

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JAMES O. METTS, SR.,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-2810358

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 11, 2010, to consider sworn complaint SC-2810358. A quorum of the commission was present. The commission determined that there is credible evidence of violations, including technical or *de minimis* violations, of section 254.031 of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent: 1) accepted 10 contributions from six corporations and two insurance companies, 2) failed to disclose the addresses of persons making contributions on his January and July 2008 semiannual campaign finance reports, 3) failed to disclose the addresses of persons receiving political expenditures on his January 2007, January 2008, and July 2008 semiannual campaign finance reports, 4) failed to disclose the total principal amount of all outstanding loans on his January 2007, July 2007, January 2008, and July 2008 semiannual campaign finance reports, 5) failed to disclose the total amount of all contributions accepted on his January 2007 semiannual campaign finance report, and 6) failed to properly disclose political expenditures on his July 2007 and July 2008 semiannual campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent holds the position of Montgomery County Justice of the Peace, Precinct Four.

Corporate Contributions

2. The respondent disclosed three of the alleged corporate contributions (totaling \$1,100) on his July 2007 semiannual report, including a political contribution of \$250 from Trout Tire, and two contributions totaling \$850 from EMC Towing.
3. The respondent disclosed seven of the alleged corporate and insurance company contributions (totaling \$3,190) on his July 2008 semiannual report, including contributions in the amount of \$250 from Porter Insurance Agency, \$250 from New Caney Insurance, \$2,000 from Mobil Mud Pump, \$40 from Wetzels Automotive, \$100 from Hofbrau Steaks, \$200 from MCLEA, and \$350 from EMC Towing.
4. According to Texas Secretary of State (SOS) records:
 - Trout Tire Center, Inc. is a domestic for-profit corporation with a listed business address of 25044 FM 1314, Porter, Texas 77365, Larry Trout is the registered agent. (The respondent's July 2007 semiannual report disclosed the address of the contributor, Trout Tire as 25044 FM 1314 Porter, Texas 77365.)
 - EMC Towing, Inc. was a domestic for-profit corporation during the period at issue, with a listed business address of PO Box 776 New Caney, TX 77357. (The respondent's July 2007 semiannual report disclosed the address of the contributor, EMC Towing, as P.O. Box 776 New Caney, Texas 77357.)
 - Porter Insurance Agency, Inc. is a domestic for-profit corporation with a listed business address of 100 North Fisk Avenue, Brownwood, TX 76801. (The respondent's July 2008 semiannual report disclosed the address of the contributor, Porter Insurance Agency, as P.O. Box 1710 Porter, Texas 77365.)
 - Mobile Mud Pump Repair I, LTD is a domestic limited partnership (LP) with a listed business address of 916 North Walker Road, Cleveland, TX 77328, disclosing a general partner, "Mobile Mud Pump Repair, Inc.," a domestic for-profit corporation with a listed business address of 916 North Walker Road, Cleveland, TX 77327. (The respondent's July 2008 semiannual report disclosed the address of the contributor, Mobil Mud Pump, as 916 N. Walker Rd. Cleveland, Texas 77328.)
 - Wetzel Automotive, LLC is a domestic limited liability company (LLC) with a listed business address of 24441 FM 2090 RD Splendora, TX 77372-3712. (The respondent's July 2008 semiannual report disclosed the address of the contributor, Wetzels Automotive, as 24441 FM 2090 Splendora, Texas 77372.)

