

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CARROLL G. ROBINSON,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-220453

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 10, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220453 filed against Carroll G. Robinson. The commission met again on April 11, 2003, to consider Sworn Complaint SC-220453. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of violations of sections 253.032 and 254.031 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent, a Houston City Council member, failed to include the required documentation from out-of-state political committees with three campaign finance reports; that the respondent failed to include a complete address for three contributors on a campaign finance report and for one payee on another report; that the respondent failed to provide a description for in-kind contributions on a campaign finance report; that the respondent reported incorrect expenditure totals on two campaign finance reports; and that the respondent converted political contributions to personal use by using political contributions to purchase a pair of boots.

III. Facts Supported by Credible Evidence

Allegation No. 1: documentation from out-of-state political committees

1. The following three reports filed by the respondent disclosed contributions from political committees that are not registered with the Texas Ethics Commission¹:

¹ The complainant also alleges that on October 13, 2001, the respondent accepted a \$500 contribution from PSI PAC and that that political committee is an out-of-state political committee. However, PSI PAC is registered with the Ethics Commission as a general-purpose political committee.

- January 2002 semiannual report: \$250 contribution from Waste Management PAC;
 - 8-day pre-election report for the November 2001 city election: \$250 contribution from Intl. Assoc. of Plumbing and Mechanical Officials (on his report, the respondent included an address in Walnut, California, and indicated that this contributor was a “PAC”); and
 - July 2000 semiannual report: \$250 contribution from Parsons Brinkerhoff, Inc. PAC.
2. The reports did not include documentation from those contributors.
 3. In response to this allegation, the respondent submitted a corrected January 2002 semiannual report and good-faith affidavit in which the respondent attempted to provide the required documentation regarding Waste Management PAC. The corrected report included a cover letter from the out-of-state political committee to the Federal Elections Commission (FEC). The cover letter stated that the statement of organization was attached. However, the statement was not included with the report.
 4. In January 2003, in response to staff’s request for the missing documentation, the respondent filed a second set of corrected reports and good-faith affidavits for the reports listed above.
 5. The second corrected July 2000 and January 2002 semiannual reports included the missing documentation from Parsons Brinkerhoff, Inc. PAC and from Waste Management PAC.
 6. The second corrected 8-day pre-election report did not include documentation from Intl. Assoc. of Plumbing and Mechanical Officials.
 7. In the good-faith affidavit submitted with the report, the respondent swore that Intl. Assoc. of Plumbing and Mechanical Officials was not registered with the FEC. The report included a “Report of Lobbyist Employer” filed in California pursuant to laws of that state.

The complainant also alleged that on November 1, 2001, the respondent accepted a \$1,000 contribution from Union Pacific Corporation Fund for Effective Government and that it is an out-of-state political committee. However, Union Pacific Corporation Fund for Effective Government is registered with the Ethics Commission as a general-purpose political committee. The complainant also alleges that in the January 2002 semiannual reporting period, the respondent accepted a \$5,000 contribution from another out-of-state political committee. However, the report does not disclose any \$5,000 contribution as being from an out-of-state political committee.

Allegation No. 2: missing addresses for contributors and payee

8. In support of this allegation, the complainant submitted a copy of the respondent's July 2001 and January 2002 semiannual reports, which show missing address information in connection with three contributions and one expenditure, as follows:

Date	Report Type	Amount	Missing Address Information
02-07-01	July 2001 semiannual	\$1,000	Street name, city, state, and zip code
04-10-01	July 2001 semiannual	\$ 250	Street name
06-19-01	July 2001 semiannual	\$ 360	Street name and zip code
11-19-01	Jan 2002 semiannual	\$ 180	Street name and zip code

9. In response to this allegation, the respondent submitted corrected July 2001 and January 2002 semiannual reports and good-faith affidavits. The corrected reports disclosed the complete addresses of the three contributors and the one payee cited by the respondent. The respondent did not provide an explanation as to why the information was omitted from the original reports.

Allegation No. 3: description of in-kind contributions

10. In support of this allegation, the complainant submitted a copy of the respondent's July 2001 semiannual report. The following chart includes the in-kind contributions cited by the complainant:

Date	Amount	Description
2-27-01	\$ 500.00	None
2-27-01	\$1,163.21	None
4-10-01	\$ 812.22	None
4-16-01	\$1,000.00	None
6-19-01	\$ 360.00	None

11. In response to this allegation, the respondent filed a corrected report and good-faith affidavit for the July 2001 semiannual report. The corrected report includes the following description for each of the expenditures at issue: "In-Kind Catering for a fundraiser." The respondent did not provide an explanation as to why the information was omitted from the original report.

