

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RACHEL BEAVERS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-290230

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 11, 2010, to consider sworn complaint SC-290230. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 255.001, 255.004, and 255.007 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent failed to include a disclosure statement and highway right-of-way notice on political advertising signs. The complaint also alleged that the respondent misrepresented the true source of campaign communications published in a local newspaper.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for White Settlement City Council in an election held on May 9, 2009.
2. The complaint alleged that the respondent failed to include a disclosure statement on her political advertising signs. There are two types of signs at issue in this complaint. The signs read:
 - a. Sign 1- Elect Rachel Beavers It's Time to Move Ahead for CITY COUNCIL – Place 3.
 - b. Sign 2- VOTE FOR RACHEL M BEAVERS CITY COUNCIL WHITE SETTLEMENT FEB. 7 PLACE 3.
3. A photograph of Sign 1 was provided with the complaint. There appears to be a line of text on the bottom of the sign. The text is illegible on the photograph of the sign.

4. A photograph of Sign 2 was included with the complaint. Sign 2 did not include a disclosure statement.
5. The complaint alleged that the respondent failed to include the highway right-of-way notice on her political advertising signs. The photograph submitted with the sworn complaint shows one side of signs that do not include the highway right-of-way notice.
6. The complaint alleged that the respondent failed to disclose the true source of two campaign communications that were published in a local newspaper. The communications at issue contained two different disclosure statements. One stated at the bottom that it was, "Authorized and paid for by Citizens for Beavers, [name of respondent's campaign treasurer], Treasurer," the other stated that it was "Paid for by Citizens for Rachel Beavers."
7. There are no documents filed with the city of White Settlement by a political committee named "Citizens for Beavers," or "Citizens for Rachel Beavers."
8. The respondent filed an 8-day pre-election report on May 1, 2009, in which she disclosed two political expenditures to the "Suburban News" totaling approximately \$200. The newspaper advertising at issue appears on pages with the heading "Suburban Newspapers Inc."
9. In response to the complaint, the respondent swore that her political advertisements "were paid for with donated funds and appropriately maintained." She swore that she included with her response, "all documents, forms, filings and literature related to my campaign," including the communications at issue. The respondent also swore that she "remedied" her political advertising signs and included photographs of the signs with her response.

IV. Findings and Conclusions of Law

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

1. "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, magazine, or other periodical. ELEC. CODE § 251.001(16). The definition of political advertising also includes a communication supporting a candidate for election to a public office that appears on a sign. *Id.*
2. 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. ELEC. CODE § 255.001(a).

3. Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy. ELEC. CODE § 255.001(b).
4. The complaint alleged that the respondent failed to include a disclosure statement on her political advertising signs. There is a line of text that is illegible on the bottom of Sign 1. Therefore, with regard to Sign 1, there is insufficient evidence of a violation of section 255.001 of the Election Code. Sign 2 did not include a disclosure statement. Therefore, with regard to Sign 2, there is credible evidence of a violation of section 255.001 of the Election Code.
5. The following notice must be written on each political advertising sign: “NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY.” A person commits an offense if the person knowingly enters into a contract to print or make a political advertising sign that does not contain the required notice or instructs another person to place a political advertising sign that does not contain the required notice. ELEC. CODE § 255.007.
6. The complaint alleged that the respondent failed to include the highway right-of-way notice on her political advertising signs. Although the photograph submitted with the sworn complaint shows only one side of signs that do not include the highway right-of-way notice, the respondent acknowledged the violation. Therefore, there is credible evidence that the respondent violated section 255.007 of the Election Code.
7. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source. ELEC. CODE § 255.004.
8. A campaign communication means a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure. ELEC. CODE § 251.001(17).
9. The complaint alleged that the respondent failed to disclose the true source of two campaign communications that were published in a local newspaper. One communication stated that it was, “Authorized and paid for by Citizens for Beavers, [name of the respondent’s treasurer], Treasurer,” the other communication stated that it was “Paid for by Citizens for Rachel Beavers.” The complaint alleged that by stating that the communications were paid for by “Citizens for Beavers,” or “Citizens for Rachel Beavers,” the respondent misrepresented the true source of the communications.
10. There are no documents filed with city of White Settlement by a committee named “Citizens for Beavers,” or “Citizens for Rachel Beavers.” In her response to the complaint, the respondent swore that she included all documents, forms, filings and literature related to her

campaign, including the communications at issue. Additionally, the respondent disclosed two political expenditures to the Suburban News totaling approximately \$200 on her 8-day pre-election report filed May 1, 2009. The communications at issue were published in a newspaper that contained the heading "Suburban Newspapers, Inc." Therefore, it appears that the communications were paid for by the respondent.

11. The communications were related to a campaign for election to public office. Thus, they were campaign communications. The communications were intended to influence the result of an election and the respondent was the true source of the campaign communication. By stating on the disclosure statement that the signs were paid for by "Citizens for Beavers," or "Citizens for Rachel Beavers," the respondent indicated that the campaign communications were paid for by a separate political committee and not her campaign. Thus, the respondent represented in campaign communications that the communications emanated from a source other than their true source. Therefore, there is credible evidence of violations of section 255.004 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 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.

The respondent also acknowledges that the following notice must be written on each political advertising sign: "NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY." A person commits an offense if the person knowingly enters into a contract to print or make a political advertising sign that does not contain the required notice or instructs another person to place a political advertising sign that does not contain the required notice.

The respondent also acknowledges that a person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source.

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 \$100 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-290230.

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

Rachel Beavers, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director