- Hofbrau Steaks is an assumed name of Northside Equipment Company, Inc., a domestic for-profit corporation with a listed business address of 53 New Oak Trl, Kingwood, TX 773464043. A Texas Franchise Tax Public Information Report filed by the corporation in 2007 disclosed a corporate address of “24890 FM 1314 RD Porter, TX 77365.” (The address disclosed by the respondent for contributor Hofbrau Steaks on the respondent’s July 2008 semiannual report was 24890 FM 1314 Porter, Texas 77365.)
 - Montgomery County Law Enforcement Association (MCLEA) is a domestic non-profit corporation with a listed business address of PO Box 8793 The Woodlands, TX 77878793. (The respondent’s July 2008 semiannual report disclosed the address of the contributor, MCLEA as 14467 FM 1484 Conroe, Texas 77303. Commission records show that there is also a general-purpose committee with that name.)
5. The respondent submitted a sworn response to the complaint in which he stated that none of the contributions were from prohibited donors, but that each contribution was from an individual, a limited liability company, or an independent insurance agent. The respondent stated in his response and correction affidavit that the respondent and his campaign treasurer contacted the commission about the prohibitions under section 253.094 of the Election Code and were informed that contributions from an LLC were not prohibited under this section.
 6. Neither Porter Insurance Agency nor New Caney Insurance are listed as insurance companies by the Texas Department of Insurance (TDI). The respondent’s July 2008 semiannual report disclosed the address of the contributor, Porter Insurance Agency, as P. O. Box 1710 Porter, Texas 77365. Further, no records were found that a business named New Caney Insurance was ever registered as a corporation with the Texas Secretary of State. SOS records for Porter Insurance Agency, Inc. apply to a company in Brownwood, Texas.
 7. The website for Porter Insurance Agency shows that New Caney Insurance Agency is a branch of Porter Insurance and both are in Montgomery County with the same zip code as that disclosed for the contributors. The Porter Insurance Agency at issue in the sworn complaint does not appear to have a branch office in Brownwood, Texas (approximately 300 miles away).
 8. The respondent stated that the contributions from Porter Insurance Agency and New Caney Insurance Agency were from independent insurance agents. Copies of the contribution checks were provided by the respondent, both checks were signed by [the same individual] for “NEW CANEY INSURANCE AGENCY” and “PORTER INSURANCE AGENCY.”
 9. The respondent provided copies of the checks he received from the other contributors at issue. He stated that the contribution from Trout Tire was actually a contribution from the owner. The respondent provided a copy of the check, which was drawn on the joint account

of two individuals. The respondent stated that “Mobil Mud Pump” was an “LTD,” the copy of the check provided shows the account as “MOBILE MUD PUMP REPAIR I, LTD.”

10. The respondent stated that the contributions from EMC Towing were from the owner of that company. The respondent provided copies of the checks from EMC Towing, which were drawn on the account of “EMC TOWING.” In a correction affidavit filed with the correction to his July 2007 semiannual report, the respondent swore that there were two companies named “EMC Towing.” One of which was incorporated and one of which was not, and he accepted the contribution from the unincorporated company. The address of EMC Towing, Inc. as disclosed in both SOS records and the report at issue, are the same. However, an assumed name certificate filed with the Montgomery County Clerk disclosed that “EMC Towing” is also an assumed name for an unincorporated business, and is also at that address.
11. The respondent stated that Wetzels Automotive is an LLC, and the copy of the check provided by the respondent bears the account name “WETZEL’S AUTOMOTIVE, LLC,” and was endorsed by “R. Wetzel.” The respondent stated that Hofbrau Steaks was a “privately held company,” and that MCLEA was a nonprofit organization and a filer with the commission. The respondent provided a TEC filer number for MCLEA (Montgomery County Law Enforcement Association), a monthly filing general-purpose committee. However, MCLEA records filed with the commission do not disclose any expenditure to or support of the respondent during the period at issue.

Reporting Political Contributions and Expenditures

12. The respondent’s January 2007 semiannual report disclosed six political expenditures totaling approximately \$465, with incomplete addresses. Two of the expenditures disclosed the city, state and zip code, but did not include the payee’s complete street address. One disclosed the city and state and three disclosed no address information. Two of the expenditures total approximately \$40, and neither payee received more than \$50 during the period covered by the report.
13. The respondent’s January 2008 semiannual report disclosed two political expenditures with incomplete addresses totaling approximately \$70. Neither payee received more than \$50 during the reporting period covered by the report. Both of the expenditures disclosed the city, state and zip code, but did not include the payee’s complete street address. The report also disclosed one \$250 political contribution with no address.
14. The respondent’s July 2008 semiannual report disclosed six political expenditures totaling approximately \$1,910 with incomplete addresses. Each of these expenditures disclosed the city, state and zip code, but did not include the payee’s complete street address. The report also disclosed two political contributions totaling \$370, with incomplete addresses. The \$300 contribution disclosed the city, state and zip code, but did not include the contributor’s complete street address. The \$70 contribution disclosed no address information. The report also disclosed a single contribution in the amount of \$2,640 from contributor “Cash” with an

address disclosed “Legion Rd. New Caney, TX 77357” and an in-kind contribution description disclosed “tickets sold at fundraiser door.”

