

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
BERNETTA HENVILLE-SHANNON,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-230414

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 9, 2003, and voted to accept jurisdiction of Sworn Complaint SC-230414 filed against Bernetta Henville-Shannon. The commission met again on July 11, 2003, to consider Sworn Complaint SC-230414. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of violations of section 254.031 of the Election Code and section 20.219(11)(E) of Ethics Commission Rules, 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 failed to report certain political contributions and political expenditures on her January 2003 semiannual report.

III. Facts Supported by Credible Evidence

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

1. The respondent is the mayor of a city with a population of 28,500.
2. The complainant alleges that the respondent failed to report certain political contributions and political expenditures on her January 2003 semiannual campaign finance report. Specifically, the complainant alleges that the respondent failed to report contributions and expenditures made in connection with two fundraisers. One was a golf tournament held on September 21, 2002, and the other was a barbeque held on October 19, 2002. The complainant submitted copies of a flier advertising the golf tournament and of photographs of banners advertising the barbeque.
3. The complainant submitted a copy of the respondent's January 2003 semiannual report. The report covers the period beginning on July 1, 2002, and ending on December 31, 2002. The totals page shows that the respondent accepted \$1,258 in unitemized contributions and

\$4,100 in total contributions during the reporting period. It also shows that she made \$2,106.16 in expenditures during the reporting period. It is not evident from the face of the report whether any of the contributions and expenditures were in connection with a golf tournament or a barbeque.

4. The respondent submitted a sworn response to the complaint. In regard to the golf tournament, she stated that each golfer paid \$65 to participate in the event and that for each golfer she paid \$43.50 to the golf facility and \$5.50 for lunch. She states, "There was no contribution in excess of \$50."
5. There is no payment to a golf center listed on the respondent's January 2003 semiannual report.
6. In regard to the barbeque, the respondent states in her sworn response that a contributor donated the facility used for the barbecue and that the value of the contribution was \$200. She states that the same contributor gave her a \$500 contribution and that she reported a \$700 contribution from the contributor on her January 2003 semiannual report. Her report shows a \$700 contribution from that contributor. The report does not indicate that \$200 of the \$700 contribution was an in-kind contribution, nor does it provide a description of the in-kind contribution.

IV. Findings and Conclusions of Law

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

1. A report filed under title 15 of the Election Code must include the full name and address of a person making a contribution exceeding \$50 and the date and amount of the contribution. Elec. Code § 254.031(a)(1).
2. Apparently the respondent believed that the amount of the contribution from each golfer who participated in her fundraiser was determined by subtracting any expenses from the amount paid. The amount of a contribution, however, is not reduced by the value of any consideration received. Ethics Advisory Opinion No. 382 (1997).¹ Therefore the amount of the contribution from each golfer who participated in the tournament was the total amount paid by each golfer.
3. The respondent acknowledges that each golfer paid more than \$50 to participate in the fundraiser and that she did not itemize contributions in connection with the golf tournament. Therefore, there is credible evidence that the respondent violated section 254.031(a)(1) of the Election Code by failing to itemize contributions exceeding \$50.
4. A report filed under title 15 of the Election Code must include the full name and address of a person to whom an expenditure exceeding \$50 is made during the reporting period, and the date, amount, and purpose of the expenditure. Elec. Code § 254.031(a)(3).

¹That opinion concluded that a person makes a \$15 contribution if the person buys a \$15 ticket to a fundraiser at which the person receives \$7 worth of food.

5. The respondent swears that for each person who participated in the golf fundraiser, \$43 went to the golf center. Apparently more than one person paid to participate in the tournament, in which case the respondent would have been required to make a payment of more than \$50 to the golf center. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code by failing to itemize an expenditure exceeding \$50.
6. A report filed under title 15 of the Election Code must include a description of any in-kind contribution. Ethics Commission Rules § 20.219(11)(E).
7. The respondent acknowledges that she accepted the use of a facility for the barbeque as an in-kind contribution. Because the respondent did not describe that in-kind contribution on her January 2003 semiannual report, there is credible evidence that the respondent violated section 20.219(11)(E) of Ethics Commission Rules by failing to disclose a description of the in-kind contribution.

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 a report filed under title 15 of the Election Code must include the full name and address of a person making a contribution exceeding \$50 and the date and amount of the contribution and the full name and address of any person to whom an expenditure exceeding \$50 is made and the date, amount, and purpose of the expenditure. The respondent further acknowledges that a report filed under title 15 of the Election Code must include a description of any in-kind contribution. The respondent agrees to fully and strictly comply with these requirements of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent agrees that the commission will consider the respondent to have committed the violations described under Section IV, Paragraphs 3, 5, and 7 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

The commission imposes a civil penalty of \$100 against the respondent for the violations described under Section IV, Paragraph 3, 5, and 7.

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-230414;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing it and the \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than August 8, 2003; and
4. that the executive director shall promptly set SC-230414 for a preliminary review hearing if the respondent does not agree to the resolution of SC-230414 as proposed in this ORDER and AGREED RESOLUTION.

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

Bernetta Henville-Shannon, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director