

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GUY N. MARTIN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31012424

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 8, 2012, to consider sworn complaint SC-31012424. 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, 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 disclose political contributions, political expenditures, and loans in campaign finance reports; 2) converted political contributions to personal use; 3) accepted political contributions from corporations or labor organizations; 4) accepted from contributors in a reporting period political contributions in cash that in the aggregate exceeded \$100; and 5) did not correct the expenditure totals on a corrected 30-day pre-election report for the May 2010 election.

III. Facts Supported by Credible Evidence

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

1. The respondent is a member of the city council of Conroe, Texas. He ran successfully as an opposed candidate for that position in the May 2010 election.
2. The allegations were based on the respondent's January and July 2010 semiannual campaign finance reports, and 30-day, 30-day corrected, and 8-day pre-election campaign finance reports for the May 2010 election.

3. The respondent submitted an affidavit and corrected reports in response to the complaint.

Total Political Contributions and Total Political Expenditures of \$50 or Less

4. The complaint alleged that the respondent did not disclose total political contributions of \$50 or less on the 8-day pre-election report for the May 2010 election and the July 2010 semiannual report and did not disclose total political expenditures of \$50 or less on the January and July 2010 semiannual reports. The allegations were based on the fact that the fields in the totals section on the cover sheet for total political contributions of \$50 or less, unless itemized, and total political expenditures of \$50 or less, unless itemized, were left blank.
5. The respondent corrected the 8-day pre-election report for the May 2010 election and the July 2010 semiannual report to disclose that total political contributions of \$50 or less was \$0 on both reports. The respondent did not itemize any political contributions of \$50 or less on the 8-day pre-election report for the May 2010 election. The respondent itemized a \$50 political contribution on the July 2010 semiannual report.
6. As to the January 2010 semiannual report, the respondent itemized approximately \$110 of expenditures that were \$50 or less on the report. The respondent corrected the report to disclose total political expenditures of \$50 or less, unless itemized, was \$0.
7. As to the July 2010 semiannual report, the respondent itemized a \$17.65 expenditure on the report. The respondent corrected the report to disclose that total political expenditures of \$50 or less, unless itemized, was \$0.

Total Political Contributions Maintained

8. The complaint alleged that the respondent did not disclose the amount of total political contributions maintained as of the last day of the reporting period on the 30-day and 8-day pre-election reports for the May 2010 election and the July 2010 semiannual report.
9. On the 30-day pre-election report, the respondent corrected the amount for total political contributions maintained as of the last day of the reporting period from \$1,250.78 to the amount the complaint alleged it should be, \$1,296.49. The respondent under-reported total political contributions maintained by \$45.71 on the original report.
10. On the 8-day pre-election report, the complaint alleged that total political contributions maintained should have been \$3,325.11 instead of \$2,924.20. The respondent corrected total political contributions maintained to \$3,370.31. The respondent under-reported total political contributions maintained by \$446.11 on the original report.

11. On the July 2010 semiannual report, the complaint alleged that the respondent did not disclose total political contributions maintained. The respondent left the field blank. The respondent corrected the report to disclose total political contributions maintained of \$1,692.82. This is the amount the respondent under-reported total political contributions maintained on the original report.

Total Outstanding Loans

12. The complaint alleged that the respondent did not disclose the total principal amount of all outstanding loans as of the last day of the reporting period in the January and July 2010 semiannual reports and the 8-day pre-election report for the May 2010 election. The field in the totals section on the cover sheet for total outstanding loans was left blank in each report at issue.
13. As to each of the reports at issue, the respondent attached an affidavit stating that there were no campaign loans. The respondent did not correct the cover sheet on the January 2010 semiannual report. The respondent corrected the cover sheet of the other two reports to disclose \$0 for the total amount of outstanding loans.

Purpose Description of a Political Expenditure

14. Out of 11 total political expenditures itemized in the January 2010 semiannual report, the complaint alleged that the respondent did not fully disclose the purpose description for three political expenditures. The disclosures at issue were adequate.
15. Out of 22 total political expenditures itemized in the 30-day pre-election report for the May 2010 election, the complaint alleged that the respondent did not fully disclose the purpose description for five political expenditures. The purpose of one political expenditure for \$237.71 to Impact Printing was left blank. The respondent corrected the report to disclose Printing Expense / Campaign push cards & magnets. The descriptions for the remaining expenditures at issue were adequate.
16. Out of 21 total political expenditures itemized in the 8-day pre-election report for the May 2010 election, the complaint alleged that the respondent did not fully disclose the purpose description for three political expenditures. The respondent corrected the report to disclose Advertising Expense / Newspaper Ad and Advertising Expense / DVD Campaign mailer. The descriptions for the remaining expenditures at issue were adequate.

