

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
B. EDWARD HEATHCOTT,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-2608183

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on April 13, 2007, to consider sworn complaint SC-2608183. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.062, 254.064, 254.124(c), and 254.128 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 failed to timely file a campaign finance report, failed to properly report political contributions and expenditures related to several mailers, failed to file a campaign treasurer appointment and campaign finance reports for a political committee, and failed to properly disclose direct campaign expenditures.

### III. Facts Supported by Credible Evidence

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

#### Pre-election Report Due in 2005

1. The respondent is the mayor of the city of Jersey Village.
2. The complaint alleges that the respondent was an opposed candidate and failed to timely file his campaign finance report due 8 days before the May 7, 2005, election. The report was due on April 29, 2005.
3. The evidence indicates that the report was filed on May 4, 2005.

4. The report discloses that the respondent accepted three political contributions totaling \$565 and made five political expenditures totaling \$936.79 during the reporting period.

#### **Activity Related to the 2005 and 2006 Political Mailers**

5. The complaint alleges that the respondent failed to report political contributions and expenditures, and failed to accurately report the value of political expenditures and in-kind political contributions in connection with political advertising mailers sent by the respondent in April 2005, May 2006, and June 2006.

#### *2005 Mailer*

6. In April 2005 the respondent mailed a communication to residents of Jersey Village asking them to re-elect him as mayor in the May 7, 2005, election.
7. On his campaign finance report filed May 4, 2005, the respondent disclosed two in-kind political contributions. The respondent reported an in-kind contribution of \$200 for "printing of mailer." The respondent also disclosed a separate in-kind contribution of \$265 for "mailing of letters to JV residents."
8. The complainant asserts that, based on an estimate from a local print shop, the fair market value of the contribution for printing of the mailer is \$779, not \$200, and the respondent must disclose the fair market value.
9. The complaint also alleges that the respondent failed to report the costs associated with generating a mailing list or the cost to print the mailing list on each piece of mail.
10. The complainant did not provide evidence of the actual cost to print the mailer or additional evidence related to the mailing list.
11. The evidence indicates that the respondent did not purchase a mailing list or electronic database for the mailers, but that the person who contributed the mailing service printed the mailing addresses directly on the mailers using an existing database.
12. With respect to the in-kind contribution of \$200 for the costs of printing the mailers the respondent reported the amount that the contributor indicated were the respondent's costs.

#### *2006 Mailers*

13. The respondent filed a campaign finance report on May 16, 2005, on which he indicated that the report was his final report by checking the "final report" box on the cover sheet. The respondent did not include the designation of final report schedule (C/OH-FR form) to the

- report. In his sworn response, the respondent states that this report was meant to be his final report.
14. On July 31, 2006, the respondent filed a campaign finance report on the form used by candidates and officeholders (C/OH). The report's contribution schedule (Schedule A) discloses that on May 2, 2006, the respondent accepted an in-kind contribution of "2000 printed letters" valued at \$100 from an individual.
  15. That report's schedule for political expenditures made from personal funds (Schedule G) discloses that on May 3, 2006, the respondent made a \$285 political expenditure for "postage for political mailer." The evidence indicates that the expenditure was for a mailer he sent in May 2006 endorsing candidates in the May 13, 2006, city council election. The mailer asks the recipient to "cast your vote for" three candidates for city council. The respondent did not provide notice of the expenditure to the candidates.
  16. On June 12, 2006, the respondent sent a "thank you" letter to residents of Jersey Village for supporting the newly elected candidates for city council and discussing a city council retreat. The complaint alleges that the respondent failed to report in-kind political contributions and political expenditures made in connection with these mailers.
  17. The respondent asserts that the June 2006 communication was an officeholder expenditure and was paid for using his personal funds. He asserts that he was not required to report the expenditure because he did not intend to seek reimbursement for the expenditure from political contributions.
  18. With respect to the 2006 mailers, the complaint alleges that the respondent, acting on behalf of a political committee:
    - accepted political contributions and made political expenditures without having a campaign treasurer on file;
    - failed to include in the campaign treasurer appointment the name of and the office sought by a candidate;
    - failed to file an 8-day pre-election report required of a specific purpose committee;
    - failed to include the name of the candidate opposed on the respondent's campaign finance report;
    - failed to file a July semiannual report;
    - failed to notify candidates of direct campaign expenditures made on their behalf; and
    - failed to report the "fair market value" of contributions related to the mailers.
  19. The complaint also alleges that, in the alternative, if the respondent was not acting on behalf of a political committee that the respondent:

