

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
KENNETH EDWARDS,	§	
CAMPAIGN TREASURER,	§	TEXAS ETHICS COMMISSION
PIPE FITTERS LOCAL UNION	§	
NO. 211 PAC,	§	
	§	
RESPONDENT	§	SC-31104105

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 29, 2012, to consider sworn complaint SC-31104105. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.003, 253.037, 254.031, 254.036(h), 254.151, and 254.157 of the Election Code and sections 20.61 and 20.62 of the Ethics Commission Rules, 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, as campaign treasurer for a political committee, the respondent: 1) did not provide his digitized signature on numerous campaign finance reports; 2) did not include in campaign finance reports the name of each candidate supported or opposed by the committee, or the name of each officeholder assisted by the committee; 3) made political contributions to other general-purpose committees without having included the full names and addresses of those committees on the committee's campaign treasurer appointment; 4) did not disclose on multiple campaign finance reports political contributions and political expenditures; and 5) did not timely file 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 the campaign treasurer of Pipe Fitters Local Union No. 211 PAC, a general-purpose committee.
2. The sworn complaint allegations were based on the committee's monthly campaign finance reports filed from June 2009 through April 2011.

3. In response to all the allegations, the respondent stated “I have received the complaint SC-31104105 and to my knowledge Pipefitters Local Union 211 is in no violation.”

Total Political Expenditures

4. The complaint alleged that the respondent did not properly disclose total political expenditures on his February 2010 monthly report.
5. The respondent disclosed total political expenditures of \$5,124.85. The respondent itemized \$5,124.85 in expenditures on Schedule F of the report and disclosed \$0 in total unitemized political expenditures. The complaint alleged that the correct amount of total political expenditures was \$5,687.22, which is the sum of the total political expenditures originally disclosed plus the nonpolitical expenditures made from political contributions disclosed on Schedule I (used to disclose non-political expenditures made from political contributions) of the report.
6. The payee of each of the disclosed nonpolitical expenditures appears to be a non-profit organization. The purpose for each expenditure was generally disclosed as “contribution by [an individual] of COPE funds 2009.” The amount of each individual expenditure was between \$24 and \$46.

Total Political Contributions Maintained

7. The complaint alleged that the respondent did not properly disclose total political contributions maintained on 18 campaign finance reports.
8. With regard to the majority of the reports at issue, the difference between the amount alleged to be the proper amount and the amount originally reported is approximately 5 to 13% of the amount originally reported. However, the March 2011 monthly report did not disclose any contributions or expenditures and reported \$0 in total political contributions maintained. The February 2011 monthly report disclosed \$43,002.12 in total political contributions maintained as of the last day of the reporting period. The April 2011 monthly report disclosed \$4,179.61 in total political contributions, \$500 in total political expenditures, and \$50,221.99 in total political contributions maintained.
9. The respondent did not file corrections in response to these allegations.

Candidates Supported or Opposed and Officeholders Assisted

10. The complaint alleged the respondent did not disclose candidates supported or opposed and officeholders assisted on 18 of the campaign finance reports at issue.

11. Each report disclosed expenditures that are described as a campaign contribution to a candidate or as direct expenditures supporting a candidate. The section of each report used to disclose candidates supported or opposed and officeholders assisted was left blank.
12. The respondent did not file corrections in response to these allegations.

Reporting Political Expenditures

13. The complaint alleged that the respondent did not disclose the full name of the person receiving a political expenditure for \$42.88 to “VFW” disclosed on the February 2010 monthly report.
14. The expenditure was disclosed on the report as being a non-political expenditure from political funds. VFW is a commonly recognized abbreviation for “Veterans of Foreign Wars,” a congressionally chartered veterans association.
15. The complaint alleged the respondent did not disclose a sufficient purpose description with regard to 57 expenditures, totaling approximately \$31,125, disclosed on six reports filed between August 2010 and April 2011.
16. For 56 of the expenditures at issue, the respondent disclosed a purpose description for the expenditure, but not a category description.
17. For the remaining expenditure, the respondent originally did not disclose a category or purpose description. On May 4, 2011, the respondent filed a correction to disclose a purpose description of “La Porte City Council.” On May 13, 2011, he filed a second correction to disclose a category description of “contributions/donations made by candidate/officeholder/political committee.”
18. The respondent did not file corrections to add a purpose description to any of the other expenditure entries.
19. The complaint alleged the respondent did not disclose the actual vendor payee of political expenditures disclosed on two reports.
20. The two expenditures, which total \$2,986.34, were disclosed as being to Pipe Fitters Local Union 211, a labor organization that is the controlling entity of the respondent’s political committee. The expenditures were described as being reimbursements for political expenditures specified in the purpose description, including travel and mailing expenses.
21. The respondent did not file corrections in response to these allegations.