Political Expenditures as Reimbursements

17. The complaint alleged that the respondent did not disclose the actual vendor payees, addresses, dates, and amounts “pertaining to the stated purpose” of political expenditures on the 30-day and 8-day pre-election reports for the May 2010 election and the July 2010 semiannual report. In each report, the actual payees were disclosed.

Corrected Report

18. Regarding the corrected 30-day pre-election report for the May 2010 election, the complaint alleged: “Failed to complete a corrected report and to properly execute the report affidavit, in violation of Section 254.036(h).”
19. On April 30, 2010, the respondent filed a corrected report for the 30-day pre-election report for the May 2010 election. The explanation of correction stated in pertinent part: “Omitted \$500 expense from original report – overlooked. I found the omission while filing the current report.” The report consisted of two pages, the cover page which was the Correction Affidavit for Candidate/Officeholder and a Schedule G. The respondent properly executed the cover page affidavit and identified the information that was corrected. The respondent disclosed the missing \$500 expenditure on Schedule G. The respondent did not include cover sheet page 2 of the Candidate/Officeholder reporting form which disclosed total political expenditures. The original 30-day pre-election report disclosed total political expenditures of \$21,418.09 which is the amount that was itemized on the report - \$803.51 on Schedule F (used for political expenditures) and \$20,614.58 on Schedule G.

Cash Contributions

20. The complaint alleged that the respondent knowingly accepted political contributions in cash which exceeded \$100 as disclosed on the 8-day pre-election report for the May 2010 election.
21. The 8-day pre-election report disclosed that two individuals each contributed \$200.
22. The respondent filed a corrected 8-day pre-election report. On the affidavit accompanying the corrected report the respondent swore: “Cash donations were \$100 per person for a total of \$400.00. See attached Schedule A.” The attached Schedule A (used for political contributions) disclosed the names of four individuals, two with the same last name, and the other two with the same last name.

Contributions from a Corporation or Labor Organization

23. The complaint alleged that the respondent accepted two political contributions from corporations or labor organizations. On the 8-day pre-election report for the May 2010 election, the respondent disclosed \$500 contributions from Irish Con LLC and Hadco International, both with addresses in Conroe, Texas.

24. Records of the Secretary of State's Office show that Irish Con LLC, with an address in Conroe, Texas, is a Domestic Limited Liability Company (LLC) and not a corporation, and has no corporate members.
25. Records of the Secretary of State's Office show that an entity by the name of Hadco International, Inc., with an address in Houston, Texas, was a Domestic For-Profit Corporation but that it forfeited its existence in 1988. Internet research shows that company, variously listed as Hadco International, and Hadco International, Inc., is still in business in Conroe, Texas.

Personal Use of Political Contributions

26. The complaint alleged that the respondent converted approximately \$110 in political contributions to personal use based on four expenditures disclosed on Schedule G of his January 2010 semiannual report. The expenditures at issue were made to restaurants for the purpose of "lunch." Each expenditure was disclosed on Schedule G. The box to indicate that reimbursement from political contributions was intended was not checked for any of the expenditures.
27. The respondent filed a corrected January 2010 semiannual report that disclosed for "purpose of expenditure" that the category of each of the expenditures was "Food Beverage Expense," that the description for two expenditures was "Strategy meeting for campaign," and that the description for the other two expenditures was "Food for volunteers handing out campaign literature."

IV. Findings and Conclusions of Law

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

Total Political Contributions and Total Political Expenditures of \$50 or Less

1. 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. ELEC. CODE § 254.031(a)(5).
2. Although the respondent left blank the fields for disclosing total political contributions of \$50 or less, unless itemized, and total political expenditures of \$50 or less, unless itemized, it appears when viewing each of the reports at issue that the respondent detailed all of his political contributions and expenditures. However, the respondent did not disclose a zero in the fields in the totals section on the cover sheet for total political contributions of \$50 or less, unless itemized, and total political expenditures of \$50 or less, unless itemized, in the reports at issue. The total political contributions and total political expenditures of \$50 or

less were minimal (\$50 of contributions and approximately \$130 of expenditures). Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(5) of the Election Code as to each of the reports at issue.

