

TEXAS ETHICS COMMISSION

IN THE MATTER OF
REBECCA TATUM,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-280245

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 4, 2008, to consider sworn complaint SC-280245. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.036(a), 254.031(a)(3), and 254.031(a)(6) of the Election Code, and credible evidence of technical or *de minimis* violations of section 254.031(a)(3) and section 20.62 of the Ethics Commission Rules, 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 file a campaign finance report in a format prescribed by the Texas Ethics Commission, failed to properly report in-kind political contributions, and failed to properly report political expenditures on the committee's January 2008 semiannual campaign finance report.

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 for The Woodlands VOICE PAC, a specific-purpose political committee.
2. The complaint arises from the November 6, 2007, election in The Woodlands.
3. The respondent filed a campaign finance report for the political committee on January 14, 2008, covering the period from October 28, 2007, through January 15, 2008. The report is marked as a January 2008 semiannual report and as a dissolution report.

4. In response to the complaint, the respondent filed a sworn response and a corrected report.

Failure to File Reports in a Format Prescribed by the Commission

5. The complaint alleges that the respondent failed to file the political committee's January 2008 semiannual report in a format prescribed by the commission.
6. The respondent filed the committee's January 2008 semiannual report with the cover pages and schedules. The schedules are all blank and have the words "See attached" written at the top. The respondent attached typewritten pages that included contribution and expenditure information in a separate spreadsheet format. The format was not pre-approved by the executive director of the commission. The report was filed with the Town Center Improvement District. The report discloses approximately \$53,052 in political contributions, approximately \$73,719 in political expenditures, and zero political contributions maintained.
7. The respondent swears that the report was not filed on the proper forms because she did not fully understand the instructions and that she did not realize that the Ethics Commission staff was a resource for answering her questions. The respondent also swears that she did not intend to withhold information and that she provided the required information but not in the proper format or detail. On May 6, 2008, the respondent filed a corrected January 2008 semiannual report disclosing all the required information on the proper forms. The correction changed the name of the contributor who made approximately \$31,976 in in-kind contributions from The Woodlands Operating Company, L.P. to The Woodlands Development Corp.

Failure to Properly Disclose In-Kind Contributions

8. The complaint alleges that the respondent failed to properly disclose in-kind political contributions on the committee's January 2008 semiannual report.
9. The committee's original January 2008 semiannual report discloses six in-kind political contributions totaling approximately \$32,202. The report states "Campaign materials" as the description of a \$225.75 in-kind contribution from The Blair Law Firm accepted on December 3, 2007. The report states "Campaign consulting services and materials" as the description of the remaining in-kind contributions all of which are from The Woodlands Operating Company, L.P. accepted on November 1 and 6, 2007.
10. The respondent swears that she did not understand how to report in-kind contributions. The respondent also swears that the in-kind contributions at issue were made by The Woodlands Development Corporation for services provided by the Eppstein Group, which is a political consulting firm, and that The Eppstein Group provided materials for the advertising

campaign as well as campaign advice to the political committee. The respondent further swears that she had no intent to provide misleading information and intended to fully disclose the financial activities of the political committee.

11. On May 6, 2008, the respondent filed a corrected January 2008 semiannual report. The respondent used the format prescribed by the commission for reporting political contributions. The respondent provided more specific descriptions of the in-kind contributions. The descriptions state, “yard signs The Eppstein Group,” “VOICE PAC mailing #6 - ‘Voter Guide’ The Eppstein Group,” “VOICE PAC mailing #5 – ‘String’ The Eppstein Group,” “Reprint of push cards The Eppstein Group,” “Recorded phone messages The Eppstein Group,” and “Foam hands used on election day.” The corrected report discloses approximately \$54,052 in political contributions versus the approximately \$53,052 initially reported, approximately \$41,517 in political expenditures versus the approximately \$73,719 initially reported, and zero political contributions maintained as originally reported.

Improperly Reported Political Expenditures as Reimbursements

12. The complaint alleges that the respondent failed to disclose on the committee’s January 2008 semiannual report the full name and address of the persons to whom expenditures were made.
13. The committee’s January 2008 semiannual report discloses two expenditures to Kenny Speight. One states, “(Reimb) for Home Depot for Campaign Material” for \$116.59 and gives the date of the check, November 7, 2007. The other one states, “(Reimb) for WL Lions Club for Booth rental for Wildflower Festival” for \$50 and gives the date of the check, November 7, 2007.
14. The respondent swears, “The amended report, which I have submitted and included with this letter, address[es] the issues raised in the complaint. . . . I am including full names and addresses of the persons to whom expenditures were made. Schedule F is complete.”
15. The respondent corrected the report to disclose Home Depot as the payee of the \$116.59 expenditure and to provide its address. Since the expenditure to WL Lions Club was not greater than \$50, the respondent was not required to disclose WL Lions Club as the payee and was not required to provide its address.

