this complaint. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence that Jules Lauve, Jr., Inc. and Juliet Staudt did not violate Sections 255.001, 255.004(b), and 253.096, Election Code, and credible evidence that Jules Lauve, Jr., Inc., and Juliet Staudt did violate Section 253.097, Election Code, all of which are laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondents.

II. Allegations

This complaint concerns the activities of two outdoor advertising companies, the respondent (Jules Lauve, Jr., Inc.) and another corporation, in connection with a referendum on a billboard ordinance previously enacted by the city council of a home-rule city. The complainant alleges (1) that the respondent filed a campaign finance report that disclosed the aggregate amount of its campaign expenditures on the referendum but failed to itemize expenditures totaling more than \$50 to the same payee in the reporting period, (2) that the respondent printed billboard advertisements that did not contain a political advertising disclosure statement, and (3) that the respondent and the other corporation acted in concert to make campaign expenditures for a flier and represented in the flier that the source of the flier was the respondent when the true source was the other corporation, or was both the respondent and the other corporation.

III. Facts Supported by Credible Evidence

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

1. Both respondents are corporations as defined in Title 15, Election Code. Both own billboards located within a home-rule city. The respondent is a local business; the other corporation is not.
2. The referendum was held on May 2, 1998. It was called by the city council upon the petition of qualified voters within the city. The referendum submitted to the voters a proposition concerning provisions of an existing city ordinance pertaining to billboards. Voters were asked: "Shall the City keep sub-section (c) of Ordinance No. 97-82, which allows the relocation of billboards to new locations within the City limits?" The proposition passed by a narrow margin.
3. The complainant submitted photographs of three billboard advertisements. Each of the advertisements depicted in the photographs identifies the referendum by proposition number and urges voters to "Vote yes!" The advertisements were displayed on billboards owned by the respondent. The respondent's corporate name appears on the billboards but not in the advertisements. The advertisements do not contain either the words "political advertising" or a recognizable abbreviation, nor do they contain the full name and address of the individual who contracted for the advertising or the person that individual represented.
4. The complainant also submitted a copy of the flier. The flier, like the billboard advertisements, identifies the referendum by proposition number and urges voters to "Vote yes!" In addition, the flier emphasizes the importance of billboards to the survival of the respondent's business, the importance of billboards to the prosperity of other businesses and of the local economy, and the importance of providing advertisers with media choice. The flier includes the respondent's corporate name and address and also includes the following statement: "Political Advertising paid for by [the respondent and the other corporation.]"
5. The complainant also submitted copies of campaign finance reports filed with the city secretary. On April 23, 1998, the respondent filed an 8-day before election report. In that report, the respondent disclosed total political expenditures in the amount of \$11,844.39, but failed to itemize expenditures totaling more than \$50 to the same payee in the reporting period. On May 20, 1998, after this complaint was filed, the respondent filed a corrected report and good-faith affidavit. In the corrected report, the respondent itemized all of its expenditures, including one expenditure that was not required to be itemized.

IV. Findings and Conclusions of Law

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

1. A person who knowingly enters into a contract or agreement for political advertising must indicate in the advertising that it is political advertising and must give the full name and address of the individual who personally entered into the contract or agreement for the advertising or the person that individual represents. Section 255.001, Election Code. Political advertising is defined in relevant part as a communication supporting or opposing a measure that appears in a billboard. Section 251.001(16), Election Code.

