

# TEXAS ETHICS COMMISSION

|                                  |   |                         |
|----------------------------------|---|-------------------------|
| IN THE MATTER OF                 | § | BEFORE THE              |
|                                  | § |                         |
| TEXAS JOBS & OPPORTUNITY,        | § |                         |
| BUILD A SECURE FUTURE, INC. PAC, | § | TEXAS ETHICS COMMISSION |
|                                  | § |                         |
| RESPONDENT                       | § | SC-2910219              |

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on December 7, 2010, to consider sworn complaint SC-2910219. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 571.1242 and 571.1243 of the Government Code and section 12.83 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 made or authorized political contributions in the name of or on behalf of another without proper disclosure to the recipients.

### III. Facts Supported by Credible Evidence

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

1. The respondent is a political committee located in Austin, Texas.
2. The complaint alleged that the respondent made political contributions on behalf of a state representative without disclosing the source of the contributions to the recipients of the contributions. The allegations related to activity disclosed in the respondent's 30-day pre-election report filed in connection with a primary election held on March 4, 2008.
3. The respondent filed a campaign treasurer appointment as a general-purpose committee on December 30, 2005, with the name of "Texas Free Enterprise Fund." On December 28, 2007, the respondent changed its name to "Texas Jobs & Opportunity Build a Secure Future, Inc. PAC" and stated that its acronym was "Texas J.O.B.S. PAC." On April 28, 2008, the respondent changed its name to "Texas Builds Jobs & Opportunity for a Secure Future, Inc."

4. On December 31, 2007, articles of incorporation were filed with the Texas Secretary of State that stated that “Texas Builds Jobs & Opportunity for a Secure Future Political Action Committee, Inc.” was formed as a non-profit corporation in Austin, Texas. The articles stated:

The corporation is organized as a non-profit corporation for the following purpose or purposes: patriotic, civic, educational, social, or the conduct of a professional, commercial, or trade association.

The corporation incorporates under the Election Code, §253.091 and §253.092, is restricted as a political committee, for liability purposes only, the only principal purpose of which is accepting political contributions and making political expenditures.

5. The president of the corporation was appointed as the respondent’s campaign treasurer in 2005 and was the person who appointed a subsequent campaign treasurer in December 2007. The corporation’s address in the articles was identical to the respondent’s address in its campaign treasurer appointment in 2005 and campaign finance reports.
6. In its 30-day pre-election report for the March 4, 2008, election, the respondent disclosed that it accepted a political contribution of \$250,000 from a state representative on January 10, 2008. The respondent also disclosed an additional \$82,500 in political contributions from other sources, all of which were disclosed with a date on or after January 18, 2008. The representative’s July 2008 semiannual report disclosed a political expenditure of \$250,000 to “Texas Jobs PAC” on January 10, 2008, for the purpose of “Contribution.”
7. The respondent’s 30-day pre-election report also disclosed three \$50,000 political expenditures to three incumbent candidates for state representative in the March 4, 2008, primary election, each with a date of January 11, 2008. The respondent’s January 2008 semiannual report, which immediately preceded the 30-day pre-election report, disclosed \$0 as the total amount of political contributions maintained at the end of the reporting period. Each recipient of the \$50,000 contributions disclosed the respondent as the contributor of their contribution in their campaign finance reports.
8. The complaint alleged that, based upon the activity in the reports at issue, the respondent’s political contributions consisted only of the \$250,000 contribution from the state representative at the time the respondent made the \$150,000 in contributions to the three other state representative candidates. Specifically, the complaint alleged that the state representative was the actual source of the contributions, that the state representative used the respondent “as a conduit for his contributions” to the other three state representative candidates, and that the respondent made the contributions to the other three state representative candidates without disclosing the state representative as the source of the contributions.

9. The evidence is in conflict regarding the actions of the respondent with respect to the contributions.
10. The respondent did not submit a response to the complaint. On July 7, 2010, the commission sent a letter to the respondent's attorney that asked questions concerning the allegations. The commission sent an additional request to the respondent's attorney on September 2, 2010. The respondent has not responded to the questions.

#### **IV. Findings and Conclusions of Law**

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

1. A person may not knowingly make or authorize a political contribution in the name of or on behalf of another unless the person discloses in writing to the recipient the name and address of the person actually making the contribution in order for the recipient to make the proper disclosure. ELEC. CODE § 253.001(a).
2. A political contribution means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
3. A campaign contribution means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3).
4. A contribution means, in pertinent part, a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2).
5. There is insufficient evidence that the respondent made political contributions on behalf of another person in violation of section 253.001 of the Election Code.
6. If an alleged violation in a sworn complaint is a Category Two violation, the respondent must respond to the notice required by section 571.123(b) not later than the 25th business day after the date the respondent receives the notice. GOV'T CODE § 571.1242(b)(1). A respondent's failure to timely respond to a sworn complaint as required by subsection (a)(1) or (b)(1) is a Category One violation. *Id.* § 571.1242(c).
7. During a preliminary review, the commission staff may submit to the complainant or respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation. *Id.* § 571.1243.

8. A respondent must respond to written questions submitted to the respondent pursuant to section 571.1243 of the Government Code not later than 15 business days after the respondent receives the written questions. Ethics Commission Rules § 12.83(a).
9. On January 11, 2010, the commission sent a notice of the sworn complaint by certified mail, restricted delivery, to the respondent and addressed to the respondent's president. According to records of the United States Postal Service (USPS), the respondent's president received and signed for the notice on January 12, 2010. The notice informed the respondent that the alleged violations in the sworn complaint were category two violations and that a response was required not later than 25 business days from the date the notice was received and that failure to respond will constitute a separate violation for which a separate civil penalty may be assessed. The respondent was required to respond to the sworn complaint by February 18, 2010. The respondent has not submitted a written response. Therefore, there is credible evidence that the respondent violated section 571.1242(c) of the Government Code by failing to respond to the complaint.
10. On July 7, 2010, the commission sent written questions to the respondent's attorney by certified mail, restricted delivery, and separately by delivery confirmation. USPS records state that the questions were delivered on July 20, 2010. On September 2, 2010, the commission sent the questions to the respondent's attorney and USPS records state that the questions were delivered on September 3, 2010. Based on the delivery date of the questions, the respondent was required to respond to the questions by September 27, 2010. The respondent has not submitted a response. Therefore, there is credible evidence that the respondent violated section 571.1243 of the Government Code and section 12.83(a) 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 respondent must respond to a notice of a category two violation not later than the 25th business day after the date the respondent receives the notice and failure to respond to the notice within the time required is a separate category one violation. The respondent also acknowledges that a respondent must respond to written questions submitted to the respondent pursuant to section 571.1243 of the Government Code

not later than 15 business days after the respondent receives the written questions. 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 \$10,000 civil penalty. The respondent agrees that the Texas Ethics Commission, P. O. Box 12070, Austin, Texas, 78711, must receive from the respondent full payment of the \$10,000 civil penalty no later than October 19, 2011, and waives any right to a hearing related to this sworn complaint. The respondent also acknowledges that if the \$10,000 civil penalty is not received by October 19, 2011, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

### 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-2910219.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Texas Jobs & Opportunity Build a  
Secure Future, Inc. PAC, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director