

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GERALD BIRNBERG,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-240336

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on September 10, 2004, to consider sworn complaint SC-240336. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 257.003 of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegation

The complaint alleges that the respondent, the county chairman of the Harris County Democratic Party, violated section 257.003 of the Election Code by failing to file a report of corporate and labor organization contributions by the eighth day before the March 9, 2004, primary election, in accordance with the filing schedule set out in section 20.529 of the Ethics Commission Rules.

III. Facts Supported by Credible Evidence

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

1. The respondent is the county chairman of the Harris County Democratic Party.
2. Ethics Commission records show that the respondent did not file a report regarding contributions to the Harris County Democratic Party from corporations and labor organizations for the March 1, 2004, filing deadline.
3. The respondent filed a report for the July 15, 2004, filing deadline that covered the period that should have been covered by the 8-day pre-election report. The report discloses that the Harris County Democratic Party accepted \$175 of corporate contributions and made expenditures of \$20 from corporate or labor organization contributions during the reporting period for the 8-day before election report for the March 9, 2004, primary election.

IV. Findings and Conclusions of Law

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

1. A political party may accept contributions from corporations and labor organizations for certain purposes. ELEC. CODE § 257.002. The chair of a political party that has accepted contributions from a corporation or labor organization is required to file reports regarding the receipt and expenditure of such contributions. *Id.* § 257.003. The Ethics Commission is required to set the filing deadlines for such reports by rule. *Id.* Ethics Commission rules provide that the chair of a political party that has accepted a contribution from a corporation or labor organization must file reports, including 8-day pre-primary reports, until the political party is no longer accepting corporate or labor organization contributions and the acceptance and expenditure of all such funds has been reported. 1 T.A.C. § 20.529. The filing deadline for the report due 8 days before the March 2004 primary was March 1, 2004.
2. There is credible evidence that the party accepted and spent corporate or labor organization contributions during the reporting period for the 8-day before election report for the March 9, 2004, primary election, that the party maintained contributions from corporations or labor organizations on February 28, 2004, and that the respondent should have filed a report for the March 1, 2004, filing deadline. Because the respondent did not file a report for that deadline, there is credible evidence that the respondent violated section 257.003 of the Election Code and section 20.529 of the Ethics Commission Rules.

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 the chair of a political party that has accepted contributions from a corporation or labor organization is required to file reports, including 8-day pre-primary election reports, regarding the receipt and expenditure of such contributions. Until the political party is no longer accepting corporate or labor organization contributions and the acceptance and expenditure of all such funds has been reported. The respondent agrees to fully comply with this requirement of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the commission has determined is 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. No Sanction

The commission orders that the civil penalty for the violation described under Section IV be handled through the administrative process under section 18.13 of the Ethics Commission Rules and that no additional penalty be assessed in this sworn complaint proceeding.

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-240336.

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

Gerald Birnberg, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Sarah Woelk, Acting Executive Director