- failed to file an 8-day pre-election report as if he were the treasurer of a specific-purpose committee;
  - failed to file a July semiannual report as if he were the treasurer of a specific-purpose committee;
  - failed to notify candidates of direct campaign expenditures made on their behalf; and
  - failed to report the “fair market value” of contributions related to the mailers.
20. The complaint further alleges that if the respondent neither acted on behalf of a political committee or made direct campaign expenditures as an individual that he should have filed an officeholder semiannual campaign finance report.
21. The complaint also alleges that the respondent used officeholder contributions for personal use.
22. The evidence indicates that the respondent was an officeholder, not a candidate, at the time the political expenditures for the 2006 mailers were made. The respondent asserts that the endorsements were to further his plans as a mayor. The respondent asserts that since the expenditures were made from personal funds and he did not intend to seek reimbursement he was not required to file a report, but did so for the sake of full disclosure.
23. The evidence indicates that the respondent acted as an individual and did not act in concert with anyone else in making the expenditures.

#### **IV. Findings and Conclusions of Law**

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

##### **Pre-election Report Due in 2005**

1. In addition to other required reports, for each election in which a candidate has an opponent whose name is to appear on the ballot, the candidate shall file two reports. The second report must be filed not later than the 8th day before the election. ELEC. CODE § 254.064.
2. The evidence shows that the respondent filed the 8-day pre-election report that was due on April 29, 2005, on May 4, 2005. Therefore, there is credible evidence that the respondent filed the report after the deadline in violation of section 254.064 of the Election Code.

**Activity Related to the 2005 and 2006 Political Mailers***2005 Mailers*

3. A campaign finance report must 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).
4. The complaint alleges that the respondent did not properly report in-kind political contributions related to the mailer. The complainant submitted evidence of printing costs at a local print shop. However, the evidence indicates that the mailer was not printed at that print shop.
5. The evidence indicates that the respondent reported the amount of the contribution as given to him by the person who made the in-kind contribution, and that there was no additional cost for a mailing list. Therefore, there is credible evidence that the respondent did not violate section 254.031 of the Election Code.

*2006 Mailers*

6. An individual not acting in concert with another person may make one or more direct campaign expenditures in an election from the individual's own property that exceed \$100 on any one or more candidates if the individual complies with chapter 254 of the Election Code as if the individual were a campaign treasurer of a political committee, and the individual receives no reimbursement for the expenditures. ELEC. CODE § 253.062(a). An individual making a direct campaign expenditure is not required to file a campaign treasurer appointment. ELEC. CODE § 253.062(b).
7. The campaign treasurer of a political committee is required to file a pre-election report for each election in which the committee supports or opposes a candidate. ELEC. CODE § 254.124. An 8-day pre-election report is due the eighth day before an election and covers activity through the tenth day before an election. ELEC. CODE § 254.124(c).
8. A campaign treasurer appointment continues in effect until terminated. ELEC. CODE § 252.011(b). The designation of a report as a final report terminates a candidate's campaign treasurer appointment. ELEC. CODE § 254.065(b). A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE § 253.031(a).
9. A "campaign expenditure" means an expenditure made by any person in connection with a campaign for an elective office. ELEC. CODE § 251.001(7). A direct campaign expenditure

means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. ELEC. CODE § 251.001(8).

