

TEXAS ETHICS COMMISSION

IN THE MATTER OF
LOUIS MALFARO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-260242

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 2, 2007, to consider sworn complaint SC-260242. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.151 and 254.161 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent, as campaign treasurer of a political committee, failed to disclose in the committee's campaign finance reports the name of each identified candidate supported or opposed by the committee, and whether the committee supported or opposed that candidate. The complaint also alleges that the respondent failed to deliver notice of direct campaign expenditures to candidates it supported.

III. Facts Supported by Credible Evidence

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

1. The respondent is campaign treasurer for a general-purpose political committee.
2. The allegations are based on the committee's January 2006 semiannual report and the February 6, 2006, 8-day pre-election report.
3. The evidence indicates that the respondent included the candidate, amount, and purpose of each expenditure on the schedule for political expenditures for the reports at issue, but failed to list the supported candidate's name on page two of the Cover Sheet for "Committee Activity."

4. The respondent acknowledges the error and states that they have included this information on their February 27, 2006, pre-election report and will do so on all future reports.
5. Prior to receipt of this complaint, the respondent filed a correction of the January 2006 semiannual report to indicate that \$11,324.20 originally reported as direct expenditures were actually in-kind contributions to a candidate. The respondent paid an administrative penalty related to that correction.
6. Also prior to receipt of this complaint, the respondent filed a correction of the 8-day pre-election report to indicate that \$1,335.74 originally reported as direct expenditures were actually in-kind contributions to a candidate. The respondent paid an administrative penalty related to that correction.
7. The expenditures were made on January 12, January 26, and February 2, 2006. The reporting period covering those dates ended on February 4, 2006.
8. The respondent acknowledges that the committee did not notify the candidate of the expenditures until February 14th.
9. Staff examined the committee's reports and the candidate's reports for the period in question and noted that the candidate listed some of the items as in-kind contributions from the committee and also listed notice of direct expenditures from the committee on a corrected report that was filed February 23rd.
10. The affidavit submitted with that correction indicates that the candidate was aware of some of the in-kind contributions but that the other expenditures were direct expenditures by the committee.

IV. Findings and Conclusions of Law

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

1. Each campaign finance report filed by a general-purpose committee is required to include the name of each identified candidate supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate. ELEC. CODE § 254.151(4).
2. The respondent admits that the campaign finance reports filed for the January 2006 semiannual and the 8-day pre-election reporting periods failed to list this information on the cover sheet.
3. Therefore, there is credible evidence of a violation of section 254.151 of the Election Code.

4. If a general-purpose committee makes expenditures for a candidate, the committee's campaign treasurer shall deliver written notice of that fact to the affected candidate not later than the end of the period covered by the report in which the reportable activity occurs. ELEC. CODE §§ 254.161, 254.128.
5. The corrected campaign finance reports and the respondent's sworn statement disclose that some of the expenditures at issue were in-kind contributions to the candidate rather than direct expenditures on the candidate's behalf. Notice is not required for in-kind contributions.
6. Based on the candidate's report and the affidavit from the respondent that they were late informing the candidate of their expenditures, at least some of the expenditures that the committee indicated were in-kind contributions were actually direct expenditures for which notice was required.
7. The respondent admits that such notice was given to the candidate late.
8. Therefore, there is credible evidence of a violation of section 254.161 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 each campaign finance report filed by a general-purpose committee is required to include the name of each identified candidate supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, and that if a general-purpose committee makes expenditures for a candidate, the committee's campaign treasurer shall deliver written notice of that fact to the affected candidate not later than the end of the period covered by the report in which the reportable activity occurs. 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty for the violations described under Sections III and IV.

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-260242.

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

Louis Malfaro, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director