

TEXAS ETHICS COMMISSION

IN THE MATTER OF

BRIAN B. SMITH,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31011376

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-31011376. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.151 of the Election Code, a law 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, as campaign treasurer of a political committee, failed to properly disclose the candidates or measures supported or opposed by the committee and failed to properly disclose the occupations of contributors.

III. Facts Supported by Credible Evidence

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

1. On August 6, 2010, the respondent was appointed the campaign treasurer of Hometown Huntsville, a general-purpose committee in Huntsville, Texas. The City of Huntsville held an election on November 2, 2010, in which four city council positions were on the ballot and two candidates ran for each position.
2. On October 4, 2010, the respondent filed a 30-day pre-election report for the committee, which disclosed that on September 23, 2010, the committee accepted from an individual a \$7,000 in-kind political contribution described as "website print and mailers." The report disclosed no other activity.

3. On October 25, 2010, the respondent filed an 8-day pre-election report for the committee that disclosed the following:
 - \$300 in total political contributions of \$50 or less
 - \$2,300 in total political contributions
 - \$0 in total political expenditures of \$50 or less
 - \$1,000 in total political expenditures
 - \$1,300 in total political contributions maintained
 - \$0 in outstanding loans
4. The report disclosed a political expenditure of \$1,000 to “First Tradition” in Houston, Texas on October 18, 2010, for “Advertising Expense” that was described as “website print and mailers.”
5. Neither report disclosed that the committee supported or opposed any measures or candidates or assisted any officeholders.
6. The respondent filed a January 2011 semiannual report for the committee that disclosed a direct expenditure of \$4,072 on December 30, 2010, to First Tradition in Houston for “consulting expense,” described as “campaign consulting printing and postal expense” to support four candidates for Huntsville City Council. The report also disclosed the last names of the candidates that the committee supported.
7. In response to the allegations, the respondent submitted an affidavit in which he stated that the committee had not supported any candidates during the periods covered by the 30-day and 8-day pre-election reports.
8. On or about November 5, 2010, the committee’s Internet website listed the four candidates that it supported.
9. The respondent’s 8-day pre-election report disclosed two political contributions of \$1,000 each from two individuals and did not disclose their principal occupations or job titles. After the complaint was filed, the respondent corrected the 8-day pre-election report on November 15, 2010, by disclosing the occupations of the contributors in the correction affidavit of the report. The affidavit stated that each contributor “is an independent physician.”
10. On December 6, 2010, the respondent corrected the 8-day pre-election report by disclosing the contributors’ principal occupations and employers in Schedule A (used for reporting political contributions) of the report. The correction disclosed the employer for each contributor.
11. Each corrected report indicated that the respondent corrected the report not later than the 14th business day after the date that he learned that the report as originally filed was inaccurate or incomplete and that any error or omission in the originally filed report was made in good faith.

IV. Findings and Conclusions of Law

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

1. Each campaign finance report by a campaign treasurer of a general-purpose committee must include the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates. ELEC. CODE § 254.151(4).
2. There is insufficient evidence that the respondent violated section 254.151(4) of the Election Code.
3. Each report by a campaign treasurer of a general-purpose committee must include the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period. ELEC. CODE § 254.151(6).
4. The complaint alleged that the respondent failed to disclose the principal occupations of two individuals who contributed \$1,000 each to the committee during the 8-day pre-election reporting period. The original report did not disclose the principal occupations and the respondent corrected the report after the report's due date to add the information. Therefore, there is credible evidence that the respondent violated section 254.151(6) 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 by a campaign treasurer of a general-purpose committee must include the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period. The respondent agrees to comply with this requirement 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 \$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-31011376.

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

Brian B. Smith, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director