2. A measure is defined as a question or proposal submitted in an election for an expression of the voters' will, and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will. Section 251.001(19), Election Code. The definition of "measure" includes a referendum because it is a question submitted in an election for an expression of the voters' will.
3. The billboard advertisements advocate the passage of the proposition submitted in the referendum and, therefore, support the measure. The advertisements do not contain a political advertising disclosure statement. The written response filed by the attorney for the respondent, however, states that the respondent owns the billboards on which the advertisements were displayed and did all the necessary production in the respondent's normal fashion of producing billboard advertisements. Therefore, there was no contract or agreement for the billboard advertisements. Section 255.001, Election Code, requires a political advertising disclosure statement on political advertising if a person enters into a contract or other agreement to print, publish, or broadcast the political advertising. Because there is credible evidence that there was no such contract or agreement, there is credible evidence of no violation of Section 255.001, Election Code, with respect to the billboard advertisements.
4. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source. Section 255.004(b), Election Code. A campaign communication is defined in relevant part as a written communication relating to a campaign on a measure. Section 251.001(17), Election Code.
5. The flier is a campaign communication because it is in writing and because it relates to the billboard proposition that was submitted in the referendum. The complainant contends that the flier purports to emanate from the respondent when the true source was the other corporation, or was both the respondent and the other corporation, because the flier includes a statement disclosing that it was paid for by both the respondent and the other corporation but gives only the respondent's corporate address, because the type used to print the respondent's corporate name and address is larger than the type used to print the other corporation's corporate name, and because the other corporation's campaign finance report filed with the city secretary on April 23, 1998, indicates that the other corporation paid for the flier in full.
6. Although the other corporation's campaign finance report includes an itemized expenditure for "Mailing Brochure/Printing," it is impossible to determine from that report that this expenditure was an expenditure for the flier, and even if it is assumed to be an expenditure for the flier, it is impossible to determine that the expenditure represented the total cost of the flier. Moreover, the campaign finance reports filed by both companies include expenditures made to printing companies, and it is impossible to determine from the descriptions in those reports which of those expenditures, if any, related specifically to the flier.

7. The written response submitted by the attorney for the respondent and the other corporation states that both corporations “incurred costs associated with the flier.” Therefore, it appears that both corporations were a source of the flier. Because the names of both corporations appear in the flier and because there is no misrepresentation of the identity of either corporation, the flier does not purport to emanate from a source other than its true source. *See* Tex. Att’y Gen. H-1178 (1978) (interpreting former Article 14.10, Election Code). Therefore, there is credible evidence of no violation of Section 255.004(b), Election Code.
8. Corporations may make political contributions and political expenditures only as authorized under Subchapter D, Chapter 253, Election Code. Section 253.094, Election Code.
9. Section 253.097, Election Code, allows a corporation not acting in concert with another person to make one or more direct campaign expenditures from its own property in connection with an election on a measure if the corporation makes the expenditures in accordance with Sections 253.061 and 253.062, Election Code, as if the corporation were an individual. Section 253.062 requires that direct campaign expenditures exceeding \$100 be reported as if the individual were a campaign treasurer of a political committee.
10. An “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.” Section 251.001(6), Election Code. A “direct campaign expenditure” means “a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure.” Section 251.001(8), Election Code.
11. Section 253.096, Election Code, allows a corporation to make campaign contributions from its own property in connection with an election on a measure “only to a political committee for supporting or opposing measures exclusively.” A “contribution” means 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. Section 251.001(2), Election Code. A “campaign contribution” includes a contribution to a political committee that is offered or given with the intent that it be used in connection with a campaign on a measure. Section 251.001(7), Election Code.
12. The written response filed by the attorney for the respondent and the other corporation states that both corporations “incurred costs associated with the flier,” although it states that in doing so they independently contacted the Ethics Commission staff for advice and believed upon that advice that what they were doing was ethical and proper. The response further states: “The corporations did not form a political committee. They did not commingle any funds and each conducted their own campaign activities. There was some cooperation with respect to the flier but the flier identified the responsible parties. This very limited cooperation did not rise to the level of the definition of political committee, i.e., ‘a group of persons that has as a principal purpose accepting political contributions or making political expenditures.’”

