

TEXAS ETHICS COMMISSION

IN THE MATTER OF

AMY ELLSWORTH,
CAMPAIGN TREASURER,
TEXAS FOR DAN GATTIS, INC.,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2911283

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-2911283. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.124, and 254.1212 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) did not timely file a 30-day pre-election report for the November 2008 general election; 2) did not properly disclose total political contributions maintained; 3) accepted political contributions from corporations or labor organizations; 4) did not disclose the full name of contributors and the purpose of political expenditures; 5) did not include in campaign finance reports required information for contributions from out-of-state political committees; 6) did not include in campaign finance reports the principal occupation or job title and the full name of the employer for individuals who contributed \$500 or more during a reporting period; and, 7) did not timely report political expenditures.

III. Facts Supported by Credible Evidence

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

1. During the time relevant to this complaint, the respondent was the campaign treasurer of Texans for Dan Gattis, Inc., a specific-purpose committee that files with the commission.

Timely Filing of a Campaign Finance Report

2. The complaint alleged that the respondent filed the committee's 30-day pre-election report for the November 2008 general election late.
3. The 30-day pre-election report for the November 2008 general election was due October 6, 2008.
4. On October 6, 2008, the respondent filed a report on the wrong form. On October 7, 2008, the respondent filed the committee's 30-day pre-election report on the proper form.
5. On October 22, 2008, the respondent filed an affidavit of defense for the late filing of the 30-day pre-election report and swore that the report was filed late due to a third-party software error. As permitted by commission rule, the respondent was granted a waiver of the civil penalty by the executive director.

Total Political Contributions Maintained

6. The complaint alleged that the respondent did not properly disclose the amount of total political contributions maintained in the committee's 30-day and 8-day pre-election reports for the November 2008 election, and January and July 2009 semiannual reports.
7. In response to the allegations, the respondent indicated that the 30-day and 8-day pre-election reports and January 2009 semiannual report disclosed the accrual balance instead of the actual bank balance. The respondent corrected those reports to disclose the correct amounts.

Contributions from Corporations or Labor Organizations

8. The complaint alleged that the respondent accepted nine political contributions from corporations or labor organizations totaling \$4,900. The respondent swore that if a contributor is not an individual, she contacts the contributor "to determine if the donor is a corporation, or has corporate owners," and does not accept the contribution if prohibited.
9. Five of the contributions at issue did not come from a corporation or labor organization. For four contributions, the evidence did not clearly establish whether the contributions were from a corporation or labor organization, or a political committee.

Principal Occupation or Job Title and Employer's Name

10. The complaint alleged that the respondent did not include the principal occupation or job title and the full name of the employer for five individuals contributing \$500 or more in the committee's 30-day pre-election report.

11. Out of 34 political contributions disclosed in the 30-day pre-election report, five contributions totaling \$3,000 did not include the contributor's principal occupation or job title, or the name of the contributor's employer.
12. The respondent filed a corrected report and disclosed the occupation or job title and employer's name of contributors that were not included in the original report.

Full Name of Contributors

13. The complaint alleged that the respondent did not disclose the full name of the contributor for 18 political contributions totaling \$15,750 in the committee's 30-day and 8-day pre-election reports for the November 2008 general election and January 2009 semiannual report.
14. Of the 18 disclosures at issue, 12 contributions disclosed an acronym that was not actually part of the committee's name but was listed in commission records. Three contributions disclosed the contributor's full name, and two contributions disclosed a partial name. One contribution of \$1,000 from "UPSPAC" did not include the full name of the contributor. The name on the contributor's check was "UPSPAC" and included a Federal Election Commission (FEC) identification number. No acronym was listed in the FEC records for the committee.

Contributions from Out-of-State Political Committees

15. The complaint alleged that the respondent did not include the out-of-state political committee identification number for three political contributions from out-of-state political committees totaling \$1,500 that were disclosed in the committee's 8-day pre-election report for the November 2008 general election. Each contributor at issue was listed with an out-of-state address.
16. Commission records show that the committees at issue file with the commission. The contributions at issue were reported by each committee in the committee's 30-day or 8-day pre-election report for the November 2008 general election.

Purpose of Political Expenditures

17. The complaint alleged that the respondent did not sufficiently describe the purpose of 66 political expenditures in the committee's 30-day and 8-day pre-election reports, and January and July 2009 semiannual reports.
18. At issue in the 30-day pre-election report is a \$414.67 political expenditure to AT&T Mobility for "telephone/communications."

