

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ELLEN COHEN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3100115

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 21, 2010, to consider sworn complaint SC-3100115. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031 of the Election Code as well as credible evidence of technical or *de minimis* violations of section 254.0612 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 properly disclose political contributions, political expenditures, and total political contributions maintained in campaign finance reports, 2) accepted political contributions from corporations, 3) improperly disclosed political expenditures as reimbursements, and 4) failed to include the principal occupation or job title and the full name of the employer for individuals who contributed \$500 or more during a reporting period.

III. Facts Supported by Credible Evidence

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

1. The respondent is State Representative, District 134.
2. The allegations were based on the respondent's January 2008 and July 2008 semiannual campaign finance reports; 30-day and 8-day pre-election reports for the November 2008 election; and January 2009 and July 2009 semiannual campaign finance reports.
3. The respondent's January 2008 semiannual report disclosed the following:

- \$3,372.52 in total political contributions of \$50 or less, unless itemized
 - \$188,083.92 in total political contributions
 - \$2,794.65 in total political expenditures of \$50 or less, unless itemized
 - \$44,891.90 in total political expenditures
 - \$202,964.21 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans
4. The respondent's July 2008 semiannual report disclosed the following:
- \$5,388.50 in total political contributions of \$50 or less, unless itemized
 - \$155,796.62 in total political contributions
 - \$4,714.34 in total political expenditures of \$50 or less, unless itemized
 - \$122,747.17 in total political expenditures
 - \$231,337.16 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans
5. The respondent's 30-day pre-election report for the November 2008 election disclosed the following:
- \$3,634.75 in total political contributions of \$50 or less, unless itemized
 - \$70,468.75 in total political contributions
 - \$3,347.27 in total political expenditures of \$50 or less, unless itemized
 - \$79,721.11 in total political expenditures
 - \$216,669.76 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans
6. The respondent's 8-day pre-election report for the November 2008 election disclosed the following:
- \$690 in total political contributions of \$50 or less, unless itemized
 - \$47,080 in total political contributions
 - \$1,109.01 in total political expenditures of \$50 or less, unless itemized
 - \$43,675.47 in total political expenditures
 - \$219,240.77 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loan

7. The respondent's January 2009 semiannual report disclosed the following:
 - \$737.61 in total political contributions of \$50 or less, unless itemized
 - \$51,337.57 in total political contributions
 - \$1,391.97 in total political expenditures of \$50 or less, unless itemized
 - \$34,853.47 in total political expenditures
 - \$230,377 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans
8. The respondent's July 2009 semiannual report disclosed the following:
 - \$0 in total political contributions of \$50 or less, unless itemized
 - \$2,500 in total political contributions
 - \$3,435.18 in total political expenditures of \$50 or less, unless itemized
 - \$81,658.19 in total political expenditures
 - \$158,211.77 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans

Total Political Contributions Maintained

9. The complaint alleged that the respondent disclosed an incorrect amount for the total political contributions maintained as of the last day of the reporting period in the January 2008 and July 2008 semiannual reports, 30-day and 8-day pre-election reports for the November 2008 election, and January 2009 and July 2009 semiannual reports.
10. In response to the allegations, the respondent swore that the amount disclosed reflected the "cash balance of all accounts on the last day of the reporting period."

Principal Occupation or Job Title and Name of Employer

11. The complaint alleged that the respondent failed to disclose a principal occupation or job title and the full name of the employer for 29 contributions of \$500 or more disclosed in the January 2008, July 2008, and January 2009 semiannual reports, and 30-day and 8-day pre-election reports for the November 2008 election. During the reporting periods at issue, the respondent had an active campaign treasurer appointment on file with the commission.
12. Twenty-five of the contributions disclosed the contributors' principal occupation and indicated that the contributor was self-employed. For two contributions disclosed in the January 2008 semiannual report, the information was not disclosed, but the respondent provided evidence of "best efforts," as described in section 254.0312 of the Election Code.

