

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SCOTT TOUPIN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2409140

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on September 8, 2005, to consider sworn complaint SC-2409140. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 254.031 of the Election Code, and sections 20.57(c) and 20.59 of the Ethics Commission Rules, a law and rules administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

1. The complaint alleges that certain expenditures were not itemized as required.
2. The complaint alleges that the respondent reported the credit card company as the payee instead of identifying the vendor who receives payment from the credit card company.
3. The complaint alleges that the respondent failed to report the expenditures in the proper reporting period.
4. The complaint also alleges that the political committee's political contributions were under-reported on the July 2003 semiannual report.

III. Facts Supported by Credible Evidence

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

1. During the relevant time in question the respondent was the campaign treasurer of a general-purpose political committee.

2. The expenditures at issue were reported on the committee's 30-day pre-election report due October 7, 2002, the January 2003 semiannual report, the July 2003 semiannual report, and the January 2004 semiannual report.
3. The reports disclose payments to a credit card company for expenditures that were made in a different reporting period than the one in which the credit card payment was disclosed.
4. The actual payees that were reflected by the credit card payment were not disclosed.
5. The expenditures at issue were not itemized and did not include detailed information about the payee, date, amount, or purpose of the expenditures.
6. All of the expenditures except a \$345.48 expenditure were made in connection with a campaign for elective office.
7. The evidence does not show that the political committee's political contributions were under-reported on the July 2003 semiannual report.

IV. Findings and Conclusions of Law

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

1. A campaign treasurer filing a campaign finance report is required to include 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. ELEC. CODE § 254.031(a)(3). A campaign treasurer is also required to include the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment. ELEC. CODE § 254.031(a)(4). A political expenditure means a campaign expenditure or an officeholder expenditure. ELEC. CODE § 251.001(10). A campaign expenditure means an expenditure by any person in connection with a campaign for an elective office or on a measure. ELEC. CODE § 251.001(7).
2. Prior to September 1, 2003, a political expenditure by credit card was required to be included in the report for the period during which the charge was made, not in the report for the period during which the statement from the credit card company was received. Ethics Commission Rules § 20.57(c). A report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. Ethics Commission Rules § 20.59.
3. All of the expenditures except the \$345.48 expenditure are campaign expenditures because they are expenditures made in connection with a campaign for an elective office. Therefore, the expenditures that exceeded \$50 to the same payee during the reporting period were

- required to be reported in compliance with section 254.031(a)(3) of the Election Code. The respondent did not report the expenditures in compliance with that section.
4. The description of the purpose of the \$345.48 expenditure was "reimbursement of non-political expenses." Each expenditure making up the total of \$345.48 was required to be reported in compliance with section 254.031(a)(4) of the Election Code regardless of the amount. The respondent did not report the expenditures in compliance with that section.
 5. Because the respondent did not properly report the expenditures at issue, there is credible evidence that the respondent violated sections 254.031(a)(3) and (4) of the Election Code.
 6. The respondent failed to report the credit card expenditures in the proper reporting period. Therefore, there is credible evidence that the respondent violated section 20.57(c) of the Ethics Commission Rules.
 7. The respondent reported a credit card company as the payee for expenditures without identifying the vendors who received payment from the credit card company. Therefore, there is credible evidence that the respondent violated section 20.59 of the Ethics Commission Rules.
 8. A campaign treasurer is required to disclose the total amount of all political contributions accepted during the reporting period. ELEC. CODE § 254.031(a)(6). The complainant alleges that the respondent under-reported the PAC's income on the July 2003 semiannual report. The evidence does not support this allegation. Therefore, there is no evidence that the respondent violated section 254.031(a)(6) 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 report filed by the campaign treasurer of a political committee must include 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. The respondent acknowledges that each report filed by the campaign treasurer of a political committee must include the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and

address of the person to whom the payment is made, and the date and purpose of the payment. The respondent further acknowledges that credit card expenditures are required to be reported in the proper reporting period, and that the vendors who received payment from a credit card company are required to be identified. 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty for the violations described under Sections III and IV.

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-2409140.

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

Scott Toupin, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director