

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JAMES A. FITCH,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-31011393

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 11, 2011, to consider sworn complaint SC-31011393. A quorum of the commission was present. The commission determined that there is credible evidence of violations, including technical or *de minimis* violations of section 254.031 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: 1) did not properly report political contributions, political expenditures, and loans, 2) accepted cash contributions exceeding \$100, and 3) did not disclose political committee support on campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent is Huntsville City Council Member, Position 1, At Large.

Total Political Contributions Maintained

2. The complaint alleged that the respondent incorrectly reported the amount of total political contributions maintained on his 8-day pre-election report for the November 2010 general election. The evidence was inconclusive as to whether the amount disclosed was correct.

Cash Contributions Exceeding \$100

3. The complaint alleged that the respondent accepted five cash contributions exceeding \$100 that were disclosed on his 30-day and 8-day pre-election reports for the November 2010 general election. The evidence indicated that four of the contributions totaling \$800 were actually made by check. The evidence was inconclusive as to the remaining contribution.

Disclosure of Total Political Contributions, Political Expenditures, and Loans

4. The complaint alleged that the respondent did not properly disclose the total amounts of political contributions, political expenditures, and loans on the 8-day pre-election report for the November 2010 general election. The respondent's 8-day pre-election report for the November 2010 general election disclosed \$577 in total political contributions of \$50 or less, \$3,460.48 in total political contributions, \$0 in total political expenditures of \$50 or less, \$1,367.63 in total political expenditures, and no amount in total principal amount of outstanding loans. In response to the complaint, the respondent filed a corrected report and disclosed \$302 in total political contributions of \$50 or less, \$1,202 in total political contributions, \$0 in total political expenditures of \$50 or less, \$292.50 in total political expenditures, and \$0 in total principal amount of outstanding loans. The respondent swore that he thought that each total was a "running total."

Disclosure of Purposes of Political Expenditures

5. The complaint alleged that, based on disclosures in the respondent's 30-day pre-election report for the November 2010 general election, the respondent failed to properly disclose the purposes of two political expenditures. However, the original descriptions adequately described the purposes of the expenditures.

Disclosure of Political Committee Support

6. The complaint alleged that the respondent failed to disclose support received from a political committee on his 30-day and 8-day pre-election reports for the November 2010 general election. The complaint included copies of the website of Hometown Huntsville, a general-purpose political committee. On its website, Hometown Huntsville endorsed the respondent as a candidate. The respondent did not disclose Hometown Huntsville on his campaign finance reports as a contributor or in the "Notice from Political Committees" section of his campaign finance reports. In response to the complaint, the respondent swore that he did not receive contributions from Hometown Huntsville and he did not request their endorsement. The evidence did not show when he was provided notice of the committee's support.

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.

Cash Contributions Exceeding \$100

3. A candidate or officeholder may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. ELEC. CODE § 253.033.
4. Four contributions, totaling \$800, were actually made by check. With respect to those contributions, there is credible evidence of no violation of section 255.033 of the Election Code. With respect to the remaining contribution, there is insufficient evidence of a violation of section 255.033 of the Election Code.

Disclosure of Total Political Contributions, Political Expenditures, and Loans

5. Each campaign finance report must include 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 campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted during the reporting period. ELEC. CODE § 254.031(a)(5).
7. Each campaign finance 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. With respect to the total principal amount of outstanding loans, the allegation was based on the fact that the respondent left the space used to report that information blank. There is no evidence that the respondent had outstanding loans that were required to be reported in that category. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(2) of the Election Code. With respect to the disclosure of political contributions and political expenditures, the report disclosed discrepancies of approximately \$3,610 in the totals sections. Therefore, there is credible evidence of violations of sections 254.031(a)(5) and 254.031(a)(6) of the Election Code.

Disclosure of Purposes of Political Expenditures

9. 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).
10. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61.
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 and section 20.61 of the Ethics Commission Rules.

Disclosure of Political Committee Support

12. Each report by a candidate must include, for each political committee from which the candidate received notice under section 254.128 or 254.161 of the Election Code, the committee's full name and address, an indication of whether the committee is a general-purpose committee or a specific-purpose committee, and the full name and address of the committee's campaign treasurer. ELEC. CODE § 254.061(3).
13. There is insufficient evidence of violations of section 254.061(3) 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 aggregate principal amount of all outstanding loans as of the last day of the reporting period. The respondent also acknowledges that each campaign finance 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. The respondent also acknowledges that each campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. 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-31011393.

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

James A. Fitch, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director