

TEXAS ETHICS COMMISSION

IN THE MATTER OF
KIM I. MORRELL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2804212

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2009, to consider sworn complaint SC-2804212. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(1) and (3) of the Election Code, and section 571.1242 of the Government Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

This complaint alleged that the respondent failed to include required information on his final campaign finance report and accepted political contributions from a corporation.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful candidate for Seabrook City Council, Place 1, in an election held on May 2006.
2. On July 17, 2006, the respondent filed a final report covering the period beginning May 6, 2006, through July 17, 2006. The report disclosed 25 political contributions on Schedule A (political contributions schedule) totaling approximately \$9,650. The report did not disclose the dates accepted or addresses for any of the 25 political contributions. The report also did not disclose the dates, addresses and purposes for any of the 13 political expenditures disclosed on Schedule G (political expenditures made from personal funds schedule) as having been made from personal funds. The report disclosed a \$1,000 contribution from "Charlie Whynot," with no address. The report also disclosed two political contributions totaling approximately \$1,400 from "Houston Pilots." The complaint alleged that the contributions from Charlie Whynot and Houston Pilots are corporate contributions. The report also disclosed:

- A blank space for total political contributions of \$50 or less
 - \$9,648 in total political contributions
 - A blank space for political expenditures of \$50 or less
 - \$9,951.30 in total political expenditures
 - -\$303.30 in total political contributions maintained
 - A blank space for outstanding loans
3. On July 3, 2008, the respondent filed a corrected final report that does not appear to have been notarized until August 13, 2008. The report did not include a correction affidavit. The report did not disclose complete addresses for two political contributions totaling approximately \$9,650. It appears that the correction moved all of the expenditures previously reported as having been made from personal funds (Schedule G) to political expenditures made from political funds (Schedule F). The report did not disclose a date for one political expenditure of \$95. A \$300 expenditure made from personal funds to “web site” that was disclosed on the original report was deleted on the corrected report. A \$200 expenditure made from personal funds to “web address (ISP)” also was deleted on the corrected report. The correction added two political expenditures to “godaddy.com,” one for \$200 and the other not disclosing an amount. The payee of a \$4,850.30 political expenditure from personal funds was changed from “CPY” to “Charles P. Young.” There were eight contributions deleted from the original report and eight contributions added to the corrected filed report. The corrected report also disclosed a \$1,000 contribution from “Charlie Whynot,” with a date and complete address and identifies him as self-employed with an occupation of “real estate.” The respondent’s report also only disclosed one \$1,000 contribution from “Houston Pilots,” identified as a “union.” The report also disclosed:
- A blank space for total political contributions of \$50 or less
 - \$9,648 in total political contributions
 - A blank space for political expenditures of \$50 or less
 - \$9,951.30 in total political expenditures
 - -\$303.30 in total political contributions maintained
 - A blank space for outstanding loans
4. The Comptroller of the State of Texas’ website shows a taxpayer identification number for Houston Pilots and also indicates that it is registered with the Texas Secretary of State.
5. Houston Pilots and Charlie Whynot are not listed as corporations with the Texas Secretary of State. However, there is evidence that there is a Charlie Whynot who is an individual with the same Houston address as that disclosed in the report.
6. The United States Postal Service website shows that the notice of this complaint was received by the respondent on May 6, 2008. The commission received the response to this complaint on August 15, 2008.

IV. Findings and Conclusions of Law

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

Failure to Properly Report Political Contributions or Political Expenditures

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 required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. The report must also 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)(1) and (3).
2. The evidence indicates that the respondent did not disclose the dates accepted or addresses for any of the 25 political contributions totaling approximately \$9,650 that were disclosed on his final report filed July 17, 2006. The evidence also indicates that the respondent did not disclose the dates, addresses, and purposes for 13 political expenditures and that he failed to disclose the correct payee for three political expenditures. The evidence also indicates that the respondent failed to properly disclose eight political contributions on the report at issue. Therefore, there is credible evidence of violations of sections 254.031(a)(1) and (3) of the Election Code.

Accepting Political Contributions from a Corporation

3. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, Chapter 253, Election Code. ELEC. CODE § 253.094. That subchapter does not authorize corporations or labor unions to make political contributions to a candidate.
4. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b). Thus, in order to show a violation of section 253.003(b) of the Election Code, the evidence must show that the contributor was a corporation or labor union, that at the time the respondent accepted the contribution he knew it was from a corporation or labor union, and that the respondent knew that corporate or labor union contributions for a candidate were illegal.
5. The respondent's original final report disclosed a \$1,000 contribution from "Charlie Whynot," with no address. The respondent's corrected final report disclosed the same \$1,000 contribution from "Charlie Whynot," with a complete address and identifies him as self-employed in real estate. The evidence indicates that Charlie Whynot is an individual. Therefore, with regard to the contribution from Charlie Whynot, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code.

6. The respondent's originally filed final report also disclosed two political contributions totaling approximately \$1,400 from "Houston Pilots." The respondent's corrected final report only disclosed one \$1,000 contribution from "Houston Pilots," and identified it as a "union." Texas Secretary of State records do not show that Houston Pilots is a corporation. But the respondent's sworn campaign finance report indicates that Houston Pilots is a union. The Texas Comptroller's records indicate that an entity with that name has a taxpayer identification and also indicates that the entity is not registered with the Texas Secretary of State. Although referred to as a union in the report at issue, the evidence does not establish that Houston Pilots is a corporation or labor organization. The evidence does not establish that even if Houston Pilots was a corporation or labor organization that the respondent knew that when he accepted the contribution. Therefore, with regard to the contributions from Houston Pilots, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.

Failure to Timely Respond to Notice of a Sworn Complaint

7. A respondent must respond to the notice of a Category Two violation not later than the 25th business day after the date the respondent receives the notice. Failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. GOV'T CODE § 571.1242(a)(c).
8. The United State Postal Service website shows that the notice of this complaint was delivered on May 6, 2008. The notice stated that the respondent was required to respond within 25 business days from receipt of the notice. The respondent failed to timely respond. Therefore, there is credible evidence of a violation of section 571.1242 of the Government 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 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 required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. The

report must also 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. The respondent also acknowledges that a respondent must respond to the notice of a Category Two violation not later than the 25th business day after the date the respondent receives the notice. 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 \$1,000 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-2804212.

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

Kim I. Morrell, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director