

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
MIKE ROBINSON,  
RESPONDENT

§  
§  
§  
§  
§

BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-220458

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on May 10, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220458 filed against Mike Robinson, Respondent. The commission met again on November 15, 2002, to consider Sworn Complaint SC-220458. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of Section 254.031, Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

### II. Allegations

The complainant alleges that the respondent failed to include the required information on campaign finance reports, and accepted a loan from a corporation that had not been legally and continuously engaged in the business of lending money for at least one year before the loan was made.

### III. Facts Supported by Credible Evidence

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

1. The allegations arose from a road bond election held November 7, 2000, in Williamson County.
2. The primary allegations are based on what the complainant deems "negative working capital."
3. The complainant submitted a detailed analysis of contributions and expenditures related to a specific-purpose political committee that supported the passage of the road bonds. The complainant alleges that the analysis shows that the amount of the committee's expenditures

routinely exceeded the amount of contributions that the committee received, and therefore the committee received contributions that it did not report.

4. A loan from an individual that the complainant alleges was from a corporation is shown on the committee's 30-day before the election report. The records of the Office of the Secretary of State do not show that individual to be incorporated, but do show him to be the president, director, and registered agent of a domestic business corporation named "The Communicators."
5. The complainant alleges that the repayment of the loan was never reported, and that if the loan was never repaid it was required to be reported as an outstanding loan on the committee's campaign finance reports.
6. The complainant further alleges that the respondent did not fully disclose the following campaign expenditures and contribution because the relevant reports omitted certain information:
  - the October 30, 2000, report discloses a \$7,000 expenditure to "Jeff Montgomery and Associates," the entry for which does not disclose the purpose of the expenditure;
  - the January 2001 semiannual report discloses a \$315.99 expenditure to "Peggy Smith Croslin-Legislative Consultant," the entry for which does not contain the date or the purpose of the expenditure;
  - the January 2001 semiannual report discloses an \$18,276.71 expenditure to "The Communicators," the entry for which does not include disclosure of the specific expenditures that comprise the total; and
  - the January 2001 semiannual report discloses a \$6,000 contribution from "HNTB Corporation," the entry for which does not include the city or state in the address.
7. The complainant alleges that that there was possibly an agreement between the respondent and certain contributors whereby contributors would make contributions after the end of the 8-day before the election reporting period and after the actual election in order to "hide" the contributions from disclosure prior to the election.
8. The complainant alleges that if such agreement existed it would have constituted a pledge that should have been reported in the period in which the pledge was made. The complainant provided no evidentiary support for that allegation.

9. The complainant alleges that certain billings to the committee by a local consultant might have been improper.
10. The respondent is campaign treasurer of a specific-purpose committee.
11. The treasurer appointment for the committee shows its purpose as supporting "Williamson County election on \$350 Million Dollars worth of Road Construction Bonds."
12. The respondent made a sworn response in which he swore that the committee fully and accurately disclosed the contributions it accepted.
13. The respondent swore that because:

[C]ontributions are reported on the "cash" accounting system while expenditures are reported on the "accrual" system . . . [that] it is not unusual for payment to be made on an expenditure until well after it is incurred and reported. That is normal commercial practice. There were no unreported contributions of any kind. Furthermore, at no time did the SPAC bank account operate in the negative.

14. The respondent further swore that the committee:

[I]nadvertently omitted the purpose on two expenditures. On expenditures to Jeff Montgomery and Peggy Smith-Croslin - two well known political consultants - we inadvertently omitted that the purpose of the expenditure was "consulting." Additionally, we inadvertently omitted the date on Ms. Smith-Croslin's expenditure and the city and state in the address of one contributor. We inadvertently omitted the address for the U.S. Post Office. We have filed corrections with respect to those omissions. Copies of those corrections are attached.

