

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SARAH CASH BAILEY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-230637

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 13, 2003, to consider Sworn Complaint SC-230637. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of a law administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent, the treasurer of a specific-purpose committee, failed to properly report political contributions and political expenditures, failed to include a complete disclosure statement and right-of-way notice on political advertising, and failed to file an amendment to the committee's treasurer appointment to disclose a change in the treasurer's address. The complainant also alleges that the respondent violated the Code of Fair Campaign Practices Act.

III. Facts Supported by Credible Evidence

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

1. The respondent is the treasurer of a specific-purpose political committee in Murphy, Texas. The committee was formed to support a local option election.
2. On August 30, 2002, the respondent was appointed the campaign treasurer for a specific-purpose political committee named Murphy Partners for Progress. The committee supported passage of a local option liquor election on May 3, 2003.
3. The complainant alleges that the respondent violated section 254.031 of the Election Code by failing to properly report political contributions and expenditures on the 8-day pre-election report that was due on April 25, 2003.

4. Although the complainant alleges that the respondent failed to properly report political contributions and political expenditures, the complainant submitted evidence only in regard to one political contribution, a contribution from Wal-Mart. The respondent does not deny that the committee accepted a contribution from Wal-Mart, but asserts that the contribution was properly reported on the July 2003 semiannual report.
5. The 8-day pre-election report that was due on April 25, 2003, should have included contributions *accepted* during the period beginning on March 24, 2003, and ending on April 23, 2003. The complainant submitted an e-mail dated April 16, 2003, in which a Wal-Mart representative responds as follows to a question from a Kimberley Ashby:

Mrs. Ashby – I did receive your voice and have tried to call. There was no answer and no means of leaving a message. In response to your question, the answer is yes. Wal-Mart has made a monetary contribution to Murphy Partners for Progress. We are familiar with their organization and objectives.
6. The respondent acknowledges acceptance of the contribution but asserts that it was properly reported on the July 2003 semiannual report because the contribution was not “deposited” until April 24, 2003.
7. The complainant alleges that the respondent violated section 255.001 of the Election Code by failing to include a political advertising disclosure statement on various pieces of political advertising.
8. The complainant also alleges that the respondent violated section 255.007 of the Election Code by failing to include a right-of-way notice on political advertising.
9. To support the allegation, the complainant submitted copies of fliers and pictures of signs. In regard to the signs, the respondent’s sworn response states:

The respondent . . . became aware of the fact that the Lady who donated the Political Signs had not used the printer she was advised to. Evidently, who ever printed the signs for her was not aware of the requirements. As soon as I became aware of the fact that the signs were missing some required language, I had some adhesive backed labels made and they were affixed to ALL signs posted.
10. The complainant also alleges that the respondent violated the Code of Fair Campaign Practices in chapter 258 of the Election Code by using misleading and deceptive advertising.

IV. Findings and Conclusions of Law

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

1. The campaign treasurer of a political committee is required to report a contribution on the report covering the period during which the contribution was *accepted*. ELEC. CODE § 254.031(a)(10). Acceptance of a contribution is different from deposit of a contribution. The Election Code does not permit a recipient to wait until after the end of a reporting period to decide whether to accept or reject a contribution. If the recipient does not make a decision about acceptance or rejection during the reporting period in which the contribution is received, the contribution is considered to have been accepted on the last day of that reporting period. ELEC. CODE § 254.034.
2. Furthermore, if the recipient does not accept a contribution by the end of the reporting period in which the contribution is received, the recipient must return the contribution not later than the 30th day after the deadline for filing a report for the reporting period during which the contribution is received. *Id.* A contribution not returned within that time is considered to be accepted. *Id.*
3. There is credible evidence that Murphy Partners for Progress received the Wal-Mart contribution during the period covered by the 8-day pre-election report (March 24, 2003, through April 23, 2003.)
4. A Wal-Mart representative confirmed the contribution on April 16, 2003. In their sworn affidavit, the respondent identifies the date of *deposit* as one day after the end of the reporting period for the 8-day pre-election report. Their response is silent in regard to the date of receipt, the date that is legally significant in this case. There is also credible evidence that Murphy Partners for Progress did not return the contribution by the deadline set out in section 254.034 of the Election Code. Therefore, the evidence supports a finding that the committee accepted the contribution—either as a matter of fact or by operation of law—during the period covered by the 8-day pre-election report and a finding that the respondent violated section 254.031 of the Election Code by failing to report the contribution on the 8-day pre-election report.
5. A person may not enter into a contract or other agreement to print a political advertising sign that does not include a proper disclosure statement. ELEC. CODE § 255.001. The fliers include the information required by section 255.001 of the Election Code. The signs do not include the required address information. Although the political advertising signs in question did not include the disclosure required by section 255.001 of the Election Code, the respondent's statement supports a finding that someone other than the respondent entered into a contract to print the signs and then donated the signs to the committee. Therefore, there is credible evidence that the respondent did not violate section 255.001 of the Election Code.
6. A person may not enter into a contract to print a political advertising sign and may not instruct another person to place a political advertising sign that does not include information about placing the sign in the right-of-way of a highway. *Id.* § 255.007. Although the signs in question did not include the right-of-way notice required by section 255.007 of the

Election Code, the respondent's sworn statement supports a finding that someone other than the respondent entered into a contract to print the signs and then donated the signs to the committee. Therefore, there is credible evidence that the respondent did not violate section 255.007 of the Election Code.

7. Compliance with the Code of Fair Campaign Practices is voluntary and not enforceable by the Ethics Commission. Therefore, the respondent cannot be held liable for a violation, and the commission must dismiss the allegation.

V. Representation and Agreement by Respondent

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

1. The respondent neither admits or 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 this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial hearings or argument before the commission, and before any formal adjudication 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 any post-hearing procedure.
3. The respondent acknowledges that the campaign treasurer of a political committee is required to report a contribution covering the period during which the contribution was accepted. The respondent agrees to comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent agrees that the commission will consider the respondent to have committed the violation described under Section IV if it is necessary to consider a sanction to be assessed in any future sworn complaint 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

The commission imposes a civil penalty of \$500 against the respondent for the violation described under Section IV.

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 resolution of SC-230637;
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 \$500 civil penalty 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 set SC-230637 for a preliminary review hearing if the respondent does not agree to the resolution of SC-230637 as proposed in this ORDER and AGREED RESOLUTION.

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

Sarah Cash Bailey, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director