Allegation No. 4: miscalculated total political contributions

12. In support of this allegation, the complainant submitted a copy of the respondent's 8-day pre-election report for the November 6, 2001, city election and a copy of the respondent's January 2002 semiannual report.
13. Page two of the cover sheet of the 8-day pre-election report shows that the political contribution total is \$18,950. However, the actual total of the contributions reported on the contribution schedule (Schedule A) is \$15,300.
14. Page two of the cover sheet of the January 2002 semiannual report shows that the political contribution total is \$37,250. However, the actual total of the contributions reported on the contribution schedule (Schedule A) is \$33,975.
15. In response to this allegation, the respondent filed corrected reports and good-faith affidavits for the 8-day pre-election report for the November 6, 2001, city election and for the January 2002 semiannual report. The corrected reports disclose the correct contribution totals. The respondent swears that the error on the 8-day pre-election report was due to an accounting error. The respondent did not provide an explanation as to why the total was inaccurate on the January 2002 semiannual report.

Allegation No. 5: conversion of political contributions to a personal use

16. In support of this allegation, the complainant submitted a copy of the respondent's July 2001 semiannual report which showed that on January 31, 2000, the respondent made a \$2,920 expenditure for "City Seal Inaugural Boots."
17. On January 24, 2003, the respondent submitted a sworn statement in which he swears to the following:

The boots that are in question are designated with the city seal and are worn only to events as a candidate for office or as an office holder.

The boots are housed in my office at city hall.

At the end of my term in office, the boots will be donated to a 501(c)(3) designated organization pursuant to applicable donation laws.

(Paragraph numbers omitted.)

IV. Findings and Conclusions of Law

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

1. A filer may correct a reporting error at any time by filing a corrected report. Ethics Commission Rules § 18.9.
2. A corrected 8-day pre-election report is treated as a late report for all purposes, including the assessment of a fine. *Id.*
3. As a general rule, the late fine for a semiannual report is waived if the original report was timely filed, the corrected report is complete and accurate, and the filer submits an affidavit establishing that the original report was incomplete or incorrect because of a good-faith error. *Id.* However, under Ethics Commission Rules § 18.27, the commission is not required to waive the fine for a respondent in a sworn complaint who files a corrected report, but may consider the correction to be a mitigating factor in determining the amount of any fine.

Allegation No. 1: documentation from out-of-state political committees

4. Before accepting a contribution received from an out-of-state political committee, a candidate or officeholder must have received certain documentation from the out-of-state committee. Elec. Code § 253.032.
5. Regardless of the amount of the contribution, if the out-of-state political committee is registered with the Federal Election Commission (FEC), this documentation requirement may be satisfied by receiving a copy of the committee's statement of organization filed with the FEC and certified by an officer of the committee. *Id.*
6. If the out-of-state political committee is not registered with the FEC, this documentation requirement must be satisfied by a document providing certain information about the out-of-state political committee. *Id.*
7. The respondent's original July 2000 and January 2002 semiannual reports failed to include documentation from two out-of-state political committees from which the respondent had accepted contributions. In response to this complaint, the respondent filed corrected reports and good-faith affidavits in which he included the missing documentation from those two political committees. The good-faith affidavits did not provide an explanation as to why the documentation was not included with the original reports.

8. There is credible evidence that the respondent violated section 253.032 of the Election Code by failing to include with his July 2000 and January 2002 reports documentation from out-of-state political committees from which he accepted political contributions.
9. In his 8-day pre-election report for the November 2001 city election, the respondent disclosed that he accepted a contribution from Intl. Assoc. of Plumbing and Mechanical Officials in Walnut, California. The report indicated that the contributor was a "PAC" but did not include documentation from the contributor. The contributor is not registered as a political committee with the Texas Ethics Commission.
10. In response to this complaint, the respondent filed a corrected report and good-faith affidavit in which he swore that Intl. Assoc. of Plumbing and Mechanical Officials is not registered with the FEC.
11. The corrected report included a "Report of Lobbyist Employer" filed in California pursuant to laws of that state. The respondent stated that the "PAC is registered with the California Secretary of State." According to the Office of the California Secretary of State, Intl. Assoc. of Plumbing and Mechanical Officials is not registered as a political committee. It does, however, file reports with that office because it makes political contributions in California.
12. There is insufficient evidence to determine whether Intl. Assoc. of Plumbing and Mechanical Officials is an out-of-state political committee as that term is defined by section 251.001(15) of the Election Code. Therefore, there is insufficient evidence to determine whether the respondent was required to include documentation from this contributor.

Allegation No. 2: missing addresses for contributors and payee

13. Each report filed under title 15 of the Election Code must contain details about contributions accepted during the reporting period that in the aggregate exceed \$50, including the full name and address of the contributor. *Id.* § 254.031.
14. The respondent's July 2001 semiannual report did not include an address for a contributor who made a \$1,000 contribution. Additionally, that report did not include a complete address for two contributors who made a \$250 and a \$360 political contribution, respectively.
15. Each report filed under title 15 of the Election Code must contain details about expenditures made during the reporting period that in the aggregate exceed \$50, including the full name and address of the payee. *Id.*

16. The respondent's January 2002 semiannual report did not include a complete address to a payee to whom the respondent made a \$180 political expenditure.
17. In response to this complaint, the respondent submitted corrected July 2001 and January 2002 semiannual reports and good-faith affidavits providing the missing information.
18. There is credible evidence that the respondent violated section 254.031 of the Election Code by not providing the required information on the original reports.

