

# TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
LIBERTARIAN PARTY OF TEXAS,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-2605156

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on April 13, 2007, to consider sworn complaint SC-2605156. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.031 and 253.037 of the Election 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 improperly accepted political contributions and improperly made or authorized political expenditures without properly filing a campaign treasurer appointment as a political committee.

### III. Facts Supported by Credible Evidence

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

1. The Libertarian Party of Texas (Party) filed with the commission a campaign treasurer appointment as a general-purpose committee on August 4, 2004.
2. A copy of a report from the Party's website titled "Annual Report, June 2004 – September 2005" ("Annual Report") stated, "To gain ballot access in 2004, we arranged a \$25,000 no-interest loan from 5 of our members." The Party chair, Mr. Patrick Dixon, swore that the agreements to loan the money "were all made prior to the final date of the ballot access drive, which was May 24, 2004."
3. The first campaign finance report filed by the Party was a 30-day pre-election report filed on October 4, 2004, which disclosed the total principal amount of outstanding loans as of the last day of the reporting period (September 23, 2004) as \$12,500. The report disclosed

- \$12,500 in political expenditures made on August 30, 2004, to several persons for “partial loan repayments.” The report did not disclose the acceptance of a loan.
4. A corrected report discloses \$319.26 in political expenditures made to the Party’s executive director (“ED”) to repay loans the ED made to the party by purchasing goods and services for the Party with personal funds on various dates from July 1 through August 3, 2004.
  5. The Party’s Annual Report states, “We hired executive director Wes Benedict on June 13, 2004. The contract is \$1670 monthly base salary plus 20% commision [sic] on gross revenue to the state party.” The Party chair, Mr. Dixon, swears that June 13, 2004, was the date the Party “decided to retain Wes Benedict’s services, not the date [they] began paying him.” He also swears that the ED was paid monthly by the Party and that the first payment was for services provided in July 2004.
  6. Corrected reports filed in response to the complaint disclose \$19,602.90 in political expenditures made before October 4, 2004.

#### IV. Findings and Conclusions of Law

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

1. A political committee may not knowingly accept political contributions totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. ELEC. CODE § 253.031(b).
2. A political contribution includes a campaign contribution. *Id.* § 251.001(5). A contribution means, in pertinent part, a direct or indirect transfer of money and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2). A campaign contribution means, in pertinent part, a contribution that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3).
3. A pledge is a contribution in the form of an unfulfilled promise or unfulfilled agreement, whether enforceable or not, to provide a specified amount of money or specific goods or services. 1 T.A.C. § 20.1(12).
4. In Ethics Advisory Opinion 231, the commission addressed the appropriate time to report pledges of political contributions. In the opinion, the commission determined that the date of a pledge is the date of the acceptance of the pledge, and once a contribution in the form of a pledge is reported, a committee is not required to report the contribution a second time when it is actually received. Ethics Advisory Opinion No. 231 (1994). In Ethics Advisory Opinion No. 382, the commission also stated that the date of a pledge is the date the pledge is

- accepted and that if a recipient accepts an offer in 1997 of a payment to be made in 1998, then the contribution would be made in 1997. Ethics Advisory Opinion No. 382 (1997).
5. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rules § 12.5(3). The criminal offense for a violation of section 253.031 of the Election Code is a Class A misdemeanor. ELEC. CODE § 253.031(f). The statute of limitations for a Class A misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure Article 12.02. The evidence shows that the Party accepted the \$25,000 in loans as pledges before May 24, 2004. Therefore, allegations relating to the unlawful acceptance of the \$25,000 in loans are based on alleged offenses that occurred more than two years before the complaint was filed (May 25, 2006), and are not within the commission's sworn complaint jurisdiction.
  6. In a situation where a person makes an expenditure for a political committee using his personal funds with the understanding that a political committee will repay him, and the person is not repaid in the same reporting period as when the expenditure was made, the expenditure constitutes a loan to the committee. Ethics Advisory Opinion No. 450 (2003). Thus, there is credible evidence that the Party accepted \$319.26 in loans from its ED between July 1 and August 3, 2004. The Party's campaign treasurer appointment was filed on August 4, 2004. At the time the expenditures were made, the Party had already accepted \$25,000 in loans. Therefore, there is credible evidence that the Party violated section 253.031(b) of the Election Code by accepting political contributions that caused its total amount of political contributions to exceed \$500 when a campaign treasurer appointment had not been filed.
  7. A political committee may not knowingly make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. ELEC. CODE § 253.031(b). A general-purpose committee may not make or authorize political expenditures totaling more than \$500 unless the committee has: (1) filed its campaign treasurer appointment not later than the 60th day before the date the expenditure is made that causes the total expenditures to exceed \$500, and (2) accepted political contributions from at least 10 persons. ELEC. CODE § 253.037(a); Ethics Advisory Opinion No. 161 (1993).
  8. A political expenditure includes a campaign expenditure. ELEC. CODE § 251.001(10). A campaign expenditure means, in pertinent part, an expenditure made by any person in connection with a campaign for an elective office. *Id.* § 251.001(7).
  9. An 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).

10. A political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. *Id.* § 254.035(a).
11. On or about June 13, 2004, the Party made an agreement with its ED to pay him \$1,670 every month plus an additional amount that varied depending on the amount of the Party's revenue for the month. Thus, there is credible evidence that the amount to be paid to the ED for his services was readily determinable at the time the agreement was made, regardless of any additional payment for commission or other expenses. The date the Party's campaign treasurer appointment was filed was August 4, 2004. Therefore, there is credible evidence that the Party violated section 253.031(b) of the Election Code by making or authorizing political expenditures exceeding \$500 at a time when a campaign treasurer appointment was not in effect.
12. The 60th day after the date the Party filed its campaign treasurer appointment was October 3, 2004. The Party's reports show that the Party made \$19,602.90 in political expenditures before that date. Therefore, there is credible evidence that the Party violated section 253.037(a) of the Election Code by making political expenditures in excess of \$500 at a time when it did not have a campaign treasurer appointment in effect for at least 60 days.

#### **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 political committee may not knowingly accept political contributions totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect and that a general-purpose committee may not make or authorize political expenditures totaling more than \$500 unless the committee has: (1) filed its campaign treasurer appointment not later than the 60th day before the date the expenditure is made that causes the total expenditures to exceed \$500, and (2) accepted political contributions from at least 10 persons. 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-2605156 as to the respondent.

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

\_\_\_\_\_  
Libertarian Party of Texas, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director