

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOSEPH D. WARDY, JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-240460

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on September 10, 2004, to consider sworn complaint SC-240460. A quorum of the commission was present. To resolve this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complaint alleges a number of violations of the campaign finance law.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for Mayor of El Paso in a May 2003 election.
2. A number of the allegations in the complaint arise from a 23-page "merged donors list" that the respondent included with a report he filed in November 2003 to correct the 8-day pre-election report due on April 25, 2003. The complainant bases a number of allegations on apparent inconsistencies between the merged donor list and the respondent's actual report.
3. In his sworn response the respondent states that his wife created the merged donors list by merging lists from separate computers. He states that the list was mistakenly filed with the corrected report he filed in November 2003 and that it is not an accurate reflection of actual contributions.

Allegation No. 1

4. The complaint alleges that the respondent failed to file a January 2003 semiannual report; failed to report a \$500 contribution from Joe Pickett; and failed to report a \$1,000 transfer from himself to his campaign.

5. The respondent filed a campaign treasurer appointment on December 23, 2002.
6. The respondent submitted a January 2003 semiannual report with a file stamp showing that it was filed with the El Paso City Clerk at 2:46 p.m. on January 15, 2003. He swears he did in fact file the report on January 15, 2003.
7. The report lists a \$500 contribution from Joe Pickett on December 23, 2002, and it lists a \$1,000 loan from the respondent on the same date.

Allegation No. 2

8. The complaint alleges that the respondent failed to report a \$37,707 contribution from David J. Rendall on the 8-day pre-election report due on April 25, 2003.
9. The respondent filed an 8-day pre-election report on April 25, 2003, listing a \$500 contribution from David J. Rendall on March 27, 2003.
10. The respondent also submitted a copy of a check dated March 11, 2003, showing a \$500 contribution from David J. Rendall.
11. The merged donors list shows a contribution from David J. Rendall in the amount of \$37,707.
12. The respondent states that the amount shown on the merged donors list is incorrect and that his wife concluded that the amount \$37,707 was generated by the computer during the merge process.

Allegation No. 3

13. The complaint alleges that the respondent failed to report a \$37,728 contribution from Neal and Margaret Remz on the 8-day pre-election report due on April 25, 2003.
14. The merged donors list shows a contribution from Neal and Margaret Remz in the amount of \$37,728.
15. The respondent submitted a copy of a check dated April 17, 2003, showing a \$25 contribution from Neal and Margaret Remz.
16. The respondent states that the amount shown on the merged donors list is incorrect and that his wife concluded that the amount was generated by the computer during the merge process.

Allegation No. 4

17. The complaint alleges that the respondent accepted cash contributions that exceeded \$100 from a single contributor during the period covered by the 30-day pre-election report due on April 5, 2003.
18. The respondent acknowledges that he accepted a cash contribution of \$100 and a cash contribution of \$60 on different days during the period covered by the 30-day pre-election report that was due on April 5, 2003.

Allegation No. 5

19. The complaint lists six contributor names that appear on the merged donor list. In connection with those names, he cites section 253.001 of the Election Code, which requires that a contributor identify the true source of a contribution.

Allegation No. 6

20. The complaint alleges that the respondent converted political contributions to personal use by making improper reimbursements to himself from political contributions.
21. The relevant reports show that the respondent reimbursed himself from political contributions in amounts that did not exceed the amounts he had reported either as political expenditures from personal funds or as loans (including interest on those loans).

Allegation No. 7

22. The complaint alleges that the respondent did not properly report the purpose of certain expenditures.
23. The respondent reported an expenditure of \$7.58 on January 8, 2003, to El Paso Electric Company with the purpose listed as "Initiation Charge." The respondent states that this was a fee charged by the Electric Company to begin electric service at the campaign headquarters.
24. The respondent reported an expenditure of \$97.55 on February 12, 2003, to Economy Cash & Carry with the purpose listed as "Donation." The respondent states that he made a donation of goods from Economy Cash & Carry to the Aoy Elementary School Association.
25. The respondent reported an expenditure of \$6,013.20 on February 12, 2003, to Jobe Concrete with the purpose listed as "Repair and Equipment Rental." The respondent states that this was for repairs made to the campaign headquarters.

