

Texas Ethics Commission

IN THE MATTER OF
JIM WOLVERTON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-201073

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 10, 2000, and voted to accept jurisdiction of Sworn Complaint SC-201073 filed against Jim Wolverton, Respondent. The commission met again on August 10, 2001, to consider Sworn Complaint SC-201073. 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 254.064, Election Code, a law 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

The complainant alleges that the respondent failed to include a \$600 filing fee as an expenditure on his January 2000 semiannual report, failed to timely file his 30-day before election report for the March 14, 2000, primary election, and failed to include a political advertising disclosure statement on his political advertising.

III. Facts Supported by Credible Evidence

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

1. At all times relevant to this complaint, the respondent was an opposed candidate for county commissioner in the March 14, 2000, primary election.
2. The respondent filed the two reports in question, and a report correcting one of those reports, with the county elections administrator. The respondent's January 2000 semiannual report was stamped as received on January 18, 2000, which was the due date. In response to the complaint, the respondent filed a corrected January 2000 semiannual report on October 30, 2000, disclosing the \$600 expenditure for the filing fee. In an affidavit accompanying the corrected report, the respondent swore that he did not know that payment of a filing fee is

considered a campaign expenditure. The respondent's 30-day before election report for the March 14, 2000, primary election was stamped as received on February 22, 2000. The 30-day before election report was due by February 14, 2000.

3. In support of his allegation regarding the political advertising disclosure statement, the complainant submitted six written communications, all of which support the respondent for nomination or election to a public office. Communications 1, 2, and 3 appear in a flier and do not include a political advertising disclosure statement. Communications 4, 5, and 6 were published in a newspaper in return for consideration. Communications 4 and 5 did not include a political advertising disclosure statement. Communication 6 did not include an address in the political advertising disclosure statement.
4. In response to this complaint, the respondent submitted an affidavit in which he swears to the following:

I, Jim O. Wolverton, swear that Mrs. Sweatt, account representative for the Weekly Herald Newspaper, was told both ads were for political use (October 26, 2000 and November 2, 2000) [communications 5 and 6]. I called Mrs. Sweatt as soon as I was made aware of the October 26, 2000 ad not having the disclosure printed. She apologized and said she would correct the problem before the November 2, 2000 ad would run. I asked if she had all the information. She told me she had all the information in the file. My personal check had my name and address printed on it. The lower left corner had "Political ad" written on the check.

5. The respondent also submitted an affidavit from the production manager of the printing company that printed the fliers in which the production manager swears that the printing company inadvertently forgot to add the disclaimer to the fliers.
6. The respondent also submitted an affidavit from the chief operating officer of the newspaper that published communications 4, 5, and 6. As to communication 4, the chief operating officer swears that the respondent told the newspaper account representative that the advertisement was a political advertisement paid for by the respondent's campaign but that the person who designed the advertisement inadvertently omitted the political advertising disclosure statement. As to communications 5 and 6, the chief operating officer of the newspaper swears that the newspaper account representative working on communication 5 was not familiar with the requirements for political advertising and did not include the disclosure statement but that upon notice from the respondent, the disclosure statement was added to communication 6.

IV. Findings and Conclusions of Law

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

1. A person filing a campaign finance report is required to itemize political expenditures made during the reporting period that in the aggregate exceed \$50. Section 254.031(a)(3), Election Code. The respondent filed an application for a place on the ballot and paid a \$600 filing fee. The \$600 filing fee is an expenditure made in connection with a campaign for an elective office and therefore constitutes a reportable political expenditure. Sections 251.001(7) and (10), Election Code. That expenditure, however, was not reported on any of the respondent's original reports.
2. A filer may correct a reporting error at any time by filing a corrected report. Section 18.43, Ethics Commission Rules. A corrected report, other than one correcting a report due eight days before an election, is deemed to be timely filed and no fine is imposed for the incomplete report if the filer submits an affidavit establishing that the corrected report was filed because of a good-faith error. Sections 18.49 and 18.83, Ethics Commission Rules. The respondent filed a corrected report and affidavit disclosing the expenditure for the filing fee and swearing that he did not know payment of a filing fee is considered a campaign expenditure. Therefore, the respondent is not subject to a late fine for omitting a political expenditure, and there is credible evidence that the respondent did not violate Section 254.031, Election Code.
3. An opposed candidate is required to file pre-election reports by the 30th day and the 8th day before the election. Section 254.064, Election Code.
4. The filing authority's date stamp shows that the filing authority received the respondent's 30-day before election campaign finance report eight days after the due date. There is credible evidence that the respondent's 30th day before election report was not timely filed. Therefore, there is credible evidence that the respondent violated Section 254.064, Election Code.
5. A person may not knowingly enter into a contract or other agreement to print political advertising that does not indicate that it is political advertising and that does not contain the full name and address of the individual who entered into the contract or agreement with the printer or the full name and address of the person that individual represents. Section 255.001(a), Election Code.
6. Political advertising is defined in relevant part as a communication supporting or opposing a candidate for nomination or election to a public office that, in return for consideration, is published in a newspaper, or that appears in a pamphlet, circular, flier, or similar form of written communication. Section 251.001 (16), Election Code.
7. Communications 1, 2, and 3 constitute political advertising because they support a candidate for election to a public office and appear in a flier. The production manager of the printing company that printed the fliers swears that the company inadvertently forgot to add the disclaimer to the fliers. There is credible evidence that the respondent entered into a contract to print the fliers with the required disclosure statement but that the printing company failed

to include the disclosure statement. Therefore, as to communications 1, 2, and 3, there is credible evidence that the respondent did not violate Section 255.001, Election Code.

8. Communications 4, 5, and 6 constitute political advertising because they support a candidate for election to a public office and, in return for consideration, were published in a newspaper.
9. As to communications 4, 5, and 6, there is credible evidence that the respondent entered into a contract to print the newspaper advertisements with the required disclosure statement but that the newspaper failed to include either the disclosure statement or the complete disclosure statement. Therefore, as to communications 4, 5, and 6, there is credible evidence that the respondent did not violate Section 255.001, 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 violation described under Section IV, Paragraph 4, 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 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 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 a civil penalty of \$100 for the violation described under Section IV, Paragraph 4.

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-201073;
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 September 7, 2001; and
4. that the executive director shall promptly refer SC-201073 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-201073 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2001.

Jim Wolverton, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director