

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
NO BONDS FOR BILLIONAIRES PAC,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-2907172

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2010, to consider sworn complaint SC-2907172. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 253.031 of the Election Code, a law 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 and made political expenditures exceeding \$500 for a political committee that did not have a campaign treasurer appointment in effect.

III. Facts Supported by Credible Evidence

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

1. The respondent was No Bonds for Billionaires PAC, a specific-purpose committee located in Austin, Texas.
2. Andrews County held an election on May 9, 2009, in which a measure was passed to approve \$75 million in bonds for the construction of a radioactive waste disposal site in the county. A campaign treasurer appointment was filed for the respondent with the Andrews County Clerk on May 11, 2009. The appointment provided the respondent's address in Austin, Texas.
3. A campaign finance report for the respondent was also filed on May 11, 2009, covering a period from April 19, 2009, to May 8, 2009. The report disclosed the following:
 - \$0 in total political contributions of \$50 or less
 - \$9,575.91 in total political contributions

- \$0 in total political expenditures of \$50 or less
 - \$9,575.91 in total political expenditures
 - \$0 in total political contributions maintained
 - \$0 in total principal amount of outstanding loans
4. The report detailed in-kind political contributions totaling approximately \$9,580, including the following:
- \$284.94 for “FedEx Kinkos Copies” on April 19, 2009
 - \$1,242 for “postage USPS” on April 20, 2009
 - \$89.40 for “postage/copies UPS” on April 20, 2009
 - \$5,034 for “KOSA television ads” on April 20, 2009
 - \$856 for “KOSA television ads” on April 24, 2009
 - \$50 for “sec. of state filing fee” on April 28, 2009
 - \$1,300 for “KWES television ads” on April 29, 2009
 - \$48.72 for “Fed Ex, Kinko Copies” on April 29, 2009
 - \$6.68 for “Fed Ex Kinkos Copies” on April 30, 2009
 - \$18.65 for “Copies Fed Ex Kinkos” on May 2, 2009
 - \$5.52 for “posterboard Fed Ex Kinkos” on May 2, 2009
 - \$520 for “services – Karen Hadden” on “April 19, 2009 – May 8, 2009”
 - \$120 for “Comfort Suites hotel” on May 1, 2009
5. A campaign finance report for the respondent was also filed on June 16, 2009, covering a period from May 9, 2009, to May 15, 2009. The report was marked as a dissolution report and included a signed and notarized dissolution affidavit. The report disclosed the following:
- \$0 in total political contributions of \$50 or less
 - \$2,295 in total political contributions
 - \$0 in total political expenditures of \$50 or less
 - \$2,295 in total political expenditures
 - \$0 in total political contributions maintained
 - \$0 in total principal amount of outstanding loans
6. The dissolution report also disclosed in-kind political contributions totaling approximately \$2,300, including the following:
- \$2,000 for “AIM Productions ads, website” on May 10, 2009
 - \$295 for “Melodye Pryor reimbursement” on June 1, 2009
7. On May 5, 2009, articles of incorporation for were filed for “No Bonds for Billionaires” with the Texas Secretary of State (SOS), stating that the entity was a non-profit corporation located in Andrews, Texas.

8. An Internet website, www.nobondsforbillionaires.org, was registered on April 17, 2009, according to the registration information for the domain name. The website included a press release dated May 5, 2009, that stated:

The No Bonds for Billionaires group has written letters to the editor, mailed postcards to voters, talked to neighbors and reporters and run television ads in opposition to the bonds. The organization has a web site, www.NoBondsforBillionaires.org, and encourages citizens to vote NO on the bonds.

9. In response to the allegations, the respondent's campaign treasurer swore, in pertinent part:

No Bonds for Billionaires was not trying to hide its involvement in the bond election. It put on its TV ads "Paid for by No Bonds for Billionaires," which they thought was required as part of an issue advocacy campaign. No one was told or understood that NBB might have to file as a PAC until I informed them on May 7th.

