

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
CYNTHIA “CINDI” NEVERDOUSKY,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-31505118

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on February 1, 2016, to consider sworn complaint SC-31505118. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 252.001, 253.031, and 254.064 of the Election Code and a technical or *de minimis* violation of section 255.006 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 the respondent: 1) did not file a campaign treasurer appointment; 2) made campaign expenditures without a campaign treasurer appointment in effect; 3) did not file pre-election reports; and 4) represented in a campaign communication that the respondent held an elective public office that she did not hold at the time the representation was made.

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 Aledo ISD School Board Trustee, Place 2, in the May 2015 election.

Expenditures without a Campaign Treasurer Appointment in Effect

2. The complaint alleged that the respondent did not file a campaign treasurer appointment (CTA) and made political expenditures without a CTA in effect.

3. In response to the complaint, the respondent stated that she did not know that she had to file a CTA. The respondent also stated that she acted as her own campaign treasurer, that all the campaign expenditures that were made came from her personal accounts, and that she received no contributions.
4. Records on file with Aledo ISD show that as of June 6, 2015, the respondent did not have a CTA on file. The respondent filed her application for a place on the ballot on February 27, 2015, and filed an 8-day pre-election report on May 7, 2015, according to records on file with Aledo ISD.
5. The 8-day pre-election report that was filed by the respondent with Aledo ISD disclosed \$2,056.85 in total political expenditures. The 8-day pre-election report the respondent filed with Aledo ISD does not show the dates on which the first expenditures were made. However, a copy of the 8-day pre-election report the respondent provided with her sworn response shows that the first expenditures were made on March 11, 2015, for printing and advertising expenses. The expenditures were disclosed on Schedule G (used to disclose political expenditures made from personal funds).

Untimely Filing of Campaign Finance Reports

6. The complaint alleged that the respondent did not file the 30-day and 8-day pre-election reports in advance of the May 2015 election.
7. In her sworn response, the respondent stated that she filed an 8-day pre-election report with the filing authority, one day after the filing deadline. Records on file with the Aledo ISD elections office show that the only report filed by the respondent before the May 2015 election was an 8-day pre-election report that was filed on May 7, 2015, six days after the filing deadline of May 1, 2015.
8. The period covered for the respondent's 8-day pre-election report began on February 27, 2015, the day the respondent filed her application for a place on the ballot, and extended through May 1, 2015.
9. The respondent filed a final report on June 10, 2015. The final report disclosed one \$88.68 political expenditure from personal funds and \$0 in political contributions accepted.

Misleading Use of Office Title

10. The complaint alleged that the respondent represented that she was an incumbent candidate for Aledo ISD School Board Trustee, Place 2, by not including the word "for" before the name of the office sought on her political advertising signs. In support of the allegation, the complainant provided a photograph showing one of the respondent's political advertising signs. The sign reads:

An Experienced Educator
Cindi Neverdousky
AISD School Board Place 2

11. The political advertising sign does not include the word “for.”
12. In her sworn response, the respondent stated: “At no time did I ever represent myself in any publications or public speaking as an incumbent. Please note that any informed voter would have been aware that there was no incumbent in the race.”

IV. Findings and Conclusions of Law

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

Expenditures without a Campaign Treasurer Appointment in Effect

1. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. ELEC. CODE § 252.001. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. *Id.* § 253.031(a).
2. A candidate must file a campaign treasurer appointment before accepting any campaign contributions or making or authorizing any campaign expenditures, including campaign expenditures from personal funds. Ethics Commission Rules § 20.201.
3. “Candidate” means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. ELEC. CODE § 251.001(1). Examples of affirmative action include: filing an application for a place on a ballot, and soliciting and accepting a campaign contribution or making a campaign expenditure. *Id.* § 251.001(1)(B), (G).
4. A campaign expenditure is an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7).
5. At the latest, the respondent became a candidate on February 27, 2015, when she filed her application for a place on the ballot with Aledo ISD.

6. In the 8-day pre-election report, the respondent disclosed making approximately \$2,055 in campaign expenditures from personal funds for advertising and printing services. The purchases of advertising and printing services were campaign expenditures because they were made in connection with the respondent's campaign for Aledo ISD School Board Trustee. Although the respondent maintained that she acted as her own campaign treasurer, she was still required to file a CTA.
7. Credible evidence indicates that the respondent made political expenditures totaling approximately \$2,055 and did not file a CTA. Therefore, there is credible evidence of violations of sections 252.001 and 253.031(a) of the Election Code.

Untimely Filing of Campaign Finance Reports

8. 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. ELEC. CODE § 254.064(a). The first report must be received by the authority with whom the report is required to 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 under chapter 254, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b). The second report must be received by the authority with whom the report is required to 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. *Id.* § 254.064(c).
9. The respondent had two opponents on the ballot in the May 2015 election and indicated in the 8-day pre-election report she filed with Aledo ISD that she made political expenditures beginning on March 11, 2015. Thus, the respondent was an opposed candidate during the 30-day and 8-day pre-election reporting periods. The respondent was therefore required to file with Aledo ISD the 30-day pre-election report by April 9, 2015. The respondent was required to file the 8-day pre-election report by May 1, 2015.
10. The only campaign finance report that the respondent filed was an 8-day pre-election report. That report covered from February 27, 2015, through May 1, 2015, which covered both the 30-day and 8-day pre-election reporting periods.
11. The "received" stamp and accompanying notation made by the Aledo ISD elections office showed the 8-day report was received on May 7, 2015, six days late. Thus, there is credible evidence of violations of sections 254.064(b) and (c) of the Election Code.

Misleading Use of Office Title

12. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. ELEC. CODE §255.006(b). For purposes of this section, a person represents that a candidate holds a public office that the candidate does not hold if: 1) the candidate does not hold the office that the candidate seeks; and 2) the political advertising or campaign communication states the public office sought but does not include the word “for” in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. *Id.* § 255.006(c).
13. “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. *Id.* § 251.001(17).
14. A technical, clerical, or *de minimis* violation for the purposes of section 571.0631 of the Government Code may include a first-time allegation against a respondent for failure of a non-incumbent to use the word “for” in a campaign communication, where the communication is not otherwise misleading. Ethics Commission Rules § 12.81(a)(3).
15. The political advertising sign at issue is a campaign communication because it is a written communication relating to a campaign for election to public office. The respondent was not an incumbent in the May 2015 election. The picture of a sign submitted by the complainant does not include the word “for” to clarify that the respondent did not hold that office. However, the sign is not otherwise misleading. The respondent also has no prior violations of title 15 of the Election Code. Therefore, there is credible evidence of a technical or *de minimis* violation of section 255.006 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 candidate shall appoint a campaign treasurer as provided by chapter 252 of the Election Code and that a candidate may not knowingly make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect.
4. The respondent further acknowledges that 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 received by the authority with whom the report is required to be filed not later than the 30th day before election day. The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day.
5. The respondent further acknowledges that a person may not represent in a campaign communication that a candidate holds an elective public office that the candidate does not hold at the time the representation is made. If the candidate is not the incumbent in the office the candidate is seeking, the campaign communication must use the word “for” to clarify that the candidate does not hold the office sought. The word “for” must be at least one-half the type size as the name of the office and should appear immediately before the name of the office.
6. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes certain 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 nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$250 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-31505118.

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

Cynthia "Cindi" Neverdousky, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director