

TEXAS ETHICS COMMISSION

IN THE MATTER OF

M. W. MARTINEZ,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31006193

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-31006193. 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 and credible evidence of technical or *de minimis* violations of section 254.061 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 provide complete information on campaign finance reports, and 2) accepted political contributions from corporations or labor organizations.

III. Facts Supported by Credible Evidence

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

1. The respondent is Austin City Council Member, Place 2.

Total Political Contributions Maintained

2. The complaint alleged that the respondent incorrectly reported the amount of total political contributions maintained on four campaign finance reports. The complaint did not provide specific evidence to support the allegations.

Political Contributions from Corporations or Labor Organizations

3. The complaint alleged that, based on disclosures in two campaign finance reports, the respondent accepted nine political contributions from corporations or labor organizations. The respondent denied that he accepted political contributions from corporations or labor organizations. Three of the contributions at issue did not come from a corporation or labor organization. For six contributions, the evidence was inconclusive with regard to the status of the contributor or the respondent's knowledge of the contributor's status.

Disclosure of Full Names of Persons Making Political Contributions

4. The complaint alleged that, based on disclosures in the respondent's 30-day pre-election report for the May 2009 election, the respondent failed to disclose the full names of nine persons who made political contributions. The following disclosures did not include a full name for the contributor:

30-day Pre-election Report, May 2009 Election

- March 12, 2009, \$350, AFSCME PAC
- January 6, 2009, \$350, BMC PAC
- March 17, 2009, \$350, BOMA Austin PAC
- March 30, 2009, \$150, R.L. [_____]
- January 9, 2009, \$350, D. [_____]

Disclosure of Purposes of Political Expenditures

5. The complaint alleged that, based on disclosures in four campaign finance reports, the respondent failed to properly disclose the purposes of nine political expenditures. The respondent did not file corrected reports. However, the original descriptions adequately described the purposes of the expenditures.

Disclosure of Political Expenditures as Reimbursements

6. The complaint alleged that the respondent improperly reported nine political expenditures as reimbursements on four campaign finance reports. In all instances, the named payee was the actual vendor of the goods or services purchased.

Address of Campaign Treasurer

7. The complaint alleged the respondent failed to include his campaign treasurer's street address on five campaign finance reports. The reports at issue were the respondent's

January 2009 semiannual report, 30-day pre-election report for the May 2010 election July 2009 semiannual report, and January 2010 semiannual report.

8. The alleged missing information was not included on the reports at issue. The respondent filed corrected reports to include this information.

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. 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).
2. There is insufficient evidence of a violation of section 254.031(a)(8) of the Election Code.

Political Contributions from Corporations or Labor Organizations

3. 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.
4. 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.
5. 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.
6. A partnership that has corporate partners is subject to the same restrictions on political activity that applies to corporations. Ethics Advisory Opinion No. 221 (1994).
7. For three of the political contributions at issue, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code. For six of the political contributions at issue, there is insufficient evidence of violations of sections 253.003 and 253.094 of the Election Code.

Disclosure of Full Names of Persons Making Political Contributions

8. 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 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).

9. Of the nine disclosures at issue, five contributions did not include the full name of the contributor. Two of those contributions were corrected. Therefore, with respect to those five contributions, totaling \$1,550, there is credible evidence of violations of section 254.031(a)(1) of the Election Code. The remaining entries were correct or in substantial compliance. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code.

Disclosure of Purposes of Political Expenditures

10. 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).
11. The original purpose descriptions were adequate. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.

Disclosure of Political Expenditures as Reimbursements

12. 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).
13. A report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. Ethics Commission Rules § 20.59.
14. Political expenditures 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 maybe reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: 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 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 above, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows: 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; the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and 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.

15. The respondent disclosed the actual vendor payee of the expenditures at issue. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code, and sections 20.59 and 20.62 of the Ethics Commission Rules.

Address of Campaign Treasurer

16. Each report by a candidate must include the candidate's campaign treasurer's name, residence or business street address, and telephone number. ELEC. CODE § 254.061.
17. The respondent filed corrected reports to disclose a street address for his campaign treasurer. The omissions did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.061 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 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 a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. The respondent also acknowledges that each report by a candidate must include the candidate's campaign treasurer's name, residence or business street address, and telephone number. 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 \$100 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-31006193.

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

M. W. Martinez, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director