

TEXAS ETHICS COMMISSION

IN THE MATTER OF
KIMBERLY ASHBY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-230307

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 10, 2003, and voted to accept jurisdiction of Sworn Complaint SC-230307 filed against Kimberly Ashby. The commission met again on July 11, 2003, to consider Sworn Complaint SC-230307. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of violations of section 254.123 of the Election Code, and section 20.219(11)(E) of Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent, the treasurer of a specific-purpose political committee, failed to report political contributions and political expenditures and failed to file a January semiannual campaign finance report in connection with a local option election. The complainant also alleges that the respondent violated the Code of Fair Campaign Practices Act. The respondent alleges that the complainant filed a frivolous complaint.

III. Facts Supported by Credible Evidence

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

1. The respondent is the treasurer of a specific-purpose political committee in a city with a population of 6,000.
2. The complainant alleges that the respondent failed to file the January 2003 semiannual report.
3. The complainant also alleges that the respondent failed to report political contributions of more than \$50 and failed to report political expenditures of more than \$50. Specifically, the complainant alleges that the respondent made unreported political expenditures for a flier, a telephone campaign, and a consultant.

4. The complainant also alleges that the respondent violated the Code of Fair Campaign Practices.
5. The respondent submitted a detailed sworn response to the complaint.
6. The respondent alleges that the complaint is frivolous.
7. The complaint arises out of a local option petition effort and the subsequent election. In November 2002, supporters of the sale of alcoholic beverages in the city began soliciting petition signatures to call a local option election.
8. The respondent filed a campaign treasurer appointment on November 20, 2002, for a specific-purpose committee opposing the petition effort. The petition effort ended in December 2002.
9. The Commissioners Court for the county was then required to determine if the petitions were sufficient to call a local option election. The Commissioners Court did not make a decision until February 2003, at which time the court set the local option election for May 3, 2003.
10. Staff obtained certified copies of the respondent's filings with the local filing authority.
11. The respondent did not file a campaign finance report until March 7, 2003; the report is marked as a January 2003 semiannual.
12. The report disclosed total political contributions of \$3,824 from four contributors, all of which were itemized. One of the four is reported as an in-kind contribution of \$3,649 from "Jus' Cause." No description of the in-kind contribution was included on the report.
13. Also on March 7, 2003, the respondent filed a correction affidavit for the January semiannual report. The correction affidavit adds \$177 to the amount of the in-kind contribution from Jus' Cause, increasing the amount of that contribution from \$3,649 to \$3,826.
14. The respondent also filed a statement on March 7 with the local filing authority concerning the late report. The respondent stated:

I am sorry if this is late. On the instruction guide I read where I must file 30 days before an election. As of January 15 we were not even sure if there would be an election. . . . These individual checks came in last fall but I did not cash them until mid-January, again hoping there would be no election. There was no attempt on the part of [the committee] to hide anything. I have received NO notice from the election's office or the state about this matter. I had to hear it from a reporter.

15. In regard to the allegation that the respondent failed to timely file the January 2003 semiannual report, the respondent swears that she filed the report as soon as she learned that she had missed a deadline.
16. In regard to the allegation that the respondent failed to report political contributions of more than \$50, the respondent swears "There were no other contributions other than those reported."
17. In regard to the allegation that the respondent failed to report political expenditures of more than \$50, the respondent swears that her committee made no political expenditures during the reporting period.
18. The respondent stated to staff that she mistakenly thought that the in-kind contribution the committee received from Jus' Cause also had to be reported as an expenditure.
19. The respondent also submitted a letter from Jus' Cause that breaks down the in-kind contribution the organization made to the respondent's committee. The letter states that Jus' Cause produced and distributed fliers and pamphlets for the committee, as well as telephone services.

IV. Findings and Conclusions of Law

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

1. The campaign treasurer of a specific-purpose committee is required to file a semiannual report not later than January 15. Elec. Code § 254.123.
2. A report filed under title 15 of the Election Code must include all political expenditures and political contributions made during the reporting period. Elec. Code § 254.031. A report must also include the full name and address of a person making a contribution exceeding \$50 in the aggregate, and the date of the contribution. Elec. Code § 254.031(a)(1).
3. A reported in-kind contribution must also include a description of the contribution. Ethics Commission Rule § 20.219(11)(E).
4. Subscription to the Code of Fair Campaign Practices by a political committee is voluntary. Elec. Code § 258.007.
5. The respondent admits that she did not file the January 2003 semiannual report until March 7, 2003. Therefore, there is credible evidence that the respondent violated section 254.123 of the Election Code by not timely filing the January 2003 semiannual report.
6. The respondent swears that the January 2003 semiannual report accurately disclosed all political contributions and expenditures. The complainant provided no evidence to the

- contrary. Therefore, there is credible evidence that the respondent did not violate section 254.031 of the Election Code by failing to report political contributions and expenditures.
7. The respondent failed to provide a description of the in-kind contribution to the committee from Jus' Cause. Therefore, there is credible evidence that the respondent violated section 20.219(11)(E) of Ethics Commission Rules by failing to disclose a description of the in-kind contribution.
 8. The respondent alleges that the complainant filed a frivolous complaint. A frivolous complaint is a complaint that is groundless and brought in bad faith or is groundless and brought for the purposes of harassment. Gov't Code § 571.176. The complaint is not groundless because the respondent did in fact fail to timely file the January semiannual report. Since the complaint is not groundless, by definition it is not frivolous.
 9. The complainant also alleges that the respondent violated the Code of Fair Campaign Practices (Chapter 258 of the Election Code) by using misleading and deceptive advertising. Compliance with the Code of Fair Campaign Practices is voluntary and not enforceable by the Ethics Commission. Therefore, the commission dismissed the allegation.

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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that the campaign treasurer of a specific-purpose committee is required to file a semiannual report not later than January 15. The respondent further acknowledges that a reported in-kind contribution must also include a description of the contribution. The respondent agrees to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations described under Section IV, Paragraphs 5 and 7 if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

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

The commission imposes a civil penalty of \$100 against the respondent for the violations described under Section IV, Paragraph 5 and 7.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-230307;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than August 8, 2003; and
4. that the executive director shall promptly set SC-230307 for a preliminary review hearing if the respondent does not agree to the resolution of SC-230307 as proposed in this ORDER and AGREED RESOLUTION.

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

Kimberly Ashby, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director