13. On March 2, 2010, the respondent corrected the January 2008 semiannual report to change the principal occupation and employer information for one \$500 contribution from “Executive Coach” to “writer.” The July 2008 report disclosed that the same contributor made two contributions of \$500 or more. The required information was provided for one of the contributions but not the other.

Political Contributions from Corporations

14. The complaint alleged that the respondent accepted political contributions from a corporation based on disclosures in the January 2008 and July 2008 semiannual reports and 8-day pre-election report for the November 2008 election. The contributions at issue were either from a political committee or an entity that was not organized under the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, the Texas For-Profit Corporation Law, or the Texas Nonprofit Corporation Law and did not have a corporate member or partner.

Name of Contributor

15. The complaint alleged that the respondent failed to fully disclose the names of contributors in the January 2008 and July 2008 semiannual reports.
16. The January 2008 semiannual report disclosed an initial and last name for the contributor’s name of a \$250 contribution. The July 2008 semiannual report disclosed the initials and last name for the contributors of a \$500 contribution and a \$250 contribution.

Payees of Political Expenditures

17. The complaint alleged that the respondent failed to disclose the payees, addresses, dates, and amounts “pertaining to the stated purpose” of political expenditures in the January 2008 and July 2008 semiannual reports, and 30-day and 8-day pre-election reports for the November 2008 election.
18. The actual payees were disclosed for the expenditures at issue.

Payee Names, Addresses, and Purpose Descriptions of Political Expenditures

19. The complaint alleged that the respondent failed to fully disclose the names, addresses, or purposes related to political expenditures disclosed in the respondent’s January 2008, July 2008, January 2009, and July 2009 semiannual reports and 30-day and 8-day pre-election reports for the November 2008 election.

20. Twenty political expenditures, totaling \$4,460, disclosed “field” or “Gifts” as the purpose of the expenditure. Eleven political expenditures totaling approximately \$970 did not disclose the payee’s full name, or used an acronym that was not part of the committee’s name. The required information for the remaining political expenditures at issue was adequately disclosed.

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. 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).
2. 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).
3. The complaint alleged that the respondent did not correctly disclose the total political contributions maintained as of the last day of the reporting period in the January 2008 and July 2008 semiannual reports, 30-day and 8-day pre-election reports for the November 2008 election, and January 2009 and July 2009 semiannual reports. The respondent swore that the amounts of total political contributions maintained were correct in the reports at issue, and the evidence is insufficient to refute the respondent’s statement. Therefore, there is insufficient evidence that the respondent violated section 254.031(a)(8) of the Election Code.

Occupation and Employer Information

4. The respondent had an active campaign treasurer appointment on file during the periods at issue. Thus, the respondent was a candidate for title 15 filing purposes. Each report by a candidate for a statewide office in the executive branch or a 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 and that are accepted 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.

5. A person required to file a report under this chapter is considered to be in compliance with section 254.0612, 254.0912, or 254.1212 of the Election Code only if the person or the person's campaign treasurer shows that the person has used best efforts to obtain, maintain, and report the information required by those sections. A person is considered to have used best efforts to obtain, maintain, and report that information if the person or the person's campaign treasurer complies with this section. *Id.* § 254.0312(a).
6. Each written solicitation for political contributions from an individual must include, in pertinent part, a clear request for the individual's full name and address, the individual's principal occupation or job title, and the full name of the individual's employer, and an accurate statement of state law regarding the collection and reporting of individual contributor information. *Id.* § 254.0312(b).
7. For each political contribution received from an individual that, when aggregated with all other political contributions received from the individual during the reporting period, equals or exceeds \$500 and for which the information required by section 254.0612, 254.0912, or 254.1212 of the Election Code is not provided, the person must make at least one oral or written request for the missing information. A request under this subsection: (1) must be made not later than the 30th day after the date the contribution is received; (2) must include a clear and conspicuous statement that complies with subsection (b); (3) if made orally, must be documented in writing; and (4) may not be made in conjunction with a solicitation for an additional political contribution. *Id.* § 254.0312(c).
8. While the complaint alleged that the respondent failed to disclose the principal occupation or job title and the full name of the employer for a total of 29 political contributions of \$500 or more in the five reports at issue, 25 of the political contributions at issue disclosed the contributors' principal occupations and disclosed that the contributors were self-employed. In the January 2008 semiannual report, the respondent failed to disclose the principal occupation or job title and the full name of the employer for one contributor of \$500 and failed to disclose the principal occupation/job title for one contributor of \$1,000. The respondent filed a corrected report in March 2010 to disclose the required occupation and employer information for the two individuals at issue. Although the principal occupation and employer information was not included when the report was due, the respondent disclosed at the time the report was due that the information had been requested for the two individuals at issue. The respondent provided records that "best efforts," in accordance with section 254.0312 of the Election Code, were used to obtain the missing information. Therefore, there is credible evidence that the respondent did not violate section 254.0612 of the Election Code in connection with the political contributions.
9. The respondent also corrected the January 2008 semiannual report to change the principal occupation information for one contributor of \$500. The respondent disclosed the contributor's principal occupation as "Executive Coach" on the original report and "Writer" on the corrected report. Although the respondent disclosed the required occupation and

