

TEXAS ETHICS COMMISSION

IN THE MATTER OF

RAY NELSON,
CAMPAIGN TREASURER,
PROGRESSIVE DEMOCRATS OF
SOUTHEAST TEXAS,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31110233

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on March 27, 2013, to consider sworn complaint SC-31110233. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.003, 253.037, 254.031, and 254.151 of the Election Code and section 20.62 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 include on campaign finance reports the name of each identified candidate supported or opposed, and officeholders assisted by the committee; 2) did not properly disclose political contributions and political expenditures; 3) accepted an unlawful contribution from a corporation; 4) did not file a campaign finance report; and 5) made a political contribution to another general-purpose committee without disclosing the recipient committee in a campaign treasurer appointment.

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 for the Progressive Democrats of Southeast Texas, a general-purpose committee that files campaign finance reports with the commission.

Names of Candidates Supported or Opposed and Officeholders Assisted

2. The complaint alleged that the respondent did not disclose the names of each identified candidate supported or opposed by the committee, and each identified officeholder assisted by the committee on the following six campaign finance reports: January 2010 semiannual report, July 2010 semiannual report, 30-day and 8-day pre-election reports for the November 2010 general election, January 2011 semiannual report, and the July 2011 semiannual report.
3. On the reports at issue, the “Committee Activity” sections of the report cover sheets were left blank. The committee supports only Democratic Party candidates and officeholders.

Full Name of Contributor

4. The complaint alleged that the respondent did not disclose the full name of an individual who made a \$160 political contribution.
5. The political contribution at issue was disclosed on Schedule A (used to disclose political contributions) of the committee’s January 2010 semiannual report. The respondent disclosed the contributor’s last name and first and middle initials.

Total Political Contributions Maintained

6. The complaint alleged that the respondent reported an incorrect balance for total political contributions maintained on six committee reports as follows:
 - January 2010 Semiannual Report – disclosed \$11,440.28; complaint alleged \$11,559.20; difference is \$118.92
 - July 2010 Semiannual Report – disclosed \$9,077.40; complaint alleged \$9,205.82; difference is \$128.42
 - 30-day Pre-election Report for the November 2010 general election – disclosed \$5,470.07; complaint alleged \$5,476.45; difference is \$6.38
 - 8-day Pre-election Report for the November 2010 general election – disclosed \$6,015.03; complaint alleged \$6,021.45; difference is \$6.42
 - January 2011 Semiannual Report – disclosed \$6,039.08; complaint alleged \$5,685.95; difference is \$353.13
 - July 2011 Semiannual Report – disclosed \$4,978.51; complaint alleged \$4,625.38; difference is \$353.13

7. The respondent corrected the political contributions maintained balance on the committee's 30-day pre-election report for the November 2010 general election from \$5,470.07 to \$5,470.03.

Staff Reimbursements

8. The complaint alleged that the respondent did not disclose the actual vendor payee, address, date, and amount pertaining to the stated purpose of seven political expenditures that were disclosed in the committee's January 2010 and July 2010 semiannual reports.
9. Regarding the January 2010 semiannual report, the respondent disclosed six expenditures on Schedule I (used to disclose non-political expenditures made from political contributions) totaling approximately \$1,500 that appear to be staff reimbursements. Regarding the July 2010 semiannual report, the respondent disclosed one \$200 expenditure on Schedule F (used to disclose political expenditures) that appears to be a staff reimbursement. In both reports at issue, the respondent disclosed the staff members as the payees of the political expenditures.
10. In response to the complaint, the respondent corrected both reports at issue to disclose the stores where the political expenditures were made. With respect to the January 2010 semiannual report, the respondent reclassified the expenditures and moved them from Schedule I to Schedule F.
11. Based on the corrections, the evidence indicated that six out of the seven political expenditures at issue were staff reimbursements. A \$200 political expenditure was disclosed in the committee's January 2010 semiannual report as "band for event," and there was no evidence to indicate that the payee was not properly disclosed.

Total Political Expenditures

12. The complaint alleged that the respondent reported an incorrect balance for total political expenditures in the committee's January 2010 and July 2011 semiannual reports. In each report at issue, the respondent disclosed on Schedule I expenditures that were made from political contributions. The respondent did not include those expenditures when calculating the amount of total political expenditures. The expenditures reported by the respondent appear to have been political expenditures. In response to the complaint, the respondent corrected both reports at issue.
13. The committee's January 2010 semiannual report disclosed \$0 in total political expenditures. Schedule I of the report disclosed 13 expenditures totaling approximately \$8,560. The respondent corrected the total political expenditure balance to \$9,520.93 (the respondent added political expenditures totaling approximately \$970 that were not disclosed in the original report).

14. The committee's July 2011 semiannual report disclosed \$2,161.84 in total political expenditures. Schedule I of the report disclosed one expenditure of \$100. The respondent corrected the total political expenditure balance to \$2,227.74 (the respondent added two political expenditures totaling \$65.90 that were not disclosed in the original report).

