

TEXAS ETHICS COMMISSION

IN THE MATTER OF

**TERRY L. ORR,
CAMPAIGN TREASURER,
SOUTHLAKE FAMILIES,**

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31105154

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 8, 2012, to consider sworn complaint SC-31105154. 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 and section 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 the respondent, as campaign treasurer of a political committee, did not properly disclose political contributions and political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent was the campaign treasurer of Southlake Families, a specific-purpose committee in Southlake, Texas. The complaint alleged that the respondent did not disclose the committee's contributions and expenditures in an 8-day pre-election report in connection with a measure election held on May 14, 2011, in the city of Southlake. Specifically, the alleged expenditures were for signs, 9,000 campaign flyers, a website, T-shirts, a telephone survey, and e-mail messages.
2. The committee named the respondent as its campaign treasurer by an appointment filed on March 23, 2011, which disclosed that the committee's purpose was to oppose a "Local Option Election" measure described as, "The Legal Sale of Alcoholic Beverages Including Mixed Beverages" in a May 14, 2011, city election.

3. The complaint included a copy of a flyer and a six-page advertisement that advocated a vote against a “liquor referendum” on the ballot in the election. The documents stated that they were political advertisements paid for by “Southlake Families PAC” in Southlake.
4. The committee’s 30-day pre-election report covered a period from March 23, 2011, to April 11, 2011, and disclosed the following:
 - Total political contributions of \$50 or less was blank
 - \$100 in total political contributions
 - Total political expenditures of \$50 or less was blank
 - \$0 in total political expenditures
 - \$100 in total political contributions maintained
 - \$0 in total principal amount of outstanding loans.
5. The committee’s 8-day pre-election report was filed on May 6, 2011, and covered a period from April 13, 2011, to May 6, 2011. The report was due on May 6, 2011. The report disclosed the following:
 - Total political contributions of \$50 or less was “-”
 - \$5,550 in total political contributions (corrected to \$9,954.72)
 - Total political expenditures of \$50 or less was “-”
 - Total political expenditures was “-” (corrected to \$9,160.70)
 - \$5,550 in total political contributions maintained (corrected to \$894.02)
 - Total principal amount of outstanding loans was “-”.
6. The 8-day pre-election report itemized approximately \$5,550 in political contributions, of which approximately \$150 in contributions were \$50 or less. None of the itemized contributions were in-kind contributions. The respondent corrected the report on May 24, 2011, after the complaint was filed, and corrected the committee’s totals for political contributions, political expenditures, and political contributions maintained. The corrected report also itemized approximately \$9,950 in political contributions, of which approximately \$4,400 were in-kind contributions. The contributions that were added by the corrected report were disclosed as follows:
 - \$300 from a couple on May 1, 2011
 - \$50 from an individual on May 5, 2011
 - \$343.83 from an individual (“Individual A”) on April 13, 2011, for “Advertising – Car Magnets, Banners”
 - \$60 from Individual A on April 17, 2011, for “Food/Beverage – Pizza”
 - \$380 from an individual (“Individual B”) on April 18, 2011, for “Advertising – Postage”
 - \$400 from Individual B on April 21, 2011, for “Advertising – Freelance Writing”

- \$363.88 from Individual A on April 21, 2011, for “Advertising – Printing”
 - \$60 from Individual A on May 4, 2011, for “Food/Beverage – Pizza”
 - \$2,447.01 from Individual B on May 5, 2011, for “Advertising – Paper, Printing, Postage”.
7. The corrected report also disclosed the following political expenditures:
- \$343.83 to Individual A on April 13, 2011, for “Advertising” described as “Car Magnets; Banners”
 - \$60 to Individual A on April 17, 2011, for “Food/Beverage” and described as “Pizza”
 - \$380 to Individual B on April 18, 2011, for “Advertising” and described as “Postage”
 - \$400 to Individual B on April 21, 2011, for “Advertising” and described as “Freelance Writing”
 - \$363.88 to Individual A on April 21, 2011, for “Advertising” and described as “Printing”
 - \$60 to Individual A on May 4, 2011, for “Food/Beverage” and described as “Pizza”
 - \$2,447.01 to Individual B on May 5, 2011, for “Advertising” and described as “Paper, Printing, Postage”
 - \$210 to a business on April 29, 2011, for “Advertising” and described as “T-shirts”
 - \$241.40 to a business on April 30, 2011, for “Advertising & Polling” and described as “Robo Call & Polling”
 - \$700 to a business on May 3, 2011, for “Consulting Expense” and described as “Mail Piece”
 - \$2,244.58 to a business on May 3, 2011, for “Advertising” and described as “Postcards, Postage, Handling”
 - \$1,710 to a business on April 22, 2011, for “Advertising” and described as “Signs”.
8. The committee’s campaign treasurer appointment was amended on June 9, 2011, and stated that the committee’s new purpose was to oppose a measure in an election on November 8, 2011. The measure was identified as, “The legal sale of all alcoholic beverages for off-premise consumption only,” and described as, “We oppose legalizing liquor stores in Southlake.”
9. In response to the complaint, the respondent swore, in pertinent part:

The original report I filed was prepared based upon when I as the treasurer received the supporting documents. I later learned the report should be prepared based on when an expense originated or contribution was written or

received. Upon learning this I revised the report which had been filed on 5/6/2011. The revised report was filed on 5/24/2011.