With respect to the expenditure to "The Communicators," in the amount of \$18,276.71, we previously itemized all of the individual expenses that made up that amount. The itemized expenditures were properly reported on the two preceding contribution and expenditure reports. We have attached copies of the relevant portions of those reports with the operative items highlighted.

I understand now that it was unnecessary for me to list that amount as a reimbursement because I had already itemized those expenditures. However, the important point is that I did itemize the expenditures.

This inadvertent "redundant" reporting may be the reason that the complainant thought we had expenditures that exceeded contributions. I did not believe that the contribution and expenditure report was a balance sheet. I believed I should report these expenditures when they were incurred as well as when the actual payment check was written. I now understand that may have been redundant but I did report all these expenditures in the reporting period in which they were incurred.

The third allegation is basically paranoid rambling. It accuses me of agreeing "to defer revelation of certain contributions in apparent violation of sections 251.001(2) and 254.031(a)(2)."

We did not "hide" or "delay" the reporting of any contributions. All contributions were reported in a timely and accurate fashion. All contributions were properly reported in the reporting period in which they were received and accepted.

The final allegation contains a vague assertion that there is something untoward, inappropriate, or illegal regarding our dealings with Mr. Pete Peters or the firm "The Communicators."

The SPAC's dealings with Mr. Pete Peters or the firm "The Communicators" were entirely appropriate and legal. He is a consultant and the firm engages in various public relations activities. They were engaged by the SPAC for various campaign activities and they performed those activities satisfactorily. There was nothing untoward, inappropriate, or illegal regarding our dealings.

15. In a follow-up affidavit the respondent swore that:

With respect to the expenditures in the amount of \$18,276.71 that we itemized on our reports, please be aware that the committee made those expenditures. The committee ordered those expenditures.

The committee sent that amount to 'The Communicators' for ultimate payment to the vendors for the services that the committee had ordered. Keeping track of the services provided and paying out the committee's funds in the payment for those services were part of the services for which the committee paid "The Communicators."

#### IV. Findings and Conclusions of Law

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

##### **Hidden contributions and questionable billings**

1. The respondent questioned the timing of certain contributions made after the end of the 8-day before the election reporting period, and whether certain billings made by a consulting firm (The Communicators) to the committee were proper.
2. Contributions accepted by a committee after the end of the 8-day reporting period are not required to be reported until the next report that is due. In this case, contributions accepted after October 28, 2000, were required to have been disclosed on the January 2001 semiannual report. Section 254.123(c), Election Code.
3. The complainant correctly asserted that a promise to make a contribution is a contribution in the form of a pledge and must be reported in the period in which the pledge is made and accepted.
4. The respondent swore that "all contributions were reported in a timely and accurate fashion. All contributions were properly reported in the reporting period in which they were received and accepted."
5. The complainant provided no evidence to support his belief that the committee accepted an undisclosed pledge during the 8-day reporting period, or to refute the respondent's statement. Therefore, there is credible evidence that the respondent did not fail to include the information required by Section 254.031(a)(1), Election Code, with regard to possible pledged contributions made before the end of the reporting period for the 8-day before the election report.
6. With regard to the expenditures to the consultant and consulting firm, the respondent swore that the committee engaged them to perform various campaign activities, that the activities were performed in a satisfactory manner, and that the committee's relationship with the consultant and firm were "entirely appropriate and legal."
7. The complainant alleges that the billings from the consulting firm to the committee may have been improper but provided no evidence to support that allegation.
8. The committee's reports disclose the payments to the consulting firm. Therefore, there is credible evidence that the respondent did not violate Title 15, Election Code, with respect to the billings from the consultant or his consulting firm.

