

TEXAS ETHICS COMMISSION

IN THE MATTER OF
KATHY L. MITCHELL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2605133

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 28, 2007, to consider sworn complaint SC-2605133. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.121 and 254.031 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent, as the campaign treasurer of a political committee, failed to properly disclose political contributions and political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent was the campaign treasurer of the Clean Water Clean Government PAC (CWCG), a specific-purpose political committee that supported two City of Austin charter amendments in a May 13, 2006, election.
2. The respondent filed a 30-day pre-election campaign finance report for CWCG on April 13, 2006. The report disclosed a \$74,168.56 in-kind political contribution from Save Our Springs Alliance, Inc. (SOS) on February 13, 2006, and \$169,168.82 in total political contributions.
3. CWCG was created on February 13, 2006, the same day the respondent was appointed as its campaign treasurer. On that date, SOS provided petitions it had gathered to CWCG. The petitions were gathered prior to the creation of CWCG.

4. The respondent's 30-day pre-election report included an affidavit that provided dates, purposes, and dollar amounts for the expenditures that comprised the \$74,168.56 in-kind contribution from SOS. The affidavit included expenditures and work made or performed between "Oct./Nov. 2005" and February 24, 2006.
5. The respondent's report disclosed in-kind contributions totaling \$19,379.26 from "Save Our Springs Alliance" on the report's Schedule A. In response to the complaint, the respondent filed an affidavit with the City of Austin that stated that the contributions at issue "should be listed as 'Save Our Springs Alliance, Inc.' and the contribution should have been placed on Schedule C."
6. The respondent's report did not include her telephone number. The respondent admits that she failed to disclose her telephone number in her report and swears that this was "an inadvertent clerical error." She filed a correction affidavit with the City of Austin that included her telephone number and explained that she forgot to include it in her original report.
7. The respondent's report disclosed three in-kind contributions from "Save Our Springs Alliance" that included date ranges for the contributions without including precise dates. The respondent's report provided descriptions of the contributions, such as "staff, legal and communication services," "website services," "ballot language lawsuit expenses," and "ballot language lawsuit."
8. The respondent's report disclosed three political expenditures without providing the purposes of the expenditures. The respondent admits that her report did not disclose a purpose for any of these expenditures and attributes this to an "inadvertent clerical error." The respondent filed a correction affidavit with the City of Austin that states that the report should have listed the purpose of the expenditures as "consulting services" and that an expenditure to the Austin Chronicle should have been disclosed with the purpose of "advertising."
9. The respondent's report disclosed three political expenditures to "Glen Maxey Consulting," which were disclosed with separate purposes of "consulting services," "consultation services," and "consulting." The respondent swears that the expenditures at issue were paid to Glen Maxey Consulting for consulting services.
10. The respondent's report disclosed a political expenditure of \$669.04 to an individual for "Reimbursements for phones, office supplies, email." The individual contracted with other individuals or entities to acquire office supplies, Internet service, and phone service and submitted an invoice to CWCG for payment.
11. The respondent's report disclosed a political expenditure of \$96.54 to an individual for "Reimbursement for office supplies." The respondent filed a correction affidavit with the

City of Austin that discloses the actual payees, amounts, dates, and purposes of the expenditures made by the individual on behalf of CWCG. The affidavit shows that the individual made three expenditures totaling \$83.17 to a single payee in the period covered by the report.

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 must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates the contributions are accepted. ELEC. CODE § 254.031(a)(1).
2. Each campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).
3. A campaign contribution means, in pertinent part, a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred to make a transfer with the intent that it be used in connection with a campaign on a measure. *Id.* §§ 251.001(2), (3).
4. A campaign expenditure means, in pertinent part, an expenditure made by any person in connection with a campaign on a measure. *Id.* § 251.001(7). A direct campaign expenditure means a campaign expenditure that does not constitute a campaign contribution to a political committee. *Id.* § 251.001(8).
5. The respondent's report disclosed an in-kind political contribution in the form of petition signatures with a value of \$74,168.56 from SOS on February 13, 2006. The expenditures made to gather the signatures prior to February 13, 2006, could not have been made by SOS as direct expenditures on behalf of CWCG because CWCG had not yet been created at the time the expenditures were made. CWCG accepted the signatures from SOS as an in-kind contribution valued at \$74,168.56 on February 13, 2006. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(1) of the Election Code in connection with this contribution.
6. The respondent's report disclosed \$169,168.82 as the total amount of political contributions, which included the \$74,168.56 in-kind political contribution from SOS. There is no evidence that the amount of the contribution from SOS was incorrect or that the total amount of contributions disclosed in the report was otherwise incorrect. Therefore, there is credible