15. In his affidavit submitted in response to the complaint, the respondent swore that the cash contribution was from “individual \$10.00 ticket sales at the Fundraiser, from numerous individuals, not over \$50.00 total from an individual.”
16. The respondent filed corrections to the reports at issue, disclosing complete addresses for each of the payees and contributors. In his correction affidavit for the July 2008 semiannual report, the respondent swore that the \$2,640 total was “put in wrong place on report-clearly a clerical error.” The respondent removed the contribution from Schedule A and reported it on the cover sheet under “total political contributions of \$50 or less” (the original report left blank the space provided to disclose this amount.)

Disclosure of Contribution and Loan Totals

17. The respondent left blank the space provided to disclose the total principal amount of all outstanding loans as of the last day of the reporting period on his January 2007, July 2007, January 2008, and July 2008 semiannual reports.
18. The respondent filed an affidavit in which he swore that he had “incurred no loans in financing any part of (his) campaign.” The respondent filed corrections to each of the reports at issue that disclosed zeroes in the space provided to disclose the total principal amount of all outstanding loans as of the last day of the respective reporting periods.
19. The respondent’s July 2007 semiannual report left blank the space provided to disclose total political contributions. The report disclosed no itemized contributions, and contained no Schedule A.
20. The respondent swore that the space was left blank because there were no contributions during the filing period. The respondent filed a correction to his July 2007 semiannual report, which disclosed a zero in the space provided to disclose total political contributions.
21. There is no evidence that the respondent accepted political contributions or loans that were not disclosed on the reports at issue.

Alleged Improperly Disclosed Reimbursements

22. The respondent's July 2007 semiannual report disclosed four political expenditures totaling \$2,684.41 to an individual payee, disclosing the purposes as "Fundraiser Letters," "Purchases for fundraiser items," "Printing fundraiser tickets," and "Final payment for coordinating (sic) fundraiser."
23. The respondent's July 2008 semiannual report disclosed six political expenditures to individuals:
 - \$200 on 5/5/08, for "founders day supply"
 - \$100 on 5/13/08, for "Benefit tickets"
 - \$2,000 on 6/2/08, for "fundraiser"
 - \$1,200 on 6/17/08, for "Benefit"
 - \$200 on 6/20/08, for "Benefit"
 - \$500 on 1/15/08, for "New Caney High School Golf Tournament"
24. The total amount of expenditures at issue is approximately \$6,885.
25. The respondent's affidavit filed in response to the sworn complaint states that the expenditures to one individual were payments for services rendered to the campaign. The respondent also swore that the payments to the other individuals were donations towards benefits for a variety of charitable organizations.
26. The respondent filed corrections to his July 2007 and 2008 semiannual reports. The corrected July 2008 semiannual report explained that the payments to one individual were for "services rendered for printing and mailing fundraiser letters," "payment for expenses incurred from campaign," "payment for printing fundraiser tickets," and "salary for services rendered as fundraiser coordinator." The respondent also disclosed the full purpose for the charitable donations discussed above on his corrected July 2008 semiannual report.

IV. Findings and Conclusions of Law

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

Corporate Contributions

1. 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.
2. 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. 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.

3. 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.
4. The contribution from Trout Tire was actually a contribution from an individual.
5. SOS records indicate that a corporation EMC Towing, Inc., shares the same address as EMC Towing, an assumed name for an individual. The contributions from EMC Towing were from the owner of that company.
6. An insurance agency is not necessarily an insurance company for the purposes of the prohibition under section 253.094 of the Election Code. Neither Porter Insurance Agency, nor New Caney Insurance are incorporated entities or insurance companies.
7. The respondent stated that the contribution from MCLEA was from the association's PAC. However, that political action committee did not disclose an expenditure supporting the respondent during the period at issue.
8. A copy of the check provided by the respondent from Wetzel Automotive indicates that the company is an LLC. No other evidence refutes this, and SOS records indicate that it is not incorporated and has no corporate members.
9. Hofbrau Steaks is the assumed name of an incorporated entity that disclosed the same address on tax records filed with the state of Texas as was disclosed for the contributor's address by the respondent in his campaign finance report. The copy of the check provided by the respondent did not contain the words "inc" or "incorporated."
10. The respondent stated that "Mobil Mud Pump" was an "LTD." A copy of the check provided by the respondent indicated that the contribution was drawn on the account of Mobile Mud Pump, a limited partnership with a general partner, "Mobile Mud Pump Repair, Inc.," a for-profit corporation.
11. The evidence shows that the contributions from Trout Tire, Wetzel Automotive, Porter Insurance Agency, New Caney Insurance Agency, and EMC Towing were not corporate contributions. Therefore, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code with regard to these contributions.
12. In response to this complaint, the respondent stated that he was not aware that any of these contributors were incorporated entities when he accepted the contributions from the