**Corporate loan**

9. The complainant alleges that the committee accepted an illegal corporate contribution in the form of a loan from a corporation that had not been legally and continuously engaged in the business of lending money for at least one year before the loan was made. Section 253.103, Election Code.
10. A corporation is not prohibited from making a contribution in connection with an election on a measure to a political committee for supporting or opposing measures exclusively. Section 253.096, Election Code.
11. There is no evidence that the committee made the subject of this complaint had contributed to or supported candidates for elected office at the time the alleged loan was made, or that supporting or opposing candidates was a purpose of the committee. Further, the committee's 30-day before the election report disclosed the loan as coming from an individual as opposed to an entity.
12. The Secretary of State's records do not show a corporation with a name that is the same as the name of that individual. Thus, there is no evidence that the loan at issue came from a corporation, and even if it had, a corporation could legally contribute to the committee. Therefore, there is credible evidence that the respondent did not violate Section 253.003, Election Code, with respect to the loan.

**Incomplete reporting**Failure to fully report contributions

13. The campaign treasurer of a specific-purpose committee that supports a measure must file semiannual reports each year as well as reports due 30 and 8 days before the measure election. Sections 254.123 and 254.124, Election Code.
14. The respondent was the campaign treasurer for the committee and filed the campaign finance reports at issue in this complaint. The complainant alleges that the reports were incomplete.
15. Campaign finance reports must disclose the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period as well as the full name and address of the person making the contributions, and the dates of the contributions. Section 254.031(a)(1), Election Code.
16. The report must include the amount of loans that are made to the committee during the reporting period for campaign purposes and that in the aggregate exceed \$50, the dates the

loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. Section 254.031(a)(2), Election Code.

17. The report must also disclose the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. Section 254.031(a)(3), Election Code.
18. The complainant did a detailed analysis that he asserts proves that the committee received contributions that it did not report. The complainant's theory is that since the expenditures disclosed on the committee's campaign finance reports exceed the contributions reported during most of the time periods covered by the reports, the respondent must have received contributions that he did not report. The complainant's analysis refers to this as "negative working capital."
19. The respondent swore that there were no unreported contributions.
20. The respondent swore that because expenditures must be reported when they accrue, the total expenditures and contributions do not necessarily balance. This assertion is correct.
21. The date a political expenditure is made is the date the amount is readily determinable by the person making the expenditure. Section 254.035, Election Code; Section 20.57(a), Ethics Commission Rules.
22. The actual disbursement of funds to pay for an expenditure may come during a different reporting period than the one in which the expenditure is reported. When that is the case, the disbursement is not reported because the expenditure was previously reported.
23. Other than the analysis based on "negative working capital," the complainant submitted no evidence to show that the respondent failed to report all the contributions that the committee accepted.
24. The respondent swore that he reported all the contributions that the committee received and accepted. Therefore, there is credible evidence that the respondent did not violate Section 254.031, Election Code.

Failure to fully report expenditures

25. The committee's January 2001 semiannual report discloses that on October 31, 2000, the committee made an \$18,276.71 expenditure to "The Communicators." That entry discloses that the expenditure was made for "Reimbursement of expenses" but does not disclose the specific expenditures that comprise the total.
26. The respondent swore that he had disclosed in detail the individual expenditures that make up that total in the two reports that preceded the January 2001 semiannual report.
27. The respondent swore that expenditures were then reported again in the January semiannual report as a single expenditure to "The Communicators," resulting in the expenditures being reported twice.
28. The respondent swore that "I believed I should report these expenditures when they were incurred as well as when the actual payment check was written. I now understand that may have been redundant but I did report all these expenditures in the reporting period in which they were incurred."
29. The respondent swore that the committee actually made and ordered the expenditures and "The Communicators" kept track of all the expenditures and paid the expenditures out of committee funds.
30. The respondent submitted highlighted copies of the campaign finance reports in which the individual expenditures were disclosed, the total of which was \$18,276.71. Reports received from the local filing authority show the same information. Thus, the respondent disclosed the expenditures in the reports covering the periods in which the expenditures were made. Therefore, there is credible evidence that the respondent did not violate Section 254.031, Election Code, with respect to the alleged expenditures.

