

TEXAS ETHICS COMMISSION

IN THE MATTER OF
KENNETH DEMPSEY,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-2707170

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2008, to consider sworn complaint SC-2707170. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.063 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 properly report political contributions and political expenditures and failed to file pre-election and semiannual campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for the Helotes city council, in the May 2006 election.
2. Before the May 2006 city council election, the respondent and two other candidates decided to run as a slate.
3. The respondent offered to include the two other candidates on his campaign materials.
4. The political advertising that was paid for by the respondent included his name and a group picture of the slate of candidates.

5. One of the advertisements at issue was a newspaper advertisement that indicated that it was paid for by approximately 95 individuals whose names appeared in the advertisement.
6. The respondent did not know about nor did he give his permission for the publication of that advertisement.
7. The respondent filed his campaign treasurer appointment on or about March 20, 2006. The respondent filed both 30-day and 8-day pre-election reports, but they were not date stamped by the local filing authority.
8. The complaint alleges that the respondent did not sufficiently describe the purpose of multiple political expenditures for political advertising that were also in-kind contributions to other candidates.
9. Of the six expenditures disclosed on the respondent's 30-day pre-election report, two expenditures were disclosed as "signs," two expenditures as "sign materials," and two expenditures did not disclose a purpose.
10. A supplement to the complaint alleges that a general-purpose political committee paid for consulting services, that the respondent benefited from the expenditure for consulting services, and that the respondent should have reported a pro rata share of the expenditure as an in-kind contribution, or reported notice of a direct expenditure.
11. Evidence is inconclusive to show whether the expense paid for by the general-purpose committee for consulting services was a direct campaign expenditure or an in-kind contribution.
12. The respondent filed a report, marked as final, with the local filing authority on March 14, 2008, covering the period beginning May 5, 2006, through March 12, 2008. The report disclosed two political contributions and one political expenditure.
13. The report disclosed an expenditure to Election Support Services (ESS) dated June 28, 2006, for campaign mailings, door hangers, phone bank, walk list and newspaper advertisement coordination.

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 must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031.
2. Each campaign finance report filed by a candidate must include the full name and address for each political committee from which the candidate received notice of a direct expenditure and the full name and address of the committee's campaign treasurer. The candidate must also include the full name and address for each individual from which the candidate received notice of a direct expenditure. ELEC. CODE § 254.061.
3. An in-kind contribution means a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. The term does not include a direct campaign expenditure. Ethics Commission Rules § 20.1(8).
4. A direct campaign expenditure is a campaign expenditure that does not constitute a contribution by the person making the expenditure. A campaign expenditure is not a contribution from the person making the expenditure if it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made. Ethics Commission Rules § 20.1(5).
5. The complaint alleges that the respondent received an in-kind contribution of a newspaper advertisement paid for by approximately 95 individuals. The evidence indicates that the expenditure for the advertisement was made without the prior approval or consent of the respondent. Thus, the political expenditure was by definition a direct expenditure and not an in-kind contribution. Therefore, there is credible evidence of no violation of section 254.031 of the Election Code regarding that political advertisement.
6. The complaint alleges that the respondent failed to report a \$6,300 in-kind contribution for consulting services provided to the respondent by a general-purpose political committee. The evidence is insufficient to show whether the political expenditure by the general-purpose political committee for consulting services was a direct campaign expenditure or an in-kind contribution. Therefore, there is insufficient evidence that the respondent violated sections 254.031 and 254.061 of the Election Code with respect to the political expenditure by the general-purpose political committee.
7. Each campaign finance report must 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).

8. The complaint alleges that the respondent did not sufficiently describe the purpose of multiple political expenditures for political advertising that were also in-kind contributions to other candidates. The evidence indicates that the respondent simply listed signs, or sign materials on multiple entries for political expenditures that also benefited other candidates.
9. The evidence indicates that the respondent offered to add the names of two other candidates to his campaign materials and the candidates accepted the offer.
10. As stated in Ethics Advisory Opinion No. 331 (1996):

A contribution does not necessarily pass into the candidate's possession. For example, a third-party might pay for a billboard supporting a candidate and make payment directly to the owner of the billboard. If the candidate gives prior consent or approval to the offer to pay for the billboard, the third party has made (and the candidate has accepted) a campaign contribution to the candidate. The candidate is required to report the contribution on the campaign finance report covering the period in which the candidate accepted the contribution. Ethics Advisory Opinion No. 331 (1996).

11. The evidence indicates that the two other candidates gave prior consent and approval to the offer to include their names on the political advertisements. Thus, the evidence indicates that the expenditures by the respondent for the advertisements constituted in-kind contributions to the two other candidates.
12. A filer is required to disclose the purpose of certain political expenditures. Since at least May 16, 2000, the instructions for reporting political expenditures that constitute a contribution to another candidate direct that filer to disclose that the expenditure was a political contribution and identify the recipient. Here, the filer merely disclosed "signs" or "sign materials," on his 30-day pre-election report. The respondent did not disclose that the political expenditures were, at least in part, a contribution to other candidates. In addition, the evidence also indicates that the respondent did not disclose the purpose of multiple political expenditures on the same report. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.
13. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report must be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the

first day after the period covered by the last report required to be filed, as applicable, and continuing through the 40th day before election day. The second report must be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. ELEC. CODE § 254.064.

14. The complaint alleges that the respondent failed to timely file pre-election reports. The respondent did file both the 30-day and 8-day pre-election reports, but they were not date stamped by the filing authority. Thus it cannot be determined if the reports were timely filed. Therefore, there is insufficient evidence of violations of section 254.064 of the Election Code.
15. A candidate is required to file two reports for each year. The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through June 30. The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31. ELEC. CODE § 254.063.
16. If a candidate expects no reportable activity in connection with the candidacy to occur after the period covered by a report, the candidate may designate the report as a "final" report. The designation of a report as a final report relieves the candidate of the duty to file additional reports as a candidate and terminates the candidate's campaign treasurer appointment. ELEC. CODE § 254.065.
17. The evidence indicates that the respondent filed a campaign treasurer appointment on or about March 20, 2006. The evidence also indicates that the respondent filed a final report to terminate his status as a candidate on March 14, 2008. Therefore, as a candidate, the respondent was required to file July 2006, January 2007, July 2007, and January 2008 semiannual reports. On March 14, 2008, the respondent filed a final report that covered the period from May 5, 2006, through March 12, 2008.
18. The complaint alleges that the respondent did not disclose a political expenditure for direct mail. The March 14, 2008, report discloses that the respondent paid ESS for the advertisements on June 28, 2006. That political expenditure was required to be reported on the respondent's July 2006 semiannual report. The respondent failed to file that report, as well as the January 2007, July 2007, and January 2008 semiannual reports. Therefore, there is credible evidence of violations of sections 254.031 and 254.063 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 must 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. The respondent also acknowledges that a candidate is required to file two reports for each year. The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through June 30. The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31. 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 \$1,000 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-2707170.

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

Kenneth Dempsey, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director