

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
SAM HOUSTON RACE PARK, LTD.,	§	TEXAS ETHICS COMMISSION
	§	
RESPONDENT	§	SC-970424, SC-970424A,
	§	SC-970424B, and SC-970424C

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 14, 1997, to consider sworn complaints SC-970424, SC-970424A, SC-970424B, and SC-970424C filed against Sam Houston Race Park, Ltd. (the respondent), through its registered agent Byron L. Wade. A quorum of the commission was present. The commission voted to accept jurisdiction of these complaints. Based on the investigation conducted by the commission staff, the commission determined there was credible evidence of a violation of Section 253.094, Election Code, a law administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Facts Supported by Credible Evidence

Credible evidence available to the commission would support the following findings of fact:

1. The complainants alleges that the respondent, a limited partnership with corporate partners, violated Section 253.094, Election Code, by making a political contribution to the Committee For A Well-Qualified Judiciary, a specific-purpose committee that supported judicial candidates.
2. In response to these complaints, the respondent submitted an affidavit that was executed by the respondent's chief legal officer and registered agent. In this affidavit, the respondent states that it is a Texas limited partnership. In April, 1995, the respondent filed for protection under Chapter 11 of the United States Bankruptcy Code. An order closing the bankruptcy case was entered in December, 1996. Prior to its reorganization in bankruptcy, the partnership consisted of approximately 65 partners. Of these partners, approximately five were corporations. The respondent's general managing partner was a corporation.
3. In its affidavit, the respondent states that in 1993, it hired a political consultant who had been represented as an expert on political contributions. The respondent made a number of

political contributions in October and November 1994, after being advised by the political consultant that the contributions were permissible. These contributions included a contribution to the Committee for a Well-Qualified Judiciary, the specific-purpose political committee referred to in these complaints. The complainants submitted to the commission a copy of a schedule of a campaign finance report filed by the Committee for a Well-Qualified Judiciary. The report discloses a \$10,000 contribution that the respondent made to the political committee on October 7, 1994.

4. According to the respondent's affidavit, soon after the respondent began making the contributions, questions were raised regarding whether it was lawful for a partnership with corporate partners to make political contributions to candidates and to political committees that support candidates. The respondent became aware of Ethics Advisory Opinion No. 221 (1994), which reaffirmed a prior advisory opinion that had determined that a partnership that includes one or more corporate partners is subject to the same limitations on political contributions as corporations. After learning of this opinion, the respondent ceased making further political contributions, sent letters to the recipients of its previous contributions asking for the return of the contributions, and stopped payment on outstanding contribution checks. The respondent, through its attorney, also contacted the Ethics Commission to inform the commission of the contributions, to explain that any violation of the law was inadvertent, and to discuss any further actions that could be taken to mitigate the situation.

III. Conclusions of Law

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

1. Section 253.094, Election Code, provides that a corporation may not make a political contribution or expenditure unless it is authorized by Subchapter D, Chapter 253, Election Code. That subchapter does not authorize corporations to make political contributions to a candidate or to a political committee that supports or opposes candidates.
2. Ethics Advisory Opinion No. 221 (1994) concludes that a partnership that has corporate partners is subject to the same restrictions on political activity that apply to corporations.
3. The respondent, a partnership with corporate partners, made a political contribution to a political committee that supported candidates. Thus, there is credible evidence that the respondent violated Section 253.094, Election Code.
4. In its response to these complaints, the respondent raised an issue relating to the commission's jurisdiction to consider and rule on this complaint and suggested that this complaint is barred by the respondent's bankruptcy proceedings. The commission's jurisdiction is not barred or otherwise affected by the bankruptcy proceedings, which were closed in December 1996.

IV. Representations and Agreement by the Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits nor denies the facts detailed under Section II and the commission's findings and conclusions of law detailed under Section III, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling these sworn complaints.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge appointed by the commission, and further waives any right to a post-hearing procedure established or provided by law.
3. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violation detailed in Section III, Paragraph 3, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

V. Confidentiality

This ORDER and AGREED RESOLUTION describes an alleged violation that the commission has determined would be neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under Section 571.140, Government Code, and may be disclosed by members and staff of the Texas Ethics Commission.

VI. Sanction

After considering the seriousness of the violation described under Sections II and III, including the nature, circumstances, consequences, extent, and gravity of the violation; that no previous violations by this respondent are known to the commission; the attempts by the respondent to address and mitigate the consequences of the violation prior to the filing of these complaints; and after considering the sanction deemed necessary to deter future violations, the commission imposes no civil penalty for the violation described under Section III, Paragraph 3.

VII. Order

The Texas Ethics Commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;

2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-970424, SC-970424A, SC-970424B, and SC-970424C;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than December 12, 1997; and
4. that the executive director shall promptly refer SC-970424, SC-970424A, SC-970424B, and SC-970424C to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-970424, SC-970424A, SC-970424B, and SC-970424C as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 1997.

SAM HOUSTON RACE PARK, LTD.

Respondent
James D. Noteware, President

EXECUTED ORIGINAL received by the commission on: _____
DATE

Texas Ethics Commission

By: Tom Harrison, Executive Director