Incomplete information on campaign finance reports

31. The committee's 8-day before the election report filed October 30, 2000, discloses that on October 27, 2000, the committee made a \$7,000 expenditure to "Jeff Montgomery and Associates."
32. The entry for that expenditure does not show the purpose for which the expenditure was made.
33. A committee's campaign finance report must include the purpose of political expenditures that exceed \$50 during a reporting period. Section 254.031(a)(3), Election Code.

34. After the complaint was filed, the respondent filed a corrected report showing that the purpose of the expenditure was "consulting."
35. The committee's January 2001 semiannual campaign finance report discloses a \$315.99 expenditure to "Peggy Smith Croslin-Legislative Consultant."
36. The entry does not disclose the date of the expenditure or the purpose of the expenditure.
37. The committee's January 2001 semiannual campaign finance report discloses that on October 31, 2000, the committee accepted a \$6,000 contribution from "HNTB Corporation."
38. The entry for that contribution is incomplete because it does not include the city and state in the contributor's address. Section 254.031(a)(1), Election Code.
39. After the complaint was filed, the respondent filed a correction to the January 2001 semiannual report showing the date of the expenditure to Peggy Smith-Croslin and the purpose as "consulting." That corrected report also showed the complete address in Kansas City, Missouri, for the contributor that made the \$6,000 contribution on October 31, 2000.
40. The respondent was statutorily required to provide a complete address when disclosing the contribution at issue, as well as the purposes of the expenditures. Although the respondent did disclose the expenditures and contribution at issue and has since corrected the reports, the respondent did not fully disclose that information in the original reports. Therefore, there is credible evidence that the respondent violated Section 254.031, Election Code.

#### Loan

41. The complainant alleges that the committee accepted a loan in the amount of \$1,912.57, and the repayment of that loan was never disclosed, nor was the loan shown to be outstanding on reports filed after the reporting period in which the loan was made.
42. A loan must be disclosed on the committee's campaign finance report covering the period in which the loan is made. Section 254.031(a)(2), Election Code. A committee's report must also disclose on each report the aggregate principal amount of all outstanding loans as of the last day of the reporting period. *Id.*
43. The committee's 30-day before the election report discloses that on October 5, 2000, an individual made a loan to the committee in the amount of \$1,912.57. The same report also discloses an expenditure for that amount to a sign company the following day. The report also discloses a loan in that amount as outstanding at the end of the reporting period.

44. Subsequent reports do not show any outstanding loans, nor is there a specific entry showing that the loan was repaid.
45. The respondent swore that the \$1,192.57 was included in the \$18,276.71 reimbursement to "The Communicators" dated October 31, 2000, and disclosed on the committee's January 2001 semiannual report.
46. Because the loan was not repaid until October 31, 2000, it was outstanding at the end of the 8-day before the election reporting period, and should have been reported as such on that report. That report does not show any outstanding loan balances. Therefore, there is credible evidence that the respondent violated Section 254.031(a)(2), 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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that a committee's campaign finance report must include the purpose of political expenditures that exceed \$50 in the aggregate during a reporting period and must disclose the payee's full address. The respondent further acknowledges that a committee's report must disclose on each report the aggregate principal amount of all outstanding loans as of the last day of the reporting period. The respondent agrees to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations described under Section IV, Paragraphs 40 and 46, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

## VI. Confidentiality

This ORDER and AGREED RESOLUTION describes a violation that the commission has determined is 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, consequences, extent, and gravity of the violations, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$400 civil penalty for the violations described under Section IV, Paragraphs 40 and 46.

## VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-220458;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$400 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than December 13, 2002; and
4. that the executive director shall promptly refer SC-220458 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-220458 as proposed in this ORDER and AGREED RESOLUTION.

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

\_\_\_\_\_  
Mike Robinson, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.  
Texas Ethics Commission

By: \_\_\_\_\_  
Tom Harrison, Executive Director