

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
ROCKIE GILLEY,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-3170475

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (Commission) met on October 3, 2018, to consider sworn complaint SC-3170475. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 255.001 and 254.031 of the Election Code and sections 20.51 and 20.219 of the Ethics Commission Rules, and credible evidence of technical or *de minimis* violations 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 adopted this resolution.

### II. Allegations

The complaint alleged that the respondent: 1) did not include on political advertising the disclosure statement required by section 255.001 of the Election Code; 2) misrepresented that each respondent held an elective public office that the respondents did not hold at the time the representations were made by not including the word "for" before the office sought on political advertising, which is prohibited by section 255.006 of the Election Code; and 3) did not disclose political contributions and political expenditures as required by section 254.031 of the Election Code and sections 20.51 and 20.219 of the Ethics Commission Rules.

### III. Findings of Facts and Conclusions of Law

Credible evidence available to the Commission supports the following findings and conclusions of law:

1. The respondent was a successful non-incumbent candidate for Kennedale City Council in the May 6, 2017, uniform election.

#### Political Advertising

2. The complaint alleged that the respondent: 1) did not include on political advertising the disclosure statement required by section 255.001 of the Election Code; and 2) misrepresented that the respondent held an elective public office that the respondent

- did not hold at the time the representations were made by not including the word "for" before the office sought on political advertising.
3. The respondent caused political advertising in the form of a campaign website to be published. The campaign website did not contain a political advertising disclosure statement.
  4. The respondent caused political advertising in the form of campaign mailers to be distributed in April 2017. The campaign mailers did not contain a political advertising disclosure statement. The campaign mailers also did not include the word "for" preceding the position the respondent sought. The mailers included the respondent's name, followed by the position the respondent was seeking. Separately, the mailers contained the text, "For Kennedale City Council."
  5. 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, candidate, or political committee who paid for it. ELEC. CODE § 255.001(a).
  6. A disclosure statement that is required by section 255.001 of the Election Code, must contain the words "political advertising" or any recognizable abbreviation. *See* Ethics Commission Rules § 26.1(a).
  7. A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made. ELEC. CODE § 255.006(a). 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).
  8. Neither the campaign website, nor the campaign mailers contained the political advertising disclosure statement. The communications at issue qualify as political advertising because they supported a candidate for elected public office. *See id.* § 251.001(16). The political advertising at issue is deemed to contained express advocacy because it was authorized by the respondent, a candidate. *See id.* § 255.001(b). Therefore, there is credible evidence of violations of section 255.001 of the Election Code.
  9. Although the campaign mailers include the word "for," they do not use the word "for" in connection with the name of the office sought by the respondent. Therefore, there is credible evidence of technical or *de minimis* violations of section 255.006 of the Election Code.

**Reporting In-Kind Contributions**

10. The respondent was a member of a slate of candidates that shared the cost of political expenditures in connection with the May 6, 2017, uniform election. There is credible evidence the respondent, along with the other candidates in this slate, coordinated his campaign activities, and thereby gave prior consent and approval for expenditures made on his behalf by the other candidates.
11. Credible evidence indicates that the expenditures made by the other candidates were disclosed on their campaign finance reports as expenditures, but the respondent did not disclose these expenditures as in-kind political contributions in the 30-day and 8-day pre-election reports for the May 6, 2017, uniform election. The respondent made a good faith effort to correct the reports.
12. In addition, there is credible evidence that the respondent did not disclose two in-kind contributions from non-candidates.
13. Each report filed 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(a)(1); *see also* Ethics Commission Rules § 20.219(10) (requiring disclosure of the description of an in-kind contribution).
14. If political advertising supporting or opposing two or more candidates is an in-kind contribution, each person benefiting from the contribution shall report the amount determined by dividing the full value of the political advertising by the number of persons benefited by the political advertising. ELEC. CODE § 20.51(c).
15. The respondent's corrected reports indicate the respondent did not disclose multiple in-kind contributions. With respect to the expenditures for political advertising, the fair market value should have been disclosed as one-third the full value of the political advertising, in accordance with section 20.51(c) of the Ethics Commission Rules.
16. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code and sections 20.51(c) and 20.219(10) of the Ethics Commission Rules.

**IV. 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. The respondent asserts that any violations herein described were not liberate and *de minimis*.

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: 1) 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, candidate, or political committee who paid for it; 2) a person may not represent in a campaign communication that a candidate holds a public office that the candidate does not hold at the time that the representation is made; 3) each report filed 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, the dates of the contributions; and a description of any in-kind contribution; and 4) if political advertising supporting or opposing two or more candidates is an in-kind contribution, each person benefiting from the contribution shall report the amount determined by dividing the full value of the political advertising by the number of persons benefited by the political advertising.

The respondent agrees to comply with these requirements of the law.

### **V. Confidentiality**

This order and agreed resolution describes violations that the Commission has determined are neither technical nor *de minimis*, though respondent disagrees with this determination. However, to resolve the matter respondent agrees that this order and agreed resolution will not be 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 \$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-3170475 with respect to the respondent.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Rockie Gilley, Respondent

EXECUTED by the Commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Seana Willing, Executive Director