

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

DONNA BARR,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2907177

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on February 11, 2010, to consider sworn complaint SC-2907177. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(3) and 254.031(a)(8) of the Election Code 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 proposed this resolution to the respondent.

### II. Allegations

The complaint alleged that the respondent accepted a political contribution from a corporation, failed to properly report political expenditures made as reimbursements, and failed to properly disclose political contributions maintained on the committee's July 2007 and January 2008 semiannual campaign finance reports.

### 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 of the Montgomery County Republican Women PAC (MCRW), a general-purpose political committee.
2. The complaint included allegations related to MCRW's July 2007 semiannual report, filed July 11, 2007.
3. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rules § 12.5(a). The criminal offense for a violation of section 254.031 of the Election Code is a Class C misdemeanor. ELEC. CODE § 254.041. The statute of limitations for a Class C misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Thus, allegations that the respondent violated

section 254.031 of the Election Code that relate to conduct that occurred more than two years before the postmark date of the sworn complaint (July 13, 2007) are not within the commission's sworn complaint jurisdiction. The respondent filed the July 2007 semiannual report at issue in the sworn complaint on July 11, 2007. Therefore, the allegation related to that report was not considered. The allegations related to the respondent's January 2008 semiannual report were within the commission's sworn complaint jurisdiction.

4. The respondent's original January 2008 semiannual report included the following contribution:
  - a \$35 in-kind political contribution from "Classic Consignment."
5. The respondent's original January 2008 semiannual report included the following political expenditures:
  - \$100 to Donna Barr for, "Autumnfest."
  - \$1,628.55 to Sandy Downey for, "To reimburse for Treats for Troops."
  - \$52 to May Etie for, "Reimbursement for stamps for Fundraiser postcard stamps."
  - \$371.22 to Patty Fox for, "Treats for Troops reimbursement."
  - Approximately \$1,490 for four political expenditures to Brigitte Izzo for, "Treats for Troops-4th July Parade," "Stamps," "To reimburse for materials for Fundraiser," "Passthrough for Treats for Troops Mailing Costs," and "To Reimburse for Speaker Gifts."
  - Approximately \$210 for four political expenditures to Pearl Maggio for, "Items for Autumnfest" and "To reimburse for stamps."
  - Approximately \$3,080 for three political expenditures to Anne Miraglia for, "Passthrough for Treats for Troops," "Mailing Costs-Single Soldiers Project," and "Passthrough for Treats for Troops Reimbursement for Supplies and Mailing."
  - \$282.02 to Denise Mittelholzer for, "Treats for Troops."
  - Approximately \$360 for three political expenditures to Bette Osborn, for, "To reimburse for Stamps for Newsletters" and "To reimburse for Food for Fundraiser."
  - Approximately \$280 for two political expenditures to Cheree Page, for, "Treats for Troops" and "Hospitality."
  - \$107.01 to Joann Robinson for, "Paper Products for Autumnfest."
  - \$582.69 to Terry Sparling for, "Passthrough Treats for Troops Reimbursement for Supplies."

The respondent's January 2008 semiannual report disclosed \$0 in total political contributions maintained and the total political expenditures to individuals at issue is approximately \$8,540.

6. The respondent filed a corrected January 2008 semiannual report which corrected each of the expenditures at issue to reflect the ultimate vendor payee. The corrected January 2008 semiannual report removed the expenditures to individuals originally reported and disclosed political expenditures to vendors such as Hobby Lobby, Big Lots, and the Post Office, for purposes such as “fundraiser items,” “Christmas trees to be sent to troops in Iraq,” and “postage.” Total political expenditures remained the same. The corrected report disclosed \$15,618.07 in total political contributions maintained.
7. The complaint alleged that MCRW accepted a contribution from a corporation. MCRW’s January 2008 semiannual report disclosed a \$25 in-kind political contribution of “Fundraiser Donation-Bath-Set” (not alleged) and a \$35 in-kind political contribution of “Fundraiser Donation-Two Silver Accent Pieces” from “Classic Consignment” on October 10, 2007. The principal occupation/job title disclosed for this contributor was “Car Dealership Owner.”
8. According to the Texas Secretary of State’s (SOS) records, Classic Consignment is a domestic for-profit corporation.
9. In her correction affidavit for the January 2008 semiannual report, the respondent swore that she made “corrections to reflect the correct contributor as a member of our club not as a corporation.” In her response to the sworn complaint, the respondent stated that the donation of “a bath set and two silver accent pieces” were actually donated by a member of the Montgomery County Republican Women and not by a corporation. The corrected report reflects in-kind political contributions from the individual member for “Fundraiser Donation – Bath Set” in the amount of \$25 and “Fundraiser Donation-Two Silver Accent Pieces” in the amount of \$35, with a principal occupation/job title of “Car Dealership Owner.”
10. The complaint alleged that the respondent failed to properly disclose in campaign finance reports political expenditures made to reimburse campaign or office staff. MCRW’s reports disclosed approximately \$8,540 in political expenditures from political contributions as reimbursements to individuals without disclosing the actual payees of the expenditures or payments. The purpose of each expenditure was at least partially disclosed on the original report.
11. The respondent corrected the expenditures at issue to reflect actual vendor payees.
12. The complaint alleged that the respondent failed to correctly disclose the total political contributions maintained on the committee’s January 2008 semiannual report. The committee disclosed “0” in the space provided for total political contributions maintained. The respondent swore in her response to the sworn complaint that:

When filing the General-Purpose Committee Campaign Finance Report on-line, the information is input and the report, Form GPAC, is generated automatically. I assumed that the amount of the contributions maintained would automatically be generated when the report was finalized, taking into

account the contributions and expenditures. I did not manually input the amount of political contributions maintained and therefore the report show [sic] a zero balance. These items have been corrected.

13. The respondent corrected the report to disclose \$15,618.07 in political contributions maintained.

#### **IV. Findings and Conclusions of Law**

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

##### **Corporate Contribution**

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 she knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
5. Classic Consignment is a corporation. However, the respondent swore that she mistakenly reported the donor of the in-kind contribution and corrected the report at issue to disclose the actual contributor, an individual. There was no additional evidence to refute the respondent's statement. Therefore, there is insufficient evidence that the respondent violated sections 253.003 and 253.094 of the Election Code.

##### **Disclosure of Political Expenditures As Reimbursements**

6. 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).

7. When a political expenditure is made on behalf of a candidate or officeholder by a staff member or campaign worker, the name of the actual payee must be disclosed, not the name of the staff member or campaign worker. Ethics Commission Rules § 20.62.
8. The total amount of expenditures at issue was approximately \$8,540 to 12 individuals to reimburse purchases made on behalf of the committee. All of the expenditures were made from political contributions. The committee's original reports disclosed the names and addresses of the individuals who were reimbursed by the respondent without disclosing the names and addresses of those vendors who were actually paid by the individuals. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

### **Total Political Contributions Maintained**

9. Each report must include as of the last day of the reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
10. The respondent failed to properly disclose total political contributions maintained on the committee's January 2008 semiannual report. The respondent filed a corrected report disclosing the total. Therefore, there is credible evidence that the respondent violated section 254.031(a)(8) of the Election Code as to this report.

### **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 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, and that the proper way to report a committee expenditure for which an individual will seek reimbursement is in accordance with section 20.62 of the Ethics Commission Rules. The respondent acknowledges that each report must include as of the last day of the reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or

more accounts in which political contributions are deposited as of the last day of the reporting period. 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 \$250 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-2907177.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Donna Barr, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director