

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
KIRK TINER,	§	
CAMPAIGN TREASURER,	§	
TEXAS UNITED AUTOMOBILE	§	TEXAS ETHICS COMMISSION
WORKERS CAP VOLUNTEER FUND	§	
COMMITTEE,	§	
	§	
RESPONDENT	§	SC-3110477

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) held a preliminary review hearing on January 31, 2013, on sworn complaint SC-3110477. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.151, and 254.154 of the Election Code, 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, as the campaign treasurer of a general-purpose committee: 1) did not include information on campaign finance reports; 2) did not identify each candidate or measure supported or opposed and each officeholder assisted by the committee during the reporting periods at issue; 3) did not include on campaign finance reports the principal occupation for individuals who contributed \$50 or more during a reporting period; and 4) did not timely file the committee's 30-day pre-election campaign finance report in connection with the November 2010 general election.

III. Facts Supported by Credible Evidence

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

1. During the time at issue, the respondent was the campaign treasurer of Texas United Automobile Workers CAP Volunteer Fund Committee, a general-purpose committee.

2. There are seven reports at issue: the July 2009, January 2010, July 2010, and January 2011 semiannual reports, the 8-day pre-election report for the March 2010 primary election, and the 30-day and 8-day pre-election reports for the November 2010 general election.

Identification of Candidates Supported or Opposed and Officeholders Assisted

3. The complaint alleged that the respondent did not identify each candidate supported or opposed and each officeholder assisted by the committee during the reporting period on the January 2010 and July 2010 semiannual reports, the 8-day pre-election report for the March 2010 primary election, and the 30-day and the 8-day pre-election reports for the November 2010 general election.
4. The reports at issue disclosed contributions to candidates totaling \$48,500. The 30-day pre-election report for the November 2010 general election also disclosed contributions to the Ellis County Democratic Party, the Johnson County Democratic Party, the Tarrant County Democratic Party, and the Texas Democratic Party totaling \$2,500. The reports did not disclose the names of the candidates supported or opposed by the committee, indicating whether the committee supported or opposed each listed candidate, in the committee activity section of the report. The respondent corrected the errors as to the candidates to which the committee contributed. The respondent corrected the 30-day pre-election report for the November 2010 general election to disclose the classification by party of officeholders assisted by the committee for contributions totaling \$2,500 to county and state Democratic Party entities.

Political Contributions, Political Expenditures, and Total Political Contributions Maintained

5. The complaint alleged that the respondent disclosed an incorrect amount for the total political contributions maintained as of the last day of the reporting period on each report at issue. The complaint also alleged that the respondent disclosed an incorrect amount for total political contributions on the July 2010 semiannual report.

July 2009 Semiannual Report

6. The respondent filed a corrected July 2009 semiannual report that changed a Schedule A contribution of \$2,500 to a Schedule F expenditure and corrected the total contributions and total expenditures accordingly. The corrected report also changed total political contributions maintained from \$0 to \$61,520.87.

January 2010 Semiannual Report

7. The respondent filed a corrected January 2010 semiannual report that changed total political contributions maintained from \$0 to \$51,020.87.

8-day Pre-election Report for the March 2010 Primary Election

8. The respondent filed a corrected 8-day pre-election report for the March 2010 primary election that changed Schedule A contributions totaling \$5,500 to Schedule F expenditures and corrected the total contributions and total expenditures accordingly. The corrected report also changed total political contributions maintained from \$0 to \$45,520.87.

July 2010 Semiannual Report

9. The respondent filed a corrected July 2009 semiannual report that changed the \$16,000 of activity disclosed as pledges from corporations or labor organizations to contributions made to candidates. The corrected report also changed total political contributions maintained from \$0 to \$29,520.87.

30-day Pre-election Report for the November 2010 General Election

10. The respondent filed a corrected 30-day pre-election report for the November 2010 general election that changed total political contributions maintained from \$0 to \$11,020.87.

8-day Pre-election Report for the November 2010 General Election

11. The respondent filed a corrected 8-day pre-election report for the November 2010 general election that changed total political contributions maintained from \$0 to \$10,520.87.

January 2011 Semiannual Report

12. The respondent filed a corrected January 2010 semiannual report that changed total political contributions maintained from \$0 to \$10,520.87.

Names and Occupations of Contributors

13. The complaint alleged that the respondent did not disclose the full names and principal occupations of contributors disclosed on the 8-day pre-election report for the March 2010 primary election and the July 2010 semiannual report.

8-day Pre-election Report for the March 2010 Primary Election

14. On the 8-day pre-election report for the March 2010 primary election the respondent disclosed that two individuals made contributions to the committee. The respondent's corrected report disclosed that the committee had not received contributions from those individuals but had made contributions to them.