- evidence that the respondent did not violate section 254.031(a)(6) of the Election Code in connection with this report.
7. Each report by a campaign treasurer of a specific-purpose political committee must include on a separate page or pages of the report, the identification of any contribution from a corporation or labor organization made and accepted under subchapter D, chapter 253 of the Election Code. ELEC. CODE § 254.121(8). Under subchapter D, a corporation may make campaign contributions from its own property in connection with an election on a measure only to a political committee for supporting or opposing measures exclusively. *Id.* § 253.096.
 8. Pre-election reports for a specific-purpose committee that supports or opposes measures exclusively must disclose each contribution accepted from a corporation and must include the date each contribution was accepted, the full name of the corporation making the contribution, the address of the corporation making the contribution, the amount of the contribution, and a description of any in-kind contribution. ELEC. CODE § 254.121(8).
 9. CWCG accepted political contributions from “Save Our Springs Alliance, Inc.,” which the respondent disclosed in her report as political contributions from “Save Our Springs Alliance.” The contributions were disclosed on Schedule A of her report rather than on Schedule C, which is the schedule designated for corporate contributions. Therefore, there is credible evidence that the respondent violated sections 254.031(a)(1) and 254.121(8) of the Election Code by failing to disclose the full name of the contributor and by failing to disclose that the contributions were from a corporation.
 10. Each report by a campaign treasurer of a specific-purpose committee must include the telephone number of the committee’s campaign treasurer. ELEC. CODE § 254.121(2).
 11. The respondent’s report did not include her telephone number. Therefore, there is credible evidence that the respondent violated section 254.121 of the Election Code by failing to include her telephone number in the report.
 12. A campaign finance report for a specific-purpose committee must include, for each person from whom the committee accepted a political contribution of more than \$50 in value or political contributions that total more than \$50 in value, a description of any in-kind contribution in addition to the dates of the contributions. Ethics Commission Rules § 20.311(13)(E).
 13. The respondent’s report disclosed in-kind contributions and provided a range of dates in which the contributions were accepted, not specific dates. Therefore, there is credible evidence that the respondent violated section 254.031(a)(1) of the Election Code in connection with the dates of these contributions.

14. Regarding the in-kind contributions for which a date range was provided, the purposes of the expenditures were sufficiently disclosed. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(1) of the Election Code or Ethics Commission Rules § 20.331(13)(E) in connection with the descriptions of these contributions.
15. A campaign finance report for a specific-purpose committee must include 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. ELEC. CODE § 254.031(a)(3).
16. The respondent's report disclosed three political expenditures without disclosing their purposes. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code in connection with the purposes of these expenditures.
17. The respondent's report also disclosed three political expenditures with a purpose of either "consulting services," "consultation services," or "consulting." There is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code in connection with the purposes of these expenditures.
18. According to Ethics Advisory Opinion No. 450, which applies to the expenditures at issue in this complaint, when a person makes a campaign expenditure on behalf of a committee using the person's personal funds and later receives reimbursement from the committee, the campaign treasurer is required to report a single expenditure by listing the name of the individual or entity paid by the person as the payee, showing the date of the expenditure as the date the person made the expenditure, and explaining in the "purpose" section that a person made the expenditure from personal funds and that the committee subsequently reimbursed the person. Ethics Advisory Opinion No. 450 (2003). This requirement applies only in a case where the total amount paid to the individual or entity by the committee or by a person on behalf of the committee exceeds \$50 in a reporting period.
19. Regarding the political expenditure made for "phones, office supplies, email," there is no indication that CWCG directed the individual to acquire supplies or services from a particular individual or entity. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code in connection with this expenditure.
20. Regarding the political expenditure made as a reimbursement for office supplies, the evidence shows that an individual made several political expenditures within the period covered by the report on behalf of CWCG with the intent that the expenditures be reimbursed. Three of the expenditures exceeded \$50 and were made to a single payee in the period covered by the report. The respondent did not disclose the dates, amounts, purposes, or payees in connection with these expenditures. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code in connection with these expenditures.

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 by a campaign treasurer of a specific-purpose political committee must include: (1) the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates the contributions are accepted; (2) the telephone number of the committee's campaign treasurer; (3) for each person from whom the committee accepted a political contribution of more than \$50 in value or political contributions that total more than \$50 in value, a description of any in-kind contribution in addition to the dates of the contributions; (4) and 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. The respondent also acknowledges that when a person makes a campaign expenditure on behalf of a committee using the person's personal funds and later receives reimbursement from the committee, the campaign treasurer is required to report the expenditure as required by Ethics Commission Rules § 20.62. The respondent also acknowledges that each campaign finance report by a campaign treasurer of a specific-purpose political committee that supports or opposes measures exclusively must include on a separate page or pages of the report, the identification of any contribution from a corporation or labor organization made and accepted under subchapter D, chapter 253 of the Election Code, including the date each contribution was accepted, the full name of the corporation making the contribution, the address of the corporation making the contribution, the amount of the contribution, and a description of any in-kind contribution.
4. The respondent agrees to comply with these requirements 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 violations 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 \$250 civil penalty.

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-2605133.

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

Kathy L. Mitchell, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director