

TEXAS ETHICS COMMISSION

IN THE MATTER OF
FLOYD E. EMERY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31308138

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 21, 2014, to consider sworn complaint SC-31308138. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.063 of the Election Code and section 20.61 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: 1) did not properly disclose in campaign finance reports political contributions and political expenditures; 2) did not timely file a semiannual campaign finance report; 3) accepted political contributions from corporations or labor organizations; and 4) accepted political contributions in cash that exceeded \$100.

III. Facts Supported by Credible Evidence

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

1. The respondent was elected to city council, District D, for Missouri City in the May 14, 2011, uniform election and currently holds that position.

Disclosure of Contributor Information

Contributor Name

2. The complaint alleged that the respondent did not properly disclose the name of an entity making a \$500 political contribution. The contributor name at issue was disclosed on

Schedule A (used to disclose political contributions) of the respondent's July 2013 semiannual report. In response to the complaint, the respondent corrected the report to change the name of the contributor from a business to an individual. The respondent stated that although the contribution check had a business logo at the top, he believed that the check was a personal check from an individual. The respondent corrected the report again to change the contributor name back to the business.

3. The respondent provided a copy of the contribution check. The name appearing on the contribution check is the same business name that was disclosed by the respondent in the original report. The respondent also provided an affidavit from the contributor, in which the contributor swore that the contribution was made through the business, a general partnership.

Contributor Addresses

4. The complaint alleged that the respondent did not disclose complete address information for four contributors who made political contributions totaling \$900. The contributions at issue were disclosed on Schedule A of the respondent's July 2013 semiannual report. Regarding the four contributors at issue, the respondent disclosed a city, state, and zip code, but did not provide a street address for the contributors. In response to the complaint, the respondent corrected the July 2013 semiannual report to include complete address information for the contributors at issue.

Payee Addresses

5. The complaint alleged that the respondent did not provide complete address information for three payees of political expenditures totaling approximately \$3,000 that were disclosed on Schedule F (used to disclose political expenditures) of the respondent's July 2013 semiannual report.
6. For one expenditure of \$400, the respondent did not disclose the payee's street address; for one expenditure totaling approximately \$2,480, the respondent did not disclose the payee's city, state, and zip code; and for the remaining expenditure of \$120, the respondent did not disclose the payee's street address and zip code. In response to the complaint, the respondent corrected the report to disclose complete address information for the payees at issue.

Purpose of Political Expenditures

7. The complaint alleged that the respondent did not properly disclose the purpose of six political expenditures totaling approximately \$5,220 that were disclosed on Schedule F of his January 2012 and July 2013 semiannual reports.
8. Regarding five of the political expenditures at issue totaling approximately \$2,730, the respondent did not provide a description for the expenditures. In response to the complaint,

the respondent corrected the reports at issue and provided more complete descriptions for the expenditures.

9. Regarding the remaining expenditure of approximately \$2,480, the respondent provided a category of "Food/Beverage/Event Exp." and a description of "Kickoff." In response to the complaint, the respondent filed a correction to the July 2013 semiannual report and changed the description to "Re election campaign kickoff event."

Total Political Contributions

10. The complaint alleged that the respondent did not disclose total political contributions in his January 2013 semiannual report. Based on the totals section of the report at issue, the respondent disclosed \$0 in total political contributions. However, the respondent disclosed \$25 in total unitemized political contributions of \$50 or less (the respondent did not disclose any political contributions on Schedule A).
11. In response to the complaint, the respondent filed a correction to the January 2013 semiannual report at issue and changed total political contributions to \$25.

Timely Filing of Campaign Finance Report

12. The complaint alleged that the respondent did not timely file a July 2012 semiannual report. The allegation was based on the respondent's January 2013 semiannual report that was filed with the Missouri City secretary on January 9, 2013. The report covered from January 1, 2012, through December 31, 2012, and was marked as both a July 2012 and a January 2013 semiannual report.
13. In response to the complaint, the respondent swore that he didn't think the July 2012 semiannual report was required because he had less than \$500 in activity during the respective reporting period (note that the report was required because the respondent had an active campaign treasurer appointment on file). The respondent corrected the January 2013 semiannual report to change the period covered and also filed a separate July 2012 semiannual report covering from January 1, 2012, through June 30, 2012. The July 2012 semiannual report disclosed \$0 in total political contributions and \$315 in total political expenditures.

Accepting Political Contributions from Corporations

14. The complaint alleged that the respondent accepted two political contributions totaling \$2,500 from two corporations. The contributions at issue were disclosed on Schedule A of the respondent's July 2013 semiannual report as being made from two businesses.

