

TEXAS ETHICS COMMISSION

IN THE MATTER OF

RAYMOND N. DIAZ,
FORMER CAMPAIGN TREASURER,
SHEET METAL WORKERS' LOCAL
UNION 49 LOCAL PAL,

RESPONDENT

§
§
§
§
§
§
§
§

BEFORE THE

TEXAS ETHICS COMMISSION

SC-31105110

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on March 27, 2013, to consider sworn complaint SC-31105110. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.151, and 254.154 of the Election Code and section 20.61 of the Ethics Commission Rules, 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: 1) did not properly disclose political contributions and political expenditures; 2) did not file a pre-election report; 3) did not identify each candidate or measure supported or opposed and each officeholder assisted by the committee during a reporting period; and 4) did not include on a separate page or pages of a campaign finance report, the identification of any contribution from a corporation or labor organization made and accepted under subchapter D, chapter 253 of the Election Code.

III. Facts Supported by Credible Evidence

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

1. The respondent was campaign treasurer of the general-purpose committee Sheet Metal Workers' Local Union 49 Local PAL during the periods at issue.
2. The reports at issue are the 8-day pre-election report for the November 2010 general election and the January 2011 semiannual report.

Filing of Report

3. The complaint alleged that the respondent did not file the 8-day pre-election report for the November 2010 general election. The allegation was based on the fact that the January 2011 semiannual report disclosed that the committee made a \$500 political contribution on October 18, 2010, to a candidate in the Texas November 2010 general election. October 18, 2010, was during the reporting period for the 8-day pre-election report for the November 2010 general election. The January 2011 semiannual report disclosed approximately \$10,140 of expenditures. Approximately \$4,190 of these expenditures occurred during the reporting period for the 8-day pre-election report at issue.
4. In response to the sworn complaint, on November 27, 2012, the respondent filed the 8-day pre-election report for the November 2010 general election. The report disclosed \$0 for total political contributions and approximately \$4,190 for total political expenditures. The activity the respondent disclosed on the January 2011 semiannual report shows that the committee accepted approximately \$390 of contributions during the 8-day reporting period that were not disclosed on the late-filed 8-day pre-election report. The respondent's affidavit stated that the only expenditure that was made in connection with a Texas election that was in the form of a political contribution to a candidate in the 2010 general election.

Identification of Candidates Supported or Opposed and Officeholders Assisted

5. The complaint alleged that the respondent did not identify each candidate supported or opposed and each officeholder assisted by the committee during the reporting period on the January 2011 semiannual report.
6. On the report at issue, the "Committee Activity" section of the report cover sheet was left blank. The report disclosed on Schedule F (used to disclose political expenditures) a \$500 expenditure that was a contribution to a candidate in the Texas November 2010 general election. The respondent did not disclose in the "Committee Activity" section of the report cover sheet that the committee supported this candidate.

Contributions Maintained

7. The complaint alleged that the respondent disclosed an incorrect balance for contributions maintained on the January 2011 semiannual report or, in the alternative, if the balance for contributions maintained was correct, that the respondent did not report additional contributions or expenditures. The respondent disclosed \$9,702.34 for contributions maintained. The complaint alleged that the amount should be <\$7,961.79>.
8. Bank records indicated that the committee's bank balance as of the last day of the reporting period was \$1,740.55.

Contribution from a Corporation or Labor Organization

9. The complaint alleged that the respondent did not include on a separate page or pages of the January 2011 semiannual report, the identification of contributions from a corporation or labor organization. The report at issue disclosed approximately \$1,480 of contributions from Sheet Metal Workers Local Union 49.
10. The contributions at issue were contributions from individual members of Sheet Metal Workers Local Union 49, and none exceeded an aggregate of \$50 from any one person during the reporting period. The amount disclosed was the total received from the members during the period covered by the report.

Political Expenditures

11. The complaint alleged that on the January 2011 semiannual report the total political expenditures amount should have been \$10,136.44. The respondent disclosed \$1,000 for this amount. The report disclosed total political expenditures of \$50 or less of \$0 and the report itemized a \$500 expenditure to a candidate in the Texas November 2010 general election and a \$500 expenditure to a payee in New Mexico on Schedule F.
12. The report disclosed 18 expenditures totaling approximately \$9,140 on Schedule I (used to disclose non-political expenditures made from political contributions). The complaint alleged that these expenditures were political expenditures that should have been included in the total political expenditures amount.
13. The complaint alleged that the respondent did not disclose the actual vendor payee, address, date, and amount pertaining to the stated purpose of 16 expenditures totaling approximately \$7,920 that were disclosed on Schedule I (used for non-political expenditures made from political contributions) of the January 2011 semiannual report.
14. The complaint alleged that the respondent did not provide the categories of the expenditures disclosed on Schedule F and Schedule I of the January 2011 semiannual report. On that report Schedule F disclosed two expenditures totaling \$1,000 and Schedule I disclosed 18 expenditures totaling approximately \$9,140. The respondent did not provide the category of any of the expenditures. The respondent corrected the report to disclose the categories of the expenditures.
15. The complaint alleged that the respondent did not adequately describe the purpose of 17 of the 18 expenditures disclosed on Schedule I of the January 2011 semiannual report.
16. The evidence indicated that of the \$10,136.44 of expenditures disclosed on the January 2011 semiannual report, only the October 10, 2012, \$500 contribution to a candidate in the Texas

November 2010 general election, pertained to activity in Texas. The other expenditures were for political activity in the state of New Mexico.

