

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BRACY WILSON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3120245

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) held a preliminary review hearing on May 30, 2013, to consider sworn complaint SC-3120245. 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 allegations regard political contributions from a corporation.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for state representative of District 70 in a May 29, 2012, primary election.
2. The complaint alleged that the respondent accepted campaign contributions from a corporation by using the facilities of Valliance Bank (the bank) and accepting food and beverages for a campaign fundraising event. The event was located in an office building in McKinney, Texas, that was owned by a domestic limited partnership consisting of a single limited liability company. The limited liability company was managed by one individual. The bank's business address was located in the office building.
3. According to records of the Texas Secretary of State (SOS), the bank was formed on December 19, 2006, as a financial institution in Oklahoma City, Oklahoma. The bank filed an application for registration of an out-of-state financial institution with the SOS on July 6, 2012. Texas franchise public information reports also indicated that the bank was wholly owned by Valliance Texas Financial Holdings, Inc., a for-profit corporation that had a business address in the office building. The executive vice president of Valliance Bank was identified as a director and the secretary of Valliance Texas Financial Holdings, Inc.

4. The complainant alleged that he received the following invitation, which stated, in pertinent part:

Bracy Wilson Invites You To Attend
The Host Committee of
Valliance Bank
[and a separate limited liability company]
cordially invites you to a fundraising reception
to benefit our next
District 70 State Representative
Bracy Wilson.

5. The invitation also identified individuals and a limited liability partnership as “Entertainment Sponsors” and “Event Sponsors.”
6. The complaint also included a January 16, 2012, announcement for the event on the respondent’s account on twitter.com. The website stated, “Valliance Bank (McKinney) Opens Doors to Wilson Campaign” and included a link to the invitation. The respondent’s account on Facebook included a January 17, 2012, announcement, which stated “Valliance Bank (McKinney) Opens Doors to Wilson Campaign” and a link to the invitation.
7. The respondent’s Facebook account included a January 24, 2012, announcement that included a photograph of the respondent and the date and location of the event. The photograph stated that the sponsors of the event were the bank; the limited liability company; and two individuals. The announcement also stated, “Thank you for the support of my sponsors Valliance Bank, [the limited liability company], and [Individuals A & B] for our campaign event on February 16.”
8. The complaint also included a January 30, 2012, announcement on the respondent’s Facebook account that stated, in part:

Just got email from Sponsors as to our Feb. 16 5:30-7:30 Campaign Event status,

“Just met with Valliance Bank for the gathering on Feb 16th. We’ve coordinated food, beverages, times, etc. and they’ve already sent out the invitations. They expect a few hundred folks. It’s going to be a great event!”

If anyone would like receive [sic] an invitation, let us know.

9. The respondent filed a January 15 semiannual campaign finance report on January 17, 2012, covering a period from October 6, 2011, to December 31, 2011. The report disclosed the following:
- \$1,046 in total political contributions of \$50 or less
 - \$9,346 in total political contributions
 - \$649.17 in total political expenditures of \$50 or less
 - \$12,603.38 in total political expenditures
 - \$38,659.42 in total political contributions maintained
 - \$41,268.78 in total principal amount of outstanding loans
10. The respondent also filed a 30-day pre-election report on April 27, 2012, covering a period from January 1, 2012, to April 20, 2012. The report disclosed the following:
- \$45 in total political contributions of \$50 or less
 - \$5,320 in total political contributions
 - \$713.99 in total political expenditures of \$50 or less
 - \$49,980.61 in total political expenditures
 - \$819 in total political contributions maintained
 - \$10,689 in total principal amount of outstanding loans
11. The respondent's reports did not disclose any political contributions from the bank or political expenditures to the bank. The reports also did not disclose any contributions or expenditures that were clearly related to the fundraising event.
12. In response to the allegations, the respondent swore on March 13, 2012, in pertinent part:
- Wilson for Texas campaign has not received any contributions from Valliance Bank either monetarily or in kind.
- Attached are the resources for your review:
1. Invoice for Catering Services showing \$2,000 worth of expenses.
 2. A \$1,000 personal check from [the vice president of the bank] covering half of the catering expense.
 3. A notice to [Individual C] showing that \$1,000 covered the balance of the Catering Service expense.
 4. An invoice from Valliance Bank to [Individual D] for the rental of the facility.
 5. A copy of the check paid by [Individual D] for the rental of the facility.
 6. A picture of the literature table at the event showing the responsible party for the rental facility.
13. The respondent submitted a document dated February 8, 2012, and titled, "Invoice for Catering Services." The document was signed by the executive vice president of the bank.

