

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JAMES R. ASH,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2909217

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 21, 2010, to consider sworn complaint SC-2909217. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.004, 253.031, and 253.033 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: 1) knowingly accepted political contributions totaling more than \$500 and made or authorized political expenditures totaling more than \$500 for a political committee at a time when a campaign treasurer for the committee was not in effect, 2) failed to file campaign finance reports, 3) failed to properly report political contributions and political expenditures in campaign finance reports, and 4) knowingly accepted from a contributor in a reporting period political contributions in cash that in the aggregate exceeded \$100.

III. Facts Supported by Credible Evidence

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

1. The respondent is an individual that opposed red light cameras in the City of College Station.
2. The complaint relates to a City of College Station November 2009 measure election on whether to prohibit the use of red light cameras for traffic enforcement in the city. According to the complaint, in June, July, and August of 2009, the respondent made political expenditures to hold events to support the measure to prohibit red light camera enforcement.

3. According to news reports¹, on July 16, 2009, the respondent submitted to the City of College Station a petition opposing red light cameras, and the petition was later certified by city officials.
4. In response to the complaint, the respondent swore that he circulated an initiative petition opposing red light cameras and received the first signature on the petition on June 3, 2009. The respondent swore that in the days leading up to the decision to do the petition, he funded the purchase of two banners that cost more than \$100. The respondent also swore that, while circulating the petition, he attempted to familiarize himself with the rules regarding political committees, but did not know that the circulation of a petition was within the definition of a measure or that any campaign finance reports were required. The respondent swore that he “filled out a July Acting As a SPAC [sic] report and filed it with the appropriate authorities in College Station and attached a copy for [the commission’s] review.” The respondent also swore to the following:

The City of College Station indicated to our petition group that once the petition was on the ballot that the rules regarding political speech would have to change for the City officials. I took this as further evidence that the political campaign would start only after the city placed the item on the ballot. The red light camera interest themselves [opposing the petition] sent company officials to College Station to work within the City, no one acted as if the political campaign had started. Not until the City Council voted to have an election did our opposition or our petition group form political action committees.

5. The respondent swore that after the red light camera issue was featured on a radio interview he received a \$2,000 political contribution in cash (disclosed as accepted on September 11, 2009). The respondent swore that he made a payment to the contributor refunding the contribution as soon as he learned it was impermissible. The respondent provided a copy of a cashier’s check from Take Back Your City SPAC (TBYC), a specific-purpose committee, dated October 1, 2009, made payable for \$2,000 to the individual contributor at issue.
6. The local filing authority provided copies of documents filed since January 1, 2009, by the respondent and TBYC. The local filing authority provided copies of TBYC’s 30-day and 8-day pre-election reports for the November 2009 election, as well as TBYC’s semiannual reports filed in January and July of 2010. The local filing authority provided a certified statement that those are the only reports filed by the respondent or TBYC in its possession for the period at issue. The local filing authority also stated that no campaign treasurer appointments for TBYC are in its possession.

¹ See, e.g., *It’s in Their Hands Now*, The Brian-College Station Eagle, July 17, 2009; Shauna Lewis, *Voters May Get Say on Red-Light Cameras*, The Brian-College Station Eagle, July 24, 2009.

7. The sworn complaint included a copy of a campaign treasurer appointment filed by TBYC. The campaign treasurer appointment named Lori Ash treasurer of the committee and disclosed that the committee's purpose was supporting a measure to make "camera enforcement unenforceable" in College Station. The campaign treasurer appointment disclosed November 3, 2009, as the election date for the measure. The document was not date stamped and the respondent stated that he does not know when TBYC filed it.
8. The respondent submitted a copy of a July 2009 semiannual report that he completed using Form SPAC (specific-purpose committee campaign finance report). The date stamp on the document indicates that it was hand delivered on November 16, 2009. The respondent indicated on the report's cover page that he was filing the report pursuant to section 253.062 of the Election Code, which addresses the reporting of direct campaign expenditures by individuals not acting in concert with another person. On the section of the report's cover page used for disclosing the committee name, the respondent wrote "Jim Ash acting as a SPAC [sic]." The report covered the period from May 1, 2009, through June 30, 2009, and disclosed a purpose of supporting a measure to ban red light cameras. The report disclosed \$832 in total political contributions. Schedule A (used for reporting political contributions) disclosed the respondent as the contributor on all entries, and listed in the "in-kind description" box the purpose of each payment. Schedule A disclosed that on June 13, 2009, the respondent made a \$433 political expenditure that, when aggregated with earlier political expenditures made by the respondent to support the petition, exceeded \$500. The report did not disclose any political expenditures on other parts of the report.
9. On October 5, 2009, TBYC filed a 30-day pre-election report for the November 2009 election that covered the period from July 1, 2009, through September 24, 2009. The report disclosed the following:
 - \$4,299.40 in total political contributions;
 - \$1,817.24 in total political expenditures;
 - \$1,282.78 in total political contributions maintained as of the last day of the reporting period; and
 - A political contribution of \$2,000 on September 11, 2009, from an individual (included a notation that the amount was returned on October 1, 2009).
10. TBYC filed an 8-day pre-election report for the November 2009 election that covered the period from September 25, 2009, through October 24, 2009. The local filing authority date stamped the report as received on October 26, 2009. The report disclosed the following:
 - \$12,275 in total political contributions;
 - \$12,249.33 in total political expenditures;
 - \$1,308.42 in total political contributions maintained as of the last day of the reporting period; and

