

TEXAS ETHICS COMMISSION

IN THE MATTER OF
R. GARY MONTGOMERY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-290351

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 12, 2010, to consider sworn complaint SC-290351. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(8) and 254.121(4) of the Election Code, laws 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, as the campaign treasurer of the specific-purpose political committee Citizens for Lone Star College (CLSC) (formerly Citizens in Support of College District Expansion), failed to properly disclose political contributions and political expenditures, failed to include the name of each candidate supported or opposed by the committee, failed to include the name of each officeholder assisted by the committee, and accepted political contributions from corporations or labor organizations.

III. Facts Supported by Credible Evidence

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

1. The respondent is the campaign treasurer of the specific-purpose political committee CLSC. The respondent was appointed the committee's campaign treasurer in December 1996.
2. There are four campaign finance reports at issue. Two are the 30-day and 8-day pre-election reports for a May 10, 2008, election. The respondent first filed a paper report for each of these reports and then filed the reports electronically. The other reports at issue are the July 2008 semiannual report and the dissolution report filed on December 12, 2008.

Disclosure of Political Contributions

3. Regarding the 8-day pre-election report, the complaint alleged that the respondent failed to properly disclose political contributions. The respondent initially filed the report on paper and then filed the report electronically by the due date. The complaint alleged that the respondent reported different totals on the two reports, failed to report a \$1,000 political contribution on the initial report, reported different contribution dates on the two reports, and failed to report two political contributions, one of \$10 and one of \$250, on the electronically filed report.
4. The respondent swore that any discrepancies between the two reports was “a scrivener’s error and unintentional.”

Disclosure of Political Expenditures

5. Regarding the July 2008 semiannual report, the complaint alleged that the respondent improperly reported a political expenditure made by an individual on behalf of the committee.
6. The committee’s July 2008 semiannual report disclosed on Schedule F (used for reporting political expenditures) a May 15, 2008, expenditure of \$1,101.74 to an individual for “poll work and volunteer.”
7. The respondent’s affidavit states, “The reimbursement expenses in the amount of \$1,101.74 paid to [the individual] on May 15, 2008 were tendered for [the individual’s] work on the bond election.”

Disclosure of Total Political Contributions Maintained

8. Regarding the committee’s 30-day and 8-day pre-election reports for the May 2008 election, as well as the July 2008 semiannual report and dissolution report filed in December 2008, the complaint alleged that the total political contributions maintained amounts were not properly disclosed. The complaint alleged that each report was incorrect as follows:

30-day pre-election report:	disclosed - \$14,100; alleged correct amount - \$17,263.53;
8-day pre-election report:	disclosed - \$93,210; alleged correct amount - \$55,507.30;
July 2008 semiannual report:	disclosed - \$106,780; alleged correct amount - \$11,722.23;
Dissolution report:	disclosed - \$0; alleged correct amount \$267.50.

9. The respondent's affidavit stated that the report disclosed the correct amounts for each reporting period, but acknowledged that the cumulative amounts (total contributions maintained) should have been disclosed as follows:

30-day pre-election report: \$17,263.53 (originally under reported by \$3,163.53);
8-day pre-election report: \$55,637.30 (originally over reported by \$37,572.70);
July 2008 semiannual report: \$11,852.23 (originally over reported by \$94,927.77);
Dissolution report: no specific statement regarding this report, but evidence indicates there was a discrepancy of approximately \$270.

10. The respondent filed corrected reports disclosing total contributions maintained amounts as follows:

30-day pre-election report: \$17,263.53;
8-day pre-election report: \$55,507.30;
July 2008 semiannual report: \$11,722.23;
Dissolution report: \$ 267.50.

Disclosure of Candidate or Measure Supported or Opposed and Officeholder Assisted

11. Regarding the 30-day and 8-day pre-election reports, July 2008 semiannual report, and dissolution report, the complaint alleged that the respondent failed to disclose the name of each candidate supported or opposed and the name of each officeholder assisted.
12. The committee's 30-day pre-election report for the May 10, 2008, election, does not disclose that the committee made any political expenditures, but discloses \$14,100 in political contributions. The section of the report used to disclose candidates, officeholders, and measures supported or opposed was left blank.
13. The committee's 8-day pre-election report for the May 10, 2008, election, disclosed on Schedule F three political expenditures to Campaign Strategies Inc. One was for "Consulting Fee" in the amount of \$10,000, one was for "mail out" in the amount of \$24,750, and one was for "Printing – yard signs" in the amount of \$5,986.23. Total political expenditures were \$40,736.23. The section of the report used to disclose candidates, officeholders, and measures supported or opposed was left blank.
14. The committee's July 2008 semiannual report disclosed on Schedule F eight political expenditures totaling \$53,319.13 to Campaign Strategies Inc. The purposes were for, "Employee Mailing," "Yard sign delivery & distribution," "Consulting Fee," "Mail out," "GOTV Robo Calls," "E-Day Push Cards," "T-Shirts," and "Newspaper ads." There was

also the expenditure addressed previously to the individual for “poll work and volunteer” in the amount of \$1,101.74 and an expenditure to Staff Solve in the amount of \$3,184.20 for “poll workers.” Total political expenditures were \$57,605.07. The section of the report used to disclose candidates, officeholders, and measures supported or opposed was left blank.