10. The respondent stated that the individuals who made in-kind contributions to the committee all did so at the direction of the committee. He stated that the committee decided beforehand that they were going to purchase goods and services for the committee, such as advertisements, pizza, and magnets, and that the individuals agreed to pay for them out of their personal funds. The respondent also stated that the committee made reimbursements to the individuals in some cases, but was unable to identify the reimbursed expenditures.
11. To date, no additional corrections have been filed.

IV. Findings and Conclusions of Law

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

1. Each campaign finance 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 by the person or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
2. A report must also include, in pertinent part, 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. *Id.* § 254.031(a)(3).
3. A report must also 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. *Id.* § 254.031(a)(5).
4. A report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).
5. A report must also 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. *Id.* § 254.031(a)(8).
6. Political expenditures made out of personal funds by a staff member of a political committee with the intent to seek reimbursement from the 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 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 or less made during the reporting period. Except as provided above, a political expenditure made out of personal funds by a staff member of a political committee with the intent to seek reimbursement from the 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 political committee; the expenditure made by the staff member is reported as a political expenditure by the political committee; and the reimbursement to the staff member to repay the loan is reported as a political expenditure by the political committee. Ethics Commission Rules § 20.62.

7. The committee made political expenditures to oppose the measure on the ballot in the election. The respondent, as campaign treasurer of the committee, filed an 8-day pre-election report for the committee that disclosed \$5,550 in political contributions and disclosed the amount of political expenditures as “-”. In response to the complaint, the respondent corrected the total amount of political contributions to \$9,954.72 and corrected the total amount of political expenditures to \$9,160.70. The respondent also corrected the amount of total political contributions maintained from \$5,550 to \$894.02. Therefore, there is credible evidence that the respondent violated sections 254.031(a)(6) and 254.031(a)(8) of the Election Code.
8. The respondent also disclosed the total amounts of political contributions and political expenditures of \$50 or less as “-” on both the original and corrected reports. By using a dash, the reports indicated that there was nothing to disclose in those categories, and the evidence did not indicate that the committee made political expenditures or accepted political contributions that were required to be disclosed in those categories. Therefore, there is credible evidence of no violation of section 254.031(a)(5) of the Election Code.
9. The complaint also alleged that the respondent did not properly itemize political contributions and political expenditures in the 8-day pre-election report. After the complaint was filed, the respondent corrected the report to disclose approximately \$4,400 in contributions that were not previously disclosed. The dates on the respondent's report indicated that the report covered the period from April 13, 2011, to May 6, 2011. However, the period should have been from April 5, 2011, to May 4, 2011, and the report was only required to disclose activity that occurred during that time. Of the approximate \$4,400 in contributions that were added to the corrected report, approximately \$1,910 in contributions were accepted during the period that the report was required to cover. Thus, the respondent was required to disclose the approximate \$1,910 in contributions no later than May 6, 2011. The respondent did not disclose the contributions by the due date. Therefore, there is credible evidence that the respondent violated section 254.031(a)(1) of the Election Code by failing to timely disclose the contributions in the 8-day pre-election report. The remaining approximate \$2,500 in contributions that the respondent added to the report were not required to be disclosed until July 15, 2011, after the complaint was filed.

10. Approximately \$6,710 in expenditures were made from April 5, 2011, to May 4, 2011. Thus, the respondent was required to properly disclose approximately \$6,710 in political expenditures in the report. None of the expenditures were disclosed when the report was originally filed. Although the exact amount of reimbursed expenditures was not clear, the evidence indicated that the expenditures were made by individuals on behalf of the committee out of their personal funds with the intent to be reimbursed by the committee. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

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: 1) the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions; 2) 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; 3) 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; 4) the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; and, 5) 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.

The respondent also acknowledges that political expenditures made out of personal funds by a staff member of a political committee with the intent to seek reimbursement from the political committee must be reported in accordance with section 20.62 of the Ethics Commission Rules.

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 \$1,300 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-31105154.

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

Terry L. Orr, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director