Allegation No. 3: description of in-kind contributions

19. Each report filed under title 15 of the Election Code must contain details about contributions accepted during the reporting period that in the aggregate exceed \$50, including a description of any in-kind contribution. *Id.* § 254.031.
20. The respondent's July 2001 semiannual report did not include a description for five in-kind contributions totaling \$3,835.43.
21. In response to this complaint, the respondent filed a corrected report and good-faith affidavit for the July 2001 semiannual report providing the missing descriptions.
22. There is credible evidence that the respondent violated section 254.031 of the Election Code by not providing the required information on the original report.

Allegation No. 4: miscalculated total political contributions

23. A campaign finance report is required to report the total amount of all political contributions accepted during the reporting period. *Id.* § 254.031.
24. The respondent's 8-day pre-election report discloses that the political contribution total was \$18,950 when in fact the total was \$15,300.
25. The respondent's January 2002 semiannual report discloses that the political contribution total was \$37,250 when in fact the total was \$33,975.
26. In response to this allegation, the respondent filed corrected reports and good-faith affidavits for the two reports in which he discloses the correct contribution total. The respondent swears that the error on the 8-day pre-election report was due to an accounting error. The respondent did not provide an explanation as to why the total was inaccurate on the original January 2002 semiannual report.

27. Because the respondent did not include correct contribution totals on the original 8-day pre-election report and the January 2002 semiannual report, there is credible evidence that he violated section 254.031 of the Election Code.

Allegation No. 5: conversion of political contributions to a personal use

28. A candidate or officeholder may not convert political contributions to personal use. Elec. Code § 253.035(a); *see also id.* Elec. Code § 251.001(5) (the term "political contribution" includes both campaign contributions and officeholder contributions).
29. "Personal use" means "a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office." *Id.* § 253.035(d).
30. In Ethics Advisory Opinion No. 407 (1998), the commission considered whether a legislator could use political contributions to rent a tuxedo for the legislative gala on the eve of the first day of a regular legislative session or for a nonprofit charity function. In response to that question the commission stated:

An officeholder may use political contributions to pay clothing expenses if the clothing (1) is of a type appropriate for the performance of duties or activities of the office held, (2) is not adaptable to general usage as ordinary clothing, and (3) is not so worn. . . .

In our opinion, the rental of a tuxedo for the legislative gala satisfies that standard. The legislative gala is in connection with legislative activities and apparently it is common practice for male legislators to wear tuxedos to the event. Further, a tuxedo, unlike a business suit, is for most people not adaptable to general usage as ordinary clothing. Finally, the fact that the legislator is renting the tuxedo indicates that this particular tuxedo will not be so worn. We conclude therefore that a legislator may use political contributions to rent a tuxedo for the legislative gala on the eve of the first day of a regular legislative session.

Similarly, a legislator may use political contributions to rent a tuxedo for attendance at a charity event as long as the legislator is attending the event as an activity of a public officeholder. . . . Whether a legislator is doing so depends on the facts of any particular case. For example, a legislator would, in our view, be attending such an event as an activity of his or her

office if he or she had been asked to speak at the event or otherwise lend his or her renown to the event.

Ethics Advisory Opinion No. 407 (1998).

31. The purchase of the boots at issue satisfies the standard set out in Ethics Advisory Opinion No. 407. The respondent swears that the boots are worn only to events as a candidate for office or as an officeholder. Furthermore, the boots embroidered with a city seal, unlike a regular pair of boots, are for most people not adaptable to general usage as ordinary clothing. Finally, the fact that the respondent swears that the boots are used only to attend events as a candidate or officeholder and that the boots are stored in his office indicates that the boots will not be so worn.
32. There is credible evidence that the respondent did not violate section 253.035(a) 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 and 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 and settling this sworn complaint.
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, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that before accepting a contribution received from an out-of-state political committee, a candidate or officeholder must have received certain documentation from the out-of-state committee; that each report filed under title 15 of the Election Code must contain details about contributions accepted during the reporting period that in the aggregate exceed \$50, including the full name and address of the contributor; that each report filed under title 15 of the Election Code must include details about expenditures made during the reporting period that in the aggregate exceed \$50, including the full name and address of the payee; that each report filed under title 15 of the Election Code must include a description of any in-kind contribution; and that that each report filed under title 15 of the Election Code must include correct contribution totals. The respondent agrees to fully and strictly comply with those laws.

4. 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 violations described under Section IV, Paragraphs 8, 18, 22, and 27, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$600 civil penalty for the violations described under Section IV, Paragraph 8, 18, 22, and 27.

VIII. Order

The 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-220453;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$600 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 9, 2003; and
4. that the executive director shall promptly refer SC-220453 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-220453 as proposed in this ORDER and AGREED RESOLUTION.

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

Carroll G. Robinson, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director