companies, and the checks he received did not indicate that any of the contributors were incorporated.

13. The \$100 contribution from Hofbrau Steaks was a corporate contribution.
14. The \$2,000 contribution from Mobile Mud Pump LTD was prohibited because its general partner was incorporated, although the face of the check did not indicate that fact. The evidence is insufficient to show the source of the funds for the \$200 contribution from MCLEA.
15. The statutes at issue require the commission to show that the respondent knew that a contribution was prohibited at the time he accepted it. Regarding the contributions from Hofbrau Steaks, Mobil Mud Pump LTD, and MCLEA, the evidence is insufficient to show a violation of sections 253.003 and 253.094 of the Election Code.

Reporting Political Contributions and Expenditures

16. Each 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 by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
17. 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).
18. The respondent swore that none of the contributors to his fundraiser contributed more than \$50, and filed a correction to the report at issue. The evidence is insufficient to show that any contributor exceeded the \$50 threshold. Therefore, as to the \$2,640 contribution there is insufficient evidence of a violation of section 254.031(a)(1) of the Election Code.
19. A \$300 contribution disclosed the contributor's city, state and zip code, but not a complete street address. Therefore, as to this contribution, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(1) of the Election Code.
20. Two political contributions totaling \$320 disclosed no address information. Therefore, as to these contributions, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code.

21. The respondent disclosed 14 expenditures with incomplete address information. Of these, four of the expenditures at issue were not required to be detailed because the payee did not receive over \$50 during the reporting period covered by the report.
22. Of the remaining expenditures, approximately \$1,840 of the expenditures disclosed partial addresses that included at least the city and state of the payees. Therefore, as to these expenditures, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(3) of the Election Code.
23. The remaining two expenditures, totaling \$200, were to vendors who received over \$50 during the reporting period covered by the report on which they were disclosed, and disclosed no address information. Therefore, as to these expenditures, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.

Disclosure of Contribution and Loan Totals

24. Each campaign finance report must include, in pertinent part, the total amount of all political contributions accepted during the reporting period. ELEC. CODE § 254.031(a)(6).
25. Each campaign finance report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
26. The evidence indicates that the respondent filed corrections to the reports at issue to disclose \$0 in total political contributions, and \$0 total principal amount of all outstanding loans as of the last day of the reporting periods at issue. At the time the original reports were filed, the respondent did not include this information. However, there is no evidence that the respondent accepted any contributions during the period covered by the January 2007 semiannual report, and there is no evidence that the respondent accepted any loans that required disclosure during the other relevant periods at issue. Therefore, there is credible evidence of technical or *de minimis* violations of sections 254.031(a)(2) and 254.031(a)(6) of the Election Code.

Alleged Improperly Disclosed Reimbursements

27. 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).
28. A person who accepts a political contribution as a candidate or as an officeholder may not convert the contribution to a personal use. ELEC. CODE § 253.035.

29. A person may use political contributions to make charitable contributions. Ethics Advisory Opinion No. 149 (1993).
30. The political expenditures at issue were correct as originally reported, reflecting the ultimate payee of the political expenditures. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

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 a campaign finance report must include, for all 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. The respondent also acknowledges that a campaign finance report must include, for all loans that are made during the reporting period and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. The respondent also acknowledges that a campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. The respondent also acknowledges that a campaign finance report must include the total amount of all political contributions accepted during the reporting period. 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 \$100 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-2810358.

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

James O. Metts, Sr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director