

TEXAS ETHICS COMMISSION

IN THE MATTER OF

ROBERT MELE,
CAMPAIGN TREASURER,
TEAMSTERS LOCAL UNION
NO. 988 DRIVE,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31105150

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on January 31, 2013, to consider sworn complaint SC-31105150. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.151 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. Allegations

The complaint alleged that the respondent: 1) did not disclose on multiple campaign finance reports cover sheet information; 2) did not include on campaign finance reports the name of each identified candidate supported or opposed, and officeholders assisted by the committee; 3) did not properly disclose the purpose of political expenditures; 4) did not properly disclose political expenditures made as staff reimbursements; 5) did not properly disclose total political expenditures; 6) did not properly disclose political contributions; and 7) accepted unlawful political contributions from labor organizations.

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 for Teamsters Local Union No. 988 Drive, a general-purpose committee that files campaign finance reports with the commission.

Cover Sheet Information

2. The complaint alleged that the respondent did not disclose the election date and election type on the cover sheet of the following nine committee reports: 30-day and 8-day pre-election reports for the November 2009 uniform election, 30-day and 8-day pre-election reports for the March 2010 primary election, runoff report for the April 2010 primary runoff election, 8-day pre-election report for the May 2010 uniform election, 30-day and 8-day pre-election reports for the November 2010 general election, and the 30-day pre-election report for the May 2011 uniform election.
3. The election information was left blank on the cover sheet of all nine reports at issue.

Names of Candidates Supported or Opposed and Officeholders Assisted

4. The complaint alleged that the respondent did not disclose the names of each identified candidate supported or opposed by the committee, and each identified officeholder assisted by the committee on the following 11 campaign finance reports: July 2009 semiannual report, 30-day and 8-day pre-election reports for the November 2009 uniform election, January 2010 semiannual report, 30-day pre-election report for the March 2010 primary election, 8-day pre-election report for the May 2010 uniform election, July 2010 semiannual report, 30-day and 8-day pre-election reports for the November 2010 general election, January 2011 semiannual report, and the 30-day pre-election report for the May 2011 uniform election.
5. On the reports at issue, the “Committee Activity” sections of the report cover sheets were left blank. However, Schedule F (used to disclose political expenditures) of the reports at issue disclosed multiple political expenditures that were made in support of identified candidates. For example, Schedule F of the July 2009 semiannual report disclosed a \$2,500 political expenditure to “[an individual candidate]” for the purpose of “Campaign Contribution – Houston City Council.” Thus, information showing which candidates the committee supported was readily apparent to anyone who may have viewed Schedule F of the reports.

Purpose of Political Expenditures

6. The complaint alleged that the respondent did not properly disclose the purpose of six political expenditures that were disclosed in the committee’s 30-day pre-election report for the November 2010 general election.
7. For five political expenditures totaling \$20,000, the respondent did not provide a category. However, the descriptions provided by the respondent made it clear that the expenditures were political contributions to individual candidates. For example, for two of the political

expenditures totaling \$5,000, the respondent disclosed in the description field “Campaign Contribution – Supreme Court Justice.”

8. For one of the expenditures of \$1,507.46 that was disclosed on Schedule I (used to disclose non-political expenditures made from political contributions), the respondent did not provide a category. However, the respondent indicated in the description field that the expenditure was for “Professional Fees – Form GPAC Preparation.” Thus, the information disclosed by the respondent made the purpose of the expenditure reasonably apparent.

Staff Reimbursements

9. The complaint alleged that the respondent did not disclose the actual vendor payee, address, date, and amount pertaining to the stated purpose of 11 expenditures that were disclosed on Schedule F of the committee’s 8-day pre-election report for the May 2010 uniform election and 8-day pre-election report for the November 2010 general election.
10. Regarding the 8-day pre-election report for the May 2010 uniform election, the respondent disclosed three expenditures totaling approximately \$2,190 that appear to be staff reimbursements. Regarding the 8-day pre-election report for the November 2010 general election, the respondent disclosed eight expenditures totaling approximately \$3,921 that appear to be staff reimbursements.
11. The evidence indicated that the expenditures were not reimbursements, but rather, direct payments to individual staff members for campaign services rendered.

Total Political Expenditures

12. The complaint alleged that the respondent reported an incorrect balance for total political expenditures in four committee reports. In each report at issue, the respondent disclosed on Schedule I (used to disclose non-political expenditures made from political contributions) expenditures that were made from political contributions. The respondent did not include those expenditures when calculating the amount of total political expenditures. The expenditures reported by the respondent appear to have been political expenditures.
13. The committee’s January 2010 semiannual report disclosed \$15,000 in total political expenditures. Schedule I of the report disclosed one expenditure of \$916.52. The respondent corrected the total political expenditure balance to \$15,916.52.
14. The committee’s runoff election report for the April 2010 runoff election disclosed \$0 in total political expenditures. Schedule I of the report disclosed two expenditures totaling \$3,142.38. The respondent corrected the total political expenditure balance to \$3,142.38.

