

TEXAS ETHICS COMMISSION

IN THE MATTER OF
DONNA HOWARD,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-260246

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 2, 2007, to consider sworn complaint SC-260246. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 254.031 of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegation

The complaint alleges that the respondent failed to properly report campaign contributions.

III. Facts Supported by Credible Evidence

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

1. The respondent is a state representative who was a candidate during the period at issue.
2. The allegation is based on a press release and a political mailer sent out by a political committee in support of the respondent.
3. On February 6, 2006, the respondent filed a campaign finance report, covering both the 30-day before the primary election and 8-day before the special election runoff reporting periods, the respondent reported neither notice of direct campaign expenditures from the political committee nor in-kind contributions from the committee.
4. Prior to receiving this complaint, the respondent filed a corrected report on February 23, 2006, to disclose that she received notice of direct expenditures from the political committee at issue, and to disclose five in-kind contributions for bus rentals totaling \$1,842.50 from that committee, which were not previously disclosed.

5. No fine was assessed administratively for the second corrected report since it met the substantial compliance guidelines.
6. The corrected report does not reflect in-kind contributions for either the mailer or the press release.
7. The campaign finance reports filed by the political committee do not disclose any expenditure in connection with the press release, and the respondent submitted a sworn response indicating that a campaign volunteer prepared the press release and e-mailed it to the committee.
8. The respondent states that although the campaign was aware that the committee had made in-kind contributions for bus rentals, they did not receive information from the committee regarding the amount of the contributions until after the reporting deadline, and when the amount was received, a corrected report was filed to include those contributions.
9. The political committee's reports disclose an expenditure of \$10,291.47 for political mailers and list under the purpose of payment a contribution in-kind to the respondent.
10. The respondent's affidavit indicates that she did not coordinate with the committee regarding the mailers.
11. The respondent submitted additional affidavits stating that a volunteer to the campaign was notified by the committee that the committee was going to prepare and distribute direct mail to support the candidate.
12. The respondent explains that the volunteer did not have authority to accept contributions on her behalf.
13. The respondent also swears that she did not know about the mailing in advance, and only learned about it after it was received by voters in the district.

IV. Findings and Conclusions of Law

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

1. Each campaign finance report filed by a candidate is required to include the amount of political contributions accepted during the reporting period, that in the aggregate exceed \$50, the full name and address of the contributor, and dates of the contributions. ELEC. CODE § 254.031(a)(1).

2. The respondent admits that the campaign finance report as originally filed failed to list any in-kind contributions from the political committee in question.
3. The respondent's corrected report discloses in-kind contributions of \$1,842.50 from the committee in question.
4. The respondent admits that the campaign was aware of the in-kind contributions that were disclosed on the corrected report.
5. Since the respondent accepted contributions during in the reporting period, they should have been reported on the original report. Therefore, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code in regards to the bus rentals.
6. Because the report was corrected before the respondent received the sworn complaint and considered in the administrative process, staff recommends no penalty.
7. The reports filed by the political committee also show an additional in-kind contribution of \$10,291.47 for the political mailers at issue. This contribution is not disclosed on the respondent's report.
8. A direct campaign expenditure, in contrast to a contribution, is a campaign expenditure supporting a candidate that is made without the prior consent or approval of the candidate supported. Ethics Commission Advisory Opinion No. 331 (1996).
9. A candidate is not required to disclose a notice of direct campaign expenditure until the candidate receives notice of the expenditure. ELEC. CODE § 254.061(3).
10. The evidence indicates that the expenditure for the political mailing was made without the prior consent or approval of the respondent. Thus, the expenditure was actually a direct campaign expenditure by the political committee and not an in-kind contribution. The respondent disclosed the notice of direct campaign expenditure after she received it.
11. The respondent was not required to report the expenditure for the mailers as a political contribution, therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code in regards to the political mailer.

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 each campaign finance report filed by a candidate is required to include the amount of political contributions accepted during the reporting period, that in the aggregate exceed \$50, the full name and address of the contributor, and dates of the contributions. The respondent agrees to comply with this requirement of the law.

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 violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes no additional civil penalty for the violation described under Sections III and 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-260246.

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

Donna Howard, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director