

TEXAS ETHICS COMMISSION

IN THE MATTER OF

BARBARA E. "BARBIE"
SCHARF-ZELDES,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31007235

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) held a preliminary review hearing on February 8, 2012, to consider sworn complaint SC-31007235. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 254.063 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) did not timely file a semiannual campaign finance report, 2) did not properly report political expenditures, and 3) accepted political contributions from a corporation.

III. Facts Supported by Credible Evidence

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

1. During the time relevant to this complaint, the respondent was a judicial candidate for Bexar County Probate Court No. 2 in the March 2010 primary election and the November 2010 general election.

Timely Filing of a Campaign Finance Report

2. The complaint alleged that the respondent did not timely file a July 2010 semiannual report. The report was due July 15, 2010.
3. The appropriate filing authority for a candidate for a county office is the county filing authority. In some counties, the county clerk is the county filing authority. In other counties

there is a county elections administrator, and in those counties the county elections administrator is the county filing authority for campaign finance documents.

4. On May 21, 2009, the respondent filed an *Appointment of a Campaign Treasurer by a Judicial Candidate* with the Bexar County Elections Administrator. The appointment indicated that the respondent sought the office of probate court judge. The respondent signed the document acknowledging that she was aware of the restrictions in title 15 of the Election Code on contributions from corporations and labor organizations.
5. On August 6, 2010, the respondent filed a July 2010 semiannual report with the Bexar County Elections Administrator, covering a period from January 1, 2010, through June 30, 2010. The report included two cover sheets, the first one file stamped by the Bexar County Elections Administrator on August 6, 2010, and the second one file stamped by the County Clerk of Bexar County on July 12, 2010. The report disclosed \$20,030 in total political contributions and \$20,895.30 in total political expenditures.
6. The respondent swore that the courier was directed to deliver the report to the Elections Department. The courier billed the respondent for a delivery to the City Clerk and the report bore a stamp showing it was received by the Bexar County Clerk on July 12, 2010. The respondent swore that the courier who delivered the report took it to the wrong address. The respondent provided a document from the courier showing that the report was addressed to the office of the municipal clerk and that it was delivered to that office on July 12, 2010. The document also showed that the respondent's office was notified of that delivery on July 13, 2010. As noted, the report bore a stamp showing that it was received by the Bexar County Clerk on July 12, 2010.

Reporting of Political Expenditures

7. The complaint asserted that the bulk of the respondent's expenditures were made to "GTO Advertising" and alleged that the process of giving "all the funds to one source who secretly pays" the campaign expenses thwarts the reporting requirements and review of a candidate's campaign spending. The complaint included copies of the relevant pages from the respondent's July 2009, January 2010, and July 2010 semiannual reports.
8. The respondent's July 2009 semiannual report itemized five political expenditures totaling approximately \$7,340. Two of those expenditures totaling \$7,130 were made to GTO Advertising for "Printing / Layout" and "Consulting." The remaining expenditures were for a post office mail box, a check order, and a petition signing party.
9. The respondent's January 2010 semiannual report itemized 29 political expenditures totaling approximately \$32,440. Eight of those expenditures totaling approximately \$25,220 were made to GTO Advertising for "Consulting," "Design and Printing," "Consulting, Banners, Mailings," "Printing," and "Consulting & Printing." Some of the other expenditures were for a website, T-shirts, sponsorships, advertising, a parade fee, and PayPal transaction fees.

10. The respondent's July 2010 semiannual report itemized 19 political expenditures totaling approximately \$20,900. Eight of those expenditures totaling approximately \$18,870 were made to GTO Advertising for "Consulting," "Snipes," and "Postage & Consulting." The remaining expenditures were for a table or booth at an event, videos, PayPal transaction fees, voter file system, and post office mail box.
11. In response to the allegations, the respondent swore that, "In each report I have filed, I have accounted for all expenses and in-kind contributions."
12. The evidence indicated that the respondent made the payments to GTO Advertising for comprehensive campaign services.

Contributions from a Corporation

13. The complaint alleged that the respondent accepted an unlawful political contribution from a corporation by holding a campaign fundraising event in one of the corporation's jewelry stores and accepting a percentage of all sales. The respondent swore that there were no sales, and that prior to the event, she asked about the store's legal status and was advised that it was not incorporated.

IV. Findings and Conclusions of Law

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

Timely Filing of a Campaign Finance Report

1. A candidate shall file two reports for each year. ELEC. CODE § 254.063(a). The first report shall be filed not later than July 15 and 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. *Id.* § 254.063(b).
2. Campaign finance reports must be filed with the authority with whom a campaign treasurer appointment by a candidate for the office held by the officeholder is required to be filed. ELEC. CODE § 254.097.
3. The respondent was a candidate for county office. The county filing authority for campaign finance documents in Bexar County is the county elections administrator. The due date for the July 2010 semiannual report was July 15, 2010. It appears that the report was filed with the county clerk on July 12, 2010. However, the county clerk was not the proper filing authority. The respondent filed her report with the county elections administrator on August 6, 2010, which is 22 days after the deadline. Therefore, there is credible evidence of a violation of section 254.063(b) of the Election Code.

Reporting of Political Expenditures

4. Each campaign finance report filed by a candidate 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).
5. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61(a).
6. A critical factor in determining whether the respondent sufficiently described the purpose of a political expenditure is the respondent's level of involvement with the expenditure. For instance, if the respondent directed a political consultant's activity by telling the consultant how to spend the funds, the respondent would have been required to disclose the ultimate recipient as the payee and describe the purpose of the expenditure in more detail than "campaign services/expenses." On the other hand, if the respondent gave money to the consultant knowing that the consultant would pay other service providers but did not exercise discretion over the details of how the consultant made the payments, then the respondent would comply with the law by reporting the payment to the consultant, and describing the purpose of the expenditure as being for consulting or campaign services would be sufficient.
7. The evidence is insufficient to show that the respondent exercised discretion over how the funds were spent. Therefore, there is insufficient evidence of a violation of section 254.031 of the Election Code and section 20.61 of the Ethics Commission Rules.

Contributions from a Corporation

8. 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).
9. 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. That subchapter does not authorize a corporation to make a political contribution to a candidate.
10. "Corporation" means a corporation that is organized under the Texas Business Corporation Act, the Texas Non-Profit 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. *Id.* § 253.091.
11. In order to show a violation of section 253.003(b) of the Election Code, the evidence must show that the contributor was a corporation, that at the time the respondent accepted the

- contribution she knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
12. “Contribution” means 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. The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a guarantee of a loan or extension of credit, including a loan described by this subdivision. ELEC. CODE § 251.001(2).
 13. “Political contribution” means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
 14. “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 or on a measure. *Id.* § 251.001(3).
 15. “In-kind contribution” means a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. Ethics Commission Rules § 20.1(8).
 16. The evidence did not show that the respondent was aware of the entity’s status at the time of the event. The jewelry store’s provision of a forum to meet and greet potential voters and advertising space constituted in-kind contributions. There is no evidence that the respondent received any proceeds from jewelry sales. The jewelry store is owned by a corporation. However, the evidence does not establish that the respondent was aware of the jewelry store’s legal status at the time that she accepted the contributions. Therefore, there is insufficient evidence of a violation of sections 253.003 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 a candidate is required to file two reports each year. The first report must be filed by July 15. The second report shall be filed not later than January 15. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the commission has determined is 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. No Sanction

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes no 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-31007235.

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

Barbara E. Scharf-Zeldes, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director