

TEXAS ETHICS COMMISSION

IN THE MATTER OF
WESLEY R. WILLIAMS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3130343

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 21, 2014, to consider sworn complaint SC-3130343. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.003, 253.094, 254.031, and 254.061 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 disclose on campaign finance reports political contributions and political expenditures; 2) accepted political contributions from corporations or labor organizations; and 3) did not include the campaign treasurer's telephone number on 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 elected to the San Antonio City Council, District 8, in a May 2011 election. The respondent did not run for re-election in the May 2013 election.

Total Political Contributions Maintained

2. The complaint alleged that the respondent did not properly report total political contributions maintained on his January 2012, July 2012, and January 2013 semiannual reports.

3. In his response to the complaint, the respondent included bank records to show the balance of those accounts at the end of each of the reporting periods at issue.
4. The respondent's January 2012 semiannual report disclosed \$8,330.44 in total political contributions maintained as of December 31, 2011. The respondent's bank records show \$8,330.44 in his political account as of December 31, 2011.
5. The respondent's July 2012 semiannual report disclosed \$10,561.69 in total political contributions maintained as of June 30, 2012. The respondent's bank records show \$10,561.69 in his political account as of June 30, 2012.
6. The respondent's January 2013 semiannual report disclosed \$9,561.69 in total political contributions maintained as of December 31, 2012. The respondent's bank records show \$9,561.69 in his political account as of December 31, 2012.
7. As a result of this complaint, the respondent filed a corrected January 2012 semiannual report to disclose a \$29,173.22 political expenditure for reimbursement to himself. The report also reflected the change in total political expenditures.

Accepting Political Contributions from Corporations

8. The complaint alleged that the respondent accepted political contributions totaling approximately \$1,000 from two corporations. The contributions at issue were disclosed on Schedule A of the respondent's 30-day pre-election report for a May 2011 election as follows:
 - March 23, 2011, \$500, Convenience Store Retailers Association
 - April 4, 2011, \$500, Homespring Realty Partners
9. According to records from the Texas Secretary of State (SOS), Association of Convenience Store Retailers is a domestic nonprofit corporation. The address for Convenience Store Retailers Association disclosed on the respondent's report at issue is the same as the address for Association of Convenience Store Retailers. The association's articles of incorporation do not state that the corporation has incorporated only for liability purposes.
10. In response to the complaint, the respondent swore that "after a meeting at the Association office on March 13, 2013, it was determined that the organization is a Nonprofit Corporation which is involved in more activities than just supporting political activities so the funds were returned in March 17, 2013." The respondent included the copy of the front of a check for \$500 to Association of Convenience Store Retailers dated March 17, 2013.

11. The respondent's attorney stated that the respondent was under the mistaken belief that the principal purpose of the non-profit contributor was as a political committee. The respondent submitted a copy of a \$500 check from "Association of Convenience Store Retailers" dated March 23, 2011.
12. SOS records do not have a listing for an entity named Homespring Realty Partners.
13. In his response to the complaint, the respondent swore that the contribution was from HomeSpring Hogan Office Building, LLC, and that the LLC was not a corporation.
14. SOS records indicate that HomeSpring Hogan Office Building, LLC, (HHOB) is a domestic limited liability company. The registered agent for HHOB is Hogan Properties Company, Inc., however the records do not show whether they have any ownership interest in HHOB. The Texas franchise public information report filed in 2010 for HHOB indicates that no corporation or LLC has an ownership interest of 10% or more in HHOB. The certificate of formation for HHOB also indicates the company only has one manager who is an individual.
15. The respondent submitted a copy of a check for \$500 dated February 9, 2011, and drawn on the account of HomeSpring Hogan Office Building, LLC, payable to the Reed Williams Campaign.
16. In the respondent's initial campaign treasurer appointment, he signed a statement that read, in pertinent part:

I am aware of the restrictions in title 15 of the Election Code on contributions from corporations and labor organizations.

Full Names of Contributors

17. The complaint alleged that the respondent did not properly disclose the full names of five contributors who made political contributions totaling approximately \$2,250. In his response to the complaint, the respondent provided copies of the contribution checks at issue. The political contributions at issue were disclosed on Schedule A (used to disclose political contributions).
18. The checks for three political contributions totaling approximately \$1,500 showed the same names that were disclosed by the respondent on the reports at issue.
19. The checks for two of the political contributions at issue totaling approximately \$750 disclosed names that were substantially similar to those disclosed on the reports at issue.

20. The respondent has filed corrected reports to disclose the same name that was provided on each of the checks for the contributions at issue, where necessary.

Staff Reimbursements

21. The complaint alleged that the respondent did not properly disclose a \$240.10 political expenditure to an individual with a description of "Election Night Party Supplies" that appears to have been made as a staff reimbursement on his July 2011 semiannual report.
22. In response to the complaint, the respondent swore that the individual at issue:

...was reimbursed \$240.10 for expenses associated with a campaign event. The reimbursed amount was a combination of three purchases (1) Kinko Fed Ex \$65.41, (2) Office Depot \$39.38, and (3) Balloons Etc. \$135.31...

Campaign Treasurer's Telephone Number

23. The complaint alleged the respondent did not include his campaign treasurer's telephone number on his July 2011 and July 2012 semiannual reports. In response to the complaint, the respondent's attorney stated that the respondent "inadvertently missed listing the phone number of the treasurer." The respondent filed corrected reports and disclosed the telephone numbers in the appropriate sections.

