

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
FRIENDS OF THE BRANCH,	§	
GENERAL-PURPOSE	§	TEXAS ETHICS COMMISSION
POLITICAL COMMITTEE,	§	
	§	
RESPONDENT	§	SC-3170223

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on June 26, 2018, to consider sworn complaint SC-3170223. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 253.003(b), 253.094, and 253.005 of the Election Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleged that the respondent: 1) accepted a \$5,000 political contribution from three corporations, ABC Land & Development, Inc. (ABC), Mercer Crossing Commercial Association, Inc. (Mercer), and One Realco Corporation (One Realco), (referred to jointly as the corporations); and 2) made political expenditures from the unlawfully accepted contributions.

III. Facts Supported by Credible Evidence

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

1. The respondent, Friends of the Branch (the PAC), is a general-purpose political committee that files with the Commission.
2. ABC, Mercer, and One Realco are organized as domestic, for-profit corporations, according to records on file with the Texas Secretary of State.
3. In the 8-day pre-election report for the May 9, 2015, City of Farmers Branch election, the

PAC disclosed accepting a political contribution of \$5,000 from each of the corporations on Schedule C1 (used to disclose monetary political contributions from corporations and labor organizations to political committees that support or oppose measures exclusively or that are direct campaign expenditure only committees).¹

4. The political contribution from Mercer was disclosed with an acceptance date of April 3, 2015, and the political contributions from ABC and One Realco were disclosed with an acceptance date of April 15, 2015.
5. In the 8-day pre-election report at issue, the PAC also disclosed making two political contributions of \$5,000 each to two candidates for the Farmers Branch City Council on April 20, 2015 and April 24, 2015.
6. Both candidates reported accepting the political contributions from the PAC in their own campaign finance reports, and both won their respective elections.
7. On May 22, 2014, Mike Del Valle, on behalf of the PAC, appointed a campaign treasurer. The campaign treasurer acknowledged that he was "aware of the restrictions in title 15 of the Election Code on contributions from corporations and labor organizations," when he signed the campaign treasurer appointment form. The PAC also designated the treasurer as a PAC decision-maker for expenditures and contributions.
8. On January 6, 2015, the first campaign treasurer was replaced, but according to the amended treasurer appointment form, maintained his role as a PAC decision maker for political expenditures and contributions.
9. The PAC replaced the first campaign treasurer with Rebecca "Becky" Fisher (Fisher). Fisher acknowledged that she was "aware of the restrictions in title 15 of the Election Code on contributions from corporations and labor organizations" when she signed the amended campaign treasurer appointment form. In addition to being a campaign treasurer, Fisher was also designated as a political expenditure and contribution decision-maker in the PAC's initial campaign treasurer appointment. Del Valle, who appointed both treasurers on behalf of the PAC, was also listed as a PAC political expenditure and contribution decision-maker.

¹ The instruction guide for Form GPAC states that Schedule C1 is only for general-purpose committees that support or oppose measures exclusively or that are direct campaign expenditure only committees. It also states that Schedule C3 is for the disclosure of monetary support by corporations or labor organizations to establish or administer the committee or to finance the solicitation of political contributions to a committee from the employees, stockholders, or members of the corporation or labor organization and their families.

10. According to PAC bank records, the PAC maintained only \$1,804.52 in total political contributions as of March 31, 2015. The only political contributions accepted by the PAC during the reporting period at issue were the \$15,000 in corporate contributions. This means only \$1,804.52 of non-corporate money was available to the PAC when it made the \$10,000 in political contributions to the candidates.

IV. Findings and Conclusions of Law

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

Accepting Political Contributions from Corporations

1. A person may not knowingly accept a political contribution *the person knows* to have been made in violation of this chapter. ELEC. CODE § 253.003(b) (emphasis added). Under section 253.094 of the Election Code, a corporation may not make a political contribution that is not authorized by subchapter D of Chapter 253 of the Election Code. *Id.* § 253.094(a).
2. A "political contribution" is defined as a campaign contribution or an officeholder contribution. *Id.* § 251.001(5). "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(3).
3. The contributions were made to a general-purpose political committee registered with the Commission. The PAC exists to support and oppose candidates and officeholders and used the contributions it accepted to make political contributions to candidates.
4. Unlike simply making a corporate contribution, in order to violate the law, the PAC must have knowingly accepted a prohibited corporate contribution and must have known that the contribution was being made in violation of law. Therefore, in order for the PAC to have violated sections 253.003(b) and 253.094 of the Election Code the PAC must have:
 - a) knowingly accepted a political contribution from an entity that the PAC knew was a corporation; and
 - b) known that the law prohibited corporations from making such political contributions.

The PAC accepted political contributions from the corporations.

