

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
WEBB K. MELDER,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-31010325

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on February 8, 2012, to consider sworn complaint SC-31010325. 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: 1) did not use the prescribed form to file campaign finance reports in violation of section 254.036 of the Election Code, 2) did not properly disclose political contributions, political expenditures, and loans in violation of section 254.031 of the Election Code and section 20.62 of the Ethics Commission Rules, and 3) did not properly execute the affidavit on a campaign finance report in violation of section 254.036(h) of the Election Code.

### III. Facts Supported by Credible Evidence

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

1. The respondent was a successful candidate for mayor of the City of Conroe in a May 2008 election.
2. The reports at issue are the respondent's January 2009 (original and corrected), July 2009, January 2010, and July 2010 semiannual reports.

#### Use of Prescribed Form

3. The complaint alleged that the respondent did not use the prescribed form on the January 2009, the corrected January 2009, and the July 2010 semiannual reports.

4. On the January 2009 and corrected January 2009 semiannual reports, the respondent used Schedule F, Political Expenditures, for the first page of political expenditures. For the additional pages of political expenditures, the respondent modified other schedules. The respondent itemized \$1,050 of political expenditures on Schedule F and \$3,238.97 of political expenditures on the other modified schedules. The total itemized political expenditures were \$4,288.97. The respondent did not file a corrected report to disclose the expenditures on Schedule F.
5. On the July 2010 semiannual report, the respondent used Schedule F for the first page of political expenditures. For the second page of political expenditures, the respondent disclosed two political expenditures on a blank sheet of paper. At the top of the page was written “[s]chedule F; continued.” No amounts were disclosed for the political expenditures. The respondent filed a corrected report disclosing the two political expenditures on Schedule F including disclosing the amounts of the expenditures, which totaled \$600.

#### **Total Political Contributions, Expenditures, and Loans**

6. The complaint alleged that on the corrected January 2009 semiannual report the respondent did not disclose total political contributions of \$50 or less, total political contributions, total political expenditures of \$50 or less, total political expenditures, and total outstanding loans.
7. The respondent filed a report on July 13, 2009, that was not accompanied by Form COR-C/OH, Correction Affidavit For Candidate/Officeholder. Cover sheet page 1 of the report stated that the report type was January 15, and the period covered was from July 1, 2008, through December 31, 2008, which is the reporting period for the January 2009 semiannual report. In the affidavit box on page two of the report’s cover sheet the respondent wrote “\*correction 7-13-09.” The respondent left the fields blank on that page except for the amount for total political contributions maintained as of the last day of the reporting period. The report was an apparent \$167.06 correction to the amount of political contributions maintained disclosed on the original report.

#### **Total Political Expenditures**

8. The complaint alleged that the amount the respondent reported for total political expenditures on the January 2009 semiannual report should have been \$4,288.97 and not \$2,288.97.
9. The respondent corrected one of the itemized political expenditures to change the amount from \$200 to \$100. The respondent corrected total political expenditures to \$3,638.97. The political expenditures disclosed on the report indicated that the correct amount was \$4,188.97.

**Total Political Contributions Maintained**

10. 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 on each report at issue or, in the alternative, did not report additional political contributions or political expenditures. The complaint provided no specific evidence regarding the allegations other than alleging that the amount of total political contributions maintained should be a different amount than the amount that the respondent actually disclosed on each of the reports at issue.

January 2009 Semiannual Report

11. In the January 2009 semiannual report, the respondent disclosed \$9,236.03 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the amount of total political contributions maintained should be \$7,236.03. The difference between the amount disclosed and amount alleged is \$2,000. The respondent corrected the amount disclosed to \$9,403.09, a difference of \$167.06.

Corrected January 2009 Semiannual Report

12. In the corrected January 2009 semiannual report, the respondent disclosed \$9,403.09 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the amount of total political contributions maintained should be \$7,236.03. The difference between the amount disclosed and amount alleged is \$2,167.06. The respondent did not correct the amount disclosed.

