

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ANN SUTHERLAND,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-31005150

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 11, 2011, to consider sworn complaint SC-31005150. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.036 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 did not use the prescribed form for two pre-election campaign finance reports and did not disclose in-kind political contributions in the form of two political mailers.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for Place 6 on the Fort Worth Independent School District Board in a May 2010 election.

Use of Prescribed Form

2. The complaint alleged that the respondent did not use the prescribed form for her 30-day and 8-day pre-election reports for the May 8, 2010, school board election.
3. Schedule A (used for political contributions) and Schedule F (used for political expenditures) of the respondent's 30-day and 8-day pre-election reports at issue had the statement "See attached" written on them. The contributions attachment for the 30-day pre-election report listed 21 contributions totaling \$2,825. The contributions attachment for the 8-day pre-

election report listed 10 contributions totaling \$670. The contribution attachments disclosed the dates and amounts of the contributions and the names and addresses of the contributors. The expenditures attachment for the 30-day pre-election report listed 24 expenditures totaling \$2,686.18. The expenditures attachment for the 8-day pre-election report listed seven expenditures totaling \$8,458.01. The expenditure attachments disclosed the dates and amounts of the expenditures, the names and addresses of the payees, and the purposes of the expenditures.

4. In response to the allegations, the respondent swore:

I used the spreadsheet because it was recommended by another member of the Fort Worth ISD board, who has been following this procedure for two years and thought it was satisfactory.

5. The respondent corrected the errors.

6. The correction affidavit for the 8-day pre-election report stated, “2. Corrected small error (\$31.14) on expenditures which had been listed twice. 3. Re-calculated totals on cover sheet p. 2.” The corrected total of political expenditures is \$8,426.87. The respondent mistakenly put that amount in the space for total political expenditures of \$50 or less.

Reporting Political Contributions

7. The complaint alleged that the respondent did not disclose in-kind political contributions in the form of two political mailers. The complaint stated:

The respondent/candidate had knowledge, and so stated in public, that she had accepted in-kind campaign support from UEA (United Educators Association Inc) but failed to report on campaign finance report.

8. The complaint included two mailers that each state in part, “Vote Ann Sutherland for School Board . . . Pol Adv. Paid for by UEA . . .”

9. The respondent’s January 2010 semiannual report and 30-day and 8-day pre-election reports do not disclose any in-kind contributions of the mailers.

10. In response to the allegations, the respondent swore:

Regarding Violation #2, asserting I failed to report two contributions greater than \$50. According to p. 8 of your Form C/OH instruction guide, relating to direct campaign expenditure by other individuals, I am required to report such a contribution when given notice by an individual that this has been made. It also says, “If you have not received such notice, you may skip this section.”

As I told you on the phone, I was told that the United Educators Assn. had budgeted \$10,000 for the campaign. At no time was I given notice that money had been expended.

Based on the second paragraph of page 8 of this instruction guide, it appears to me that this was, indeed, a direct campaign expenditure. However, as I did not receive notice of it having been made, I do not think I violated the rule.

Please let me know if you agree with this interpretation or if you want me also to amend my reports to reflect these contributions as well.

11. The respondent submitted another affidavit with a copy of an e-mail to her from an official of the United Educators Association which states in part:

In our conversation with you before the May 2010 election, we stated to you it was UEA's intent to budget up to \$10,000 for direct campaign expenditures in your race. Never did we say it would be an in-kind-contribution or any other contribution to your campaign.

12. UEA filed three campaign finance reports with the Fort Worth Independent School District regarding expenditures it made in connection with the May 8, 2010, school board election. The first report filed on April 8, 2010, was marked as a 30-day pre-election report and disclosed \$2,660.59 of expenditures. The expenditures were for a website, yard signs, yard sign hardware, and printing for a mailer. The report was signed by the UEA official. The cover letter accompanying the report stated in part:

In light of recent U.S. Supreme Court rulings and in compliance with state law, United Educators Associations must report any direct campaign expenditures that exceed \$100 as if it was an individual.

The direct campaign expenditures made by the United Educators Association was [sic] not made in concert with another person and the United Educators Association has not received and will not receive any reimbursement for the expenditures.

13. The second report, filed on April 30, 2010, was marked as an 8-day pre-election report, and stated that the committee purpose was to support the respondent as a candidate for the Fort Worth Independent School Board of Trustees Place 6. The report disclosed \$1,710.23 in expenditures. The expenditures were for postage for the mailer and phone calls to voters. The report was signed by the UEH executive. The third report, filed on July 13, 2010, was marked as a July semiannual report, and stated that the committee purpose was to support the respondent as a candidate for the Fort Worth Independent School Board of Trustees Place 6. The report disclosed \$919.30 in expenditures. The expenditures were for postcards to voters

and phone calls to voters. The report states that it was sworn to by the respondent. It was accompanied by a cover letter that stated the same thing as the cover letter accompanying the first report.

IV. Findings and Conclusions of Law

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

Use of Prescribed Form

1. Each report filed under this chapter with an authority other than the commission must be in a format prescribed by the commission. ELEC. CODE § 254.036.
2. The respondent did not use the prescribed forms to itemize political contributions and political expenditures on the 30-day and 8-day pre-election reports at issue. Therefore, there is credible evidence of violations of section 254.036 of the Election Code.

Reporting Political Contributions

3. Each report must include the amount of political contributions from each person that in the aggregate exceed \$50, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
4. “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. ELEC. CODE § 251.001(2).
5. “Campaign contribution” means a contribution to a candidate or political committee that is offered with the intent that it be used in connection with a campaign for elective office or on a measure. ELEC. CODE § 251.001(3).
6. “Pledge” means a contribution in the form of an unfulfilled promise or unfulfilled agreement, whether enforceable or not, to provide a specified amount of money or specific goods or services. The term does not include a contribution actually made in the form of a check. Ethics Commission Rules § 20.1(12).
7. “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. ELEC. CODE § 251.001(6).
8. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. ELEC. CODE § 251.001(7).

9. Ethics Advisory Opinion No. 331 states: A contribution does not necessarily pass into the candidate's possession. For example, a third-party might pay for a billboard supporting a candidate and make payment directly to the owner of the billboard. If the candidate gives prior consent or approval to the offer to pay for the billboard, the third-party has made (and the candidate has accepted) a campaign contribution to the candidate. The candidate is required to report the contribution on the campaign finance report covering the period in which the candidate accepted the contribution. Ethics Advisory Opinion No. 331 (1996).
10. The evidence indicated that UEA told the respondent that it had budgeted \$10,000 for her campaign. Presumably, after being advised of this the respondent had knowledge of the proposed expenditures to be made on her behalf and approved of the expenditures. Thus, the proposed expenditures by UEA constituted campaign contributions. The expenditures made during the 30-day or 8-day reporting periods for the May 2010 election should have been disclosed on Schedule A (political contributions) on the appropriate report. Any pledged expenditures that were not made during the same period that UEA told the respondent that it would make them were nevertheless contributions that should have been disclosed as a contribution in the form of a pledge on Schedule B (pledged contributions). The respondent did not disclose the UEA contributions on either schedule in the pre-election reports for the May 2010 election. Therefore, there is credible evidence of violations of section 254.031(a)(1) 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 report filed under chapter 254 of the Election Code with an authority other than the Ethics Commission must be in a format prescribed by the commission and that each report must include the amount of political contributions from each person that in the aggregate exceed \$50, the full name and address of the person making the contributions, and the dates of the contributions. 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 is 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-31005150.

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

Ann Sutherland, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director