

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CAROL DRAKE,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2410168

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on July 14, 2005, to consider sworn complaint SC-2410168. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of sections 253.004, 255.001, and 255.007 of the Election Code, laws administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent knowingly made or authorized political expenditures of a political committee in excess of \$500 at a time when the committee did not have a campaign treasurer appointment on file. The complaint also alleges that the respondent did not file campaign finance reports for the committee and distributed political advertising signs without a required political advertising disclosure or right-of-way notice.

III. Facts Supported by Credible Evidence

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

1. At all times relevant to the complaint, the respondent was the president of the Advocates for Education Committee (hereafter, the committee), which was formed to support school bonds in elections in the Magnolia Independent School District.
2. The committee made political expenditures for brochures, postcards, t-shirts, yard signs, and direct mailings that advocated the passage of three school bond measures in an August 28, 2004, election.

3. At the time the complaint was filed, the school district had no records or reports from the committee on file.
4. A letter addressed to the respondent states that \$2,147 for printing and \$2,343 for postage were contributions and gifts from a local business to the committee. The respondent admits that the business “produced and mailed our brochure” and that “[o]ur committee did pay for the mailing of the brochure” by making reimbursements to the business.
5. After the complaint was filed, the committee filed an 8-day pre-election campaign finance report with the school district. The report disclosed a single \$1,000 political contribution and political expenditures totaling \$1,558.02. The expenditures occurred between August 6 and August 30, 2004.
6. The complaint included a photograph of a yard sign that encouraged voters to support the bonds. The sign did not contain a political advertising disclosure or right-of-way notice.
7. The respondent admits that the political advertising disclosure and right-of-way notice were not included in the committee’s political advertising, but that “[t]his was not done intentionally on the part of myself or any member of the committee, but we were not made aware of the law in this regard.”

IV. Findings and Conclusions of Law

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

1. A political committee may not knowingly make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. ELEC. CODE § 253.031.
2. The report filed by the committee disclosed total political expenditures in excess of \$1,500.
3. The committee has not filed a campaign treasurer appointment with the school district or any other office. Therefore, there is credible evidence that the committee violated section 253.031 of the Election Code by making political expenditures totaling more than \$500 without having a campaign treasurer appointment in effect.
4. A person may not knowingly make or authorize a political expenditure that is in violation of the Election Code. ELEC. CODE § 253.004.

5. A person would violate section 253.004 of the Election Code by knowingly making or authorizing a committee's political expenditure at a time when a campaign treasurer for the committee is not in effect if: (1) the expenditure would cause the committee to exceed \$500 in expenditures, or (2) the committee has already made expenditures exceeding \$500.
6. The respondent made or authorized committee expenditures in excess of \$500. Therefore, there is credible evidence that the respondent violated section 253.004 of the Election Code.
7. A campaign treasurer of a political committee must file two campaign finance reports per year, in addition to reports filed on the 30th day and the 8th day before an election in which the committee is involved. ELEC. CODE §§ 254.123, 254.124.
8. The requirement to file campaign finance reports applies to a campaign treasurer appointed by a political committee, not to the committee itself. The committee did not file a campaign treasurer appointment. Thus, the respondent was not responsible for filing the committee's campaign finance reports. Therefore, there is credible evidence that the respondent did not violate section 254.123 or 254.124 of the Election Code.
9. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not include a disclosure statement. ELEC. CODE § 255.001.
10. A person is prohibited from knowingly entering into a contract to print or make, or instructing another person to place, a political advertising sign that does not contain a highway right-of-way notice. ELEC. CODE § 255.007.
11. Political advertising is a communication supporting or opposing a measure that appears in a pamphlet, circular, flier, billboard, or other sign. ELEC. CODE § 251.001(16).
12. A political advertising sign is a written form of political advertising designed to be seen from a road but does not include a bumper sticker. ELEC. CODE § 255.007.
13. The yard sign at issue supported a bond measure and was designed to be seen from a road. Thus, it was a political advertising sign on which the disclosure statement and highway right-of-way notice were required.
14. The respondent's position as president of the committee, her admission that the signs did not carry the required disclosure or notice, and the absence of any statement that denies responsibility for the signs shows that the respondent knowingly caused the signs to be distributed. The evidence also shows that she either knowingly entered into a contract to print or make the signs or instructed another person to place the signs. Therefore, there is credible evidence that the respondent violated sections 255.001 and 255.007 of the 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 or 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 this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a political committee may not knowingly make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. The respondent also acknowledges that a person may not knowingly make or authorize a committee's political expenditure at a time when a campaign treasurer for the committee is not in effect if: (1) the expenditure would cause the committee to exceed \$500 in expenditures, or (2) the committee has already made expenditures exceeding \$500. The respondent also acknowledges that a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not include a disclosure statement and may not knowingly enter into a contract to print or make, or instruct another person to place, a political advertising sign that does not contain a highway right-of-way notice. The respondent agrees to comply with these requirements of the law.

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, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$200 civil penalty for the violations described under Sections III and IV.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-2410168.

AGREED to by the respondent on this _____ day of _____, 20__.

Carol Drake, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director