

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ALBERT H. NEWTON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31006181

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 7, 2010, to consider sworn complaint SC-31006181. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 255.001, and 255.007 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent failed to include: 1) required information in a campaign treasurer appointment; 2) a disclosure statement in political advertising; 3) a highway right-of-way notice in political advertising signs; and, 4) required information in a campaign finance report.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for director of the Southern Montgomery County Municipal Utility District in the May 8, 2010, election.

Candidate's and Campaign Treasurer's Address and Telephone Number

2. The complaint alleged that the respondent failed to disclose the candidate's mailing address and telephone number, and the campaign treasurer's address and telephone number, on his campaign treasurer appointment.

3. The complaint also alleged that the respondent failed to disclose the candidate's mailing address and telephone number, and the campaign treasurer's name, address, and telephone number, on his 8-day pre-election report for the May 2010 election.
4. The campaign treasurer appointment that the respondent originally filed with the district included the mailing address and telephone number of both the candidate and the campaign treasurer. The appointment shows that the respondent designated himself as campaign treasurer.
5. The 8-day pre-election report that the respondent originally filed with the district included the address and telephone number for the candidate but not the campaign treasurer.
6. Before releasing records in response to a public information request for copies of all campaign treasurer appointments and campaign finance reports filed by officeholders and candidates for the Board of Directors of the Southern Montgomery County Municipal Utility District, the district's general manager and public information coordinator redacted the home addresses and telephone numbers of the directors in accordance with provisions of the Public Information Act that permit the information to be withheld.

Political Advertising

7. The complaint alleged that the respondent did not include a political advertising disclosure statement or highway right-of-way notice on political advertising signs.
8. A copy of the sign was included with the complaint. The sign at issue did not include a disclosure statement or a highway right-of-way notice.

Required Information on Campaign Finance Report

9. The complaint alleged that the respondent failed to disclose on his 8-day pre-election report for the May 2010 election the total amount of political contributions of \$50 or less, the total amount of all political contributions accepted, the total amount of political contributions maintained, the total principal amount of all outstanding loans. Those fields were left blank on the report's cover sheet.
10. The complaint also alleged that the respondent failed to disclose the purpose of two political expenditures.
11. There were five political expenditures disclosed on Schedule F of the report, totaling \$828.12. Two political expenditures were made to SMCMUD in the amounts of \$15.97 and \$4.50, but the fields for disclosing the purpose of expenditure were left blank.
12. The respondent filed corrections to the report. He removed the two political expenditures to SMCMUD and added those amounts to the amount of total political expenditures of \$50 or less on the report's cover sheet. The respondent replaced the blank fields in the totals section

with zeroes, and changed the amount of total political expenditures of \$50 or less to \$40.47 and the amount of total political expenditures to \$1,625.88. There was no evidence that there were political contributions maintained or outstanding loans that were required to be reported.

IV. Findings and Conclusions of Law

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

Candidate's and Campaign Treasurer's Address and Telephone Number

1. A campaign treasurer appointment must include the campaign treasurer's residence or business street address and telephone number. ELEC. CODE § 252.002.
2. A campaign treasurer appointment by a candidate must also include the candidate's telephone number. ELEC. CODE § 252.0032(a)(1).
3. Each candidate's campaign treasurer appointment must include the mailing address of the candidate making the appointment. Ethics Commission Rules § 20.205.
4. Each campaign finance report by a candidate must include, in pertinent part, the candidate's address and the campaign treasurer's name, residence or business street address, and telephone number. ELEC. CODE § 254.061.
5. The candidate's and campaign treasurer's address and telephone phone were included on the respondent's campaign treasurer appointment when it was originally filed with the district. The information was redacted from the record when the district provided a copy of the record to the public. Therefore, there is credible evidence that the respondent did not violate sections 252.002 and 252.0032(a)(1) of the Election Code and section 20.205 of the Ethics Commission Rules with respect to the campaign treasurer appointment.
6. The candidate's address and telephone number were included on the respondent's 8-day pre-election report when it was originally filed with the district. The information was redacted from the report when the district provided a copy of the report to the public. However, the respondent did not complete the sections of the report for the campaign treasurer's name, address or telephone number. The respondent named himself as campaign treasurer, and that information was available to a person viewing the campaign treasurer appointment. The omission on the campaign finance report did not substantially affect disclosure. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.061(2) of the Election Code with respect to the campaign treasurer's information, and credible evidence of no violation of section 254.061(1) of the Election Code with respect to the candidate's information.

Political Advertising

7. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001.
8. The following notice must be written on each political advertising sign: “NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY.” A person commits an offense if the person knowingly enters into a contract to print or make a political advertising sign that does not contain the required notice or instructs another person to place a political advertising sign that does not contain the required notice. ELEC. CODE § 255.007.
9. The sign at issue did not include a political advertising disclosure statement or a highway right-of-way notice. Therefore, there is credible evidence that the respondent violated sections 255.001 and 255.007 of the Election Code.

Required Information on Campaign Finance Report

10. Each campaign finance report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
11. Each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during a reporting period. ELEC. CODE § 254.031(a)(5).
12. Each campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during a reporting period. ELEC. CODE § 254.031(a)(6).
13. Each campaign finance report must include as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).

14. The respondent's 8-day pre-election report showed blank fields for total political contributions of \$50 or less, total political contributions, total political contributions maintained, and total principal outstanding loans. The evidence did not show that the respondent had accepted any political contributions during the reporting period or had unreported loans. Therefore, there is credible evidence that the respondent committed technical or *de minimis* violations of sections 254.031(a)(2), (a)(5), and (a)(6) of the Election Code.
15. The respondent corrected the report to disclose \$0 in total political contributions maintained. There is no evidence that the respondent had unreported political contributions maintained. There is credible evidence of a technical or *de minimis* violation of section 254.031(a)(8) of the Election Code.
16. 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).
17. The complaint alleged that the respondent failed to disclose the purpose of two political expenditures. The expenditures at issue did not exceed \$50 to a single payee during the reporting period. Thus, the purpose information was not required to be disclosed. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code with respect to these expenditures.
18. Although not alleged, the respondent disclosed an incorrect total of political expenditures of \$50 or less, and improperly reported political expenditures. He corrected one payee's name, the amount of three expenditures, and the total amount of political expenditures on the cover sheet. Therefore, there is credible evidence that the respondent committed a technical or *de minimis* violation of section 254.031(a)(5) of the Election Code with respect to disclosing total political expenditures of \$50 or less, and violated sections 254.031(a)(3) and (a)(6) of the Election Code with respect to disclosing the other political expenditures and the total amount of political expenditures made during the reporting period.

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 by a candidate must include the campaign treasurer's name, residence or business street address, and telephone number.

The respondent acknowledges that a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person, candidate, or political committee who paid for it.

The respondent also acknowledges that the following notice must be written on each political advertising sign: "NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY." A person commits an offense if the person knowingly enters into a contract to print or make a political advertising sign that does not contain the required notice or instructs another person to place a political advertising sign that does not contain the required notice.

The respondent acknowledges that each campaign finance report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. The report must also include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. The respondent also acknowledges that the report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The report must also include as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period.

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 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 \$100 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-31006181.

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

Albert H. Newton, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director