Failure to Properly Disclose Political Contributions and Political Expenditures

16. The complaint alleges that the respondent failed to disclose the full name and address of the persons to whom expenditures were made, and failed to disclose the dates and purposes of over \$70,000 in political expenditures on the committee’s January 2008 semiannual report.

17. The committee's January 2008 semiannual report discloses the following: The Eppstein Group as the payee for an expenditure for "Campaign consulting services and materials in the amount of \$30,272.06 and gives the date of the check, November 7, 2007; four invoice numbers with amounts that make up the \$30,272.06; The Woodlands Operating Co LP as the payee for an expenditure for "Partial Reimb: Campaign consulting services and materials" in the amount of \$11,073.54 and gives the date of the check as January 8, 2008; and Bank SC as the payee for an expenditure of \$5.

IV. Findings and Conclusions of Law

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

Failure to File Reports in a Format Prescribed by the Commission

1. Each campaign finance report filed with an authority other than the commission must be in a format prescribed by the commission. ELEC. CODE § 254.036(a). The executive director shall prescribe forms for campaign finance reports. Ethics Commission Rules §§ 18.1, 20.19.
2. The report was required to be filed in a format prescribed by the commission. The spreadsheet format used by the respondent was not prescribed by the commission. Therefore, there is credible evidence that the respondent violated section 254.036(a) of the Election Code.

Failure to Properly Disclose In-Kind Contributions

3. Each 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 of the contributions. ELEC. CODE § 254.031(a)(1).
4. Each report must include for each person from whom the candidate 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. Ethics Commission Rules § 20.219(11)(E).
5. The January 2008 semiannual report disclosed the name and address of the persons making the in-kind contributions and the dates of the in-kind contributions. The corrected January 2008 semiannual report discloses more specific descriptions of the in-kind contributions.

6. The respondent sufficiently described the in-kind contributions at issue. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.219(11)(E) of the Ethics Commission Rules.

Improperly Reported Political Expenditures as Reimbursements

7. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
8. Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: 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; and included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. Except as provided above, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows: the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee; the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee. Ethics Commission Rules § 20.62.
9. The evidence shows that the committee's report disclosed an expenditure for \$116.59 as a reimbursement to an individual. The committee's report did not disclose the address of the vendor who was actually paid by the individual, but did disclose the date of the expenditure, name of the vendor, and purpose of the expenditure. The respondent filed a corrected report to provide the missing information. There is credible evidence that the respondent committed a technical or *de minimis* violation of section 254.031(a)(3) of the Election Code and Ethics Commission Rule § 20.62.

Failure to Properly Disclose Political Contributions and Political Expenditures

10. Each report 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).
11. Each report must include the total amount of all political contributions and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
12. On the corrected January 2008 semiannual report, the respondent used the format prescribed by the commission to report political expenditures. The corrected report discloses The Woodlands Development Corp as the payee of the \$11,073.54 expenditure instead of The Woodlands Operating Co LP as disclosed on the original report. The purpose of the payment on the original report states, "Partial Reimb: Campaign consulting services and materials." The purpose of the payment on the corrected report states, "Partial Reimbursement VOICE PAC mailing #3 'Remember.'"
13. When the respondent corrected the report at issue she disclosed \$54,051.97 in total political contributions (\$53,051.97 was the amount originally disclosed) and \$41,517.19 in total political expenditures (\$73,719.16 was the amount originally disclosed). The amount of total political expenditures that was originally disclosed, \$73,719.16, appears to be the total of in-kind political contributions and political expenditures.
14. The respondent sufficiently described the purpose of the political expenditures at issue. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code with regard to those expenditures. However, the respondent originally disclosed The Woodlands Operating Co. LP as the payee of political expenditures and later corrected to report The Woodlands Development Corp. as the payee. In addition, the original report disclosed incorrect totals for political contributions and political expenditures. Therefore, there is credible evidence of a violation of sections 254.031(a)(3) and 254.031(a)(6) of the Election Code with respect to payee name and totals.

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 with an authority other than the commission must be in a format prescribed by the commission. The respondent also acknowledges that a campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. The respondent also acknowledges that political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: 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; and included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. The respondent also acknowledges that, except as provided above, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows: the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee; the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee. 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 fact that the commission recently imposed on the respondent a \$1,000 fine for similar violations, and the sanction necessary to deter future violations, the commission imposes a \$100 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-280245.

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

Rebecca Tatum, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director