

TEXAS ETHICS COMMISSION

IN THE MATTER OF

VICKI GRAHAM,
TREASURER, TAXPAYERS FOR
RESPONSIBLE GOVERNMENT

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2707172

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2008, to consider sworn complaint SC-2707172. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 254.161 of the Election Code, a law 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

The complaint alleges that the respondent failed to timely file a special pre-election campaign finance report, failed to properly report political expenditures, and failed to notify candidates of political expenditures made on their behalf. In addition, the complaint alleges that the respondent made or authorized a political expenditure for a general-purpose political committee prior to the committee accepting political contributions from at least 10 persons.

III. Facts Supported by Credible Evidence

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

1. The respondent was the campaign treasurer for the Taxpayers for Responsible Government.
2. The complaint arises from the May 13, 2006, Helotes city council election.
3. Taxpayers for Responsible Government (TRG), a general-purpose committee, filed a campaign treasurer appointment on February 13, 2006, naming the respondent as the committee's campaign treasurer.

4. The complaint alleges that TRG made one \$6,300 expenditure to a consulting firm on June 29, 2006, for consulting for a candidate's campaign. The complaint alleges that TRG made the expenditure prior to the May 2006 election but did not report the expenditure until after the election.
5. The evidence indicates that the respondent did not have knowledge of the transaction between TRG and the consulting firm. The evidence indicates that a member of TRG made the expenditure, but did not notify the respondent of the expenditure until well after the May 2006 election.
6. The respondent became aware of the expenditure on or about June 14, 2006, when the committee member who was involved in the transaction gave the respondent the information necessary to file the committee's report.
7. A supplement to the complaint alleges that TRG was organized as a general-purpose committee but acted as a specific-purpose committee because it only participated in a single election for the Helotes city council and was therefore required to file special pre-election reports as a specific-purpose committee.
8. The supplement to the complaint also alleges that the respondent made a political expenditure prior to accepting contributions from 10 persons and failed to provide notice of an expenditure to candidates.
9. The evidence indicates that during its existence TRG accepted seven contributions totaling \$6,300.
10. The evidence also indicates that TRG's only political expenditure throughout its existence was the \$6,300 paid to a consulting firm after the election and disclosed on TRG's final report.
11. The supplement to the complaint also alleges that the respondent failed to correctly report political expenditures made on behalf of a slate of candidates and failed to provide to the three candidates notice of a direct expenditure.
12. The respondent filed 30-day and 8-day pre-election campaign finance reports for TRG for the May 2006 election. The reports disclosed that the committee had no reportable activity.
13. The respondent filed a campaign finance report covering the period of May 4, 2006, through June 30, 2006, that was designated as a July semiannual and dissolution campaign finance report. The report discloses one political expenditure of \$6,300, to Election Support Services (ESS) on June 29, 2006, as a direct campaign expenditure for "Consulting for Ken Dempsey's campaign for Helotes City Council."

14. The report's cover sheet does not disclose that the political committee supported or opposed any candidate, measure or officeholder.
15. The evidence indicates that TRG paid for consulting services for a single candidate's campaign and that no other candidate received any services, consulting or otherwise, at TRG's expense.
16. The candidate who benefited from the TRG expenditure filed a correction affidavit with a corrected final report on March 12, 2008, stating that at the time he submitted a final report, on or about August 20, 2007, he was not aware of any expenditure made by TRG on behalf of his campaign. The candidate swears that he has since learned that TRG made a \$6,300 political expenditure on June 29, 2006, on behalf of his campaign to a consulting firm and that he did not know about the expenditure until February 7, 2008, when he first reviewed TRG's final report.

