

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ARDITH H. GARNER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2707171

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2008, to consider sworn complaint SC-2707171. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031 of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to properly report political contributions and political expenditures and failed to file pre-election campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for the Helotes city council, in the May 2006 election.
2. Before the May 2006 city council election, the respondent and two other candidates decided to run as a slate.
3. One of the other candidates offered to include the respondent and the third candidate on his campaign materials.
4. The political advertising that was paid for by the other candidate includes the respondent's name and a group picture of the slate of candidates.
5. One of the advertisements at issue was a newspaper advertisement that indicated that it was paid for by approximately 95 individuals whose names appeared in the advertisement. The

respondent did not know about nor did she give her permission for the publication of that advertisement.

6. The complaint alleges that the respondent accepted political contributions or made political expenditures exceeding \$500 and did not file pre-election campaign finance reports.
7. The respondent swears that she accepted no political contributions, that her campaign was funded entirely with her own personal funds and that she expended only \$271.34 on her campaign from her personal funds.
8. A supplement to the complaint alleges that a general-purpose political committee paid for consulting services, that the respondent benefited from the expenditure for consulting services, and that the respondent should have reported a pro rata share of the expenditure as an in-kind contribution, or reported notice of a direct expenditure.
9. Evidence is inconclusive with respect to whether the respondent was aware that the consultant had been hired and whether the consultant was hired on her behalf.

IV. Findings and Conclusions of Law

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

1. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031.
2. Each campaign finance report filed by a candidate must include the full name and address for each political committee from which the candidate received notice of a direct expenditure and the full name and address of the committee's campaign treasurer. The candidate must also include the full name and address for each individual from which the candidate received notice of a direct expenditure. ELEC. CODE § 254.061.
3. An in-kind contribution means a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. The term does not include a direct campaign expenditure. Ethics Commission Rules § 20.1(8).
4. A direct campaign expenditure is a campaign expenditure that does not constitute a contribution by the person making the expenditure. A campaign expenditure is not a contribution from the person making the expenditure if it is made without the prior consent

or approval of the candidate or officeholder on whose behalf the expenditure was made. Ethics Commission Rules § 20.1(5).

5. The complaint alleges that the respondent received an in-kind contribution of a newspaper advertisement paid for by approximately 95 individuals. The evidence indicates that the expenditure for the advertisement was made without the prior approval or consent of the respondent. Thus, the political expenditure was by definition a direct expenditure and not an in-kind contribution. Therefore, there is credible evidence of no violation of section 254.031 of the Election Code regarding that political advertisement.
6. The complaint also alleges that the respondent received in-kind contributions from another candidate for newspaper and direct mail advertising, and signs.
7. The evidence indicates that early in the 2006 campaign the other candidate offered to add the respondent's name to his campaign materials, and the respondent accepted that offer. The evidence indicates that the other candidate then followed through with his offer and added the respondent's name and a group picture, including the respondent, to the political advertisements at issue.
8. As stated in Ethics Advisory Opinion No. 331 (1996):

A contribution does not necessarily pass into the candidate's possession. For example, a third-party might pay for a billboard supporting a candidate and make payment directly to the owner of the billboard. If the candidate gives prior consent or approval to the offer to pay for the billboard, the third party has made (and the candidate has accepted) a campaign contribution to the candidate. The candidate is required to report the contribution on the campaign finance report covering the period in which the candidate accepted the contribution. Ethics Advisory Opinion No. 331 (1996).
9. The evidence indicates that the respondent gave prior consent and approval to the offer to include the respondent's name on the political advertisements. Thus, the evidence indicates that the expenditures by the other candidate for the political advertising constituted in-kind contributions to the respondent. The respondent did not report the in-kind contributions for political advertising. Therefore, there is credible evidence of violations of section 254.031 of the Election Code.
10. The evidence is insufficient to show that the respondent accepted in-kind contributions from the general-purpose political committee or that the committee provided notice of direct campaign expenditures to the respondent with regard to the hiring of a consultant. Therefore, there is insufficient evidence that the respondent violated sections 254.031 or 254.061 of the Election Code regarding contributions from or direct campaign expenditures by the general-purpose political committee.

11. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report must be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed, as applicable, and continuing through the 40th day before election day. The second report must be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. ELEC. CODE § 254.064.
12. An opposed candidate who chooses to file on the modified reporting schedule and exceeds \$500 in political contributions or political expenditures in the election shall, in pertinent part, file pre-election campaign finance reports and, if necessary, a runoff report. If a candidate exceeds the \$500 maximum after the filing deadline for the first report required to be filed, the candidate or committee shall file a report not later than 48 hours after the maximum is exceeded. ELEC. CODE § 254.183.
13. The evidence indicates that the respondent accepted in-kind contributions early in the 2006 campaign and that these political contributions were not reported. However, the exact date that the respondent accepted the in-kind contributions is unclear from the evidence. Therefore, there is insufficient evidence of a violation of sections 254.064 and 254.183 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 each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. 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 \$500 civil penalty.

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-2707171.

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

Ardith H. Garner, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director