

TEXAS ETHICS COMMISSION

IN THE MATTER OF
DAVID HILL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2808312

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 4, 2008, to consider sworn complaint SC-2808312. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 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 resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to properly disclose political contributions and political expenditures in his January 2007, July 2007, and January 2008 semiannual campaign finance reports. The complaint also alleges that the respondent accepted political contributions from corporations.

III. Facts Supported by Credible Evidence

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

1. The respondent is the constable of Precinct 5 of Montgomery County and has been in office for twenty-six years.
2. The complaint specifically alleges that the respondent failed to disclose in his campaign finance reports the following information: the complete address of contributors and payees; the purpose of a political expenditure; the name of an individual making a political contribution; and the date a political contribution was accepted.
3. The respondent's January 2007 semiannual report did not disclose the complete address of the contributor in two instances, totaling \$700. In addition, the report did not disclose the purpose of a political expenditure made on July 6, 2006, to an individual in the amount of

- \$67.80. Lastly, the report did not disclose the complete address of the payee for twenty-five political expenditures, totaling approximately \$11,445.
4. The respondent's July 2007 semiannual report did not disclose the complete address of the payee for twenty political expenditures, totaling approximately \$2,991.
 5. The respondent's January 2008 semiannual report did not disclose the complete address of the contributor in fourteen instances, totaling \$5,315. The report also did not disclose the name of the individual who made a \$100 contribution to the respondent on August 17, 2007. In addition, the report did not disclose the date the respondent accepted a \$100 political contribution. Further, the report did not disclose the complete address of the payee for forty political expenditures, totaling approximately \$7,593.
 6. In four instances, the respondent failed to disclose the entire address. In all other instances where the address was incomplete, the respondent disclosed the city and state but failed to disclose the street address, street name, or zip code.
 7. The complaint alleges that the respondent accepted three corporate contributions, totaling \$1,100.
 8. The respondent's January 2007 semiannual report disclosed a political contribution of \$100 from Pinehurst Tire Auto on August 23, 2006.
 9. The respondent's July 2007 semiannual report disclosed a political contribution of \$500 from Montgomery County Fair Association on May 22, 2007.
 10. The respondent's January 2008 semiannual report disclosed a political contribution of \$500 from Texas Outdoor Power on July 30, 2007.
 11. In response to the sworn complaint, the respondent provided copies of the checks at issue and submitted an affidavit in which he swears that none of the three checks he received showed that they were from companies that were incorporated.
 12. According to the Texas Secretary of State's records, Montgomery County Fair Association, Inc. is a domestic nonprofit corporation with the following business address: PO Box 869, Conroe, Texas, 77305.
 13. In the respondent's affidavit, the respondent acknowledges that Montgomery County Fair Association is a corporation but swears that he did not know it was a corporation at the time he accepted the contribution. The respondent has returned the contribution to Montgomery County Fair Association after learning that it was a corporation.

14. According to the Texas Secretary of State's records, Pinehurst Auto Sales, Inc. is a domestic for-profit corporation with the following business address: 35323 State Hwy 249, Pinehurst, Texas, 77362. The Secretary of State's records list Danny W. Johns as the registered agent of the corporation. The Better Business Bureau (www.our.bbb.org) lists the name of the business owner of Pinehurst Auto & Tire as James Mantle and its business address as 35247 FM 249, Pinehurst, Texas, 77362.
15. The respondent asserts that Pinehurst Auto & Tire is not the same company as Pinehurst Auto Sales, Inc. The check provided by the respondent lists the following business name and address: Pinehurst Auto & Tire, 35247 FM 149, Pinehurst, Texas, 77362.
16. Although records of the Secretary of State show that Pinehurst Auto Sales, Inc. is incorporated, there is no record that Pinehurst Auto & Tire is an incorporated business. In addition, the address for Pinehurst Auto & Tire is different than that of Pinehurst Auto Sales, Inc.
17. According to the Texas Secretary of State's records, Texas Outdoor Power Sales, Inc. is a domestic for-profit corporation with the following business address: 1650 N Loop 336 E, Conroe, Texas, 77301. The Secretary of State's records list Lesley W. Glasscock as the registered agent of the corporation. The signature lines of the Texas Franchise Tax Public Information Reports that the corporation filed with the Secretary of State contain the name Wayne Glasscock and the title of president.
18. The respondent asserts that Texas Outdoor Power is not the same company as Texas Outdoor Power Sales, Inc. The check provided by the respondent lists the following business name and address: Texas Outdoor Power, 1650 N. Loop 336 East, Conroe, Texas, 77301. The check at issue appears to have been signed by Wayne Glasscock. The respondent has returned the contribution to Texas Outdoor Power after learning that it was a corporation.
19. In a second affidavit submitted by the respondent, the respondent states that he knows accepting a corporate check is a violation of section 253.003 of the Election Code but swears that he did not know the donations were from corporations because it did not state that on the check. In addition, the respondent swears that he has never knowingly accepted funds from a corporation. The available evidence does not show that the respondent knew that the checks were from corporations.

IV. Findings and Conclusions of Law

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

1. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the

- full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
2. Each campaign finance report 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. ELEC. CODE § 254.031(a)(3).
 3. The evidence shows that in the reports at issue, the respondent provided incomplete addresses of contributors and payees by failing to include the street address, street name, or zip code. In addition, the respondent failed to disclose a contributor's name in one instance, the date of a political contribution in one instance, and the purpose of a political expenditure in one instance. Therefore, there is credible evidence of violations of sections 254.031(a)(1) and 254.031(a)(3) of the Election Code.
 4. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003.
 5. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094.
 6. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
 7. In order to show a violation of section 253.003 of the Election Code, the evidence must show that the contributor was a corporation, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
 8. The evidence shows that the business name and address on the check from Pinehurst Auto & Tire do not match the corporate name and address in the Texas Secretary of State's records for Pinehurst Auto Sales, Inc. In addition, the name on the signature line of the check does not match the name of the registered agent on the Secretary of State's records or the name of the business owner on the Better Business Bureau's records. Thus, the evidence is inadequate to determine whether Pinehurst Auto & Tire is an entity that is prohibited from making political contributions to candidates or officeholders. Therefore, there is insufficient evidence that the respondent violated sections 253.003 and 253.094 of the Election Code with respect to the political contribution from Pinehurst Auto & Tire.
 9. The respondent acknowledges that the contribution from Montgomery County Fair Association was a corporate contribution, but he swears that he did not know that he was

receiving a contribution from a corporation when he accepted the check. The evidence is insufficient to refute his assertion. Therefore, there is insufficient evidence that the respondent violated sections 253.003 and 253.094 of the Election Code with respect to the political contribution from Montgomery County Fair Association.

10. The check from Texas Outdoor Power does not contain the full name Texas Outdoor Power Sales, Inc. However, the Texas Secretary of State's records show that the entity is incorporated, the address on the check is the same as that of the corporation, and the name on the signature line of the check matches the name of the president and registered agent of Texas Outdoor Power Sales, Inc. Thus, the evidence shows that the contribution from Texas Outdoor Power was a corporate contribution.
11. The respondent swears that he did not know he was receiving a contribution from a corporation when he accepted the check from Texas Outdoor Power. The evidence is insufficient to refute his assertion. Therefore, there is insufficient evidence that the respondent violated sections 253.003 and 253.094 of the Election Code with respect to the political contribution from Texas Outdoor Power.

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 campaign finance report is required to include the amount of political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contribution, and the dates of the contributions. The respondent also acknowledges that each 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. 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.

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-2808312.

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

David Hill, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director