

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JEFF FREEMAN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2805216

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 2009, to consider sworn complaint SC-2805216. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 253.097 of the Election Code, credible evidence of a technical or *de minimis* violation of section 255.001 of the Election Code, and credible evidence of a violation of section 571.1242 of the Government Code, laws 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 knowingly accepted political contributions totaling more than \$500 and made or authorized political expenditures totaling more than \$500 for a political committee at a time when a campaign treasurer appointment for the committee was not in effect, failed to file campaign finance reports, and failed to include a disclosure statement on political advertising.

III. Facts Supported by Credible Evidence

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

1. The respondent is the current president of the Rowlett Police Association, which is organized as a nonprofit corporation.
2. The complaint relates to the May 10, 2008, election on a civil service proposition in Rowlett.
3. The complaint included copies of two flyers, a photograph of a sign, a printed page from the Rowlett Police Association's Internet website, and two newspaper advertisements. Each of

the documents urges voters to vote for the proposition. The first flyer states, “For more info visit: www.rowlettpoliceassoc.com, www.rowlettfirefighters.com,” and does not contain a disclosure statement. The second flyer states “You Trust Us with your Family, You Trust Us with your Home, On May 10th Trust us with your Vote for Fire & Police Chapter 143 Civil Service,” and lists the names “Rowlett Firefighter Association” and “Rowlett Police Association.” The flyer does not include a disclosure statement. The sign includes the statement, “Paid for by Rowlett Firefighters Association, Ben Blanton Treasurer.” The page from the Rowlett Police Association’s website does not contain a disclosure statement, although it includes a copyright statement indicating it was published by the Rowlett Police Association. One newspaper advertisement includes the statement “PAID ADVERTISEMENT,” and the other includes the statement “Paid Political Advertisement.”

4. On May 30, 2008, the commission sent a notice of sworn complaint to the respondent by certified mail. The notice of sworn complaint stated that the complaint would be processed as a Category Two violation and that the respondent was required to respond to an allegation of a Category Two violation not later than 25 business days from the date he received notice of the complaint. The notice also stated that failure to respond would constitute a separate violation for which a separate civil penalty may be assessed. The respondent signed for the notice of sworn complaint on June 2, 2008.
5. On August 22, 2008, the commission sent a second notice of complaint to the respondent by certified mail, stating that the respondent was required to respond to an allegation of a Category Two violation not later than 25 business days from the date he received notice of the complaint, and that United States Postal Service (USPS) records indicated the notice of complaint was delivered to his address on June 2, 2008. The letter also stated that, as of the date of the letter, the commission had not received a response to the complaint. The respondent signed for the second notice of sworn complaint on September 8, 2008.
6. On September 3, 2008, the local filing authority provided all documents filed with that office by individuals or committees supporting the May 2008 civil service proposition. No documents were filed for the Rowlett Police Association.
7. On October 6, 2008, and January 12, 2009, the commission sent a notice of quarterly status letter to the respondent stating that the matter is still pending.
8. On January 27, 2009, in response to the sworn complaint, the respondent submitted an affidavit in which he swears he did not accept any monetary contributions for the civil service campaign. The respondent swears the campaign was run on dues money from the members of the Rowlett Police Association and Rowlett Firefighters Association. The respondent swears “[t]he only money spent by the Rowlett Police Association was

approximately \$500.00 that was used to reimburse a member. He had purchased the color flyer.”

9. On January 28, 2009, the commission contacted the respondent by telephone for clarification on the respondent’s affidavit. The respondent told the commission that the police association accepts dues from its members, and that the police association used those funds to purchase one of the flyers included in the complaint. The respondent said that there was an agreement that a member of the police association would pay for the flyers and be reimbursed by the police association for the cost. The respondent said that the cost of the flyers was approximately \$500, and that he would try to find out the exact amount. The respondent said that these were the only funds spent by the police association in connection with the election, and that the police association incurred the full cost for the flyers. The respondent said that he did not believe the police association needed to file anything if they were spending their own money and not a political committee. The commission requested that the respondent include this information in an affidavit and provide it to the commission. The commission did not receive the requested affidavit as of February 12, 2009.