5. The corporations gave the PAC a total of \$15,000 with the intent that it be used in connection with an election. The PAC viewed the money given to it from the corporations as political contributions and knew that the contributors were corporations, as evidenced by disclosing the contributions as such on Schedule C-1 (used to report unrestricted monetary political contributions from corporations) of the PAC's campaign

finance report. The PAC then used the money to make political contributions directly to candidates. The corporations' statements, the context of the contributions, and the PAC's actions all show that the contributions the PAC received were political contributions and the PAC knew that the contributions were from business entities organized as corporations.

The corporations were prohibited from making political contributions to the PAC.

6. ABC, Mercer, and One Realco are organized as corporations. A corporation may not make a political contribution that is not authorized by subchapter D of chapter 253 of the Election Code. *Id.* § 253.094(a). The corporations offered political contributions to the PAC that were not designated for a particular purpose, which the PAC accepted. An undesignated contribution from a corporation does not qualify as an "expenditure" authorized under chapter 253 of the Election Code. *Ex parte Ellis*, 309 S.W.3d 71, 88 (Tex.App.—Austin 2010).²

The PAC knew political contributions from corporations are prohibited when it accepted the political contributions from the corporations.

7. Fisher was treasurer of the PAC and a PAC expenditure and contribution decision-maker at the time the PAC accepted the corporate contributions. The PAC's former campaign treasurer was also a PAC contribution and expenditure decision-maker at the time the PAC accepted the corporate contributions. Both the former treasurer and Fisher signed Forms GTA and AGTA, both of which contained the following statement: "I am aware of the restrictions in title 15 of the Election Code on contributions from corporations and labor organizations."
8. The PAC claimed that the PAC members did not know that they could not accept contributions from corporations. The PAC also stated that the PAC had no connection to the corporations and had a history of contributing modest amounts of money to candidates before receiving the corporate contributions.
9. Based on the fact that two PAC decision-makers had acknowledged on signed documents filed with the Commission that they were aware of the restrictions on contributions from corporations, there is credible evidence the PAC knew the acceptance of corporate contributions was prohibited.

² As it is unnecessary for the resolution of this case, the Commission does not reach the issue of whether a corporation may legally make contributions to a political committee—even when limited for the use to defray administrative expenses—when the corporation does not control and did not form the recipient political committee (and the political committee is not a measures-only or direct campaign expenditure only committee).

10. The PAC knowingly accepted \$15,000 in prohibited political contributions from corporations, and knew that such contributions were illegal. Therefore, there is credible evidence of violations of sections 253.003(b) and 253.094 of the Election Code.

Making Political Expenditures from Illegal Political Contributions

11. A person may not knowingly make or authorize a political expenditure wholly or partly from a political contribution the person knows to have been made in violation of this chapter. ELEC. CODE § 253.005(a).

The PAC made political expenditures from political contributions that the PAC knew were made from prohibited corporate contributions.

12. As of March 31, 2015, the PAC maintained \$1,804.52 in political contributions, according to PAC bank records. The PAC then accepted political contributions from the corporations on April 3 and 15, 2015, totaling \$15,000—giving the PAC a total of \$16,804.52 in political contributions. The PAC made a \$5,000 contribution to a Farmers Branch City Council candidate on April 20, 2015, and a \$5,000 contribution to another Farmer’s Branch City Council candidate on April 24, 2015. The corporate contributions were the only political contributions the PAC accepted after January 15, 2015, and the PAC made no political expenditures before the PAC made the contributions totaling \$10,000 to the candidates. This means the PAC only maintained \$16,804.52 in total political contributions—\$15,000 of which were corporate contributions—when it made \$10,000 in expenditures to the two candidates. Therefore, the PAC made at least \$8,195.48 in political expenditures from corporate contributions.

The PAC knew the contributions it accepted from the corporations were prohibited.

13. As discussed above, the political contributions made to the PAC from the corporations were prohibited, and the PAC knew that the corporations were prohibited from contributing to it.
14. Two PAC decision-makers signed a form expressly acknowledging the restrictions on corporate contributions. The acknowledgements by PAC decision-makers are credible evidence of knowledge despite later claims of ignorance of the law. Therefore, there is credible evidence of violations of section 253.005(a) of the Election Code.
15. In summary, the PAC accepted \$15,000 in prohibited corporate contributions knowing that it was illegal to do so, thereby violating sections 253.003(b) and 253.094 of the Election Code, and then used those contributions to make political contributions to candidates, thereby violating section 253.005(a) 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 the person knows to have been made in violation of chapter 253 of the Election Code and a corporation may not make a political contribution that is not authorized by subchapter D of chapter 253 of the Election Code; and 2) a person may not knowingly make or authorize a political expenditure wholly or partly from a political contribution the person knows to have been made in violation of chapter 253 of the Election Code. 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 \$1,500 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-3170223.

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

Friends of the Branch, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director