15. The committee's 30-day pre-election report for the November 2010 general election disclosed \$20,000 in total political expenditures. Schedule I of the report disclosed one expenditure of \$1,507.46. The respondent corrected the total political expenditure balance to \$21,507.46.
16. The committee's 30-day pre-election report for the May 2011 uniform election disclosed \$5,000 in total political expenditures. Schedule I of the report disclosed 10 expenditures totaling \$6,134.56. The respondent corrected the total political expenditure balance to \$11,134.56.

Disclosure of Political Contributions

17. The complaint alleged that the respondent did not properly disclose two contributions totaling approximately \$8,910 from labor organizations. The contributions at issue were disclosed on Schedule K (used to disclose credits) of the committee's January 2011 semiannual report as follows:
 - November 23, 2010, \$4,453.87 from Teamsters Joint Council 58, with a stated reason of "Reimbursement of Lost Time Wages"
 - December 20, 2010, \$4,453.87 from International Brotherhood of Teamsters, with a stated reason of "Reimbursement of Lost Time Wages"
18. Regarding the contribution from Teamsters Joint Council 58, credible evidence indicates that the entity is a labor organization located in Houston, Texas.
19. Regarding the contribution from International Brotherhood of Teamsters, credible evidence indicates that the entity is a labor organization that has a political committee registered with the Federal Election Commission (FEC ID# C70001979).
20. The evidence indicated that the contributions at issue were made to reimburse Teamsters Local Union No. 988 Drive for expenses incurred in connection with "member-to-member communications." Regarding the "member-to-member communications," the evidence indicated that the payments were made to Local 988 members for time they spent in signing up other Local 988 members to contribute to the International Brotherhood of Teamsters Democratic, Republican, Independent Voters Education PAC (D.R.I.V.E.), a federal political action committee that is registered with the Federal Election Commission (FEC; ID# C00032979). The evidence indicated that the members did not advocate support or opposition for any candidate or office, and that their purpose was to sign up new members to contribute to D.R.I.V.E.

21. In response to the complaint, the respondent corrected the January 2011 semiannual report to move the two contributions from Schedule K to Schedule C-2 (used to disclose corporation or labor organization support). The respondent also corrected the total political contributions balance from \$14,415.50 to \$23,323.24, in order to add the two contributions at issue totaling \$8,907.74.

Accepting Political Contributions from Corporations

22. The complaint alleged that the respondent accepted two unlawful political contributions totaling approximately \$8,910 from corporations or labor organizations. The contributions at issue were disclosed on Schedule K (used to disclose credits) of the committee's January 2011 semiannual report as follows:
 - November 23, 2010, \$4,453.87 from Teamsters Joint Council 58, with a stated reason of "Reimbursement of Lost Time Wages"
 - December 20, 2010, \$4,453.87 from International Brotherhood of Teamsters, with a stated reason of "Reimbursement of Lost Time Wages"
23. The evidence indicated that the contributions at issue were made to reimburse Teamsters Local Union No. 988 Drive for expenses incurred in connection with member-to-member communications. The expenditures were made to reimburse the committee for staff member wages that were disclosed as political expenditures in the committee's 8-day pre-election report for the May 2010 uniform election, 8-day pre-election report for the November 2010 general election, and January 2011 semiannual report.

IV. Findings and Conclusions of Law

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

Cover Sheet Information

1. Each report by a campaign treasurer of a general-purpose committee must include the identity and date of the election for which the report is filed, if applicable. ELEC. CODE § 254.151(3).
2. Regarding the nine reports at issue, credible evidence indicated that the committee was involved in each respective election for which the reports were filed. Thus, the respondent was required to provide the election information on the cover sheet of the reports. There is credible evidence of violations of section 254.151(3) of the Election Code.

Names of Candidates Supported or Opposed and Officeholders Assisted

3. Each 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, and the name of each identified officeholder or classification by party of officeholders assisted by the committee. *Id.* §§ 254.151(4), 254.151(5).
4. Although the committee reports at issue disclosed political expenditures to candidates on Schedule F, the reports did not disclose the information in the “Committee Activity” section of the cover sheets. However, the disclosures on Schedule F of the reports at issue made apparent the names of the candidates and their respective offices sought. Therefore, there is credible evidence of technical or *de minimis* violations of sections 254.151(4) and (5) of the Election Code with respect to the 11 reports at issue.

Purpose of Political Expenditures

5. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 at time of complaint) 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).
6. The purpose of an expenditure means a description of goods, services, or other thing of value and must include a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making 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. Ethics Commission Rules § 20.61.
7. Regarding the six expenditures at issue, the respondent was required to provide both a category and description. Although the respondent did not provide a category, the descriptions made the purpose of the expenditures apparent. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.

Staff Reimbursements

8. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 at time of complaint) 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).
9. Regarding the political expenditures at issue, the expenditures were not reimbursements, but rather, direct payments to individual staff members for campaign services rendered. Accordingly, the evidence indicated that the ultimate payees of the political expenditures at issue were properly disclosed. 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.