July 2009 Semiannual Report

13. In the July 2009 semiannual report, the respondent disclosed \$8,010.35 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the amount of total political contributions maintained should be \$5,841.03. The difference between the amount disclosed and amount alleged is \$2,169.32. The respondent did not correct the amount disclosed.

January 2010 Semiannual Report

14. In the January 2010 semiannual report, the respondent disclosed \$7,212.33 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the amount of total political contributions maintained should be \$5,041.03. The difference between the amount disclosed and amount alleged is \$2,171.30. The respondent did not correct the amount disclosed.

July 2010 Semiannual Report

15. In the July 2010 semiannual report, the respondent disclosed \$6,269.11 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the amount of total political contributions maintained should be \$4,096.03. The difference between the amount disclosed and amount alleged is \$2,173.08. The respondent corrected the amount disclosed to \$6,269.55, a difference of 44 cents.

**Political Expenditures**Original and Corrected January 2009 Semiannual Reports

16. The complaint alleged that on the original and corrected January 2009 semiannual reports, the respondent did not fully disclose the name of three payees. The respondent disclosed IRSF Charity as the payee for an expenditure of \$300, M.C.F.A. as the payee for an expenditure of \$100, and GCLCAC – Chamber as the payee for an expenditure of \$1,300. The respondent corrected the name of the payee M.C.F.A. to M.C.F.A. Montgomery County Fair Association. The respondent did not correct the names of the other two payees.
17. The complaint alleged that on the original and corrected January 2009 semiannual reports, the respondent did not disclose the address of the payee for all 16 itemized political expenditures totaling approximately \$4,290. The information was not disclosed. The respondent corrected the errors.
18. The complaint alleged that on the original and corrected January 2009 semiannual reports, the respondent did not disclose the purpose of 14 political expenditures totaling \$4,150 that he itemized on the reports. The information was not disclosed. The respondent corrected the errors.

July 2009 Semiannual Report

19. The complaint alleged that on the July 2009 semiannual report, the respondent did not fully disclose the name of two payees. The respondent disclosed Brazos Valley FCA as the payee for an expenditure of \$200, and MCMESA as the payee for an expenditure of \$290. The respondent corrected the name of the payee Brazos Valley FCA to Brazos Valley Fellowship of Christian Athletes and the name of the payee MCMESA to MCMESA City – County Employees Scholarship Assoc. (it appears that the correct name is Montgomery County Municipal Employees Scholarship Association).
20. The complaint alleged that on the July 2009 semiannual report, the respondent did not disclose the address of the payee for all eight itemized political expenditures totaling approximately \$1,400. The information was not disclosed. The respondent corrected the errors.

21. The complaint also alleged that the respondent did not disclose the actual payee of a reimbursement. The expenditure at issue shows an individual as the recipient with a description of "Campaign donation." The evidence did not show this entry to be incorrect.

January 2010 Semiannual Report

22. The complaint alleged that on the January 2010 semiannual report, the respondent did not disclose the address for four political expenditures totaling \$800. The information was not disclosed. The respondent corrected the errors.

July 2010 Semiannual Report

23. On the July 2010 semiannual report the respondent disclosed the following:

Schedule F (used for political expenditures):

#1094

4-4-10      \$100      MCPAS – Montgomery County Performing Arts / Conroe / donation

On a sheet of paper that stated "[S]chedule F; Continued"

#1097

5-14-10      MCMESA – City – County Employees Scholarship Fund / c/o: City Hall / PO Box 1278, Conroe, TX 77305 / donation

#1098

6/1/10      Conroe Tiger Youth Football / c/o: J.D. Dixon, 426 S. 12th St., Conroe, TX 77301

24. The complaint alleged that on the July 2010 semiannual report, the respondent did not disclose the full name of the above payee "MCMESA- City – County Employees Scholarship Fund," did not disclose the address of the payee for the above three political expenditures, did not disclose the purpose of the above political expenditure to "Conroe Tiger Youth Football," and did not disclose the amount of the expenditure for the above expenditures to "MCMESA – City – County Employees Scholarship Fund" and "Conroe Tiger Youth Football."
25. The respondent corrected the name of the payee "MCMESA- City – County Employees Scholarship Fund" to "MCMESA." It appears that the correct name is Montgomery County Municipal Employees Scholarship Association.
26. The respondent corrected the address of the payee of the \$100 expenditure to "MCPAS – Montgomery County Performing Arts."