Accepting Political Contributions from Corporations

15. The complaint alleged that the respondent accepted an unlawful political contribution from a corporation, and also that the respondent did not properly disclose the contribution. The contribution at issue was disclosed on Schedule A of the committee's January 2010 semiannual report as follows:
 - September 10, 2009, \$500 from Parigi Property Management
16. According to records of the Texas Secretary of State (SOS), the respondent is a domestic limited partnership located in Beaumont, Texas, with Parigi Investments, Inc., a domestic for-profit corporation also located in Beaumont, Texas, as its general partner.
17. In response to the complaint, the respondent corrected the report and moved the contribution from Schedule A to Schedule C-2 (used to disclose corporation or labor organization support).

Filing of Campaign Finance Report

18. The complaint alleged that the respondent did not file an 8-day pre-election report for the March 2010 primary election. The complaint specified three political expenditures totaling approximately \$2,080 that were disclosed on Schedule F of the committee's July 2010 semiannual report as having been made during the period covered by the 8-day pre-election report for the March 2010 primary election. The descriptions indicated that the political expenditures were for "yard signs" and a "GOTV newspaper ad."
19. The expenditures were for materials for the general election and other non primary related events.

Contribution to General-Purpose Political Committee

20. The complaint alleged that the respondent made a political contribution to another general-purpose committee without disclosing the committee on its campaign treasurer appointment.
21. At issue is the committee's July 2011 semiannual report, where the respondent disclosed on Schedule F a \$250 political expenditure to the Galveston County Democratic Party on June 30, 2011. The name and address of the general-purpose committee was not disclosed on any of the committee's campaign treasurer appointments at the time the contribution was made.

22. In response to the complaint, the respondent filed an amended appointment of a campaign treasurer by a general-purpose committee on December 2, 2011, and disclosed the name and address of the recipient general-purpose committee at issue.

IV. Findings and Conclusions of Law

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

Names of Candidates Supported or Opposed and Officeholders Assisted

1. 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. *Id.* §§ 254.151(4), 254.151(5).
2. Credible evidence indicated that any candidate or officeholder assisted by the committee was a member of the Democratic Party, and any election-related activity was in connection with a partisan election. The commission has previously determined that when the name of a committee includes a party identification, the legal requirement that each report identify candidates or officeholders supported by party classification is satisfied. The name of the committee at issue includes a party identification. Therefore, there is credible evidence of no violations of sections 254.151(4) and 254.151(5) of the Election Code.

Full Name of Contributor

3. 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(a)(1).
4. The political contribution at issue exceeded \$50 in the aggregate, and therefore the respondent was required to disclose the full name of the person making the contribution. The respondent did not disclose the full name of the contributor when the January 2010 semiannual report was originally filed. In context, the error was minor. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(1) of the Election Code.

Total Political Contributions Maintained

5. Each report must include as of the last day of the reporting period, 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).
6. Regarding the six committee reports at issue, there is no violation of section 254.031(a)(8) of the Election Code if the difference between the amount of political contributions maintained as originally disclosed and the correct amount, or the amount alleged, does not exceed the lesser of 10% of the amount originally disclosed or \$2,500. The amount disclosed on each report is within that threshold. Therefore, there is credible evidence of no violations of section 254.031(a)(8) of the Election Code.

Staff Reimbursements

7. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 at time of complaint) 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).
8. Each 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 \$100 (\$50 during the period at issue) or less made during the reporting period. *Id.* § 254.031(a)(5).
9. Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: 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; and included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. Except as provided above, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows: the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee; the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and the reimbursement to the staff member to

repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee. Ethics Commission Rules § 20.62.

10. Regarding the political expenditures at issue, credible evidence indicated that the respondent did not properly disclose six political expenditures totaling approximately \$1,500 that were made as staff reimbursements. Regarding those six expenditures, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules. Regarding the \$200 political expenditure, the expenditure did not appear to be a reimbursement, but rather a direct payment to an individual for “band for event.” Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules with respect to that expenditure.

Total Political Expenditures

11. A campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
12. A political expenditure means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10). Campaign expenditure means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7). Officeholder expenditure means an expenditure made by any person to defray expenses that are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office and that are not reimbursable with public money. *Id.* § 251.001(9).
13. Title 15 of the Election Code treats administrative expenditures as political expenditures. *Id.* § 253.100; Ethics Advisory Opinion No. 132 (1993) (note that statute now explicitly requires reporting of political expenditures made for administrative purposes).
14. The respondent was required to include campaign expenditures, officeholder expenditures, and any administrative expenditures when calculating the total amount of political expenditures. Based on Schedule I of the reports at issue, the respondent was improperly categorizing event and administrative expenses as non-political expenditures. Accordingly, the amount of total political expenditures was understated in the two reports at issue because the expenditures disclosed on Schedule I were not included in the calculation.
15. Regarding the January 2010 semiannual report, the respondent improperly categorized 13 expenditures totaling approximately \$8,560. Moreover, the respondent corrected the report to add approximately \$970 in political expenditures. These expenditures were not disclosed when the report was originally filed. Although the respondent disclosed most of the expenditures on Schedule I of the report schedule, someone viewing the expenditure totals

section of the report would not have been able to ascertain the true amount of total political expenditures. There is credible evidence of a violation of section 254.031(a)(6) of the Election Code with respect to that report.