13. The flier, however, states that it was “paid for by” both of the corporations and, therefore, there is credible evidence that the corporations acted in concert to make expenditures for the flier.
14. Although the corporations admit that they cooperated with respect to the flier, they deny that they “formed” a political committee. “Political committee” means a group of persons that has as a principal purpose accepting political contributions or making political expenditures. Section 251.001(12), Election Code. “Person” includes a corporation. Section 311.005(2), Government Code (Code Construction Act). Because the corporations acted in concert to make expenditures for the flier, the corporations constituted a political committee under the Election Code even if they did not commingle their funds and even if they did not understand the consequences the Election Code would attach to their concerted actions. The sole purpose of the committee was to support the billboard referendum and the expenditures for the flier were made by each member of the committee in connection with that referendum.
15. An expenditure made directly by a member of a political committee is an in-kind contribution to the committee and, therefore, not a direct campaign expenditure. *See* Ethics Advisory Opinion No. 74 (1992). Consequently, as to the flier, there is credible evidence that the corporations made in-kind campaign contributions to a political committee for supporting a measure as permitted under Section 253.096, Election Code, and not direct campaign expenditures in violation of Section 253.097, Election Code.
16. Although a group becomes a political committee by its actions and not by filing an appointment of a campaign treasurer, 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. Section 253.031, Election Code. The committee did not file an appointment of a campaign treasurer. There is insufficient evidence, however, to determine whether the committee exceeded either of the \$500 thresholds for filing a campaign treasurer appointment.
17. The respondent disclosed total political expenditures in the amount of \$11,844.39 in its 8-day before election report filed on April 23, 1998, but included no itemized expenditures in that report. On May 20, 1998, the respondent amended the report to include itemized expenditures by filing a corrected report and good-faith affidavit. According to the corrected report, all but one of the expenditures reported by the respondent should have been itemized in the original report. The written response submitted by the attorney for the respondent states that the respondent’s vice president and general manager contacted the Ethics Commission staff before filing the original report and, based on that contact, did not believe she was required to itemize the expenditures.
18. A corporation that makes direct campaign expenditures exceeding \$100 from its own property in connection with an election on a measure must report those expenditures as if it were the campaign treasurer for a political committee. Sections 253.062 and 253.097,

Election Code. The campaign treasurer for a political committee must disclose in the committee's campaign finance reports the full name and address, the date, and the purpose of the payment for political expenditures totaling more than \$50 to the same payee in the reporting period. Sections 254.031 and 254.124, Election Code. Because the respondent's 8-day before election report failed to disclose this information, there is credible evidence that the respondent violated Section 253.097, Election Code.

19. A corrected 8-day before election report is treated as a late report for all purposes, including the assessment of a fine. Section 18.81, Texas Ethics Commission Rules.

V. Representations and Agreement by Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondents, Jules Lauve, Jr., Inc., and Juliet Staudt, neither admit nor deny the facts described under Section III and 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 and settling this sworn complaint.
2. The respondents, Jules Lauve, Jr., Inc., and Juliet Staudt, consent 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 respondents waive any right to a hearing before the commission or an administrative law judge, and further waive any right to a post-hearing procedure established or provided by law.
3. The respondents, Jules Lauve, Jr., Inc., and Juliet Staudt, acknowledge that a corporation that makes direct campaign expenditures exceeding \$100 from its own property in connection with an election on a measure must report those expenditures as if it were the campaign treasurer for a political committee and that the campaign treasurer for a political committee must disclose in the committee's campaign finance reports the full name and address, the date, and the purpose of the payment for political expenditures totaling more than \$50 to the same payee in the reporting period. The respondents agree to fully and strictly comply with the requirements of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondents, Jules Lauve, Jr., Inc., and Juliet Staudt, understand and agree that the commission will consider the respondents to have committed the violations detailed in Section IV, Paragraphs 17, 18, and 19, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondents.

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, 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 these respondents are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 civil penalty for the violations described under Section IV, Paragraphs 17, 18, and 19.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondents, Jules Lauve, Jr., Inc., and Juliet Staudt;
2. that this AGREED RESOLUTION disposes of the complaint only as to Jules Lauve, Jr., Inc., and Juliet Staudt, Vice President and General Manager for Jules Lauve, Jr., Inc.;
3. that if the respondents, Jules Lauve, Jr., Inc., and Juliet Staudt, consent to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-980543 as to Jules Lauve, Jr., Inc. and Juliet Staudt, Vice President and General Manager of Jules Lauve, Jr., Inc.;
4. that the respondents, Jules Lauve, Jr., Inc., and Juliet Staudt, 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 August 13, 1999; and
5. that the executive director shall promptly refer SC-980543 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 respondents do not agree to the resolution of SC-980543 as proposed in this ORDER and AGREED RESOLUTION.

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

Juliet Staudt

Jules Lauve, Jr., Inc.

By: _____
Juliet Staudt, Vice President
and General Manager

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director