15. The committee’s dissolution report disclosed on Schedule F two expenditures, one to Lone Star College Foundation in the amount of \$10,954.73 for “donation to the Lone Star College” and one to the Texas Ethics Commission in the amount of \$500 for “late filing penalty.” The section of the report used to disclose candidates, officeholders, and measures supported or opposed was left blank.
16. The detailed disclosures for the expenditures on the reports do not indicate that the committee supported or opposed a candidate or assisted an officeholder or state that an expenditure was a direct expenditure to benefit a candidate or officeholder. The detailed disclosures indicate that a number of campaign expenditures were made but do not describe any measure supported or opposed. Further, the cover sheets on the reports do not disclose that the committee had a purpose of supporting or opposing a candidate or assisting an officeholder, or supporting or opposing any measures.
17. The respondent swore that, “Citizens for LSC has not supported or opposed candidates. Citizens for LSC has not assisted officeholders with financial contributions. Citizens for LSC exists exclusively for the purpose of supporting measures that benefit Lone Star College System and opposing measures that would harm the Lone Star College System.”

Acceptance of Corporate or Labor Organization Contributions

18. The complaint alleged that the respondent accepted 41 political contributions from corporations and/or labor organizations as disclosed on the committee’s 30-day and 8-day pre-election reports, and July 2008 semiannual report.
19. The committee’s 8-day pre-election report for a November 5, 2002, election, disclosed a political expenditure of \$250 to a senate candidate on October 4, 2002. The entry stated, “Campaign Donation” in the purpose space. The report also disclosed the receipt of a political contribution of \$2,546.85 from an individual with an entry that stated it was intended to be used for a candidate’s campaign. The respondent was the campaign treasurer of the committee during the time at issue but that he did not sign the report at issue. The respondent’s attorney stated that neither the respondent nor anybody at the Lone Star College has been able to locate any records for the pertinent time period and that the respondent is unable to provide any explanation or details relating to the campaign expenditure and campaign contribution.

20. The reports at issue disclose the acceptance of political contributions from corporations.
21. The respondent swore that, "Citizens for LSC, as a committee that supports or opposes measures exclusively, may accept contributions from corporations and/or labor unions."

IV. Findings and Conclusions of Law

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

Disclosure of Political Contributions

1. 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).
2. Each report must include the total amount or a specific listing of the political contributions of \$50 or less accepted during the reporting period. ELEC. CODE § 254.031(a)(5).
3. Each report must include the total amount of all political contributions accepted during the reporting period. ELEC. CODE § 254.031(a)(6).
4. The respondent was required to file reports electronically. The 8-day pre-election report was initially filed on paper but subsequently filed electronically before the deadline. Although there are some differences between the two reports, the complaint did not provide any evidence to show that the report filed electronically was incorrect.
5. There is insufficient evidence that the respondent violated sections 254.031(a)(1) and 254.031(a)(6) of the Election Code with respect to the May 2008 8-day pre-election report.

Disclosure of Political Expenditures

6. Each 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).
7. The July 2008 semiannual report does not disclose that an individual was being reimbursed for expenditures that she made on behalf of the committee. The respondent swore that the individual was being paid for her work on the bond election. There is no evidence that the individual was being reimbursed for expenditures that she made on behalf of the committee. There is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code by failing to properly disclose the \$1,101.74 expenditure at issue.

Disclosure of Total Political Contributions Maintained

8. Each report must include as of the last day of a reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited. ELEC. CODE § 254.031(a)(8).
9. As to the total contributions maintained amounts, the respondent under reported the amount on the 30-day pre-election report by \$3,163.53, over reported the amount on the 8-day pre-election report by \$37,572.70, over reported the amount on the July 2008 semiannual report by \$95,057.77, and under reported the amount on the dissolution report by approximately \$270. Therefore, there is credible evidence that the respondent violated section 254.031(8) of the Election Code.

Disclosure of Candidate or Measure Supported or Opposed and Officeholder Assisted

10. Each report by a campaign treasurer of a specific-purpose committee must include the name of each candidate and each measure supported or opposed by the committee, indicating for each whether the committee supports or opposes; and the name of each officeholder assisted by the committee. ELEC. CODE § 254.121(4) and (5).
11. The respondent swore that the committee does not support or oppose candidates or assist officeholders and that the committee exists exclusively for the purpose of supporting measures that benefit Lone Star College System and opposing measures that would harm the Lone Star College System. The reports at issue left blank the space to disclose measures supported or opposed. The reports disclose numerous campaign expenditures. The committee reports do not disclose the measures supported or opposed. Therefore, there is credible evidence that the respondent violated section 254.121(4) of the Election Code.

Acceptance of Corporate or Labor Organization Contributions

12. 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(b).
13. A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094.
14. A corporation or labor organization may make campaign contributions from its own property in connection with an election on a measure only to a political committee for supporting or opposing measures exclusively. ELEC. CODE § 253.096.

15. The evidence indicated that the committee accepted a \$2,546.85 political contribution on July 25, 2002, to be used for a candidate's campaign and that the committee made a political expenditure of \$250 on October 4, 2002, as a campaign contribution to a candidate.
16. Although the respondent swore that the committee existed exclusively for the purpose of supporting or opposing measures, the committee accepted a political contribution for a candidate's campaign and made a political expenditure for a campaign contribution to a candidate. The report that disclosed the campaign contribution and expenditure was not signed by the respondent. The respondent swore that the exclusive purpose of the committee was to support or oppose measures. There is insufficient evidence to show that the respondent violated sections 253.003(b) and 253.094 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 must include as of the last day of a reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited. The respondent also acknowledges that each report by a campaign treasurer of a specific-purpose committee must include the name of each measure supported or opposed by the committee, indicating for each whether the committee supports or opposes the measure. 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 \$1,000 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-290351.

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

R. Gary Montgomery, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director