IV. Findings and Conclusions of Law

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

Filing of Report

1. In addition to other required reports, for each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day. The second report must be received by the authority with whom the report is required to 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 § 254.154.
2. On October 18, 2010, the committee made a contribution to a candidate in the Texas November 2010 general election. Therefore, the committee was involved in that election. The contribution occurred during the reporting period for the 8-day pre-election report. Therefore, the respondent was required to file that report. The report was due October 25, 2010. In response to the complaint, the respondent filed the report on November 27, 2012. There is credible evidence of a violation of section 254.154 of the Election Code.

Identification of Candidates Supported or Opposed and Officeholders Assisted

3. Each report by a campaign treasurer of a general-purpose committee must include the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates, and the name of each identified officeholder or classification by party of officeholders assisted by the committee. ELEC. CODE §§ 254.151(4) and (5).
4. The activity at issue for which a violation may be found is not officeholder related. Therefore, there is credible evidence of no violation of section 254.151(5) of the Election Code.
5. Although the committee's report disclosed a political expenditure to a candidate in the Texas November 2010 general election on Schedule F, the report did not disclose that the committee supported this candidate in the "Committee Activity" section of the cover sheet. However, the disclosure on Schedule F of the report made apparent the name of the candidate

supported by the expenditure. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.151(4) of the Election Code.

Contributions Maintained

6. A 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).
7. The total amount of political contributions maintained in one or more accounts includes balance on deposit in banks, savings and loan institutions and other depository institutions, and the present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc. Ethics Commission Rules § 20.50(a).
8. Bank records indicated that the committee's bank balance as of the last day of the reporting period was \$1,740.55. The respondent over-reported contributions maintained by approximately \$7,960. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.

Contribution from a Corporation or Labor Organization

9. Each 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(a)(1).
10. Each report by a campaign treasurer of a general-purpose committee must include on a separate page or pages of the report, the identification of any contribution from a corporation or labor organization made and accepted under Subchapter D, Chapter 253 of the Election Code. ELEC. CODE § 254.151(8).
11. The contributions at issue were not from the labor organization but were from the members of the labor organization and were improperly reported as being contributions from the labor organization. Therefore, there is credible evidence of no violation of section 254.151(8) of the Election Code.
12. None of the contributors contributed over \$50 during the reporting period. The committee was not required to detail the contributions. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code.

Political Expenditures

13. General purpose political committees are not required to report political expenditures made in connection with out-of-state campaigns, officeholders, or measures on reports filed under chapter 254 of the Texas Election Code. Ethics Advisory Opinion No. 208 (1994).
14. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
15. Each report must include the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
16. For reporting required under section 254.031 of the Election Code, the purpose of an expenditure means: a description of the category of goods, services, or other thing of value for which an expenditure is made and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. Ethics Commission Rules § 20.61(a).
17. Regarding the allegation that the respondent did not disclose the correct amount for total political expenditures on the January 2011 semiannual report, only one expenditure, in the amount of \$500, was made in connection with a Texas election. Therefore, total political expenditures should have been \$500 instead of \$1,000. There is credible evidence of a violation of section 254.031(a)(6) of the Election Code.
18. Regarding the allegation that the respondent did not disclose the actual vendor information for 16 of the 18 expenditures and the allegation that the respondent did not adequately describe the purpose of 17 of the 18 expenditures disclosed on Schedule I of the January 2011 semiannual report, the expenditures were made in connection with elections held in New Mexico and were not required to be disclosed on the report. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code as to disclosing the actual vendor information for and describing the purposes of these expenditures.
19. Regarding the allegation that the respondent did not provide the categories of the expenditures disclosed on Schedule I of the January 2011 semiannual report, the expenditures were made in connection with elections held in New Mexico and were not required to be disclosed on the report. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules as to the disclosure of the categories of these expenditures.
20. Regarding the allegation that the respondent did not provide the categories of the expenditures disclosed on Schedule F of the January 2011 semiannual report, the \$500

expenditure to a payee in New Mexico was not required to be disclosed on the report. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules as to the disclosure of the category of this expenditure. The \$500 expenditure to a candidate in the Texas November 2010 general election was required to be disclosed on the report. The respondent did not disclose a category for this expenditure. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(3) of the Election Code and section 20.61(a) 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: 1) in addition to other required reports, for each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports. The second report must be received by the authority with whom the report is required to 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; 2) each report by a campaign treasurer of a general-purpose committee must include the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates; 3) a 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; 4) each report must include the total amount of all political expenditures made during the reporting period; 5) a campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made, and the dates and purposes of the expenditures; and 6) for reporting required under section 254.031 of the Election Code, the purpose of an expenditure means a description of the category of goods, services, or other thing of value for which an expenditure is made and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure.

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 nature, circumstances, and consequences of the violations described under Sections III and IV, and 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-31105110.

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

Raymond N. Diaz, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director