The document stated, in pertinent part:

To: [the vice president of the bank], rgottlich@redtoblackgroup.com
From: [the executive vice president of the bank]

Please forward the amount detailed below for Catering Services related to the event scheduled to be held in the Valliance Bank lobby at 5:30 p.m. on Thursday, February 16, 2012. For your file, attached you will find a copy of the invoice from the caterer for this event, [the caterer].

½ of \$2,000.00 catering invoice attached from [the caterer]: **\$1,000.00**

Please remit payment prior to the beginning of the event. If you pay this invoice by check, please direct your payment to:

Valliance Bank
Attn: [executive vice president of the bank]
5900 S. Lake Forest Drive, Ste. 100
McKinney, TX 75070

14. The respondent also submitted a cashier's check in the amount of \$1,000 from a separate bank in San Antonio, Texas. The check was dated February 16, 2012, and made payable to "Valliance Bank, Bracy Wilson Event Rental." The check indicated that the remitter was the vice president of Valliance Bank.
15. The respondent also submitted a document on Valliance Bank letterhead that was dated February 8, 2012, and addressed to Individual C in McKinney. The document stated:

This notice is to notify you that your Saving [sic] account ending [account number] had been debited for \$1,000.00 on Feb. 8, 2012 as per your request to pay for Catering Services for the event on February 16, 2012.

16. The respondent also submitted a document titled, "Invoice for Facility Rental" and dated February 8, 2012. The invoice was signed by the executive vice president of the bank. It stated, in pertinent part:

To: [Individual D]
From: [the executive vice president of the bank], Valliance Bank

Please forward the amount detailed below for facility rental fees related to the event scheduled to be held in the Valliance Bank lobby from 5:30 p.m. to 8:30 p.m. (time to include clean-up) on Thursday, February 16, 2012.

FACILITY RENTAL FEE: \$300.00

Please direct your payment to:

Valliance Bank

Attn: [the executive vice president of the bank]

17. The respondent also submitted a copy of a \$300 check drawn on the account of Individual D and payable to the bank. The check was dated March 9, 2012, and stated that it was for "Facility Rental."
18. The respondent also submitted a photograph of a table that displayed campaign literature for the respondent, including stickers, postcards, a sign-in sheet, and various books and pamphlets. The photograph included a sign at the edge of the photograph that was partially visible. The sign stated, in pertinent part:

Campaign Fundraiser
February 16, 2012

Venue Facilities
sponsored by
private donation
from

[not visible] & [the spouse of Individual D].

19. The respondent also swore, in pertinent part:

My statement/story of the correspondence and planning for the February 16, 2012 Wilson for Texas fundraising event.

I was the candidate for Texas House District 70 and was busy campaigning during the planning stage for stated event. [The campaign manager] was the lead on the event. I am no longer in contact with [the campaign manager]. [The campaign manager] planned the event, worked and met with the bank to determine schedule, recruited volunteers, and worked with the vendors to service the event. [The campaign manager] recruited [other individuals] to assist in the event. She also met with [the vice president of the bank], to help schedule the event. [Two individuals] helped with the invitation, database invite list, and assisting at the event itself related to check in and receiving fundraising checks for the campaign. From what I gather, although I was not participating in the planning or execution, sometime in the planning, [the vice president of the bank] voluntarily offered [the campaign manager] assistance in setting up the catering as the bank used a local catering service that had served the bank before for their own bank events. He stated that the caters [sic] knew the venue and where to set up, etc.

[The campaign manager], from my recollection, did not ask for the bank to pay the catering service, but it seems that the bank took it upon themselves to make payment to the catering service because they had an account with them.

