

# TEXAS ETHICS COMMISSION

|                              |   |                         |
|------------------------------|---|-------------------------|
| IN THE MATTER OF             | § | BEFORE THE              |
|                              | § |                         |
| TEXAS MUNICIPAL POLICE       | § |                         |
| ASSOCIATION, INC.,           | § |                         |
| TMPA LEGAL, INC.,            | § |                         |
| and TEXAS MUNICIPAL POLICE   | § | TEXAS ETHICS COMMISSION |
| ASSOCIATION POLITICAL ACTION | § |                         |
| COMMITTEE,                   | § |                         |
|                              | § |                         |
| RESPONDENT                   | § | SC-230633               |

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on July 10, 2003, and voted to accept jurisdiction of Sworn Complaint SC-230633 filed against Texas Municipal Police Association, Inc. (the police association or the association), TMPA Legal, Inc. (the legal services plan or the plan), and the Texas Municipal Police Association Political Action Committee (the general-purpose committee or the committee), Respondents. The commission met again on November 13, 2003, to consider Sworn Complaint SC-230633. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of a violation of section 253.094 of the Election Code as to the association and the plan, credible evidence of a violation of section 253.101 of the Election Code as to the committee, and credible evidence of no violation of section 254.031 of the Election Code as to the committee. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondents.

### II. Allegations

The complainant alleges that the police association, or the police association's legal services plan, or both of them, received fees required as a condition of membership in the association from members who participate in the association's legal services plan and used those fees to make a contribution to the association's general-purpose committee. The complainant also alleges that the association's general-purpose committee failed to disclose the contributions on its campaign finance reports.

### III. Facts Supported by Credible Evidence

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

1. The respondent police association is an incorporated nonprofit association of Texas law enforcement officers and public safety employees. The respondent legal services plan is an

incorporated nonprofit legal services plan for members of the police association. The respondent committee is a general-purpose committee established and administered by the police association.

2. The complainant is the president of another incorporated police association.
3. The complainant submitted a copy of the plan's application for recognition of an exemption from federal income tax filed with the Internal Revenue Service in 2002. According to that application, the plan and the association share the same facilities and employees, and have the same officers and directors. Association membership, and by implication membership in the plan, is open to all law enforcement persons with public safety careers who are employed in the State of Texas by a public entity. The association's objectives include promoting social fellowship and economic well-being among its members, increasing public respect for peace officers and those with a public safety career, and promoting professional excellence. The plan's purposes include providing legal representation for participants who receive notice of an investigation or disciplinary action arising from any alleged wrongful act, including any error or omission committed while acting in the course and scope of employment with respect to civil and criminal actions, and any acts, errors, or omissions while acting outside the scope of employment with respect to administrative actions. The application (IRS Form 1024) includes the following question:

Has the organization spent or does it plan to spend any money attempting to influence the selection, nomination, election, or appointment of any person to any Federal, state, or local public office or to an office in a political organization?

If "Yes," explain in detail and list the amounts spent or to be spent in each case.

The plan's executive director answered that question as follows:

TMPA Legal, Inc. had provided \$14,273 in fiscal year 2002 to TMPA P.A.C.  
A general purpose Political Action Committee.

4. The complainant also submitted copies of all of the committee's campaign finance reports filed with the Ethics Commission in 2001 and most of the committee's campaign finance reports filed with the Commission in 2002. Those reports include the committee's political contributions during periods of time that cover the plan's fiscal year ending October 31, 2002. They disclose no contributions from the plan, but disclose contributions totaling \$14,723 from the association members through May 10, 2002, the date on which the plan's Form 1024 was filed with the IRS. According to the reports, the committee accepted those contributions in the following amounts and on the following dates:

\$2,318 on November 22, 2001  
\$2,356 on December 18, 2001  
\$2,359 on January 15, 2002  
\$2,391 on February 20, 2002  
\$2,407 on March 21, 2002  
\$2,442 on April 19, 2002

The contributions totaling \$14,723 appear to be the same contributions that the complainant alleges were made by the plan.

