

TEXAS ETHICS COMMISSION

**IN THE MATTER OF
DERRICK CONSTRUCTION
COMPANY, INC.,
RESPONDENT**

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**BEFORE THE
TEXAS ETHICS COMMISSION
SC-31011392**

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 14, 2011, to consider sworn complaint SC-31011392. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of sections 253.003 and 253.094 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. Allegation

The complaint alleged that the respondent used corporate funds to make a political contribution to a candidate.

III. Facts Supported by Credible Evidence

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

1. The respondent is a corporation located in Rockport, Texas. The complaint alleged that the respondent made an unlawful political contribution to a candidate for Aransas County Navigation District Commissioner. A candidate disclosed in a 30-day pre-election report for the November 2010 election accepting a \$5,000 contribution from the respondent on September 7, 2010.
2. According to records of the Texas Secretary of State, the respondent is a domestic for-profit corporation. In response to the complaint, the president of the corporation swore that he intended to write the contribution check from his personal account but mistakenly wrote a check from his corporate account. He further swore that when he realized the

error, he contacted the candidate and had him return the corporate check. He then gave the candidate a personal check for \$5,000. Along with his response, the president of the corporation submitted copies of the corporate check, dated September 21, 2010, and his personal check, dated October 12, 2010, that were made out to the candidate. The face of the corporate check shows that the check came from Derrick Construction, Inc., it has a plain white background, the purpose of the check was for a "Donation," and the president of the corporation signed the check. The face of the personal check shows that the check came from the president and his spouse, there is a pair of boots in the background, and it is signed by the respondent's spouse.

IV. Findings and Conclusions of Law

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

1. 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.
2. 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.
3. 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.
4. A 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. *Id.* § 251.001(2).
5. A political contribution means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
6. A campaign contribution means, in pertinent part, a contribution to a candidate that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3).
7. In response to the complaint, the registered agent and president of the corporation swore that the check was mistakenly issued from the respondent corporation's account. The face of the check shows that the check came from Derrick Construction, Inc., that the payee was the candidate, that the amount was \$5,000, that the purpose of the check was for a "Donation," and that the president of the corporation signed the check. The evidence shows that the respondent knew that the payee was a candidate for a public office and that the respondent intended to make a political contribution to him. Therefore, there is credible evidence of a violation of sections 253.003 and 253.094 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 a corporation may not make a political contribution to a candidate or officeholder. The respondent agrees to comply with this requirement of the law.

VI. Confidentiality

This order and agreed resolution describes a violation 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 violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, 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-31011392.

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

Derrick Construction Company, Inc.,
Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director