

TEXAS ETHICS COMMISSION

IN THE MATTER OF

SHERYL COLE,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31007207

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-31007207. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.063 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) did not properly disclose political contributions and political expenditures, 2) failed to file a campaign finance report, and 3) 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 Austin City Council Member, Place 6.

Total Political Contributions Maintained

2. The complaint alleged that the respondent incorrectly reported the amount of total political contributions maintained on three campaign finance reports. The complaint did not provide specific evidence to support the allegations.

Political Contributions from Corporations or Labor Organizations

3. The complaint alleged that, based on disclosures in two campaign finance reports, the respondent accepted seven political contributions from corporations or labor organizations. The respondent denied that she accepted political contributions from corporations or labor organizations. Three of the contributions at issue did not come from a corporation or labor organization. For four contributions, the evidence was inconclusive with regard to the status of the contributor or the respondent's knowledge of the contributor's status.

Disclosure of Full Names of Persons Making Political Contributions and Receiving Political Expenditures

4. The complaint alleged that, based on disclosures in five campaign finance reports, the respondent failed to disclose the full name for 15 political contributions and three political expenditures. The following disclosures did not include a full name for the contributor or payee:

January 2009 Semiannual Report

- December 5, 2008, \$350, BMC PAC

30-day Pre-election Report, May 2009 Election

- March 12, 2009, \$350, AFSCME
- January 27, 2009, \$350, M. [_____]
- March 17, 2009, \$350, BOMA Austin PAC
- February 28, 2009, \$100, M.H. [_____]
- March 17, 2009, \$100, M.H. [_____]
- March 17, 2009, \$150, M.H. [_____]
- January 9, 2009, \$350, D. [_____]
- January 23, 2009, \$100, G.D. [_____]

January 2010 Semiannual Report

- August 23, 2009, \$100, CADW

Disclosure of Purposes of Political Expenditures

5. The complaint alleged that, based on disclosures in five campaign finance reports, the respondent failed to properly disclose the purposes of nine political expenditures. The respondent did not file corrected reports. However, the original descriptions adequately described the purposes of the expenditures.

Disclosure of Political Expenditures as Reimbursements

6. The complaint alleged that the respondent improperly disclosed 11 political expenditures as reimbursements on four campaign finance reports. Ten of the expenditures at issue disclosed the actual vendor as the payee. The respondent filed a corrected report to disclose the actual vendor payee of one political expenditure totaling \$63.76.

Filing of Semiannual Campaign Finance Report

7. The complaint alleged that the respondent failed to file the July 2008 semiannual report. As of March 10, 2011, the report was not filed with the Austin City Clerk's Office.

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. Each report must include as of the last day of the 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 as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
2. There is insufficient evidence of a violation of section 254.031(a)(8) of the Election Code.

Political Contributions from Corporations or Labor Organizations

3. 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.
4. 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.
5. 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.

6. For three of the political contributions at issue, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code. For four political contributions at issue, there is insufficient evidence of violations of sections 253.003 and 253.094 of the Election Code.

Disclosure of Full Names of Persons Making Political Contributions and Receiving Political Expenditures

7. 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 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).
8. 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. ELEC. CODE § 254.031(a)(3).
9. Of the 18 disclosures at issue, nine contributions totaling \$2,200, did not include the full name of the contributor and one expenditure totaling \$100, did not include the full name of the payee. Eight of the entries were corrected, and four entries remain uncorrected. There is credible evidence of violations of sections 254.031(a)(1) and 254.031(a)(3) of the Election Code. The remaining entries were correct or in substantial compliance. Therefore, there is credible evidence of no violation of sections 254.031(a)(1) and 254.031(a)(3) of the Election Code.

Disclosure of Purposes of Political Expenditures

10. 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. ELEC. CODE § 254.031(a)(3).
11. The original purpose descriptions were adequate. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.

Disclosure of Political Expenditures as Reimbursements

12. 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. ELEC. CODE § 254.031(a)(3).
13. Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the

officeholder, candidate, or 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: 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 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 above, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows: 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 officeholder, candidate, or political committee; the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee. Ethics Commission Rules § 20.62.

14. The respondent filed a corrected report to disclose the actual vendor payee of a political expenditure totaling \$63.76. At the time the original report was filed, the respondent failed to properly disclose this information. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules. For the remaining expenditures at issue, the proper payees were disclosed in the original reports. Therefore, there is credible evidence of no violations with respect to those expenditures.

Filing of Semiannual Campaign Finance Report

15. A candidate is required to file two reports each year. The first report must be filed by July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30. ELEC. CODE § 254.063(b). The filing of a final report relieves a person of the duty to file semiannual reports as a candidate, although the person may be required to file semiannual reports as an officeholder. ELEC. CODE §§ 254.063 and 254.093.
16. The respondent filed a campaign treasurer appointment with the Austin City Clerk's Office on November 14, 2005. The respondent was elected to the Austin City Council on May 13, 2006. There is no evidence that a final report was filed. As an officeholder with a campaign treasurer appointment on file, the respondent was required to file semiannual campaign finance reports. The respondent timely filed a January 2008 semiannual report. The respondent failed to file a July 2008 semiannual report. Therefore, there is credible evidence of a violation of section 254.063(b) 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 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 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. 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 the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules. The respondent also acknowledges that a candidate is required to file two reports for each year. The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through June 30. 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 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-31007207.

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

Sheryl Cole, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director