Total Political Expenditures

10. 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).
11. A political expenditure means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10). Campaign expenditure means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7). Officeholder expenditure means an expenditure made by any person to defray expenses that are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office and that are not reimbursable with public money. *Id.* § 251.001(9).
12. Title 15 of the Election Code treats administrative expenditures as political expenditures. *Id.* § 253.100; Ethics Advisory Opinion No. 132 (1993) (note that statute now explicitly requires reporting of political expenditures made for administrative purposes).
13. The respondent was required to include campaign expenditures, officeholder expenditures, and any administrative expenditures when calculating the total amount of political expenditures. Based on Schedule I of the reports at issue, the respondent was improperly categorizing certain expenses as non-political expenditures. Accordingly, the amount of total political expenditures was understated in the four reports at issue because the expenditures disclosed on Schedule I were not included in the calculation.
14. Regarding the January 2010 semiannual report, the respondent improperly categorized one expenditure of \$916.52. Regarding the runoff election report for the April 2010 runoff

election, the respondent improperly categorized two expenditures totaling \$3,142.38. Regarding the 30-day pre-election report for the November 2010 general election, the respondent improperly categorized one expenditure of \$1,507.46. Regarding the 30-day pre-election report for the May 2011 uniform election, the respondent improperly categorized 10 expenditures totaling approximately \$6,130. The respondent did not include these expenditures in the amount of total political expenditures in the original reports at issue.

15. Although the respondent disclosed the expenditures at issue on Schedule I of the report schedules, someone viewing the expenditure totals section of the reports would not have been able to ascertain the true amount of total political expenditures. Based on the amounts at issue (approximately \$11,700), there is credible evidence of violations of section 254.031(a)(6) of the Election Code with respect to those four reports.

Disclosure of Political Contributions

16. 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).
17. Each report by a campaign treasurer of a general-purpose political committee must include on a separate page or pages of the report, the identification of any contribution from a corporation or labor organization made and accepted under Subchapter D, Chapter 253; and on a separate page or pages of the report, the identification of the name of the donor, the amount, and the date of any expenditure made by a corporation or labor organization to establish or administer the political committee, or finance the solicitation of political contributions to the committee under section 253.100 of the Election Code. *Id.* §§ 254.151(8),(9).
18. Regarding the two contributions at issue totaling approximately \$8,910, the contributions were made by labor organizations to reimburse the committee for expenses incurred in connection with member-to-member communications. Accordingly, the respondent was required to include the contributions in the total political contributions amount in the January 2011 semiannual report. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code.
19. The respondent was also required to disclose the contributions on Schedule C-2 of the January 2011 semiannual report. However, since the respondent originally disclosed the contributions on Schedule K and reported the same information required by Schedule C-2, the error was not misleading and did not substantially affect disclosure. There is credible evidence of technical or *de minimis* violations of section 254.151(9) of the Election Code.

Accepting Political Contributions from Corporations

20. 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). In order to show a violation of section 253.003(b) of the Election Code, the evidence must show that the contributor was a corporation or labor organization, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation or labor organization.
21. A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, of the Election Code. ELEC. CODE § 253.094.
22. A labor organization may engage in activity authorized for a corporation by this section. For purposes of this section, the members of a labor organization are considered to be corporate stockholders. ELEC. CODE § 253.100(c). A corporation or labor organization may not make expenditures under this section for political fund-raising other than from its stockholders or members, as applicable, or the families of its stockholders or members. *Id.* § 253.100(d)(5).
23. Regarding the two contributions at issue, the contributions were made by labor organizations to reimburse Teamsters Local Union No. 988 Drive for expenses incurred in connection with member-to-member communications, which were made to solicit membership contributions to D.R.I.V.E., a federal political action committee. Since the payments at issue were made to reimburse the respondent for expenses incurred in soliciting contributions to a federal committee, the payments at issue are governed by federal law and do not fall under Title 15 of the Election Code.
24. Even if the activity for which a violation may be found was regulated under Title 15 of the Election Code, the member-to-member communications at issue would be permissible under section 253.100(d)(5) of the Election Code. Therefore, there is credible evidence of no violations 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: 1) each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 at time of complaint) 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; 2) the purpose of an expenditure means a description of goods, services, or other thing of value and must include a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making 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; 3) 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 – Title 15 of the Election Code treats administrative expenditures as political expenditures; 4) each report by a campaign treasurer of a general-purpose committee must include the identity and date of the election for which the report is filed, if applicable; 5) each 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, and the name of each identified officeholder or classification by party of officeholders assisted by the committee; and 6) each report by a campaign treasurer of a general-purpose committee must include on a separate page or pages of the report, the identification of the name of the donor, the amount, and the date of any expenditure made by a corporation or labor organization to establish or administer the political committee, or finance the solicitation of political contributions to the committee under section 253.100 of the Election Code.

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 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 \$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-31105150.

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

Robert Mele, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director