5. Finally, the complainant submitted a copy of the association's form for making application for association and plan membership. The form provides that the association members may pay dues by payroll deduction or credit card, and it lists two categories of membership—Basic and Legal. Basic costs \$10 per month, and Legal costs \$20 per month. The additional \$10 fee for a Legal membership funds the plan and qualifies the Legal member for plan participation. The form also provides that a Legal member may designate a portion of the additional fee for contribution to the association's committee by means of the following check-off:

TMPA Political Action Committee (PAC):  Yes  No

I have chosen to participate in the TMPA Legal Assistance Program at a cost of \$10.00 per month. It is my wish that from this fee an amount as determined by the Board of Directors, but not to exceed \$2.00 per month, be donated to the TMPA Political Action Committee. I understand that this donation will not affect any TMPA benefits I receive presently or in the future.

Thus, the form provides for contributions to the association's committee from fees required as a condition of Legal membership in amounts to be determined by the plan's board of directors, but not to exceed \$2.00 per month per plan participant.

6. The association's executive director filed an affidavit in response to the complaint. He swears in his affidavit, among other things, that this methodology for collecting contributions to the committee was first used between 1986 and 1989 after it was cleared by the association's then attorney who advised the association's then executive director "that he spoke with representatives from the Secretary of State, who had responsibility for these issues during the late 1980's, and was told our methodology for collecting PAC contributions was legal because the legal assistance program was an independent fund whereby participants made voluntary contributions separate from membership dues."
7. The executive director further swears, "This issue came up in the context of a previous complaint filed by CLEAT, either with the Secretary of State or with the Travis County District Attorney. I recall that this matter was investigated at that time and [the association]

was informed its methodology was not improper.” According to the executive director, the association conducted this fundraising activity “with the full belief it was legal and proper,” but upon advice of counsel, has discontinued this fundraising practice.

8. Thus, there is credible evidence that the foregoing contributions (fees) to the committee were made, not by individual members of the association, but by the plan from fees required as a condition of membership in the plan. Furthermore, the executive director does not deny that a member or officer of the committee knew that the membership fees were required as a condition of plan membership, and he does not deny that the committee used the contributions to make political contributions and expenditures.

#### IV. Findings and Conclusions of Law

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

1. A corporation or a labor organization may not make a political contribution or political expenditure that is not specifically authorized. ELEC. CODE ch. 253, subch. D; *id.* § 253.094; *see* Ethics Advisory Op. 132 (1993). A Texas non-profit corporation is a corporation. ELEC. CODE § 253.091. An organization “in which employees participate that exists for the purpose . . . of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work” is a labor organization. *Id.* § 251.001(18). The association and its plan are both Texas non-profit corporations and labor organizations. Therefore, they are subject to the restrictions on corporate and labor organization contributions and expenditures.
2. In Ethics Advisory Opinion 379, the Ethics Commission considered whether a labor organization that collects dues by means of a payroll deduction could provide a card to its members allowing them to request that a portion of their membership dues be diverted to the organization’s political committee. *Id.* (1997). Dues from members choosing this option would be split between the labor organization and the political committee, while dues from the other members would go to the labor organization in their entirety. Regardless of the option chosen, each member would pay the same amount. The card did not ask members to make a contribution to the political committee *in addition* to the regular dues payment. The commission concluded that the labor organization would be making a contribution to the political committee each time a portion of a dues payment was transferred to the committee. The commission said, “The contribution would be from the labor organization because the labor organization, not the individual member would be giving up something of value. The individual member would be required to pay the same amount to maintain membership in the labor organization regardless of how the money was used.” *Id.*; *see also* Ethics Advisory Op. 38 (1992). The Ethics Commission recognized, however, that such contributions were authorized if they were given to the committee for the purpose of paying the expenses of establishing or administering the committee. ELEC. CODE § 253.100; Ethics Advisory Op. 379 (1997).
3. Similarly, fees from association members selecting Legal membership and designating a part of those fees for contribution to the association’s committee were split between the plan and the committee, while fees from the other Legal members went to the plan in their entirety.