26. The respondent reported an expenditure of \$1,372.50 on March 10, 2003, to Adrian Ocegueda with the purpose listed as "Volunteer Day Care." The respondent states that this was for a campaign volunteer who worked for the campaign in exchange for reimbursement for day care.
27. The respondent reported an expenditure of \$525 out of personal funds on November 10, 2003, to Los Viejos with the purpose listed as "Donation." The respondent states that this was for attendance at the annual banquet of Los Viejos, a local organization of businessmen and civic leaders. The respondent reported that he reimbursed himself for that expenditure out of political contributions on the same day.

Allegation No. 8

28. The complaint alleges that the respondent converted political contributions to personal use by using political contributions to purchase a laptop computer.
29. On the July 2003 semiannual report, the respondent reported a political expenditure from personal funds in the amount of \$2,198.09 for the purchase of a laptop computer.
30. The respondent swears that he uses the computer for "campaign reporting functions and other political word processing."
31. The complaint argues that the computer must be for personal use because the respondent purchased it after the May 2003 election.

Allegation No. 9

32. The complaint alleges that the respondent used improper forms to file his reports.
33. The respondent's reports were filed on forms that list contributions and expenditures in a column format that does not include the various boxes that are on the forms prescribed by the commission.

Allegation No. 10

34. The complaint alleges that the merged donors list filed with the correction to the 8-day pre-election report due on April 25, 2003, does not accurately reflect the respondent's reportable activity during the period covered by the report.
35. The respondent swears that he included the merged donors list with the report by mistake.

Allegation No. 11

36. The complaint alleges that the respondent did not have his January 2004 semiannual report notarized.
37. The respondent filed a January 2004 campaign finance report but the report was not notarized.

IV. Findings and Conclusions of Law

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

Allegation No. 1

1. Because the respondent filed a campaign treasurer appointment on December 23, 2003, he was required to file a January 2003 semiannual report covering the period from December 23, 2003, through December 31, 2003. ELEC. CODE §§ 254.063 (semiannual reporting requirement for candidates; 251.001(1)(A) (person who has a campaign treasurer appointment on file is a candidate). The report should have included any contributions and loans accepted during the period. *Id.* 254.031.
2. The evidence shows that the respondent filed the report by the filing deadline and that he reported a \$500 contribution from Joe Pickett and a \$1,000 loan to himself. Therefore, there is credible evidence that the respondent did not violate section 254.061 or 254.063 of the Election Code.

Allegation No. 2

3. The respondent's 8-day pre-election report filed on April 25, 2003, was required to include all contributions accepted during the reporting period. ELEC. CODE § 254.031.
4. The respondent's report included a \$500 contribution from David J. Rendall, and the evidence supports a finding that the respondent correctly reported the amount of the contribution. Therefore, there is credible evidence that the respondent did not violate section 254.031 of the Election Code.

Allegation No 3

5. The evidence supports a finding that the respondent did not accept and therefore did not fail to report a \$37,728 contribution from Neal and Margaret Remz.

6. Therefore, there is credible evidence that the respondent did not violate section 254.031 of the Election Code.

Allegation No. 4

7. A candidate may not knowingly accept from a contributor in a reporting period contributions in cash that in the aggregate exceed \$100. ELEC. CODE § 253.033.
8. The respondent acknowledges that he accepted \$160 in contributions in cash from a single contributor during the period covered by the 30-day pre-election report due on April 1, 2003.
9. Therefore, there is credible evidence that the respondent violated section 253.033 of the Election Code.

Allegation No. 5

10. A person may not knowingly make or authorize a political contribution in the name of or on behalf of another unless the person discloses in writing to the recipient the name and address of the person actually making the contribution in order for the recipient to make the proper disclosure. ELEC. CODE § 253.001.
11. This prohibition applies to contributors, not to recipients of contributions. Therefore, the respondent could not have violated section 253.001 of the Election Code in connection with the six contributions listed in the complaint.