Execution of Report Affidavits

22. The complaint alleged that the respondent did not properly execute the affidavit on the 23 campaign finance reports at issue.
23. The reports, which were filed electronically, did not include a digitized signature.
24. On May 13, 2011, the respondent filed a second correction to the April 2011 monthly report. The second correction included the respondent's digitized signature.
25. Between February 2009 and January 2011, commission staff sent the respondent letters on five occasions notifying him that his reports did not contain a digitized signature.
26. The most recent reports filed by the respondent do contain his digitized signature.

Timely Filing of Campaign Finance Report

27. The complaint alleged that the respondent did not timely file the committee's monthly January 2010 and July 2010 campaign finance reports. The reports were due on January 5, 2010, and July 6, 2010, respectively.
28. The respondent filed the January 2010 monthly report on January 11, 2010. The respondent filed an affidavit of defense to the late filing, stating that the person who normally files the reports for the committee was out sick with the flu from January 4, 2010, through January 8, 2010. The late filing penalty for that report was waived.
29. The respondent filed the July 2010 monthly report on July 6, 2010. The filing deadline for that report had been extended because July 5, 2010, was a federal holiday.

Disclosure of Recipient General-Purpose Committees

30. The complaint alleged that the respondent made political contributions to general-purpose committees without disclosing the recipient committees on his committee's campaign treasurer appointment.
31. At issue are seven expenditures totaling \$18,000 made to five different political committees. The names and addresses of the committees were not disclosed on the committee's campaign treasurer appointment but they were disclosed on Schedule F (used to disclose political expenditures) of the campaign finance reports at issue.
32. The respondent has not filed an amendment to the committee's treasurer appointment to disclose the recipient general-purpose committees.

IV. Findings and Conclusions of Law

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

Total Political Expenditures

1. A 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).
2. The respondent disclosed as the amount of total political expenditures, the sum of the itemized and unitemized political expenditures disclosed on the report. While the complaint appears to allege that the committee's nonpolitical expenditures made from political funds were, in fact, political expenditures, the complaint does not provide any evidence to support that allegation. Therefore, there is insufficient evidence of a violation of section 254.031(a)(6) of the Election Code.

Total Political Contributions Maintained

3. 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). A *de minimis* error in calculating or reporting a cash balance under subsection (a)(8) is not a violation. *Id.* § 254.031(a-1).
4. The appropriate method of determining the total political contributions maintained is by determining the balance of any and all accounts in which political contributions are maintained as of the last day of the reporting period.
5. The complaint alleged that the respondent did not correctly disclose the total amount of political contributions maintained as of the last day of the reporting period in 18 monthly campaign finance reports.
6. There is insufficient evidence of violations of section 254.031(a)(8) of the Election Code with respect to 17 of the monthly reports at issue.
7. With regard to the March 2011 monthly report, the activity disclosed on the previous and subsequent reports provide credible evidence that the disclosed amount of \$0 of political contributions maintained is not accurate. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code with regard to this report.

Candidates Supported or Opposed and Officeholders Assisted

8. Each report 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).
9. Each report must include the name of each identified officeholder or classification by party of officeholders assisted by the committee. *Id.* § 254.151(5).
10. The committee made contributions in support of candidates during the relevant reporting period for each report at issue. The respondent did not disclose candidates supported as required by section 254.151(4) of the Election Code. However, the names and addresses of the candidates were disclosed on Schedule F of the committee's campaign finance reports. Thus, the information was readily apparent to anyone who may have viewed the report, and in context did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.151(4) of the Election Code with regard to each report at issue.
11. Because there is no evidence that the respondent's political committee assisted an officeholder in the period covered by any of the reports, there is insufficient evidence of violations of section 254.151(5) of the Election Code.

