

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MICHAEL PHILLIPS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2908191

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 11, 2010, to consider sworn complaint SC-2908191. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(3), 254.031(a)(6) and 254.151(6) of the Election Code and section 20.62 of the Ethics Commission Rules, 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: 1) failed to properly disclose the total amounts of political contributions and political expenditures, 2) failed to properly disclose the total amount of political contributions maintained, 3) failed to properly disclose the principal occupation of a political contributor, 4) failed to properly disclose political expenditures, and 5) accepted an unlawful political contribution from a labor organization.

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 of the Montgomery County Democratic Executive Committee (“the committee”), a general-purpose committee, from June 12, 2006, to May 6, 2008.
2. The allegations relate to the committee’s January 2008 semiannual campaign finance report and a 10th day after termination campaign finance report filed on May 2, 2008, by the respondent.
3. To date, the respondent has filed no corrections to the reports at issue.

Total Political Contributions

4. The complaint alleged that the respondent incorrectly disclosed the amount of political contributions in the termination report. The report disclosed the amount of total political contributions as \$11,447.19, but the complaint alleged that the amount should have been \$8,514.69. The complaint included no specific facts to indicate the basis for the allegation or the manner in which the amount of \$8,514.69 was determined. The total amount of political contributions disclosed on Schedule A was \$8,514.69. When that amount is added to \$2,932.50, which was the total amount of unitemized political contributions of \$100 or less, the total is the amount disclosed by the respondent, \$11,447.19.
5. In response to the allegation, the respondent swore that he “depended on the reporting software to generate these totals from the contributions I entered.”

Total Political Expenditures

6. The complaint alleged that the respondent incorrectly disclosed the total amount of political expenditures in the reports at issue. The January 2008 semiannual report and the termination report disclosed the total amount of political expenditures, respectively, as \$250 and \$0, but the complaint alleged that the amounts should have been \$4,614.87 and \$18,881.63. The complaint included a copy of Schedule I pages from the January 2008 semiannual report, which disclosed approximately \$4,360 in nonpolitical expenditures, and a copy of Schedule I pages from the termination report, which disclosed approximately \$18,880 in nonpolitical expenditures. The expenditures were disclosed for numerous purposes, including:
 - Approximately \$800 to AT&T for “Phone Bill”
 - Approximately \$270 to “gogoJane” for “Web Site Service Fees”
 - Approximately \$280 for a banner and newspaper ad
 - Approximately \$1,100 for office supplies
 - Approximately \$650 for training expenses, meeting refreshments, and speaker gifts
 - \$50 to the Montgomery County Democratic Party for “Funds to open Primary Checking Account”
 - \$1,885.63 for office rent
 - Approximately \$300 for stamps and postage
 - Approximately \$130 for refreshments
 - Approximately \$3,090 for printing services
 - Approximately \$2,700 for county convention supplies, convention supplies, and convention expenses
 - Approximately \$11,970 for a room rental fee and meeting rooms
 - \$36 for a post office box renewal

Total Political Contributions Maintained

7. The complaint alleged that the respondent failed to properly disclose the total amounts of political contributions maintained at the end of the reporting periods covered by the reports at issue. The complaint provided no specific evidence regarding the allegations other than alleging that the amount disclosed in the January 2008 semiannual report should have been \$3,013.47 instead of \$2,939.14 and that the amount disclosed in the termination report should have been \$6,818.71 instead of \$2,222.52, which the complainant appeared to have calculated according to a formula.
8. In response to the allegations, the respondent swore:

I depended on the reporting software to generate these totals from the contributions I entered. Contribution balance shown is the bank account balance as of the closing date of each report.

Principal Occupation of a Political Contributor

9. The complaint alleged that the respondent failed to disclose the principal occupation of a contributor in the January 2008 semiannual report, which included a political contribution of \$300 from an individual and stated that the principal occupation or job title of the contributor was "Self employed." The respondent did not respond to the allegation in his response to the complaint.

Payees, Dates, and Amounts of Political Expenditures

10. The complaint alleged that the respondent failed to disclose the payees, dates, and amounts related to political expenditures that were disclosed as nonpolitical reimbursements. The complaint included lists of expenditures totaling approximately \$5,040 that were disclosed in the reports. The following expenditures are at issue:
 - \$122.19 to Adrienne Cadik in The Woodlands, Texas, for, "Reimbursed for banner" on July 16, 2007.
 - \$161.37 to Lone Star Democratic Club in The Woodlands for, "Reimburse for shared expenses for newspaper ad" on October 16, 2007.
 - \$260.75 to Wendy Melton in The Woodlands for, "Reimburse for office supplies" on September 11, 2007.
 - \$8.65 to Wendy Melton for, "Reimburse for office supplies" on September 25, 2007.

- \$8.65 to Wendy Melton for, “Reimburse for office supplies” on October 9, 2007.
- \$217.14 to Wendy Melton for, “Reimburse for Training expenses and speaker gifts” on October 16, 2007.
- \$102.11 to Wendy Melton for, “Reimburse for meeting refreshments and speakers gift” on November 5, 2007.
- \$539.26 to Wendy Melton for, “Reimburse for office supplies” on December 11, 2007.
- \$1,885.63 to Montgomery County Democratic Party in The Woodlands for, “Transfer of Funds for Office Rent” on December 17, 2007.
- \$328.85 to Tom Vinson in Conroe, Texas, for, “Reimburse for training expenses” on October 9, 2007.
- \$64.21 to Adrienne Cadik for, “Reimburse for refreshments” on January 21, 2008.
- \$1,175.16 to Wendy Melton for, “Reimburse for convention expenses” on April 9, 2008.
- \$66.80 to Janet Perkins in The Woodlands for, “Reimburse for convention expenses” on April 9, 2008.
- \$102.58 to Adam White in The Woodlands for, “Reimburse for Convention expense” on April 9, 2008.