They made payment from what I understand with the idea and intent that they would be reimbursed by a bank employee [the vice president of the

bank] from his own personal account and another bank client from his own account [Individual C]. As you can see from the records, that [the vice president of the bank] and [Individual C] did as individuals make payment for the catering services (checks copies attached), and the bank never incurred in [sic] expense as to the event. The bank venue was also rented out by an individual, [Individual D] (check attached).

I have provided you with all of my records. I do not have the invoice for catering except the “invoice” that [the executive vice president of the bank] forwarded via email to [the vice president of the bank] and then forwarded to me. This invoice states “1/2 of \$2,000.00 catering invoice attached from [the caterer]: \$1,000.00.” From my understanding, the invoice was to [the vice president of the bank] so that he could pay his \$1,000.00 where [Individual C] paid the other 1/2.

Conclusion: I was busy campaigning while volunteers were doing their best to be put [sic] on the event. As stated in my first response . . . , the Wilson for Texas campaign has not and did not received [sic] any contributions from Valliance Bank either monetarily or in kind.

20. The respondent also submitted e-mail messages, in which he communicated with sponsors of the event to confirm the date and time for the event.
21. Other non-political meetings were held at the bank between April 2012 and July 2012.
22. SOS records indicated that the limited liability company that was identified as a sponsor of the event was managed by two individuals, including Individual C.

IV. Findings and Conclusions of Law

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

Corporate Contributions

1. 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). 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. *Id.* § 253.094.
2. The prohibition applies to corporations that are 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. *Id.* § 253.091. A bank is considered to be a corporation, whether incorporated or not. *Id.* § 253.093(a).
3. “Political contribution” means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).

4. “Campaign contribution” means, in pertinent part, a contribution to a candidate that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3).
5. “Contribution” means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a guarantee of a loan or extension of credit, including a loan described by this subdivision. *Id.* § 251.001(2).
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. Ethics Commission Rules § 20.1(8).
7. An exchange of consideration between a candidate and a corporation will not by itself change the character of the transfer from a prohibited political contribution to a permissible commercial transaction. It is critical that the terms of the transaction reflect the usual and normal practice of the industry, and be typical of the terms the commercial party offers to political and non-political entities alike. Ethics Advisory Opinion No. 143 (1993).
8. To avoid the prohibition on corporate campaign contributions it is critical that the terms of a contract between a corporation and a candidate be typical of the terms the corporation offers to political and non-political customers. Ethics Advisory Opinion No. 398 (1998).
9. 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, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew that the particular contribution at issue was from a corporation.
10. The evidence is insufficient to show that the respondent accepted a political contribution from the bank. Therefore, there is insufficient evidence that the respondent violated sections 253.003 and 253.094 of the Election Code.

Disclosure of Contributions

11. A campaign finance report must include, in pertinent part, 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 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).
12. A report must also include the total amount or a specific listing of the political contributions of \$50 or less accepted during the reporting period. *Id.* § 254.031(a)(5).
13. A report must also include the total amount of all political contributions accepted during the reporting period. *Id.* § 254.031(a)(6).

14. Two individuals, including Individual C who was identified as a sponsor of the event, each paid \$1,000 to the bank that was intended to pay for the catering at the respondent's fundraising event. Individual D, who was identified as a sponsor for the event, paid \$300 to the bank to rent the bank's facilities for the event. The respondent also submitted documents to the commission as evidence that the three individuals paid the amounts for the event. Thus, the respondent accepted approximately \$2,300 in political contributions related to the event. However, the respondent did not disclose any of the contributions. Therefore, there is credible evidence that the respondent did not properly disclose political contributions in violation of sections 254.031(a)(1), 254.031(a)(5), and 254.031(a)(6) 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 a campaign finance report must include, in pertinent part, 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 required to file a report, the full name and address of the person making the contributions, and the dates of the contributions; the total amount or a specific listing of the political contributions of \$50 or less accepted during the reporting period; and the total amount of all political contributions accepted during the reporting period. 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 the sanction necessary to deter future violations, the commission imposes a \$250 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-3120245.

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

Bracy Wilson, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director