IV. Findings and Conclusions of Law

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

Campaign Treasurer Appointment and Campaign Finance Reports

1. Each political committee shall appoint a campaign treasurer as provided by Chapter 252, Election Code. ELEC. CODE § 252.001.
2. 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. *Id.* § 253.031(b).
3. A corporation or labor organization not acting in concert with another person may make one or more direct campaign expenditures from its own property in connection with an election on a measure if the corporation or labor organization makes the expenditures in accordance with section 253.062 of the Election Code as if the corporation or labor organization were an individual. *Id.* § 253.097.
4. An individual not acting in concert with another person may make one or more direct campaign expenditures that exceed \$100 on any one or more candidates only if the individual complies with the reporting requirements under Chapter 254, Election Code, as if the individual were the campaign treasurer of a political committee, and the individual receives

- no reimbursement. *Id.* § 253.062(a). An individual making expenditures under this section is not required to file a campaign treasurer appointment. *Id.* § 253.062(b).
5. “Direct campaign expenditure” means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. *Id.* § 251.001(8).
 6. “Political expenditure” means, in pertinent part, a campaign expenditure. *Id.* § 251.001(10).
 7. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. *Id.* § 251.001(7).
 8. “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. *Id.* § 251.001(6).
 9. The campaign treasurer of a specific-purpose committee shall file two reports for each year. The first report shall be filed not later than July 15 and covers the period beginning January 1, the day the committee’s campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30. The second report shall be filed not later than January 15 and covers the period beginning July 1, the day the committee’s campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31. *Id.* § 254.123.
 10. For each election in which a specific-purpose political committee supports or opposes a candidate or measure, the committee’s campaign treasurer shall file two reports. *Id.* § 254.124(a). The first report shall be filed not later than the 30th day before election day. The report covers the period beginning the day the committee’s campaign treasurer appointment is filed or the first day after the period covered by the committee’s last required report, as applicable, and continuing through the 40th day before election day. *Id.* § 254.124(b). The second report shall be filed not later than the eighth day before election day. The report covers the period beginning on the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.124(c).
 11. The evidence indicates that the Rowlett Police Association, not acting in concert with another person, made direct expenditures totaling approximately \$500 to purchase flyers supporting a measure. The evidence indicates that a member of the police association purchased the flyers from his personal funds on behalf of the police association, with the agreement that the police association would reimburse him for the cost. The member who purchased the flyers acted as an agent of the police association when he made this political expenditure, and he was reimbursed by the police association for the cost. Although the

police association was not required to file a treasurer appointment, the police association was required to file campaign finance reports as if it were the treasurer of a specific-purpose committee and report the direct expenditures. No campaign finance reports have been filed for the police association. Therefore, there is credible evidence that the respondent, as president of the police association, violated section 253.097 of the Election Code by failing to file reports required by chapter 254 of the Election Code; and credible evidence of no violation of sections 252.001, 253.031(b), 254.123, and 254.124 of the Election Code.

Disclosure Statement

12. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the political advertising, the political committee authorizing the advertising, or the candidate or specific-purpose committee supporting the candidate, if the advertising is authorized by the candidate. *Id.* § 255.001(a). This section does not apply to circulars or flyers that cost in the aggregate less than \$500 to publish and distribute. *Id.* § 255.001(d)(3).
13. The evidence indicates that the respondent authorized political advertising flyers and at least one page of an Internet website that supported the civil service proposition. The flyers and Internet website contain express advocacy. The flyers and Internet website contain no disclosure statement, although the website includes a copyright indicating that its source is the Rowlett Police Association. The respondent swears in his affidavit that the flyers at issue cost approximately \$500, but otherwise there is no evidence that they cost \$500 or more in the aggregate to publish and distribute. As to the website, there is credible evidence of a technical or *de minimis* violation of section 255.001 of the Election Code. As to the flyers purchased by the police association, there is insufficient evidence of a violation of section 255.001 of the Election Code.

Failure to Respond

14. A respondent must respond to the notice of a Category Two violation not later than the 25th business day after the date the respondent receives the notice. Failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. GOV'T CODE § 571.1242(a)(c).
15. The respondent received the notice of sworn complaint on June 2, 2008. The notice stated that the respondent was required to respond within 25 business days from receipt of the notice. The respondent failed to respond until January 2009. Therefore, there is credible evidence of a violation of section 571.1242 of the Government 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 corporation not acting in concert with another person may make one or more direct campaign expenditures from its own property that exceed \$100 in connection with an election on a measure only if the corporation complies with chapter 254 of the Election Code as if it were a campaign treasurer of a political committee, and receives no reimbursement for the expenditures. 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 indicate in the advertising that it is political advertising and, in pertinent part, the full name of the person who paid for the political advertising or the political committee authorizing the political advertising. The respondent also acknowledges that a respondent must respond to a sworn complaint that contains Category Two violations within 25 business days of receiving the notice of the sworn complaint. 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 \$1,000 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-2805216.

AGREED to by the respondent on this _____ day of _____, 2009.

Jeff Freeman, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director