15. In response to the complaint, the respondent provided copies of each contribution check. Regarding one of the contributions at issue for \$2,000, the copy of the check that was provided by the respondent indicates that the contribution was from an individual, and the respondent swore that the contribution was incorrectly reported as being received from the individual's company. Regarding the other contribution at issue for \$500, the copy of the check that was provided by the respondent indicates that the contribution was from a corporation's political committee (note that the contribution was disclosed by the political committee as a political expenditure).

Cash Contributions Exceeding \$100

16. The complaint alleged that the respondent accepted cash contributions exceeding \$100 from a contributor. The allegation was based on Schedule A of the respondent's July 2013 semiannual report, where the respondent disclosed receiving \$240 on March 4, 2013, from "CASH – VARIOUS DONORS."
17. In response to the complaint, the respondent provided affidavits from two individuals who swore that they each made political contributions of \$100 in cash to the respondent on approximately March 13, 2013. The respondent corrected his July 2013 semiannual report to disclose the individual contributions. The respondent submitted a supplemental affidavit and swore that all donations listed on the July 2013 semiannual report at issue, with the exception of the two individuals who contributed \$100 in cash, were in the form of check donations. The respondent swore that he did not receive cash donations in excess of \$100 from any contributor.

IV. Findings and Conclusions of Law

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

Disclosure of Contributor Information

1. Each 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 under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
2. It is not a valid basis of a complaint to allege that a report required under Chapter 254, Election Code, contains the improper name or address of a person from whom a political contribution was received if the name or address in the report is the same as the name or address that appears on the check for the political contribution. GOV'T CODE § 571.122(2).

Contributor Name

3. Regarding the \$500 contribution from a business, the name appearing on the contribution check is the same name that was disclosed by the respondent in the original July 2013 semiannual report. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code.

Contributor Addresses

4. Regarding the four contributions at issue totaling \$900, the respondent was required to provide complete address information for each contributor because each contribution exceeded \$50 during the period. The respondent did not provide a street address for the contributors at issue. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code.

Payee Addresses

5. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 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. Regarding the three political expenditures totaling approximately \$3,000, the respondent was required to provide complete address information for the payees because each political expenditure exceeded \$100 during the period. The respondent did not provide complete address information for the payees at issue. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.

Purpose of Political Expenditures

7. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) 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).
8. 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(a).

9. Regarding five of the political expenditures totaling approximately \$2,730, the respondent did not disclose a description for the expenditures. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules with respect to those five expenditures.
10. Regarding the remaining political expenditure totaling approximately \$2,480, the original category provided by the respondent indicated that the expenditure was made for food and beverage in connection with an event. However, the description of “Kickoff” did not sufficiently describe the purpose of the expenditure. In context, the purpose description did not substantially affect disclosure. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules with respect to that expenditure.

Total Political Contributions

11. Each 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).
12. Regarding the January 2013 semiannual report at issue, the respondent was required to include the \$25 of unitemized political contributions when calculating the amount of total political contributions. Based on the amount at issue, and the fact that the respondent disclosed the contributions under total unitemized political contributions of \$50 or less, the omission was not misleading and did not substantially affect disclosure. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code.

Timely Filing of Campaign Finance Report

13. A candidate shall file two reports for each year as provided by this section. ELEC. CODE § 254.063(a). The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the candidate’s campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30. *Id.* § 254.063(b).
14. The respondent had an active campaign treasurer appointment on file and was required to file the July 2012 semiannual report by July 16, 2012 (deadline extended due to weekend), as a candidate. The respondent filed the report on January 9, 2013, which was 177 days after the deadline. Therefore, there is credible evidence of a violation of section 254.063 of the Election Code.

Accepting Political Contributions from Corporations

15. 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.
16. 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.
17. 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.
18. Regarding the two contributions at issue, credible evidence indicates that the contributions were not made by corporations. Therefore, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code.

Cash Contributions Exceeding \$100

19. 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).
20. A candidate, officeholder, or specific-purpose committee may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. *Id.* § 253.033(a).
21. Regarding the \$240 in political contributions at issue, credible evidence indicates that the contributions did not consist of cash from a single contributor that exceeded \$100. Therefore, there is credible evidence of no violation of sections 253.003 and 253.033 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 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) each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 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; 3) 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; 4) 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; and 5) a candidate shall file two reports for each year; the first report shall be filed not later than July 15 and covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30. 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 \$200 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-31308138.

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

Floyd E. Emery, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley
Executive Director