

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
LARRY MILLER,	§	
CAMPAIGN TREASURER,	§	TEXAS ETHICS COMMISSION
IRVING FIRE FIGHTERS COMMITTEE	§	
FOR RESPONSIBLE GOVERNMENT,	§	
	§	
RESPONDENT	§	SC-3110485

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 6, 2011, to consider sworn complaint SC-3110485. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.151(4) 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 include on multiple campaign finance reports the name of each identified candidate supported or opposed by the committee, and the name of each officeholder assisted by the committee; and 2) did not deliver written notice of direct campaign expenditures to affected candidates.

III. Facts Supported by Credible Evidence

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

1. The respondent is campaign treasurer for the Irving Fire Fighters Committee for Responsible Government (IFFCRG), a general-purpose committee that files monthly campaign finance reports with the commission.

Names of Candidates Supported and Officeholders Assisted by the Committee

2. The complaint alleged that, based on financial disclosures in eight campaign finance reports, the respondent did not include the name of each identified candidate supported or opposed by the committee, and the name of each identified officeholder assisted by the committee. The "Committee Activity" section was left blank in all original reports at

issue. In response to the complaint, the respondent filed corrected reports for six of the eight monthly reports at issue. The respondent swore that the IFFCRG did not support or oppose any candidates or officeholders during the January 2010 and February 2010 reporting periods, thus no corrected reports were filed for those periods. According to the corrected reports, the committee supported at least one candidate or officeholder during all reporting periods at issue, other than the January 2010 and February 2010 reporting periods.

Notice to Candidates of Direct Expenditures

3. The complaint alleged that the respondent did not deliver notice to affected candidates or officeholders that the committee accepted political contributions or made political expenditures on their behalf. The 2009 corrected reports indicate that the IFFCRG supported three candidates during the May 2009 and June 2009 reporting periods, which were all in connection with the May 9, 2009, Irving city council election cycle. The committee also supported one candidate and officeholder during the March, April, May, and June 2010 reporting periods.
4. The respondent admits that no written notice was provided to candidates during the reporting periods at issue, but the respondent swears that all affected candidates were fully aware and verbally notified before any expenditures were made on their behalf.
5. On May 10, 2011, in response to the complaint, the respondent provided written notice to all affected candidates informing them that the IFFCRG had made in-kind contributions to support their previous campaigns.

IV. Findings and Conclusions of Law

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

Names of Candidates Supported and Officeholders Assisted by the Committee

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. As to the original June 2010 report, Schedule F disclosed multiple political expenditures to support a candidate, and included the candidate's name. Thus, information showing which candidate the committee supported was readily apparent to anyone who may have viewed Schedule F of the report. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.151(4) of the Election Code with regards to the June 2010 report. There is credible evidence of violations of section 254.151(4) of the Election Code with regards to the May 2009, June 2009, March 2010, April 2010, and May 2010 reports. There is credible evidence of no violations of section 254.151(4) of the Election Code with regards to the January 2010 and February 2010 reports.

Notice to Candidates of Direct Expenditures

3. If a general-purpose committee other than the principal political committee of a political party or a political committee established by a political party's county executive committee accepts political contributions or makes political expenditures for a candidate or officeholder, notice of that fact shall be given to the affected candidate or officeholder as provided by section 254.128 of the Election Code for a specific-purpose committee. ELEC. CODE § 254.161.
4. If a specific-purpose committee accepts political contributions or makes political expenditures for a candidate or officeholder, the committee's campaign treasurer shall deliver written notice of that fact to the affected candidate or officeholder not later than the end of the period covered by the report in which the reportable activity occurs. ELEC. CODE § 254.128(a).
5. The notice must include the full name and address of the political committee and its campaign treasurer and an indication that the committee is a specific-purpose committee. ELEC. CODE § 254.128(b).
6. "In-kind contribution" means a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. The term does not include a direct campaign expenditure. Ethics Commission Rules § 20.1(8).
7. "Direct campaign expenditure" means a campaign expenditure that does not constitute a contribution by the person making the expenditure. A campaign expenditure is not a contribution from the person making the expenditure if it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made; or it is made in connection with a measure, but is not a political contribution to a political committee supporting or opposing the measure. Ethics Commission Rules § 20.1(5).
8. The corrected campaign finance reports and the respondent's sworn statement disclose that the expenditures were in-kind contributions to the candidates, rather than direct expenditures made on the candidate's behalf. Consequentially, the political committee was not required to give notice of the in-kind political contributions to the candidates. Therefore, there is credible evidence of no violation of section 254.161 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 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. 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 \$2,000 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-3110485.

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

Larry Miller, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director