IV. Findings and Conclusions of Law

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

1. In addition to other reports, a general-purpose committee shall file additional reports if the committee makes direct campaign expenditures supporting or opposing either a single candidate that in the aggregate exceed \$1,000 or a group of candidates that in the aggregate exceed \$15,000 during the period beginning the ninth day before election day and ending at 12 noon on the second day before election day. ELEC. CODE § 254.039.
2. For purposes of reporting, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure, unless the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill. ELEC. CODE § 254.035(a).
3. The evidence indicates that TRG entered into a contract with and received services from a consulting firm prior to the May 2006 election. However, the evidence shows that the respondent did not have knowledge of the expenditure until after the election. Therefore, there is credible evidence that the respondent did not violate section 254.039 of the Election Code.
4. The supplement to the complaint alleges that although TRG was organized as a general-purpose committee, it acted as a specific-purpose committee and, therefore, should have been required to file a special report near an election as a specific-purpose committee as required by section 254.038 of the Election Code.
5. That section does not apply to a candidate for local office or to a specific-purpose committee that supports a candidate for local office. ELEC. CODE § 254.038. Therefore, there is

- credible evidence that the respondent did not violate section 254.038 of the Election Code.
6. A general-purpose committee may not knowingly make or authorize a political contribution or political expenditure unless the committee has filed its campaign treasurer appointment not later than the 60th day before the date the contribution or expenditure is made and accepted political contributions from at least 10 persons. ELEC. CODE § 253.037.
 7. Ethics Advisory Opinion 172 provides that a general-purpose committee may not knowingly make or authorize political expenditures totaling more than \$500 unless the committee has filed its campaign treasurer appointment not later than the 60th day before the date the expenditure is made that causes the total expenditures to exceed \$500, and accepted political contributions from at least 10 persons. Ethics Advisory Opinion No 172 (1993).
 8. The evidence indicates that on June 29, 2006, TRG made one political expenditure totaling \$6,300.
 9. The evidence also indicates that up to that date TRG had accepted contributions from only seven persons.
 10. However, the evidence indicates that the respondent had no knowledge of nor did she authorize the political expenditure at issue. Therefore, there is credible evidence that the respondent did not violate section 253.037 of the Election Code.
 11. Each report must include the name of each candidate or officeholder who benefits from a direct campaign expenditure made during the reporting period by the person or committee required to file the report, and the office sought or held, excluding a direct campaign expenditure that is made by the principal political committee of a political party on behalf of a slate of two or more nominees of that party. ELEC. CODE § 254.031(7).
 12. If a general-purpose committee other than the principal political committee of a political party or a political committee established by a political party's county executive committee accepts political contributions or makes political expenditures for a candidate or officeholder, notice of that fact shall be given to the affected candidate or officeholder. ELEC. CODE § 254.161.
 13. An in-kind contribution means a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. The term does not include a direct campaign expenditure. Ethics Commission Rules § 20.1(8).
 14. A direct campaign expenditure is a campaign expenditure that does not constitute a contribution by the person making the expenditure. A campaign expenditure is not a contribution from the person making the expenditure if it is made without the prior consent

or approval of the candidate or officeholder on whose behalf the expenditure was made; or it is made in connection with a measure, but is not a political contribution to a political committee supporting or opposing the measure. *Id* § 20.1(5).

15. The evidence indicates that TRG made one political expenditure for consulting services for a single candidate's campaign. Therefore, the committee had no duty to notify any other candidate of the political expenditure.
16. The evidence indicates that the candidate who benefited from the expenditure was unaware of the expenditure until February 7, 2008. Thus, the \$6,300 expenditure by TRG was a direct campaign expenditure.
17. The evidence indicates that the respondent was aware of the direct campaign expenditure to benefit the candidate not later than the day that she filed the final report.
18. The evidence indicates that the respondent never notified the candidate of the direct campaign expenditure. Therefore, there is credible evidence of a violation of section 254.161 of the Election Code.
19. The complaint also alleges that the respondent failed to disclose that the direct campaign expenditure at issue also benefited other candidates, in violation of section 254.031 of the Election Code.
20. The evidence indicates that the direct campaign expenditure at issue benefited a single candidate and that the respondent disclosed that information in TRG's final report. Therefore, there is credible evidence that the respondent did not violate section 254.031 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 if a general-purpose committee other than the principal political committee of a political party or a political committee established by a political party's county executive committee accepts political contributions or makes political

expenditures for a candidate or officeholder, notice of that fact shall be given to the affected candidate or officeholder. The respondent agrees to comply with this requirement of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the commission has determined is 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 violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering 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-2707172.

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

Vicki Graham, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director