

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MARK N. ASSAAD,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3150362

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on November 30, 2015, to consider sworn complaint SC-3150362. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 253.003 and 253.094 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. Allegation

The complaint alleged that the respondent accepted political contributions from two corporations.

III. Facts Supported by Credible Evidence

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

1. At the time relevant to the complaint, the respondent was a candidate for School Board, Place 7, of the Grapevine-Colleyville Independent School District in the May 10, 2014, uniform election.
2. The complaint alleged that, based on disclosures in the respondent's 8-day pre-election report for the May 10, 2014, uniform election, the respondent accepted two political contributions from two corporations.
3. The report at issue disclosed that the respondent accepted a political contribution of \$2,000 on April 21, 2014, from Brewer Commercial, Inc., and a political contribution of \$250 on April 26, 2014, from Alliance Drywall, Inc.

4. Texas Secretary of State records show that both entities are domestic for-profit corporations.
5. In response to the complaint, the respondent swore in pertinent part:

In April of 2014, while running for a position on my local school board, I received a \$2,000 check from a corporation by the name of Brewer Commercial, Inc. A few days later, on April 26th, 2014, I received a \$250 check from a corporation by the name of Alliance Drywall, Inc.

This was the first time I had ever run for public office and I did not completely understand the laws and rules involved with the “deemed acceptance” of contributions and the reporting of contributions.

My instinct told me that there was a problem with the corporate checks. Therefore, I did not deposit them into my campaign account. I never deposited these corporate checks into any account. I never used these funds. I returned the original, uncashed checks to the respective corporations.

However, in an abundance of caution and in an effort to be completely forthcoming in my campaign finance reporting of events associated with my campaign, I reported the checks on Schedule A. However, I reiterate, I never deposited the checks into any account.

6. The respondent attached copies of the checks, which were not endorsed, and provided copies of letters sent to the corporations that made the contributions stating that the contributions were being returned. The respondent also provided copies of his campaign account bank statements. The bank statements do not show that the respondent deposited the checks at issue.

IV. Findings and Conclusions of Law

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

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).
2. A corporation may not make a political contribution that is not authorized by subchapter D, chapter 253, of the Election Code. *Id.* § 253.094(a).

3. Subchapter D, chapter 253, Election Code, does not authorize a corporation to make a political contribution to a candidate or to make a political expenditure to support a candidate by providing assets or resources to a candidate for campaign purposes.
4. 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.
5. A determination to accept or refuse a political contribution that is received by a candidate shall be made not later than the end of the reporting period during which the contribution is received. *Id.* § 254.034(a).
6. If the determination to accept or refuse a political contribution is not made before the time required by Subsection (a) for purposes of this chapter, the contribution is considered to have been accepted on the last day of that reporting period. *Id.* § 254.034(b).
7. A political contribution that is received but not accepted shall be returned to the contributor not later than the 30th day after the deadline for filing a report for the reporting period during which the contribution is received. A contribution not returned within that time is considered to be accepted. *Id.* § 254.034(c).
8. The 8-day pre-election report was due by May 2, 2014, and was required to disclose activity from April 1, 2014, through April 30, 2014. The contributions at issue were received by the respondent during the reporting period for the 8-day pre-election report. The respondent was required to return the contributions by June 1, 2014, which is 30 days after the filing deadline for the 8-day pre-election report. The respondent did not return the contributions until March 4, 2015. Therefore, the respondent is considered to have accepted the corporate contributions by operation of law.
9. In order to show a violation of section 253.003 of the Election Code, the evidence must show that the contributor was a corporation covered by the corporate contribution prohibition, 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.
10. The evidence shows that both of the contributors were corporations covered by the corporate contribution prohibition; that at the time the respondent accepted the contributions he knew that corporate contributions were illegal; and that the respondent knew the particular contributions at issue were from corporations covered by the corporate contribution

prohibition. Therefore, there is credible evidence of 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) a person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code; 2) a corporation may not make a political contribution that is not authorized by subchapter D, chapter 253, of the Election Code; and 3) a political contribution that is received but not accepted shall be returned to the contributor not later than the 30th day after the deadline for filing a report for the reporting period during which the contribution is received. A contribution not returned within that time is considered to be accepted. 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 \$1,000 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-3150362.

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

Mark N. Assaad, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director