Regardless of whether a Legal member chose to contribute to the committee, each Legal member paid the same amount. Thus, the plan, like the labor organization in Ethics Advisory Opinion 379, made a contribution to the committee each time a portion of a fee payment was transferred to the committee. The executive director of the association described these activities as “fundraising” in the affidavit he filed in response to this complaint, and in the plan’s IRS Form 1024 he acknowledged that the plan provided the \$14,723 in contributions (fees) to the committee for purposes that included influencing elections to state and local public offices.

4. Thus, there is credible evidence that the association and its legal services plan violated section 253.094 of the Election Code by making prohibited political contributions to the committee.
5. A political committee whose administrative expenses are paid by a corporation or labor organization may not make a political contribution or political expenditure (other than an expenditure to pay those expenses) from money that is known by a member or officer of the committee to be fees or other money required as a condition of employment or condition of membership in a labor organization. ELEC. CODE § 253.101. The executive director of the association does not deny that a member or officer of the committee knew that the \$14,723 in contributions (fees) at issue were required as a condition of membership in the plan, and it is clear from the plan’s application for an exemption from federal income tax that the contributions were given to the committee for purposes that included influencing elections to state and local public offices. Thus, there is credible evidence that the committee violated section 253.101 of the Election Code.
6. The campaign treasurer for a political committee must include in the committee’s campaign finance reports the full name of each person from whom the committee accepts political contributions aggregating more than \$50 during the reporting period. ELEC. CODE § 254.031. There is credible evidence that the \$14,723 in contributions (fees) at issue were made by the plan, but were reported in the committee’s campaign finance reports as having been made by individual association members. However, there is credible evidence of no violation of section 254.031 of the Election Code by the committee because a committee’s reporting duties fall on its campaign treasurer and the committee’s treasurer is not named as a respondent to this complaint. *See* ELEC. CODE § 254.031.

#### **V. Representations and Agreement by Respondents**

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondents neither admit nor deny the facts described under Section III and the commission's findings and conclusions of law described under Section IV, and consent to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondents consent 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 respondents waive any right to a hearing before the commission or an

administrative law judge, and further waive any right to a post-hearing procedure established or provided by law.

3. The respondent police association and legal services plan acknowledge that a corporation or labor organization may not make a political contribution or political expenditure that is not specifically authorized. ELEC. CODE ch. 253, subch. D; *id.* § 253.094. The respondent general-purpose committee acknowledges that a political committee whose administrative expenses are paid by a corporation or labor organization may not make a political contribution or political expenditure (other than an expenditure to pay those expenses) from money that is known by a member or officer of the committee to be fees or other money required as a condition of employment or condition of membership in a labor organization. ELEC. CODE § 253.101.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent police association and the respondent legal services plan understand and agree that the commission will consider the respondents to have committed the violation described under Section IV, Paragraph 4, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent police association or the respondent legal services plan. The respondent general-purpose committee understands and agrees that the commission will consider the respondent to have committed the violation described under Section IV, Paragraph 5, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent general-purpose committee.

## **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, consequences, extent, and gravity of the violation, after considering the fact that no previous violations by these respondents are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes civil penalties totaling \$1,000, as follows: a \$500 civil penalty upon the respondent police association and the respondent legal services plan for the violation described under Section IV, Paragraph 4, and a \$500 civil penalty upon the respondent general-purpose committee for the violation described under Section IV, Paragraph 5.

## **VIII. Order**

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondents;
2. that if the respondents consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-230633;
3. that the respondents may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the civil penalties set out above to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than December 11, 2003; and
4. that the executive director shall promptly refer SC-230633 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 respondents do not agree to the resolution of SC-230633 as proposed in this ORDER and AGREED RESOLUTION.

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

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Texas Municipal Police Association, Inc.,  
Respondent

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TMPA Legal, Inc.,  
Respondent

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Texas Municipal Police Association  
Political Action Committee

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

Texas Ethics Commission

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Karen Lundquist, Executive Director