

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RODNEY AHART,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2604120

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 2, 2007, to consider sworn complaint SC-2604120. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(1), 254.121(8), and 254.123 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 the campaign treasurer of a specific-purpose political committee, failed to properly disclose political contributions from a corporation, failed to timely file a campaign finance report, and failed to include the description of all in-kind contributions.

III. Facts Supported by Credible Evidence

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

1. The respondent is the campaign treasurer of a specific-purpose political committee, O2nward Austin (OA). The campaign treasurer appointment naming the respondent as treasurer of OA was filed with the Austin City Clerk on November 15, 2004.
2. The complaint alleges that the respondent committed the following violations with respect to the January 2005 semiannual report: failed to timely file the January 2005 semiannual report for OA, in violation of section 254.123 of the Election Code; failed to itemize each political contribution, in violation of section 254.031 of the Election Code; failed to use Schedule C1 to disclose contributions from a corporation, in violation of section 254.121(8) of the Election Code; and failed to include the description of all in-kind contributions, in violation of section 20.331(12)(E) of the Ethics Commission Rules.

3. A January 2005 semiannual report was filed by the respondent for OA on February 8, 2005. The report disclosed \$0 in political contributions and \$0 in political expenditures.
4. The complaint alleges that expenditures made by the American Cancer Society (ACS) in November and December 2004 that were related to circulating petitions to require a measure election were in-kind campaign contributions to OA that the respondent should have reported on OA's January 2005 semiannual report.
5. The respondent filed a corrected January 2005 semiannual report for OA on April 7, 2005. The corrected report was filed before the filing of the sworn complaint and a month before the election related to the report. The explanation of correction states: "On April 5, 2005, while seeking advice from our contracted attorney regarding our specific purpose committee report for April 7, I learned that the initial advice given to me on the process for reporting in-kind contributions was incorrect. Therefore, today along with the standard 30 days from election report, I am also filing a correction affidavit to show in-kind contributions Onward Austin received that are direct expenditures for the American Cancer Society - Texas Division."
6. The corrected report discloses six in-kind contributions totaling \$52,094 from the American Cancer Society (ACS). (Formally incorporated as "American Cancer Society, Texas Division, Inc." and now as "American Cancer Society, High Plains Division, Inc.") Four describe the in-kind contribution as "initiative circulators," and have dates from November 19, 2004, through December 8, 2004, and total \$46,094. Two describe the in-kind contribution as "political consultant services," one dated December 14, 2004, in the amount of \$4,000, and the other one dated December 21, 2004, in the amount of \$2,000. The corrected report did not disclose any political expenditures. The report is sworn to and signed by the respondent.
7. OA had a website, "onwardaustin.org," during the relevant period. ACS is listed as the registrant for the website, which was created on November 16, 2004. The website's registration information also shows the "Registrant Email" address, "Admin Email" address and "Tech Email" address to be "rodney.ahart@cancer.org." (On its April 7, 2005, report OA disclosed two contributions from ACS totaling \$5,240 - one for "website development" and one for "website management.")
8. During the period in question, the respondent was the lobbyist and government relations director for ACS.
9. Evidence indicates that as early as 2003 the respondent and ACS were actively attempting to get the city to pass an ordinance prohibiting smoking in certain areas.

10. Evidence indicates that the respondent was active on behalf of both ACS and OA with respect to the May 2005 election and the petition process leading to the calling of that election.
11. The Onward Austin website (no longer active) posted information related to the election. One section asked, "Who is leading the effort?" and stated that, "This is a combined effort of Onward Austin Coalition. Members include the American Cancer Society. . . ."

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 two reports each year, one by July 15, and one by January 15. ELEC. CODE § 254.123.
2. The evidence shows that the respondent filed the January 2005 semiannual report on February 8, 2005. Therefore, there is credible evidence that the respondent violated section 254.123 of the Election Code.
3. Each report is required to include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1). A contribution means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred. *Id.* § 251.001(2). A direct campaign expenditure means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. *Id.* § 251.001(8).
4. Each report by a campaign treasurer of a specific-purpose committee is required to include on a separate page or pages of the report, the identification of any contribution from a corporation or labor organization. *Id.* § 254.121(8).
5. Each report by a campaign treasurer of a specific-purpose committee is required to include for each contribution accepted from a labor organization or corporation a description of any in-kind contribution. Ethics Commission Rules § 20.331(12)(E). Each report must also include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
6. For the expenditures by ACS to constitute in-kind contributions to OA, OA must have known and approved of the expenditures when they were made. If on the other hand, OA did

not know or approve of the expenditures when they were made the expenditures would constitute direct expenditures. On the correction affidavit for the January 2005 semiannual report and in the respondent's affidavit, the respondent described the expenditures by ACS both as in-kind contributions and as direct expenditures. An expenditure cannot be both an in-kind contribution and a direct expenditure.

7. Evidence indicates that the respondent was coordinating the efforts of OA and ACS, which were acting in partnership on the petition campaign. The respondent corrected the January 2005 semiannual report, that originally disclosed \$0 contributions, to disclose in-kind contributions from ACS totaling \$52,094. Most of the in-kind contributions were for petition circulators and a few were for political consultant services. The evidence indicates that the respondent as both a representative of OA and ACS knew and approved of the expenditures at the time they were made, and that ACS was part of the OA effort. Therefore, the evidence indicates that the expenditures by ACS were in-kind contributions to OA. The respondent originally failed to report the contributions. Therefore, there is credible evidence of a violation of sections 254.031(a)(1) and 254.121(8) of the Election Code.
8. The complaint alleges that the description of each in-kind contribution on the respondent's corrected January 2005 semiannual report must include the full name and address of each payee. Proper reporting of in-kind contributions is described by section 20.331(12)(E) of the Ethics Commission Rules. Although detailed reporting of political expenditures as alleged in the complaint is required under section 254.031(a)(3) of the Election Code for payees who received more than \$50 during a reporting period, that information is not required when reporting in-kind contributions pursuant to section 20.331(12)(E) of the Ethics Commission Rules. Therefore, there is credible evidence that the respondent did not violate section 20.331(12)(E) 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 campaign treasurer of a specific-purpose committee is required to file two reports each year, one by July 15, and one by January 15. The respondent also acknowledges that each report is required to include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and

the dates of the contributions. The respondent also acknowledges that each report by a campaign treasurer of a specific-purpose committee is required to include on a separate page or pages of the report, the identification of any contribution from a corporation or labor organization. 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 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. 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-2604120.

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

Rodney E. Ahart, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director