

TEXAS ETHICS COMMISSION

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April 24, 2015

Mr. Carlton R. Schwab
Campaign Treasurer
Texas Economic Development PAC

**RE: Notice of Reporting Error
SC-31410237**

Dear Mr. Schwab:

The Texas Ethics Commission (Commission) met on April 16, 2015, to consider SC-31410237. A quorum of the Commission was present. **The Commission determined that there is credible evidence of reporting errors that do not materially defeat the purpose of disclosure.** To resolve and settle this case without further proceedings, the Commission proposed this Notice of Reporting Error Agreement (agreement).

The Commission **found credible evidence** that the respondent, as campaign treasurer for Texas Economic Development PAC (TEDCPAC):

1. did not properly disclose political expenditures as required by sections 254.031(a)(3) and 254.031(a)(6) of the Election Code;
2. did not properly disclose the purpose of a political expenditure as required by section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules;
3. did not disclose the principal occupations of contributors as required by section 254.151(6) of the Election Code; and
4. did not identify the candidates or classification by party of candidates supported or opposed or officeholders assisted as required by sections 254.151(4) and 254.151(5) of the Election Code.

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The Texas Ethics Commission does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

The Commission **did not find credible evidence** that the respondent, as campaign treasurer for Texas Economic Development PAC (TEDCPAC):

1. did not properly disclose total political contributions maintained as required by section 254.031(a)(8) of the Election Code; and
2. did not disclose the actual payee of a political expenditure as required by section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

Total Political Contributions Maintained

1. It was contended that 14 of TEDCPAC's campaign finance reports did not properly disclose total political contributions maintained. The 14 reports at issue are the January 2013 semiannual report, the 30-day and 8-day pre-election reports for the May 2013 uniform election, the July 2013 semiannual report, the 30-day and 8-day pre-election reports for the November 2013 general election, the January 2014 semiannual report, the 30-day and 8-day pre-election reports for the March 2014 primary election, the 30-day and 8-day pre-election reports for the May 2014 uniform election, the runoff report for the May 2014 runoff election, the July 2014 semiannual report, and the 30-day pre-election report for the November 2014 general election.
2. In response to the complaint, the respondent provided bank statements for the periods covered by the reports at issue. The bank statements showed that the contribution balance on the last day of the period covered by each report at issue matched the amounts disclosed on the reports.
3. A campaign finance report must 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. ELEC. CODE § 254.031(a)(8).
4. Contributions maintained includes the balance on deposit in banks, savings and loan institutions and other depository institutions; and the present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc. Ethics Commission Rules § 20.50.
5. The respondent disclosed the correct amount of total political contributions maintained on each of the reports at issue. **Therefore, there is credible evidence of compliance with section 254.031(a)(8) of the Election Code.**

Disclosure of Political Expenditures

6. It was contended that the respondent did not properly disclose political expenditures on three campaign finance reports. On the reports at issue, the respondent disclosed expenditures on Schedule I (used to disclose non-political expenditures made from political contributions)

that the respondent did not include when calculating total political expenditures. It was contended that the expenditures disclosed on Schedule I were political expenditures that should have been disclosed on Schedule F (used to disclose political expenditures) and included in the total amount of political expenditures.

7. TEDCPAC's 8-day pre-election report for the May 2013 uniform election disclosed \$0 in total political expenditures. Schedule I of the report disclosed two expenditures, one for \$374.90 to Texas Economic Development Council for "reimbursement for postage charged to credit card," and the other for \$796.74 to "Texas Printing" for "letterhead and envelopes."
8. TEDCPAC's 30-day pre-election report for the November 2013 general election disclosed \$5,000 in total political expenditures. Schedule I of the report disclosed two expenditures totaling \$1,143.60 to Texas Economic Development Council for reimbursements for name tags and an event.
9. TEDCPAC's January 2014 semiannual report disclosed \$3,500 in total political expenditures. Schedule I of the report disclosed a \$301.56 expenditure to Square Inc. for a credit card processing fee.
10. The total amount of expenditures reported on Schedule I in the reports at issue is approximately \$2,600.
11. In response to the complaint, the respondent corrected the reports at issue to show the expenditures at issue as political expenditures on Schedule F and to include them in the amount of total political expenditures.
12. A 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 the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
13. 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. *Id.* § 254.031(a)(6).
14. "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).
15. Administrative expenditures that support the operation of a general-purpose committee ultimately support the carrying-out of the committee's political purposes, and are therefore political expenditures. See Ethics Advisory Opinion No. 132 (1993).
16. The respondent incorrectly reported political expenditures as non-political expenditures on Schedule I of the reports at issue and did not include them in calculating total political expenditures. Although these expenditures were disclosed, someone viewing the political

expenditure totals section of the reports would not have been able to ascertain the true amount of total political expenditures. **Therefore, there is credible evidence of noncompliance with sections 254.031(a)(3) and 254.031(a)(6) of the Election Code.**