Allegation No. 6

12. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a). A candidate or officeholder who makes political expenditures from personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were properly reported either as political expenditures from personal funds or as loans. *Id.* § 253.035(h). A candidate or officeholder may use political contributions to pay interest to himself or herself at a commercially reasonable rate in connection with political expenditures made from personal funds if the candidate or officeholder properly reports the expenditures and the interest rate. Ethics Advisory Opinion No. 371 (1997).
13. Because the evidence shows that the respondent reimbursed himself from political contributions in amounts that did not exceed the amounts he had reported either as political expenditures from personal funds or as loans (including interest on those loans), there is credible evidence that the respondent did not violate section 253.035 of the Election Code.

Allegation No. 7

14. A candidate must disclose the purpose of expenditures that in the aggregate exceed \$50. ELEC. CODE § 254.031.
15. The amount of detail required when disclosing the purpose of an expenditure is not specified in Title 15. Section 20.61 of the Ethics Commission Rules states that the report "must describe the categories of goods or services received in exchange for the expenditure." The instruction guide for the reporting form states that if an expenditure was made for goods or services, the description should provide enough information that a person reviewing the report would know what goods or services were purchased or leased.
16. Except in the case of the payment to Economy Cash & Carry, the descriptions at issue are adequate.
17. The description of the payment to Economy Cash & Carry, however, describes neither the goods purchased nor the reason for purchasing those goods. Therefore, there is credible evidence that the respondent violated section 254.041 of the Election Code in regard to the payment to Economy Cash & Carry.

Allegation No. 8

18. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a). Personal use means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. *Id.* § 253.035(d).
19. The respondent swears that he uses the computer for campaign finance reporting and other political purposes. Therefore, there is credible evidence that the respondent did not violate section 253.035 of the Election Code in connection with the computer in question.

Allegation No. 9

20. A report filed with a local filing authority must be on a form prescribed by the commission unless the report is a computer printout. ELEC. CODE § 254.036. If the report is a computer printout, the printout must conform to the same format and paper size as the form prescribed by the commission. *Id.*
21. Although the respondent used a format somewhat different from the forms prescribed by the Ethics Commission, all of the required information is on the form and the information is clear and easy to read. Therefore, we conclude that the respondent's form conformed to the format prescribed by the commission and that the respondent did not violate section 254.036 of the Election Code.

Allegation No. 10

22. The respondent was not required to file the merged donor list and there is no requirement that it be accurate.

Allegation No. 11

23. A campaign finance report filed on paper must be accompanied by an affidavit executed by the person required to file the report. ELEC. CODE § 254.036(h). A campaign finance report is considered to be under oath by the person required to file the report, and the person is subject to prosecution under chapter 37 of the Penal Code regardless of the absence of or a defect in the affidavit. ELEC. CODE § 254.036(h).
24. An “affidavit” is a written statement of facts signed by the party making it, sworn to before an officer authorized to administer oaths, and officially certified by the officer under his or her seal of office. *Bloyed v. General Motors Corp*, 881 S.W. 2d 422, (Tex. App. Texarkana 1994). An oath made in Texas may be administered and a certificate of the fact given by a notary public. GOV’T CODE § 602.002(4).
25. The evidence shows that in January 2004, the respondent filed a campaign finance report that was signed but not notarized. Therefore, there is credible evidence that the respondent violated section 254.036(h) of the 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 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 candidate may not knowingly accept from a contributor in a reporting period contributions in cash that in the aggregate exceed \$100. The respondent acknowledges that a candidate must disclose the purpose of expenditures that in the aggregate exceed \$50. The respondent acknowledges that a campaign finance report filed on paper must be accompanied by an affidavit executed by the person required to file the report. The respondent agrees to fully comply with this requirement 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 violation 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 \$100 civil penalty for the violation described under Section IV.

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-240460.

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

Joseph D. Wardy, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Sarah Woelk, Acting Executive Director