10. The evidence shows that the respondent filed a final campaign finance report on May 16, 2005. Upon filing his final report the respondent's campaign treasurer was terminated and he could not legally accept campaign contributions or make campaign expenditures as a candidate.
11. The respondent asserts that the expenditure for the May 2006 mailer was for officeholder purposes. In *Osterberg v. Peca*, 12 S.W. 3d 31, 51 (Tex. 2000), the Texas Supreme Court determined that expenditures for communications that contain express advocacy are campaign expenditures. The May 2006 communication clearly advocates the election of three candidates and contains express advocacy. Therefore, the expenditure for the mailer was a campaign expenditure.
12. The evidence indicates that the respondent acted alone in making the expenditure for the May 2006 mailing and that any expenditure he made was a direct campaign expenditure.
13. The report that the respondent filed on July 31, 2006, disclosed that on May 3, 2006, the respondent spent \$285 to mail the May 2006 communication. Thus, the respondent made a direct campaign expenditure that exceeded \$100. That expenditure triggered the requirement to file campaign finance reports as if he were the treasurer of a political committee.
14. The election at issue was held on May 13, 2006. An 8-day pre-election report related to that election was due May 5, 2006, and covered activity through May 3, 2006. The evidence shows that the respondent made a campaign expenditure of \$285 on May 3, 2006, but did not file an 8-day pre-election report disclosing the campaign expenditure. Therefore, there is credible evidence that the respondent violated sections 253.062 and 254.124(c) of the Election Code.
15. The evidence shows that the respondent did not provide notice to the candidates supported by the campaign expenditure for the May 2006 mailer.
16. The campaign treasurer of a specific-purpose committee that makes a political expenditure for a candidate 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 § 254.128.
17. Because the respondent made campaign expenditures that exceeded \$100 he was required to deliver the notices required of the campaign treasurer of a political committee. The respondent did not deliver notice to the affected candidates. Therefore, there is credible evidence that the respondent violated sections 253.062 and 254.128 of the Election Code.

18. The June 2006 communication expressed support for the newly elected councilpersons and was paid for using personal funds. However, the communication did not seek a vote for any person and largely discussed a working retreat by city officials. Thus, unlike the May 2006 communication the June 2006 communication was not a campaign expenditure, but was an officeholder expenditure.
19. An officeholder is not required to report officeholder expenditures made from the officeholder's personal funds unless the officeholder intends to seek reimbursement from political contributions. ELEC. CODE §§ 254.092, 253.035(h).
20. The evidence indicates that the expenditure for the June 2006 communication was a non-reportable officeholder expenditure because the respondent made the expenditure for the mailer from personal funds and he did not intend to seek reimbursement for the expenditure. Thus, there is credible evidence that the respondent was not required to file a July 2006 semiannual report to disclose the expenditures. Therefore, there is credible evidence that the respondent did not violate section 253.062 of the Election Code related to direct expenditures or section 254.093 of the Election Code related to officeholder expenditures with respect to the June 2006 mailer.
21. There is no evidence that the respondent converted political contributions to personal use. The evidence shows that the political expenditures at issue were made from personal funds. Therefore, there is credible evidence that the respondent did not violate section 253.035 of the Election Code.
22. There is credible evidence that the respondent did not act as part of the specific-purpose committee and, thus, did not violate the statutory provisions applicable to a specific-purpose committee.

### **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 an 8-day pre-election report is due the eighth day before an election and covers activity through the tenth day before an election. The respondent acknowledges that an individual not acting in concert with another person may make one or

more direct campaign expenditures in an election from the individual's own property that exceed \$100 on any one or more candidates if the individual complies with chapter 254 of the Election Code as if the individual were a campaign treasurer of a political committee, and the individual receives no reimbursement for the expenditures. The respondent acknowledges that the campaign treasurer of a political committee is required to file a pre-election report for each election in which the committee supports or opposes a candidate. The respondent further acknowledges that the campaign treasurer of a political committee that makes a political expenditure for a candidate 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 \$300 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-2608183.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
B. Edward Heathcott, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director