Actual Payee and Purpose of Political Expenditure

17. It was contended that the respondent did not disclose the actual payee and purpose of a \$1,100.32 expenditure made to Texas Economic Development Council (TEDC) on July 31, 2013, that was disclosed on TEDCPAC's 30-day pre-election report for the November 2013 general election. The expenditure was categorized as an "Event Expense" and described as "Reimbursement for event charged to TEDC."
18. After receiving notice of the complaint, the respondent explained that TEDC made an expenditure to a venue for a committee membership event. TEDCPAC later reimbursed TEDC for the event. The respondent filed a correction to the 30-day report at issue and changed the description of the expenditure to "Reimbursement for PAC Membership Promotion Event at the Austin Club 110 E 9th Street Austin TX."
19. A 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 the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
20. The purpose of an expenditure means a description of the category of goods, services, or other thing of value for which an expenditure is made and 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. Ethics Commission Rules §§ 20.61(a) and (b).
21. Although the respondent disclosed the name of the entity to which the expenditure was directly made, it is unclear whether the original expenditure made by TEDC was made on behalf of TEDCPAC. Section 20.62 of the Ethics Commission Rules applies only to reimbursement of political expenditures made from personal funds by staff members. Credible evidence shows that the expenditure at issue was not made to reimburse a staff member. **Therefore, there is insufficient evidence of compliance with section 254.031(a)(3) of the Election Code and credible evidence of compliance with section 20.62 of the Ethics Commission Rules.**
22. The original description of the expenditure provided by the respondent did not sufficiently describe the original expenditure for which the reimbursement was made. **Therefore, there is credible evidence of noncompliance with section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.**

Principal Occupation of Contributors

23. It was contended that the respondent did not disclose the principal occupations of persons making 20 contributions on TEDCPAC's 30-day pre-election report for the November 2013 general election and six contributions on TEDCPAC's July 2014 semiannual report. The respondent left the principal occupation sections blank for each contribution at issue. Each of the contributions at issue either exceeded \$50 or exceeded \$50 when aggregated with other contributions from the same contributor during the period covered by the reports.
24. In response to the complaint, the respondent corrected the reports at issue to show the principal occupations of the contributors.
25. Each report by a campaign treasurer of a general-purpose committee must include the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period. ELEC. CODE § 254.151(6).
26. The respondent did not include the principal occupations of persons from whom TEDCPAC accepted contributions exceeding \$50 in the aggregate. **Therefore, there is credible evidence of noncompliance with section 254.151(6) of the Election Code.**

Candidates Supported or Opposed and Officeholders Assisted

27. It was contended that the respondent did not disclose the candidates supported or opposed or the officeholders assisted by the committee on TEDCPAC's 30-day pre-election report for the November 2013 general election. The respondent left the committee activity portion of the report at issue blank.
28. However, the report disclosed five political expenditures totaling \$5,000 to candidates and officeholders on Schedule F (used to disclose political expenditures).
29. In response to the complaint, the respondent corrected the reports at issue to disclose in the committee activity section the candidates supported by TEDCPAC during the periods covered by the report.
30. A campaign finance report for a general-purpose committee must disclose 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). A campaign finance report for a general-purpose committee must disclose the name of each identified officeholder or classification by party of officeholders assisted by the committee. *Id.* § 254.151(5).
31. The report at issue disclosed expenditures to support candidates and to assist officeholders. The respondent did not disclose any candidates or party classification of candidates supported or opposed or officeholders assisted by the committee in the committee activity section of the report at issue. **Therefore, there is credible evidence of noncompliance with sections 254.151(4) and (5) of the Election Code.**

By signing this agreement and returning it to the Commission:

1. You consent to this agreement.
2. You accept the determinations made by the Commission in this agreement.
3. You waive any right to further proceedings in this matter.
4. You understand and agree that the Commission will consider this agreement in any future proceedings against you regarding similar allegations.
5. You acknowledge that:

A 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 the expenditures are made, and the dates and purposes of the expenditures.

The purpose of an expenditure means a description of the category of goods, services, or other thing of value for which an expenditure is made and 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.

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.

Each report by a campaign treasurer of a general-purpose committee must include the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period.

A campaign finance report for a general-purpose committee must disclose 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. A campaign finance report for a general-purpose committee must disclose the name of each identified officeholder or classification by party of officeholders assisted by the committee.

You agree to comply with these requirements of the law.

This agreement describes reporting errors that the Commission has determined are neither technical nor *de minimis*. Accordingly, this agreement is not confidential under section 571.140 of the Government Code.

The respondent agrees to tender a \$100 assessment fee to the Commission.

This agreement is a final and complete resolution of SC-31410237.

Carlton R. Schwab, Respondent

Date signed by Respondent

Executed original agreement received by the Commission on: _____.

Texas Ethics Commission

By:

Natalia Luna Ashley, Executive Director