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. Each 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).
2. For purposes of section 254.031(a)(8) of the Election Code, the total amount of political contributions maintained in one or more accounts includes the following: (1) balance on deposit in banks, savings and loan institutions and other depository institutions; and (2) 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).

3. Regarding the January 2012, July 2012, and January 2013 semiannual reports, the respondent clearly disclosed the correct amount that was maintained in his political account. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code with respect to those reports.
4. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 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).
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. *Id.* § 254.031(a)(6).
6. The evidence indicates that while the respondent reported the correct amount of total political contributions maintained on his January 2012 semiannual report at issue, he failed to disclose a \$29,173.22 political expenditure. The failure to disclose that expenditure also caused an incorrect amount of total political expenditures on the January 2012 report. Therefore, there is credible evidence of a violation of sections 254.031(a)(3) and 254.031(a)(6) of the Election Code.

Accepting Political Contributions from Corporations

7. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. *Id.* § 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.
8. 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. *Id.* § 253.094. That subchapter does not authorize a corporation to make a political contribution to a candidate or officeholder.
9. 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.
10. A Delaware limited liability company is subject to the restrictions in Election Code chapter 253, subchapter D, if it engages in a type of business listed in Election Code section 253.093

or if it is owned, in whole or in part, by an entity subject to the restrictions in Election Code chapter 253, subchapter D. Ethics Advisory Opinion No. 383 (1997).

11. A determination to accept or refuse a political contribution that is received by a candidate, officeholder, or political committee shall be made not later than the end of the reporting period during which the contribution is received. ELEC. CODE § 254.034(a).
12. Regarding the contribution from the Association of Convenience Store Retailers, credible evidence indicates that the contribution was made by a corporation. The respondent's campaign treasurer appointment indicated that he was aware of the restrictions in title 15 of the Election Code on contributions from corporations and labor organizations. The evidence indicates that the respondent was aware that the association was incorporated and there is no evidence that he believed that the Association of Convenience Store Retailers was permitted to make the political contribution at issue. Therefore, there is credible evidence of a violation of sections 253.003 and 253.094 of the Election Code with respect to that contribution.
13. With regard to the contribution from HHOB, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code with respect to that contribution. The evidence indicates the respondent did not properly disclose the name of the contributor at issue. Therefore, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code.

Full Names of Contributors

14. 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. *Id.* § 254.031(a)(1).
15. The name of an entity that is required to be included in the name of the committee may be a commonly recognized acronym by which the entity is known. *Id.* § 252.003(d).
16. The 2011 legislative session added section 571.122(e) to the Government Code, which became effective on September 1, 2011, and states: "It is not a valid basis of a complaint to allege that a report required under Chapter 254, Election Code, contains the improper name or address of a person from whom a political contribution was received if the name or address in the report is the same as the name or address that appears on the check for the political contribution." GOV'T CODE § 571.122(e). Additionally, section 571.1222, also added during the 2011 legislative session and effective on September 1, 2011, states that at any stage of a proceeding under this subchapter, the commission shall dismiss a complaint to

the extent the complaint alleges that a report required under Chapter 254, Election Code, contains the improper name or address of a person from whom a political contribution was received if the name or address in the report is the same as the name or address that appears on the check for the political contribution. *Id.* § 571.1222.

17. The checks for three political contributions totaling approximately \$1,500 showed the same names that were disclosed by the respondent on the reports at issue. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code with respect to approximately \$1,500 at issue and those allegations are dismissed in compliance with section 571.1222 of the Government Code.
18. The check for two of the political contributions at issue totaling approximately \$750 disclosed names that were substantially similar to those disclosed on the reports at issue. Based on the name and address disclosed for each contributor, each contributor's name would have been readily ascertainable. The errors were relatively minor and did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(1) of the Election Code with regard to those contributions.

Staff Reimbursements

19. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 until 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).
20. An expenditure means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
21. A political expenditure means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
22. Political expenditures made out of personal funds by a staff member of an officeholder or candidate, with the intent to seek reimbursement from the officeholder or candidate, 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:
 - (1) 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

- (2) Included with the total amount or a specific listing of the political expenditures of \$100 or less made during the reporting period. Ethics Commission Rules § 20.62.
23. The evidence indicates that the respondent did not disclose the correct payees for approximately \$200 in political expenditures at issue. Therefore, 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. There is credible evidence of no violation regarding the remaining expenditure of \$39.38 because it was not required to be itemized.

Campaign Treasurer's Telephone Number

24. Each report by a candidate must include the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed and the candidate's campaign treasurer's name, residence or business street address, and telephone number. ELEC. CODE § 254.061.
25. The respondent did not disclose his campaign treasurer's telephone number on his originally filed reports at issue. The reports were corrected to disclose the telephone number. The omissions did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.061 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 \$100 (\$50 until September 28, 2011) 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 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.

The respondent also acknowledges that a person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code.

The respondent also acknowledges that a candidate or officeholder may not accept a political contribution from a corporation or labor organization.

The respondent also acknowledges that 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.

The respondent also acknowledges that a reimbursement to a staff member must be reported in compliance with section 20.62 of the Ethics Commission Rules.

The respondent also acknowledges that each report by a candidate must include the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed and the candidate's campaign treasurer's name, residence or business street address, and telephone number.

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 \$600 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-3130343.

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

Wesley R. Williams, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director