- A political expenditure of \$2,000 on October 1, 2009, to an individual for the purpose of returning a cash contribution.
11. TBYC filed a January 2010 semiannual report that covered the period from October 25, 2009, through December 31, 2009. The local filing authority date stamped the report as received on January 15, 2010. The report disclosed the following:
- \$1,340 in total political contributions;
 - \$2,440.95 in total political expenditures; and
 - \$883.08 in total political contributions maintained as of the last day of the reporting period.
12. On July 16, 2010, TBYC filed a July 2010 semiannual report that covered the period from January 1, 2010, through June 30, 2010. The local filing authority date stamped the report as received on July 16, 2010. The report disclosed the following:
- \$0 in total political contributions;
 - \$0 in total political expenditures; and
 - \$560.07 in total political contributions maintained as of the last day of the reporting period.

IV. Findings and Conclusions of Law

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

Campaign Finance Reports and Campaign Treasurer Appointment

1. “Political committee” means a group of persons that has as a principal purpose accepting political contributions or making political expenditures. ELEC. CODE § 251.001(12).
2. “Political contribution” means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
3. “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. *Id.* § 251.001(3).
4. “Political expenditure” means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
5. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. *Id.* § 251.001(7).

6. “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).
7. A person may not knowingly make or authorize a political expenditure in violation of this chapter. *Id.* § 253.004.
8. 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. *Id.* § 253.031(b).
9. The campaign treasurer of a specific-purpose committee shall file two reports for each year. The first report shall be filed not later than July 15 and covers the period beginning January 1, the day the committee’s campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30. The second report shall be filed not later than January 15 and covers the period beginning July 1, the day the committee’s campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31. *Id.* § 254.123.
10. For each election in which a specific-purpose political committee supports or opposes a candidate or measure, the committee’s campaign treasurer shall file two reports. *Id.* § 254.124(a). The first report shall be filed not later than the 30th day before election day. The report covers the period beginning the day the committee’s campaign treasurer appointment is filed or the first day after the period covered by the committee’s last required report, as applicable, and continuing through the 40th day before election day. *Id.* § 254.124(b). The second report shall be filed not later than the eighth day before election day. The report covers the period beginning on the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.124(c).
11. Each report filed under chapter 254 of the Election Code is required to include the information required by section 254.031 of the Election Code. *Id.* § 254.031.
12. An individual not acting in concert with another person may make one or more direct campaign expenditures in an election from the individual’s own property that exceed \$100 on any one or more candidates or measures only if the individual complies with the reporting requirements under chapter 254 of the Election Code, as if the individual were the campaign treasurer of a political committee, and the individual receives no reimbursement for the expenditures. *Id.* § 253.062(a). An individual making expenditures under this section is not required to file a campaign treasurer appointment. *Id.* § 253.062(b).

13. “Direct campaign expenditure” means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. *Id.* § 251.001(8).
14. The circulation and submission of the respondent’s petition was a measure. Although the respondent’s July 2009 semiannual report indicated it was filed pursuant to section 253.062 of the Election Code, which addresses the reporting of direct campaign expenditures by individuals not acting in concert with another person, the respondent’s affidavit responding to the complaint indicated that he was part of a group supporting the measure at the time he made the political expenditures in question. The respondent swore that his petition group did not form a political committee until after the city council voted to have an election on the matter, and that he believed the political campaign would start only after the city placed the item on the ballot. News reports indicated that the city did not certify the petition until sometime after the respondent submitted the petition to city officials on July 16, 2009. Although a group becomes a political committee by having as a principal purpose accepting political contributions or making political expenditures, rather than by filing a document, the evidence indicates that TBYC filed its campaign treasurer appointment sometime after city officials determined that the matter would be submitted in an election for an expression of the voters’ will. Prior to that time, on June 13, 2009, the respondent made a \$433 political expenditure that, when aggregated with earlier political expenditures made by the respondent to support the measure, exceeded \$500. Therefore, there is credible evidence of violations of sections 253.004 and 253.031(b) of the Election Code.
15. The campaign treasurer of a political committee is responsible for filing campaign finance reports for the committee. Although TBYC failed to timely file a July 2009 semiannual report, the respondent was not the campaign treasurer for TBYC, and, therefore, was not required to file campaign finance reports in accordance with chapter 254 of the Election Code. In addition, TBYC timely filed its 30-day and 8-day pre-election reports for the November 2009 election. Therefore, there is credible evidence that the respondent did not violate sections 254.031, 254.123, and 254.124 of the Election Code. The respondent acted in concert with the group supporting the measure at issue, and, therefore, was not required to file reports of direct expenditures as required by section 253.062 of the Election Code. Therefore, there is credible evidence of no violation of section 253.062 of the Election Code.

Political Contribution of Cash

16. A candidate, officeholder, or specific-purpose committee may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. *Id.* § 253.033.
17. On September 11, 2009, the respondent accepted from an individual a \$2,000 political contribution in cash on behalf of TBYC. On October 1, 2009, after learning of the \$100 limit on cash contributions, the respondent made a \$2,000 political expenditure to refund the amount to the contributor. Therefore, there is credible evidence of a violation of section 253.033 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 a person may not knowingly make or authorize a political expenditure in violation of chapter 253 of the Election Code. 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 acknowledges that a candidate, officeholder, or specific-purpose committee may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. 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 \$300 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-2909217.

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

James R. Ash, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director