

TEXAS ETHICS COMMISSION

IN THE MATTER OF
WILLIAM M. COLDWELL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2805234

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 16, 2009, to consider sworn complaint SC-2805234. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.121(4) and 254.031(a)(7) 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 failed to disclose in a political committee's 30-day and 8-day pre-election campaign finance reports, political expenditures, the names of candidates who benefited from direct campaign expenditures, and the name of each candidate supported by the political committee.

III. Facts Supported by Credible Evidence

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

1. The respondent is the campaign treasurer for Nassau Bay Citizens for Responsible Development (NBCRD), a specific-purpose political committee.
2. On April 10, 2008, NBCRD appointed the respondent as its campaign treasurer by filing Form STA (specific-purpose committee treasurer appointment).
3. The complaint alleges that the respondent failed to disclose political expenditures for two flyers and one sign on NBCRD's campaign finance reports.
4. On April 10, 2008, the respondent filed a 30-day pre-election report in connection with the May 2008 election for NBCRD. The report disclosed \$9,626.12 in total political

contributions and \$10,495.75 in total political expenditures. The report does not disclose that NBCRD supported any specific candidates or measures. The report states that NBCRD supports “Open Communication between Citizens & City, including Bond Election regarding Certificates of Obligation.” No ballot identification is given for a bond. Of the eight political expenditures itemized on the report, none were disclosed as direct campaign expenditures supporting a candidate or candidates.

5. On May 2, 2008, the respondent filed an 8-day pre-election report in connection with the May 2008 election for NBCRD. The report disclosed \$690 in total political contributions and \$368 in total political expenditures. The report did not disclose that NBCRD supported any specific candidates or measures. The report states that NBCRD supports, “Open Communication between Citizens & City.”
6. The respondent swears that he reported all political contributions and expenditures as required by section 254.031(a)(3) of the Election Code.
7. The respondent also swears that he paid for and reported political expenditures for the “campaign literature” at issue. According to the respondent, the expenditures for campaign literature were disclosed on NBCRD’s 30-day pre-election report. That report discloses political expenditures that consist of two political expenditures to Ridgeway’s Ltd. totaling approximately \$580 for “printing,” and one \$59.54 political expenditure to FedEx Kinko’s for “printing.”
8. The respondent admitted that he did not disclose on NBCRD’s reports the name of each candidate supported by NBCRD.
9. On March 24, 2009, the respondent submitted a notarized letter in which he states that NBCRD “encouraged candidates, and furthered our cause, by assisting candidates with the preparation and distribution of material supporting the NBCRD position.” He further states, “this material was provided by NBCRD without the candidates [sic] prior consent or approval.”

IV. Findings and Conclusions of Law

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

1. The campaign treasurer of a specific-purpose committee is responsible for filing the committee’s pre-election campaign finance reports. ELEC. CODE § 254.124. A campaign treasurer appointment takes effect at the time it is filed. ELEC. CODE § 252.011. The respondent was appointed as the committee’s campaign treasurer on April 10, 2008. Thus, the respondent was responsible for filing the committee’s campaign finance reports.
2. Each campaign finance 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).

3. The complaint alleges that the respondent failed to disclose political expenditures for two flyers and one sign on NBCRD's campaign finance reports. The evidence indicates that the respondent reported political expenditures for the campaign literature at issue (two flyers and a sign.) The NBCRD's 30-day pre-election report discloses three specific itemizations for political expenditures for printing. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.
4. Each campaign finance report filed by a campaign treasurer of a specific-purpose committee must include the name of each candidate and each measure supported or opposed by the committee, indicating for each whether the committee supports or opposes. ELEC. CODE § 254.121(4). The information must be disclosed in section B of a committee's campaign finance report.
5. The complaint alleges that the respondent failed to disclose the name of each candidate supported by NBCRD on its 30-day and 8-day pre-election reports for the May 2008 election. The evidence indicates that NBCRD supported three candidates for city council of Nassau Bay. The respondent failed to disclose that NBCRD supported those candidates on its 30-day and 8-day pre-election reports for the May 2008 election. Therefore, there is credible evidence of violations of section 254.121(4) of the Election Code.
6. A direct campaign expenditure is a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. ELEC. CODE § 251.001(8).
7. A campaign expenditure is not a contribution from the person making the expenditure if it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made or it is made in connection with a measure, but is not a political contribution to a political committee supporting or opposing the measure. Ethics Commission Rules § 20.1(5).
8. Each campaign finance report filed by a campaign treasurer of a political committee must include the name of each candidate or officeholder who benefits from a direct campaign expenditure made during the reporting period by the person or committee required to file the report, and the office sought or held. ELEC. CODE § 254.031(a)(7). There is a section on Schedule F (political expenditures schedule) in which to disclose the regulated information.
9. The complaint alleges that the respondent failed to disclose the names of candidates who benefited from direct campaign expenditures for the two flyers and one sign made by NBCRD. The evidence indicates that NBCRD provided the materials without the prior consent or approval of candidates. Thus, the evidence indicates that the expenditures for a sign and flyers were direct campaign expenditures by NBCRD.

10. The evidence indicates that NBCRD disclosed the political expenditures for the two flyers and the sign on its 30-day pre-election report. The evidence also indicates that the two flyers and the sign supported three different candidates. The name of each candidate who benefited from the direct campaign expenditures for the two flyers and the sign was not disclosed on the report. Therefore, as to the respondent's 30-day pre-election report there is credible evidence of a violation of section 254.031(a)(7) 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 each campaign finance report filed by a campaign treasurer of a specific-purpose committee must include the name of each candidate and each measure supported or opposed by the committee, indicating for each whether the committee supports or opposes the candidate or measure. The respondent also acknowledges that each campaign finance report filed by a campaign treasurer of a political committee must include the name of each candidate or officeholder who benefits from a direct campaign expenditure made during the reporting period by the person or committee required to file the report, and the office sought or held. 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 \$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-2805234.

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

William M. Coldwell, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director