Total Political Contributions Maintained

3. 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). 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).
4. The total amount of political contributions maintained in one or more accounts includes the 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).
5. The respondent did not properly disclose the amount of total political contributions maintained as of the last day of the reporting period for each report at issue. The respondent under-reported the amounts on the original reports as follows: 30-day pre-election report by approximately \$50; 8-day pre-election report by approximately \$450; and the July 2010 semiannual report by approximately \$1,690. For the 30-day pre-election report, the difference between the amount disclosed on the original report and the amount alleged, or the correct amount, did not exceed the lesser of 10% of the amount originally disclosed or \$2,500. Thus, the amount was *de minimis*. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code as to that report. There is credible evidence of violations of section 254.031(a)(8) of the Election Code regarding the 8-day pre-election report and the July 2010 semiannual report.

Total Outstanding Loans

6. 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).
7. The respondent did not disclose the total principal amount of all outstanding loans as of the last day of the reporting period in the three reports at issue. As to each of the reports at issue, the respondent's affidavit stated that there were no campaign loans. Although there were no loans to disclose, the respondent did not disclose a zero in the field in the totals section on the cover sheet for total outstanding loans in the reports. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(2) of the Election Code in connection with each report at issue.

Purpose Description of a Political Expenditure

8. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) 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. ELEC. CODE § 254.031(a)(3).
9. The respondent left the purpose blank for one expenditure of approximately \$240 on the 30-day pre-election report for the May 2010 election and left the purpose blank for two expenditures totaling approximately \$6,460 on the 8-day pre-election report for the May 2010 election. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code as to these expenditures. The purposes of the other expenditures disclosed by the respondent were adequate. The respondent corrected the reports to specifically state the political nature of the expenditures. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code as to these expenditures.

Political Expenditures as Reimbursements

10. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) 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. 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 may be 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 (\$100 as of September 28, 2011) 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 (\$100 as of September 28, 2011) 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.

12. Based on the original disclosures, the political expenditures at issue disclosed the correct payees. Therefore, 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.

Corrected Report

13. Each report filed under this chapter that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. ELEC. CODE § 254.036(h).
14. A filer who files a corrected report must submit an affidavit identifying the information that was corrected. Ethics Commission Rules § 18.9(c).
15. Each report must include the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
16. The complaint alleged that the respondent did not properly execute the report affidavit. The respondent properly executed the affidavit on the Correction Affidavit for Candidate/Officeholder and identified the information that was corrected. He was not required to execute the affidavit that is on the Candidate/Officeholder Campaign Finance Report page 2. There is credible evidence that the respondent did not violate section 254.036(h) of the Election Code or section 18.9(c) of the Ethics Commission Rules.
17. The respondent did not disclose the correct total for political expenditures on the original and corrected 30-day pre-election report. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code.

Cash Contributions

18. A candidate, officeholder, or specific-purpose committee 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(a).
19. Each 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, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
20. There is insufficient evidence of a violation of section 253.033(a) of the Election Code. However, the respondent did not disclose the name of each contributor on the original report. Therefore, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code.

Contributions from a Corporation or Labor Organization

21. 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. That subchapter does not authorize a corporation to make a political contribution to a candidate.
22. “Corporation” means a corporation that is 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.
23. 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(b).
24. In order to show that the respondent violated sections 253.003 and 253.094 of the Election Code, the evidence must show that he knew that accepting a political contribution from a corporation is prohibited, that the contribution at issue was made by a corporation, and that he knew the contribution was from a corporation at the time he accepted it.
25. The evidence shows that Irish Con LLC is not a corporation. Therefore, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code as to this contribution.
26. Regarding Hadco International, although Secretary of State records indicated that Hadco International, Inc. forfeited its corporate existence, the status of the contributor is unclear. Therefore, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code as to this contribution.

Personal Use of Political Contributions

27. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a). Personal use is a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate or officeholder. ELEC. CODE § 253.003(d).
28. The evidence shows that the respondent spent personal funds on the expenditures at issue and that the expenditures were for purposes connected with the performance of activities as a candidate or officeholder. Therefore, there is credible evidence of no violation of section 253.035(a) 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 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; (2) 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; (3) each campaign finance report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period; (4) each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) 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; (5) each report must include the total amount of all political expenditures made during the reporting period; and (6) each 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, the full name and address of the person making the contributions, and the dates of the contributions. 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 \$200 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-31012424.

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

Guy N. Martin, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director