Reporting Political Expenditures

12. Each campaign finance report must include the amount of 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 the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
13. 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. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure. *Id.* § 20.61(a)(2).
14. Political expenditures made from personal funds by a staff member of a political committee with the intent to seek reimbursement from the 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: (1) the amount of 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 the expenditures are made and the

dates and purposes of the expenditures; and (2) included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. Ethics Commission Rules § 20.62.

15. The expenditures to VFW disclosed a recognized acronym commonly used as the name of the entity. Because the acronym is commonly used as the name of the payee, the disclosure substantially complies. Therefore, with regard to this expenditure, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code for this expenditure.
16. The complaint alleged that the respondent did not disclose descriptions for 57 expenditures disclosed on six monthly campaign finance reports. For 56 expenditures, the respondent disclosed a purpose description, but not a category description. For the remaining expenditure, the respondent did not originally disclose a category or purpose description. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules for all 57 expenditures at issue.
17. The complaint alleged that the respondent did not disclose the actual vendor payee for two expenditures totaling \$2,986.34. The payee disclosed for both expenditures is a labor organization that does not appear to be the vendor for the type of expenditures described in the purpose description. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules for these expenditures.

Execution of Report Affidavits

18. 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. 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." Each report filed under this chapter by electronic transfer must be under oath by the person required to file the report and must contain, in compliance with commission specifications, the digitized signature of the person required to file the report. A report filed under this chapter is considered to be under oath by the person required to file the report, and the person is subject to prosecution under Chapter 37, Penal Code, regardless of the absence of or a defect in the affidavit. ELEC. CODE § 254.036(h).
19. All 23 reports at issue did not contain a digitized signature. Therefore, there is credible evidence of violations of section 254.036(h) of the Election Code for all the reports at issue.

Timely Filing of Campaign Finance Report

20. The campaign treasurer of a general-purpose committee filing monthly reports shall file a report not later than the fifth day of the month following the period covered by the report. ELEC. CODE § 254.157(a).

21. The respondent was required to file the January 2010 monthly report by January 5, 2010. The report was not filed until January 11, 2010. Therefore, there is credible evidence of a violation of section 254.157 of the Election Code with regard to this report.
22. The respondent timely filed the July 2010 monthly report. Therefore, there is credible evidence of no violation of section 254.157 of the Election Code with regard to this report.

Disclosure of Recipient General-Purpose Committees

23. The campaign treasurer appointment of a general-purpose committee must include the full name and address of each general-purpose committee to whom the committee intends to make political contributions. ELEC. CODE § 252.003(2).
24. A general-purpose committee may not knowingly make a political contribution to another general-purpose committee unless the other committee is listed in the campaign treasurer appointment of the contributor committee. ELEC. CODE § 253.037(b).
25. The committee's campaign treasurer appointment did not include as a recipient committee the names and addresses of the recipient general-purpose committees disclosed as receiving expenditures on the committee's monthly campaign finance reports. However, the names and addresses of the recipient committees were disclosed on Schedule F of the committee's campaign finance reports. Thus, the information was readily apparent to anyone who may have viewed the report, and in context did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of sections 252.003(2) and 253.037(b) 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 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; 2) each report 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; 3) each campaign finance report must include the amount of 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 the expenditures are made, and the dates and purposes of the expenditures; 4) the report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure; 5) political expenditures made from personal funds by a staff member must be reported in accordance with section 20.62 of the Ethics Commission Rules; 6) 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. 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." Each report filed under this chapter by electronic transfer must be under oath by the person required to file the report and must contain, in compliance with commission specifications, the digitized signature of the person required to file the report. A report filed under this chapter is considered to be under oath by the person required to file the report, and the person is subject to prosecution under Chapter 37, Penal Code, regardless of the absence of or a defect in the affidavit; 7) the campaign treasurer of a general-purpose committee filing monthly reports shall file a report not later than the fifth day of the month following the period covered by the report; and 8) the campaign treasurer appointment of a general-purpose committee must include the full name and address of each general-purpose committee to whom the committee intends to make political contributions and that a general-purpose committee may not knowingly make a political contribution to another general-purpose committee unless the other committee is listed in the campaign treasurer appointment of the contributor committee.

The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes certain 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 nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the commission imposes a \$750 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-31104105.

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

Kenneth Edwards, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director