Helping out NBB, I was involved in talking to TV stations about placing NBB's ads. Both KOSA-TV and KWES-TV informed me in late April that the final charge would not be fully known or determinable until after the ads were run because the stations may not be able to place all the ads NBB requested, reducing the charges. In addition, the stations might run, because of scheduling conflicts, more 10-second ads and less 30-second ads, again reducing the charge. . . In an effort to disclose as much as possible, I listed on the May 8th report in-kind expenditures of \$5034 and \$856 for TV ads for KOSA-TV and \$1300 for KWES-TV. However, the final amount actually owed was not known or determinable on May 8th when I completed the report. No Bonds for Billionaires did not receive the actual bill from KWES until June of 2009. . . Because of a credit for ads not run, NBB owed \$1270, and not \$1300 as I reported incorrectly on May 8th. . . . Similarly, No Bonds for Billionaires did not receive the bill from KOSA-TV until after May 20, 2009. . . With a credit and a debit for ads on May 8, the reconciliation showed on the bill a total charge of \$5890. I didn't know until I received the bill how much was actually owed.

10. The respondent stated that "the principals of No Bonds for Billionaires" did not know that they might need to file as a political committee until May 7, 2009, and that they had no prior experience with bond elections.

11. The respondent also stated:

In-kind expenditures were disclosed on May 8th out of an abundance of caution, and a lack of understanding of the law. We contend, however, that NBB did not need to disclose the television ad amounts until after the May 9,

2009 bond election because the known and determinable amount was not known till the end of May when the invoices were sent. The amount was unknown because the television stations do not know when they agree to run ads whether they can run all the ads because their schedules changes daily and ads are often preempted. In this case, several ads were preempted times and the amounts billed after the election were different from the original estimate. This television ad expenditure amount totals \$7190 and was not determinable before the election. In addition, the in-kind expenditures on the June 9, 2009 report were not determinable or reportable before the May 9th election. This amount totals \$2,295. Respondents also deny that all the advertisements and other activities constituted express advocacy in opposition to the bonds, and demand strict proof by complainants that the amount exceeded \$500.

12. A copy of an e-mail message dated April 23, 2009, submitted by the respondent indicated that it was an exchange between an employee of CBS7 and the respondent's campaign treasurer. The message stated, in part:

NOTES FOR ANDREWS NUKE WASTE DUMP SPOTS

NARRATION #1

Male: Did you know that Dallas billionaire Harold Simmons' company, Waste Control Specialists, wants \$75 million to build a radioactive waste dump in Andrews County? Investors told him no. They refused to put up a dime for this project.

Female: But now he wants Andrews County to pay? Why should we bail out a billionaire?

Male: Right. That's why I'm voting no on the billionaire bonds.

Any Voice: Learn more at NoBondsForBillionaires.org. This message paid for by the . . . [message ends].

13. The respondent also submitted a copy of an invoice from Midessa Television LP in Midland, Texas, with a billing date of May 31, 2009. The invoice was addressed to "No Bonds Billionaires c/o SEED Coalition" at the same Austin address that was disclosed in the respondent's campaign treasurer appointment. The invoice also indicated that "No Bonds Billionaires" was the "advertiser" on KWES-TV. The invoice listed a "pre-payment" of \$1,300 on May 8, 2009, and a charge of \$1,270 on May 31, 2009. The invoice also indicated that a \$30 credit was due.
14. The respondent also submitted two pages from an order or invoice that listed rates for advertising during different time periods on KWES-TV. The documents indicated that "No Bonds Billionaires" was billed for nine 30-second broadcasts that occurred from May 7, 2009, to May 9, 2009, at rates from \$70 to \$275 per broadcast. One credit of \$30 was listed in one of the documents for "TEC DIF," which appeared to be a credit for a broadcast that

did not occur on May 9, 2009. The invoice indicated that the “schedule cost for this billing period” was \$1,300, the “actual gross billing” was \$1,270, and that a \$30 credit was due.

15. The respondent also submitted three pages from an order or invoice that listed rates for advertising during different time periods on KOSA-TV. The documents indicated that “No Bond 4 Billionaires” was billed for sixty-three 10-second or 30-second broadcasts that occurred from April 27, 2009, to May 9, 2009, at rates from \$25 to \$300 per broadcast. One credit of \$60 was listed in one of the documents for “NO AVAL” related to a scheduled broadcast on May 8, 2009, but a \$60 debit also appeared for an additional broadcast on the same day. The invoice indicated that the “schedule cost for this billing period” was \$5,890 and the “actual gross billing” was \$5,890.

