

TEXAS ETHICS COMMISSION

IN THE MATTER OF

CITIZENS UNITED
FOR SOUTH HOUSTON
AND ELIZABETH GARZA,

RESPONDENTS

§
§
§
§
§
§

BEFORE THE

TEXAS ETHICS COMMISSION

SC-990515

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 9, 1999, and voted to accept jurisdiction of Sworn Complaint SC-990515 filed against Citizens United for South Houston and Elizabeth Garza, Respondents. The commission met again on November 12, 1999, to consider Sworn Complaint SC-990515. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of a violation of Section 254.154, Election Code, a law administered and enforced by the commission, but imposes no civil penalty for the violation. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondents.

II. Allegations

The complainant alleged that Citizens United for South Houston, a general-purpose political committee, was involved in a May 1, 1999, municipal election and failed to file pre-election reports.

III. Facts Supported by Credible Evidence

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

1. The respondents are Citizens United for South Houston (the committee), a general-purpose political committee, and Elizabeth Garza, the committee's campaign treasurer.
2. The complainant was a successful candidate for alderman in a May 1, 1999, municipal election.
3. The complainant furnished copies of pre-election reports filed by a defeated candidate for mayor and three defeated candidates for alderman (including his opponent) in the May 1,

1999, municipal election. Each candidate's 30-day before election report discloses an in-kind contribution from the committee for "8 x 8 signs," valued at \$384, and accepted on March 20, 1999. Each candidate's 8-day before election report discloses additional in-kind contributions from the committee for "8 x 8 signs," valued at \$480, and accepted on April 3, 1999; "Cards," valued at \$49.87, and accepted on April 5, 1999; and "Cards," valued at \$61.94, and accepted on April 20, 1999.

4. The complainant states that he called the Ethics Commission to request copies of the committee's pre-election reports and was told that no reports had been filed by the committee since January 1999. According to records on file with the Ethics Commission, the committee has filed only semiannual reports since it filed a campaign treasurer appointment in July 1995.
5. The committee's most recent semiannual report was filed with the Ethics Commission in July 1999 after this complaint was filed. The report discloses contributions and expenditures from January 1, 1999, through June 30, 1999, a reporting period that includes the periods covered by the pre-election reports which are the subject of this complaint.

IV. Findings and Conclusions of Law

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

1. A general-purpose political committee that chooses to report its contributions and expenditures semiannually instead of monthly must file pre-election reports 30 and 8 days before any election in which the committee is involved. Section 254.154, Election Code. A political committee is involved in an election if the committee makes expenditures to support a candidate in that election or solicits contributions specifically for the purpose of supporting a candidate in that election during a pre-election reporting period. Section 20.425, Ethics Commission Rules.
2. For the May 1, 1999, election, the reporting period for the 30-day before election report began on January 1, 1999, and ended on March 22, 1999, and the reporting period for the 8-day before election report began on March 23, 1999, and ended on April 21, 1999.
3. The campaign treasurer and a director for the committee jointly filed a sworn response to the complaint. In their response, they state that in February 1999—prior to the pre-election reporting periods for the May 1, 1999, municipal election—the committee made four expenditures totaling \$265.82 for paint, wood, and brushes. Sometime after March 17, 1999—the deadline for filing an application for a place on the ballot in the election—volunteer members of the committee used the paint, wood, and brushes to build and erect 8' x 8' signs advocating the election of the four candidates whom the committee supported in that election. The signs were owned by the committee and made available for the use of the candidates during each of the pre-election reporting periods.

4. The sworn response states that neither the committee nor the candidates knew how to value the use of the signs. So the committee estimated the value of the labor of its uncompensated volunteer members who built and erected the signs and added to that amount the cost of the materials. The total was divided by four to arrive at the value of the contribution that each of the four candidates included in their campaign finance reports.
5. In addition to the signs, the candidates reported in-kind contributions of “cards.” One of the committee’s expenditures for the cards was made on April 5, 1999, during the reporting period for the 8-day before election report. It is not clear when the committee’s other expenditures for the cards were made.
6. A “campaign contribution” includes a transfer of anything of value to a candidate that is offered or given with the intent that it be used in connection with an election. Therefore, the value of the use of the signs by the candidates was a campaign contribution to each of the four candidates. *See* Ethics Advisory Opinion No. 390 (1998).
7. The contribution was in kind because it was not a contribution of money. Section 20.1, Ethics Commission Rules. The in-kind contribution should have been reported at its fair market value. *See* Section 20.51, Ethics Commission Rules.
8. A “campaign expenditure” includes a payment of money or any other thing of value made by any person in connection with a campaign for an elective office. Therefore, the expenditure for the cards was a campaign expenditure.
9. Because the committee made campaign contributions or campaign expenditures in each of the periods covered by the pre-election reports, the committee should have filed those reports. The reports were due by April 1, 1999, and April 23, 1999. Only the July semiannual report was filed with the commission, and that report was not filed until July 13, 1999. Therefore, there is credible evidence of a violation of Section 254.154, Election Code.
10. The campaign treasurer and a director for the committee acknowledge that the contributions and expenditures were made, but they swear that “[w]e were told by Ethics Commission Staff when we first registered with the Commission as a P.A.C. that we could choose to file reports with the Commission on 1) Local Election Reporting Dates, or 2) semi-annual Reports on January 15 and July 15” and further swear that “[w]e chose to file semi-annual reports and were told that was sufficient, and have done so during our entire existence.”
11. In addition, they swear that upon receipt of a notice regarding the requirement to file pre-election reports in October 1998 the committee’s director called the Ethics Commission staff and “was told that “if we did not take in any contributions or spend any money in STATE-WIDE ELECTIONS we did not have to file the report.”

12. The committee has been involved only in local elections since it was formed in 1995. The sworn statements of its campaign treasurer and director state that the committee believed that pre-election reports were not required for these elections based on advice received from commission staff.

V. Representations and Agreement by Respondent

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

1. The respondents neither admit nor deny 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 respondents 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 acknowledge that a general-purpose political committee that chooses to report its contributions and expenditures semiannually instead of monthly must file pre-election reports by the 30th day and 8th day before any election in which the committee is involved. Section 254.154, Election Code. The respondents agree to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondents understand and agree that the commission will consider the respondent to have committed the violation described under Section IV, Paragraph 9, 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 of the Government Code, and may be disclosed by members and staff of the commission.

VII. No Sanction

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, 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 no civil penalty for the violation described under Section IV, Paragraph 9.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondents;
2. that if the respondents consent to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-990515;
3. that the respondents may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than December 10, 1999; and
4. that the executive director shall promptly refer SC-990515 either to 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-990515 as proposed in this ORDER and AGREED RESOLUTION.

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

Elizabeth Garza, Campaign Treasurer
Citizens United for South Houston

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director