11. The respondent did not address the allegations in his response to the complaint.

Political Contribution from Labor Organization

12. The complaint alleged that the respondent accepted a political contribution from a corporation or labor organization and identified a \$1,000 political contribution on March 30, 2008, from “Plumbers Local Union #68” in Houston, Texas, that was disclosed in the termination report. The complaint included no additional evidence to support the allegation.

13. In response to the allegation, the respondent swore:

This contribution was accepted from Plumbers Local Union #68, a Political Action Committee registered with Texas Ethics Commission, account number is 00015670.

14. “Plumbers Local Union No. 68 Pac Fund” has filed reports with the commission as a general-purpose committee since July 1993 and disclosed a political expenditure of \$1,000 to “Montgomery County Democratic Party” in The Woodlands on March 28, 2008, in a runoff election report filed on March 31, 2008.

IV. Findings and Conclusions of Law

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

Total Political Contributions

1. The campaign treasurer of a general-purpose committee shall file a report not later than January 15. ELEC. CODE § 254.153(a), (c). In pertinent part, the report covers the period beginning July 1 and continuing through December 31. *Id.* § 254.153(c).
2. If the campaign treasurer of a general-purpose committee is terminated, the campaign treasurer shall file a termination report not later than the 10th day after the campaign treasurer appointment is terminated. *Id.* §§ 254.160, 254.127(d).
3. Each report must include the total amount of all political contributions accepted during the reporting period. *Id.* § 254.031(a)(6).
4. The complaint included no specific evidence to show that the total amount disclosed of political contributions disclosed in the termination report was incorrect. Based on the amounts disclosed, the political contributions total was correct, and there is no evidence that the respondent failed to properly disclose the amount of political contributions. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(6) of the Election Code.

Total Political Expenditures

5. A campaign finance report must include the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).
6. “Political expenditure” means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).

7. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7).
8. “Officeholder expenditure” means an expenditure made by any person to defray expenses that are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(9).
9. “Expenditure” means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
10. The purposes of the expenditures that were disclosed as nonpolitical expenditures indicate that the expenditures were made for the committee’s political purposes and were therefore required to be included in the amounts of total political expenditures in the reports, which the respondent failed to do. Therefore, there is credible evidence that the respondent violated section 254.031(a)(6) of the Election Code by incorrectly disclosing the total amounts of political expenditures in the reports.

Total Political Contributions Maintained

11. A campaign finance report must include, as of the last day of a reporting period for which the person is required to file a report, 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 as of the last day of the reporting period. *Id.* § 254.031(a)(8).
12. The total amount of political contributions maintained in one or more accounts includes balance on deposit in banks, savings and loan institutions and other depository institutions and the present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc. Ethics Commission Rules § 20.50(a).
13. The complaint included no evidence to support the allegations that the respondent failed to disclose the correct amounts of political contributions maintained other than calculations according to a formula. The respondent swore that each amount in the reports was the bank account balance as of the closing date of each report. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(8) of the Election Code.

Principal Occupation of Political Contributor

14. Each report by a campaign treasurer of a general-purpose committee must include the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period. ELEC. CODE § 254.151(6).
15. The complaint alleged that the respondent failed to disclose the principal occupation of an individual who contributed \$300 in a reporting period. The report disclosed the contributor's principal occupation as "Self employed," which did not disclose the contributor's principal occupation. Therefore, there is credible evidence that the respondent violated section 254.151(6) of the Election Code.

Payees, Dates, and Amounts of Political Expenditures

16. A 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. *Id.* § 254.031(a)(3).
17. Political expenditures made out of personal funds by a staff member of a political committee with the intent to seek reimbursement from the political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: (1) 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; and (2) included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. Except as provided by subsection (a) of this section, a political expenditure made out of personal funds by a staff member of a political committee with the intent to seek reimbursement from the political committee must be reported as follows: (1) the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the political committee; (2) the expenditure made by the staff member is reported as a political expenditure by the political committee; and (3) the reimbursement to the staff member to repay the loan is reported as a political expenditure by the political committee. Ethics Commission Rules § 20.62.
18. The complaint alleged that the respondent did not disclose the actual payee information, dates, or amounts for approximately \$5,040 in political expenditures because the reports identified the payees as the persons who were reimbursed, not the actual vendors who provided the goods or services to the committee. The purposes of the expenditures indicate that the expenditures were made for political purposes and all of the expenditures were made to reimburse persons over \$50 in a reporting period. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

Political Contribution from Labor Organization

19. 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(a).
20. “Labor organization” means an agency, committee, or any other organization in which employees participate that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. *Id.* § 251.001(18).
21. A person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253, Election Code. *Id.* § 253.003(b).
22. The evidence indicates that the respondent filed a campaign finance report that disclosed a \$1,000 political contribution from “Plumbers Local Union #68” and that the contribution was from a general-purpose committee, not a labor organization. Therefore, there is credible evidence that the respondent did not violate sections 253.003(b) or 253.094(a) 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 a campaign finance report by a campaign treasurer of a general-purpose committee must include the total amount of all political expenditures made during the reporting period, the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period, and 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 section 20.62 of the Ethics Commission Rules describes the proper method for disclosing reimbursements. 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 \$700 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-2908191.

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

Michael Phillips, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director