16. Regarding the July 2011 semiannual report, the respondent improperly categorized one expenditure of \$100. Moreover, the respondent corrected the report to add two political expenditures totaling \$65.90. These expenditures were not disclosed when the report was originally filed. Based on the amount at issue (approximately \$165), there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code with respect to that report.

Accepting Political Contributions from Corporations

17. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b). In order to show a violation of section 253.003(b) of the Election Code, the evidence must show that the contributor was a corporation or labor organization, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation or labor organization.
18. A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, of the Election Code. ELEC. CODE § 253.094. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. *Id.* § 253.091.
19. A partnership including one or more corporate partners is subject to the same restrictions on political activity that apply to corporations. Ethics Advisory Opinion No. 215 (1994).
20. A corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose committee. ELEC. CODE § 253.100(a).
21. Each report by a campaign treasurer of a general-purpose political committee must include on a separate page or pages of the report, the identification of the name of the donor, the amount, and the date of any expenditure made by a corporation or labor organization to establish or administer the political committee, or finance the solicitation of political contributions to the committee under Section 253.100. ELEC. CODE § 254.151(9).
22. Regarding the \$500 contribution at issue, credible evidence indicates that the contribution was made by a partnership that has a domestic for-profit corporation as its general partner. Accordingly, the partnership is subject to the prohibition on corporate contributions under

section 253.094 of the Election Code, and the respondent would have been required to disclose the contribution on Schedule C-2 of the January 2010 semiannual report. Although there is credible evidence that the respondent accepted a corporate contribution, the evidence is insufficient to show whether the funds were lawfully accepted and used in accordance with section 253.100 of the Election Code. Therefore, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code. However, the respondent did not disclose the contribution on the correct report schedule when the January 2010 semiannual report was originally filed. Therefore, there is credible evidence of a violation of section 254.151(9) of the Election Code.

Filing of Campaign Finance Report

23. 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. ELEC. CODE § 254.154(a). 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 continues through the 10th day before election day. *Id.* § 254.154(c).
24. The evidence indicated that the committee was not involved in the March 2010 primary election and was not required to file an 8-day pre-election report. The committee did not support any specific candidates, officeholders, or measures in connection with the March 2010 primary election. Thus, the respondent was not required to file an 8-day pre-election report for the March 2010 primary election. Therefore, there is credible evidence of no violation of section 254.154(c) of the Election Code.

Contribution to General-Purpose Political Committee

25. The campaign treasurer appointment of a general-purpose committee must include the full name and address of each general-purpose committee to whom the committee intends to make political contributions. ELEC. CODE § 252.003(a)(2).
26. A general-purpose committee may not knowingly make a political contribution to another general-purpose committee unless the other committee is listed in the campaign treasurer appointment of the contributor committee. *Id.* § 253.037(b).
27. The respondent filed an amended appointment of a campaign treasurer by a general-purpose committee and disclosed the name and address of the recipient general-purpose committee at issue. At the time the contribution was originally made, this information was not disclosed on the committee's campaign treasurer appointment. However, the name and address of the Galveston County Democratic Party was disclosed on Schedule F of the committee's July 2011 semiannual report when the contribution was made. Thus, the information was readily apparent to anyone who may have viewed the report, and in context did not substantially

affect disclosure. Therefore, there is credible evidence of a technical or *de minimis* violation of sections 252.003(2) and 253.037(b) 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: 1) the campaign treasurer appointment of a general-purpose committee must include the full name and address of each general-purpose committee to whom the committee intends to make political contributions; 2) a general-purpose committee may not knowingly make a political contribution to another general-purpose committee unless the other committee is listed in the campaign treasurer appointment of the contributor committee; 3) 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; 4) each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 at time of complaint) 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; 5) each campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period – Title 15 of the Election Code treats administrative expenditures as political expenditures; 6) 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 the name of the donor, the amount, and the date of any expenditure made by a corporation or labor organization to establish or administer the political committee, or finance the solicitation of political contributions to the committee under section 253.100 of the Election Code; and 7) staff reimbursements must be reported in accordance with section 20.62 of the Ethics Commission Rules.

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 after considering the sanction necessary to deter future violations, the commission imposes a \$500 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-31110233.

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

Ray Nelson, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director