

TEXAS ETHICS COMMISSION

IN THE MATTER OF
PRESTON L. DODSON,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-31010324

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 14, 2011, to consider sworn complaint SC-31010324. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031 of the Election Code and section 20.61 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) accepted a contribution from a corporation; 2) did not properly report political contributions and political expenditures; and 3) did not timely file an 8-day pre-election campaign finance report.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful candidate for Tomball City Council, Position 5, in a special election held on August 14, 2010.

Political Contribution from Corporation

2. The complaint alleged that the respondent accepted a contribution from a corporation by using a convertible automobile that was provided by Tomball Ford, Inc., a domestic for-profit corporation that is registered with the Texas Secretary of State, during a parade.
3. On August 6, 2010, the Greater Tomball Area Chamber of Commerce, Inc. sponsored an annual event known as Tomball Night, which included a parade through the city of Tomball. The respondent was a participant in the parade and was seen riding in the

- Tomball Ford, Inc. convertible with campaign signs displayed on both sides of the vehicle.
4. An agreement was made between the respondent and Tomball Ford sometime between July 30, 2010, and August 5, 2010, for use of the vehicle. The evidence is unclear as to whether the respondent intended to pay for the use of the vehicle at the time the agreement was entered into.
 5. The respondent reported the transaction on Schedule F (used for political expenditures) of his January 2011 semiannual report and disclosed a \$100 political expenditure made to Tomball Ford, Inc. on August 6, 2010. The respondent provided a copy of the \$100 check, which was dated November 12, 2010, and which was made payable to Tomball Ford. The respondent also provided a copy of the invoice from Tomball Ford that was dated July 8, 2010, and showed a \$100 charge for "use of mustang for parade." The evidence is unclear on exactly which date the respondent received the invoice from Tomball Ford.

Total Political Contributions and Total Political Expenditures

6. The complaint alleged that the respondent failed to properly disclose total political contributions and total political expenditures in his 8-day pre-election report filed in connection with the August 14, 2010, special election. The respondent corrected the report as follows:

Total political contributions - \$6,882 in original report, corrected to \$2,922;
Total political expenditures - \$3,140.64 in original report, corrected to \$1,368.85.
7. In the correction affidavit, the respondent swore that he reported cumulative contributions and expenditures in the original 8-day pre-election report, and that the report was being revised to show only the amount of political contributions and political expenditures during the period covered by the 8-day pre-election report.
8. The respondent entered into an agreement with Tomball Ford sometime between July 30, 2010, and August 5, 2010, for use of a vehicle during the parade. However, the exact day on which the amount was readily determinable is unclear. If the agreed upon amount of \$100 was readily determinable prior to August 5, 2010, then the respondent would have been required to report the amount as a political expenditure in his 8-day pre-election report, which should have covered from July 6, 2010, through August 4, 2010. Alternatively, if the amount was readily determinable on August 5, 2010, then the respondent would have been required to report the amount as a political expenditure in his January 2011 semiannual report, which should have covered from August 5, 2010, through December 31, 2010.

Purpose of Expenditures

9. The complaint alleged that the respondent did not properly disclose the purpose of two political expenditures in the 8-day pre-election report. The two political expenditures at issue were disclosed on Schedule F of the original report as follows:
 - \$300.33 to Gianna Italian Kitchen, on July 20, 2010, under the category of “Event Expense” with no description
 - \$30 to Greater Tomball Area Chamber, on July 30, 2010, under the category of “Event Expense” with no description
10. On September 20, 2010, in response to the complaint, the respondent filed a second correction to the 8-day pre-election report. The two political expenditures at issue were disclosed on Schedule F of the corrected report as follows:
 - \$300.33 to Gianna Italian Kitchen, on July 20, 2010, under the category of “Event Expense” with a description of “Food/Beverage – fundraising”
 - \$30 to Greater Tomball Area Chamber, on July 30, 2010, under the category of “Event Expense” with a description of “Parade Entry Fee”

Payee’s Name

11. The complaint alleged that the respondent did not properly disclose the full name of a person to whom three political expenditures totaling approximately \$230 were made. The three political expenditures at issue, which were made to the United States Postal Service, were disclosed on Schedule F of the original report as expenditures made to the “USPS” for “postage.”

Timely Filing of Pre-election Report

12. The complaint alleged that the respondent did not timely file the 8-day pre-election report for the August 14, 2010, special election.
13. The respondent was a candidate for city council of Tomball in an August 14, 2010, special election. The respondent was opposed in the election and did not choose to follow a modified reporting schedule. Thus, the respondent was required to file the 8-day pre-election report by August 6, 2010. According to the report affidavit, the report was notarized by the Tomball city secretary on August 6, 2010. Although the report does not bear a date stamp on the cover sheet, credible evidence indicates that the report was notarized and filed with the Tomball city secretary on August 6, 2010.

IV. Findings and Conclusions of Law

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

Political Contribution from Corporation

1. 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).
2. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. *Id.* § 253.094(a).
3. 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. *Id.* § 253.091.
4. According to the respondent's January 2011 semiannual report, the respondent used \$100 of political funds to pay for the use of the vehicle. However, it is unclear whether the respondent intended to pay for the use of the vehicle at the time the agreement was entered into, or whether the use of the vehicle was intended as a political contribution. Therefore, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.

Total Political Contributions and Total Political Expenditures

5. Each 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. ELEC. CODE § 254.031(a)(3).
6. Each campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).
7. A political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. *Id.* § 254.035(a).
8. The totals were not correct when the respondent originally filed the report. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code with respect to the original 8-day pre-election report.
9. Regarding the \$100 political expenditure made to Tomball Ford, the respondent would have been required to report the amount in the 8-day pre-election report if the amount was readily determinable between July 30, 2010, and August 4, 2010. However, the exact date on which the amount was readily determinable is unclear. Since it is unclear on which report the respondent was required to disclose the transaction, there is

insufficient evidence of a violation of sections 254.031(a)(3) and 254.031(a)(6) of the Election Code with respect to that political expenditure.

Purpose of Expenditures

10. 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. ELEC. CODE § 254.031(a)(3).
11. 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. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure. *Id.* § 20.61(a)(2).
12. Regarding the \$300 political expenditure made to Gianna Italian Kitchen, the respondent was required to disclose the purpose of the expenditure because it exceeded \$50 during the reporting period. The disclosure of the expenditure at issue did not include a description. The category of “Event Expense” is not sufficiently specific because it is unclear whether the expenditure was for admission to the event, a donation, or some other purpose. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.
13. Regarding the \$30 political expenditure made to the Greater Tomball Area Chamber, the respondent was not required to disclose the purpose of the expenditure because it did not exceed \$50 during the reporting period. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.

Payee’s Name

14. 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 political expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
15. The acronym “USPS” is one that is commonly used to represent the name of the United States Postal Service. Therefore, there is credible evidence of no violations of section 254.031(a)(3) of the Election Code.

Timely Filing of Pre-election Report

16. For each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. *Id.* § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. *Id.* § 254.064(c).
17. The evidence indicated that the 8-day pre-election report was timely filed. Therefore, there is credible evidence of no violation of section 254.064(c) 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 total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. 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 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 \$100 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-31010324.

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

Preston L. Dodson, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director