

TEXAS ETHICS COMMISSION

IN THE MATTER OF
AMADEO ORTIZ,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2809329

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaint SC-2809329. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(3), 253.003, and 253.094 of the Election 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

The complaint alleged that the respondent accepted political contributions from corporations. The complaint also alleged that the respondent failed to properly disclose political contributions on his July 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 successful candidate for Bexar County Sheriff in the November 2008 election.
2. The respondent disclosed the acceptance of the following contributions on his July 2008 semiannual report:
 - a contribution in the amount of \$70.85 from “Shell Oil Co.” on March 31, 2008.
 - a contribution in the amount of \$1,000 from “Freedom Debt.com” on April 1, 2008.

- a contribution in the amount of \$100 from “George Primera Trucking” on April 1, 2008.
 - a contribution in the amount of \$100 from “Hominik Custom Builders” on April 1, 2008.
 - a contribution in the amount of \$36.86 from “Luciano Restaurant on the River” on April 5, 2008.
 - a contribution in the amount of \$500 from “San Antonio Chapter of HAPCOA” on April 1, 2008.
 - a contribution in the amount of \$353.10 from “San Antonio Produce Market” on April 10, 2008.
 - a contribution in the amount of \$353.10 from “San Antonio Produce Market” on May 1, 2008.
 - a contribution in the amount of \$353.10 from “San Antonio Produce Market” on June 1, 2008.
 - a contribution in the amount of \$400 from “Wurzbach Estates” on May 28, 2008.
3. According to the Texas Secretary of State’s (SOS) records, two of these entities are domestic for-profit corporations: Shell Oil is a foreign for-profit corporation. The Texas Secretary of State’s records provide the following addresses for these corporations: (1) Debt Freedom Inc., at the same address disclosed by the respondent for contributor “Freedom Debt.com,” 4100 E. Piedras Dr., Suite #251, San Antonio, TX 78228; (2) San Antonio Produce Terminal Market, 1500 S. Zarzamora, San Antonio, TX 78207; and (3) Shell Oil Company, P.O. Box 2463, Houston, TX 77252.
 4. SOS records showed no evidence that the following four entities were incorporated: George Primera Trucking, Hominik Builders, Luciano Restaurant on the River, and Wurzbach Estates.
 5. California Secretary of State (CSOS) records document that the Hispanic American Police Command Officers Association (HAPCOA) is an incorporated entity, with a Washington D.C. address. CSOS records indicate that at this time the entity’s status is “suspended.”
 6. HAPCOA maintains a website at <http://www.hapcoa.org>. The HAPCOA website contains a link to a local San Antonio chapter of HAPCOA, a weblog for the group. The site discloses the “San Antonio Chapter Executive Board 2009” which includes the respondent as “Parliamentarian.” Other documents from the website show that the respondent was Parliamentarian in 2007 and 2008 as well. The site also discloses corporate sponsors including Freedom Debt and HAPCOA, which are displayed in the right menu frame on the main web page and includes links to the corporations’ websites, www.freedomdebt.com and www.hapcoa.org.

7. In response to the sworn complaint, the respondent submitted an affidavit in which he admitted that five of the eight contributors were incorporated entities, and that each of those contributions had been returned. The respondent provided copies of the repayment checks and swore that approximately \$5,170 was returned to donors. He further swore that the \$70.85 contribution disclosed from Shell Oil was actually an expenditure for gasoline that he incorrectly reported as a contribution. He further swore that he had “[r]esearched the list of contributions and the above recited are the only ones that could have been corporations to the best of my knowledge.”
8. On June 8, 2009, the respondent filed a correction to his July 2008 semiannual report. In that report, he removed the entry for Shell Oil from contributions and disclosed this as an expenditure for “auto expense.”
9. In a supplement to his original response, the respondent stated that although he was aware that donations to candidates from corporations are prohibited, that none of the contributions at issue indicated on the face of the checks received by the respondent that they were incorporated entities and that the respondent did not knowingly accept corporate contributions.

IV. Findings and Conclusions of Law

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

Acceptance of Corporate Contributions

1. 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.
2. 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.
3. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
4. In order to show a violation of section 253.003 of the Election Code, the evidence must show that the contributor was a corporation, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.

5. The respondent disclosed contributions from four incorporated entities: Shell Oil, San Antonio Produce Market, HAPCOA, and Freedom Debt.com. The respondent incorrectly disclosed an expenditure to Shell Oil as a contribution on his July 2008 semiannual report, but he has corrected the error. Therefore, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code with respect to the \$70.85 political contribution from Shell Oil Co.
6. Although staff made multiple attempts to contact the complainant in an attempt to obtain additional information that would show or tend to show that the respondent had knowledge of the corporate status of the contributors, the complainant did not respond. In the absence of direct evidence as the \$1,000 contribution from Freedom Debt and the approximately \$1,700 in contributions from George Primera Trucking, Hominik Builders, Luciano Restaurant, San Antonio Produce Market, and Wurzbach Estate, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.
7. The respondent was, and is currently, Parliamentarian for the San Antonio chapter of HAPCOA. Parliamentarian is an executive board position of that group. Because the respondent is Parliamentarian it is reasonable to infer that the respondent was aware that HAPCOA was a non-profit corporation at the time he accepted its political contribution. The respondent swore that he was aware of the prohibition against accepting a political contribution from a corporation. Therefore, there is credible evidence of a violation of sections 253.003 and 253.094 of the Election Code with respect to the \$500 political contribution from HAPCOA.

Failure to Properly Disclose Political Contributions and Political Expenditures

8. 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, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
9. 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).
10. The evidence shows that the respondent incorrectly reported an expenditure to Shell Oil as a contribution on his July 2008 semiannual report. Therefore, there is credible evidence of a violation of section 254.031(a)(3) 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 is required to 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 corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, Chapter 253, Election Code. The respondent also acknowledges that a person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code, and that chapter does not authorize corporations to make political contributions to a candidate.

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-2809329.

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

Amadeo Ortiz, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director