IV. Findings and Conclusions of Law

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

1. A political committee may not knowingly accept political contributions totaling more than \$500 or make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. ELEC. CODE § 253.031(b).
2. “Political committee” means a group of persons that has as a principal purpose accepting political contributions or making political expenditures. *Id.* § 251.001(12).
3. “Specific-purpose committee” means a political committee that does not have among its principal purposes those of a general-purpose committee but does have among its principal purposes supporting or opposing one or more measures, all of which are identified. *Id.* § 251.001(13)(A)(ii).
4. “Measure” means a question or proposal submitted in an election for an expression of the voters’ will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters’ will. *Id.* § 251.001(19).
5. “Political contribution” means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5). “Campaign contribution” means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.* § 251.001(3).
6. “Contribution” means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a guarantee of a loan or extension of credit, including a loan described by this subdivision. *Id.* § 251.001(2).

7. “Political expenditure” means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
8. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7).
9. “Expenditure” means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
10. For purposes of reporting under this chapter, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure, except as provided by Subsection (b). *Id.* § 254.035(a). If the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received. *Id.* § 254.035(b).
11. The respondent filed a campaign treasurer appointment on May 11, 2009, that stated its purpose was to oppose the bonds in the Andrews County election. The respondent’s campaign finance reports also indicated that the committee accepted approximately \$11,580 in in-kind political contributions before May 11, 2009. The language from the advertisements run by the respondent indicated the advertisements opposed the bond measure and a press release from No Bonds for Billionaires stated that it opposed the county bonds, wrote letters to the editor, mailed postcards to voters, talked to neighbors and supporters, ran television advertisements in opposition to the bonds, and had a website that “encourages citizens to vote NO on the bonds.” Thus, the evidence indicated that the respondent was a specific-purpose committee that had a principal purpose of accepting political contributions and making political expenditures and that it accepted political contributions that exceeded \$500 before filing a campaign treasurer appointment.
12. Approximately \$7,190 of the contributions at issue were for television advertisements. The respondent stated that disclosure of the amounts of the advertisements was not required until after the May 9, 2009, election because the amounts were not readily determinable until the invoices were sent at the end of May 2009.
13. Section 254.035(a) of the Election Code provides that, for purposes of reporting under chapter 254 of the Election Code, a political expenditure is not made until the amount is readily determinable by the person making the expenditure. The law that prohibits a political committee from accepting political contributions or making political expenditures over \$500 without filing a campaign treasurer appointment is located in chapter 253 of the Election Code and is separate from a committee’s reporting requirements. Furthermore, based on the amounts of the expenditures and the number of advertisements for which the

respondent was ultimately billed, it appears that the members of the respondent were fully aware that the cost of the advertisements would largely exceed \$500.

14. The respondent also stated that the “in-kind expenditures” of \$2,000 on the respondent’s dissolution report, disclosed as an in-kind political contribution on May 10, 2009, was not determinable or reportable before the election. The respondent provided no additional evidence regarding the activity to show that the contribution was not accepted until after the campaign treasurer appointment was filed.
15. The evidence indicated that the respondent accepted approximately \$11,580 in political contributions before its campaign treasurer was appointed. Therefore, there is credible evidence that the respondent violated section 253.031(b) of the Election Code.
16. Regarding the allegation that the respondent also made or authorized political expenditures that exceeded \$500, the respondent’s reports disclosed the activity at issue as both political contributions and political expenditures on the cover pages of its reports. The evidence indicated that members of the respondent directed another individual to place the orders for television advertisements, but that SEED ultimately paid for the advertisements as in-kind political contributions to the respondent.
17. By directing another individual to run specific television advertisements, members of the respondent entered into agreements to make payments or incurred obligations to make payments for the political advertising and therefore made political expenditures for the advertisements, which totaled approximately \$7,190. Regarding the additional approximate \$4,390 in political expenditures that were disclosed as occurring before the campaign treasurer was appointed, there was no evidence of the manner in which the expenditures were made. All of the activity was itemized as political contributions on Schedule A in the reports and was not itemized as political expenditures. However, the reports disclosed all of the activity as both political contributions accepted, and political expenditures made, by the respondent. Thus, the evidence indicated that the respondent made approximately \$11,580 in political expenditures before filing a campaign treasurer appointment. Therefore, there is credible evidence that respondent NBBPAC made political expenditures over \$500 without filing a campaign treasurer appointment.

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 a political committee may not knowingly accept political contributions totaling more than \$500 or make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. 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-2907172.

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

No Bonds for Billionaires PAC, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director