27. The respondent corrected the purpose of the expenditure to “Conroe Tiger Youth Football.”
28. The respondent corrected the amount of the expenditures for the expenditure to “MCMESA – City – County Employees Scholarship Fund” to \$500 and the amount of the expenditure to “Conroe Tiger Youth Football” to \$100.

### **Report Affidavit**

29. The complaint alleged that the respondent did not include a properly notarized affidavit with his January 2009 semiannual report.
30. The affidavit accompanying the respondent’s January 2009 semiannual report was not properly executed by the respondent. The affidavit did not contain a notary stamp or seal, did not contain a signature of an officer administering an oath, and only contained the signature of the respondent.

## **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. On the January 2009 (original and corrected) and July 2010 semiannual reports, the respondent did not use the prescribed form to itemize all of his political expenditures. The amount of political expenditures that were not itemized on the prescribed form on the two reports was approximately \$3,840.
3. On the January 2009 semiannual reports, the schedules that the respondent modified to report his political expenditures disclosed the information that is required by Schedule F. There is credible evidence of technical or *de minimis* violations of section 254.036 of the Election Code regarding approximately \$3,240 in detailed expenditures disclosed on the reports. (The respondent did not correct the report to disclose these expenditures on Schedule F.)
4. On the July 2010 semiannual report, the sheet of paper included the information for the two expenditures that is required by the Ethics Commission form except for the amounts of the expenditures. The respondent filed a corrected report disclosing the two political expenditures on Schedule F including disclosing the amounts of the expenditures which totaled \$600. There is credible evidence of violations of section 254.036 of the Election Code regarding these expenditures.

**Total Political Contributions, Expenditures, and Loans**

5. Each report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amounts of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
6. Each report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. ELEC. CODE § 254.031(a)(5).
7. Each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
8. When the respondent filed his second January 2009 semiannual report, it is apparent that he was only attempting to disclose a change in the amount of total political contributions maintained as of the last day of the reporting period. When a filer files a corrected report on paper they are only required to disclose the information that they want to change. Although the respondent did not use the proper correction affidavit to file a corrected report, it is apparent that he was attempting to file a corrected report and, therefore, he was only required to report information that he was correcting. Therefore, the respondent did not violate sections 254.031(a)(2), 254.031(a)(5), and 254.031(a)(6) of the Election Code as to the corrected January 2009 semiannual report.

**Total Political Expenditures**

9. Each report must include the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
10. On the January 2009 semiannual report the respondent under reported total political expenditures by \$1,900. The respondent's corrected report did not correct the error. There is credible evidence of a violation of section 254.031(a)(6) of the Election Code.

**Total Political Contributions Maintained**

11. 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).

12. A *de minimis* error in calculating or reporting a cash balance under Subsection (a)(8) is not a violation of this section. ELEC. CODE § 254.031(a-1).
13. 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).
14. The respondent corrected the January 2009 semiannual report to increase the amount by approximately \$170 and corrected the July 2010 semiannual report to add 44 cents to the total. The difference between the amount disclosed on the original reports and the correct amounts did not exceed the lesser of 10% of the amount originally disclosed or \$2,500. Thus, the amounts are *de minimis*. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code with respect to the January 2009 and July 2010 semiannual reports. There is insufficient evidence that the respondent violated section 254.031(a)(8) of the Election Code as to the other reports at issue.

### **Political Expenditures**

15. Each report must include the amount of political expenditures that in the aggregate exceed \$50 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).
16. A reimbursement by a candidate to a staff member must be disclosed in accordance with section 20.62 of the Ethics Commission Rules.