employer information, the occupation information was incorrect when the report was due. In the July 2008 semiannual report, the respondent disclosed that one individual gave two contributions totaling more than \$500 during the reporting period. Although the first contribution disclosed the contributor's principal occupation and disclosed that the contributor was self-employed, the second contribution of \$100 failed to disclose the required occupation and employer information. Therefore, there is credible evidence that the respondent committed a technical or *de minimis* violation of section 254.0612 of the Election Code in connection with those political contributions disclosed in the January 2008 and July 2008 semiannual reports.

Accepting a Contribution from a Corporation

10. 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.
11. 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.
12. 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.
13. The contributions at issue were not from an entity that section 253.094 of the Election Code prohibits from making a political contribution. Therefore, there is credible evidence that the respondent did not violate section 253.003 of the Election Code by accepting a political contribution that is illegal under section 253.094 of the Election Code in connection with the contributions.

Name of Contributor

14. 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 by the person or committee required to file the report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
15. In the original January 2008 semiannual report, the respondent failed to disclose the contributor's full name for one political contribution of \$250. Although the respondent corrected the report at issue to disclose the middle name of the contributor, the name of the contributor was incorrect when the report was due. In the July 2008 semiannual report, the respondent failed to disclose the contributors' full names for two political contributions totaling \$750. Therefore, there is credible evidence that the respondent violated section 254.031(a)(1) of the Election Code in connection with political contributions totaling \$1,000 in the January 2008 and July 2008 semiannual reports.

Payees of Political Expenditures

16. 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).
17. A political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: (1) 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; and (2) included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. Except as provided by subsection (a) of this section, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows: (1) the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee; (2) the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and (3) the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee. Ethics Commission Rules § 20.62.
18. The complaint alleged that the respondent did not disclose the actual payee information for political expenditures totaling approximately \$930 in the reports at issue. The political expenditures at issue were disclosed correctly when the report was originally filed. Therefore, there is credible evidence no of violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules with regard to those expenditures.

Payee Names, Addresses, and Purpose Descriptions of Political Expenditures

19. 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).

20. In the reports at issue, the respondent failed to adequately disclose the purpose descriptions for 20 political expenditures at issue totaling approximately \$4,460, for which the purpose was described as “Gifts” or “field.” Eleven political expenditures totaling approximately \$970 used an acronym that was not part of the committee’s name instead of the full name of the committee. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code in connection with approximately \$970 of political expenditures related to payee names and approximately \$460 of political expenditures related to purpose descriptions. The remaining allegations regarding the purpose of expenditures were sufficient under the statute.

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 report by a candidate for a statewide office in the executive branch or a 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 and that are accepted during the reporting period, the individual’s principal occupation or job title and the full name of the individual’s employer.

The respondent also 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 by the person or committee required to file the report, the full name and address of the person making the contributions, and the dates of the contributions.

The respondent also acknowledges that 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.

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 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-3100115.

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

Ellen Cohen, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director