19. At issue in the 8-day pre-election report are three political expenditures totaling approximately \$410 to AT&T Mobility and Verizon Wireless for “telephone/communications.”
20. At issue in the January 2009 semiannual report are 13 political expenditures totaling approximately \$3,340 for such purposes as “telephone/communications,” “legal fees,” and “Meeting Expense.”
21. At issue in the July 2009 semiannual report are 45 political expenditures totaling approximately \$8,550 for such purposes as “Books,” “Computer Equipment,” “Telephone/Communications,” “Meeting Expense,” “Equipment,” “Legal Fees,” and “Supplies.”
22. The respondent filed corrections to the reports at issue and clarified the purpose of expenditures to indicate that they were campaign expenses.

IV. Findings and Conclusions of Law

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

Timely Filing of a Campaign Finance Report

1. 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. ELEC. CODE § 254.124(a). The first report shall be filed not later than the 30th day before election day. *Id.* § 254.124(b). The second report shall be filed not later than the eighth day before election day. *Id.* § 254.124(c).
2. The 30-day pre-election report was due October 6, 2008. The respondent filed the committee’s report on October 7, 2008, which was one day late. Although the waiver of the administrative penalty was granted, the report was not timely filed. Therefore, there is credible evidence of a violation of section 254.124 of the Election Code, but no penalty is assessed for the violation.

Total Political Contributions Maintained

3. A campaign finance report must include, as of the last day of a reporting period for which the person is required to file a report, 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).

4. The total amount of political contributions maintained in one or more accounts includes balance on deposit in banks, savings and loan institutions and other depository institutions and the present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc. Ethics Commission Rules § 20.50(a).
5. The respondent acknowledged that the amounts of total political contributions maintained were incorrect and corrected three reports to disclose the correct amounts. Therefore, regarding the 30-day and 8-day pre-election reports and January 2009 semiannual report, there is credible evidence that the respondent violated section 254.031(a)(8) of the Election Code. Regarding the July 2009 semiannual report, there is insufficient evidence of a violation.

Contributions from Corporations or Labor Organizations

6. 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. That subchapter does not authorize a corporation to make a political contribution to a candidate.
7. “Corporation” means a corporation that is organized under the Texas Business Corporation Act, the Texas Non-Profit 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. *Id.* § 253.091.
8. 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(b).
9. For five of the political contributions at issue totaling \$3,000, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code. Regarding the remaining contributions totaling \$1,900, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.

Principal Occupation or Job Title and Employer’s Name

10. Each report by a specific-purpose committee for supporting or opposing a candidate for or assisting a holder of a statewide office in the executive branch or a legislative office must include the contents prescribed by section 254.0612 of the Election Code. ELEC. CODE § 254.1212.
11. Each report by a candidate for a statewide office in the executive branch or legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 during the reporting period, the individual’s principal occupation or job title, and the full name of the individual’s employer. ELEC. CODE § 254.0612.

12. As the treasurer of a specific-purpose committee for supporting a candidate for a legislative office, the respondent was required to disclose the occupations and employers of contributors whose contributions equaled or exceeded \$500. The respondent failed to provide that information for five contributors at the time the reports were originally due. Therefore, there is credible evidence of violations of section 254.1212 of the Election Code.

Full Name of Contributors

13. A campaign finance report filed by a candidate must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
14. Of the 18 disclosures at issue, 17 contributions included the full name of the contributor or an acronym that is used in commission records, or was part of the committee's name. Therefore, with respect to 17 entries, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code. The entry for UPSPAC did not disclose a name or acronym used in commission or FEC records. Therefore, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code regarding that contribution.

Contributions from Out-of-State Political Committees

15. A candidate, officeholder, or political committee that accepts a political contribution from a political committee that files with the Federal Election Commission must include the FEC statement of organization or FEC identification number as a part of the report filed under Chapter 254 for the reporting period in which the contribution was accepted. ELEC. CODE § 253.032.
16. The contributions at issue were from political committees that file with the commission. Thus, the respondent was not required to include a FEC identification number for the contributors. Therefore, there is credible evidence of no violations of section 253.032 of the Election Code with respect to these contributions.

Purpose of Political Expenditures

17. A campaign finance report filed by a candidate 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).
18. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61.

19. Although the respondent filed corrected reports to provide additional information for the political expenditures at issue, the original disclosures were adequate. Therefore, there is credible evidence of no violations 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 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 acknowledges that 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.

The respondent acknowledges that 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. The first report shall be filed not later than the 30th day before election day. The second report shall be filed not later than the eighth day before election day.

The respondent also acknowledges that a campaign treasurer of a specific-purpose political committee that supports or opposes a candidate for, or holder of, a statewide office in the executive branch or a legislative office must include a contributor's principal occupation or job title and the full name of the contributor's employer if the committee accepts political contributions of \$500 or more from the contributor during 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 \$500 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-2911283.

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

Amy Ellsworth, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director