### **Original and Corrected January 2009 Semiannual Reports**

17. On the original and corrected January 2009 semiannual reports the respondent did not fully disclose the name of the payee for three political expenditures totaling \$1,700, did not disclose the address of the payee and the purpose for 14 political expenditures totaling \$4,150, and did not disclose the address of the payee for two other political expenditures totaling approximately \$140. The respondent corrected: the name of the payee for the \$100 expenditure but not the names of the payees for the other two expenditures which totaled \$1,600; the addresses of the payees of the expenditures; and the purposes of the expenditures.
18. There is credible evidence of violations of section 254.031(a)(3) of the Election Code as to the above failures to disclose required information.

July 2009 Semiannual Report

19. On the July 2009 semiannual report the respondent did not fully disclose the name of the payees for two political expenditures totaling \$490 and did not disclose the address of the payee for eight political expenditures totaling \$4,150. The respondent corrected the name of the payee for the \$200 expenditure and the addresses of the payees of the expenditures. The respondent did not fully correct the name of the payee for the \$290 expenditure.
20. There is credible evidence of violations of section 254.031(a)(3) of the Election Code as to the above failures to disclose required information.
21. Regarding the allegation that the respondent did not disclose the true payee of a reimbursement, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

January 2010 Semiannual Report

22. On the January 2010 semiannual report the respondent did not disclose the address of the payee for four political expenditures totaling \$800. The respondent corrected the errors.
23. There is credible evidence of violations of section 254.031(a)(3) of the Election Code as to the above failures to disclose required information.

July 2010 Semiannual Report

24. On the July 2010 semiannual report the respondent disclosed "MCMESA - City – County Employees Scholarship Fund" as the payee for a \$500 political expenditure. The respondent corrected the name of the payee "MCMESA- City – County Employees Scholarship Fund" to "MCMESA." This is the acronym of the payee's name, not the payee's full name. It appears that the correct name is Montgomery County Municipal Employees Scholarship Association. The respondent did not disclose the full name of the payee for this expenditure on the original and corrected report.
25. On the July 2010 semiannual report the respondent did not disclose the address of the payee of the \$100 expenditure to "MCPAS – Montgomery County Performing Arts." The respondent corrected the error. For the expenditures to "MCMESA – City – County Employees Scholarship Fund" and "Conroe Tiger Youth Football" the respondent disclosed addresses for the payees using the symbol "c/o." The respondent did not fail to disclose addresses for these payees.
26. On the July 2010 semiannual report the respondent did not disclose the purpose of the \$100 expenditure to "Conroe Tiger Youth Football." The respondent corrected the error.

27. On the July 2010 semiannual report the respondent did not disclose the amounts of expenditures to “MCMESA – City – County Employees Scholarship Fund” and “Conroe Tiger Youth Football.” The respondent filed a corrected report disclosing the amounts to be \$500 and \$100 respectively.
28. There is credible evidence of no violation of section 254.031(a)(3) of the Election Code as to the addresses that used the symbol “c/o.” There is credible evidence of violations of section 254.031(a)(3) of the Election Code as to the other allegations.

### **Report Affidavit**

29. Each campaign finance report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: “I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code.” ELEC. CODE § 254.036(h).
30. The Election Code does not specifically define “affidavit,” but the generally accepted definition includes the requirement that the facts being sworn to be done so before an officer qualified to administer an oath. The affidavit accompanying the respondent’s January 2009 semiannual report was not properly executed by the respondent. The affidavit did not contain a notary stamp or seal, did not contain a signature of an officer administering an oath, and only contained the signature of the respondent. Nevertheless, section 254.036 of the Election Code also provides that a campaign finance report is considered to be under oath even if the affidavit is defective. Therefore, with regard to the respondent’s January 2009 semiannual report, there is credible evidence of a technical or *de minimis* violation of section 254.036(h) 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: (1) each report filed under this chapter with an authority other than the commission must be in a format prescribed by the commission; (2) each report must include the total amount of all political expenditures made during the reporting period;

(3) each report must include the amount of political expenditures that in the aggregate exceed \$50 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 (4) each campaign finance report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code." 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-31010325.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Webb K. Melder, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director