July 2010 Semiannual Report

15. On the July 2010 semiannual report the respondent disclosed four names as corporations or labor organizations that pledged contributions to the committee. The respondent's corrected report disclosed that the committee had not received pledged contributions from four corporations or labor organizations by those names but had made contributions to four candidates. The last names of the candidates matched the names given as the corporations or labor organizations that pledged contributions to the committee.

Timely Filing of Report

16. The complaint alleged that the respondent did not timely file the 30-day pre-election report for the November 2010 general election. The report was due on October 4, 2010. The respondent filed the report on October 12, 2010. The commission imposed a \$500 civil penalty on the respondent through the administrative process. The respondent paid the civil penalty on December 15, 2010.

IV. Findings and Conclusions of Law

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

Identification of Candidates Supported or Opposed and Officeholders Assisted

1. Each report by a campaign treasurer of a general-purpose committee must include the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee.
2. The reports at issue disclosed contributions to candidates totaling \$48,500. The reports did not disclose the names of the candidates supported or opposed by the committee, indicating whether the committee supported or opposed each listed candidate, in the committee activity section of the report. The respondent corrected the errors as to the candidates to which the committee contributed. The respondent corrected the 30-day pre-election report for the November 2010 general election to disclose the classification by party of officeholders assisted by the committee for contributions totaling \$2,500 to county and state Democratic Party entities. Because information regarding the recipients of the contributions made by the committee were disclosed on Schedule F of the committee's reports, the omissions on the cover sheets of the reports did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of sections 254.151(4) and 254.151(5) of the Election Code.

Political Contributions, Political Expenditures, and Total Political Contributions Maintained

3. Each 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, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
4. Each report must include the amount of political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) 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. Each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
6. 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. ELEC. CODE § 254.031(a)(8).
7. 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).
8. Each report by the campaign treasurer of a general-purpose committee must include the identification of any contribution from a corporation or labor organization made and accepted under Subchapter D, Chapter 253. ELEC. CODE § 254.151(8).
9. The complaint alleged that the respondent disclosed an incorrect amount for contributions maintained on each of the reports at issue.

July 2009 Semiannual Report

10. Regarding the July 2009 semiannual report, the respondent filed a corrected report that changed a Schedule A contribution of \$2,500 to a Schedule F expenditure and corrected the total contributions and total expenditures accordingly. Therefore, there is credible evidence of violations of sections 254.031(a)(1), 254.031(a)(3), and 254.031(a)(6) of the Election Code. The corrected report also changed contributions maintained from \$0 to \$61,520.87.

Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.

January 2010 Semiannual Report

11. Regarding the January 2010 semiannual report, the respondent filed a corrected report that changed contributions maintained from \$0 to \$51,020.87. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.

8-day Pre-election Report for the March 2010 Primary Election

12. Regarding the 8-day pre-election report for the March 2010 primary election, the respondent filed a corrected report that changed Schedule A contributions totaling \$5,500 to Schedule F expenditures and corrected the total contributions and total expenditures accordingly. Therefore, there is credible evidence of violations of sections 254.031(a)(1), 254.031(a)(3), and 254.031(a)(6) of the Election Code. The corrected report also changed contributions maintained from \$0 to \$45,520.87. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.

July 2010 Semiannual Report

13. Regarding the July 2009 semiannual report, the respondent filed a corrected report that changed the \$16,000 of activity disclosed as pledges from corporations or labor organizations to contributions made to candidates. Therefore, there is credible evidence of violations of sections 254.031(a)(3) and 254.031(a)(6) of the Election Code. The corrected report also changed contributions maintained from \$0 to \$29,520.87. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.

30-day Pre-election Report for the November 2010 General Election

14. Regarding the 30-day pre-election report for the November 2010 general election, the respondent filed a corrected report that changed contributions maintained from \$0 to \$11,020.87. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.

8-day Pre-election Report for the November 2010 General Election

15. Regarding the 8-day pre-election report for the November 2010 general election, the respondent filed a corrected report that changed contributions maintained from \$0 to \$10,520.87. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.

January 2011 Semiannual Report

16. Regarding the January 2010 semiannual report, the respondent filed a corrected report that changed contributions maintained from \$0 to \$10,520.87. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.

Names and Occupations of Contributors

17. Each 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, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
18. 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).
19. Regarding the 8-day pre-election report for the March 2010 primary election, the respondent disclosed that two individuals made contributions to the committee. The respondent's corrected report disclosed that the committee had not received contributions from those individuals but had made contributions to them. Thus, the respondent was not required to disclose detailed contributor information. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code. Since the committee did not receive contributions from those two individuals the respondent was not required to disclose the principal occupation of those individuals. Therefore, there is credible evidence of no violation of section 254.151(6) of the Election Code.
20. Regarding the July 2010 semiannual report, the respondent disclosed four names as corporations or labor organizations that pledged contributions to the committee. The respondent's corrected report disclosed that the committee had not received pledged contributions from four corporations or labor organizations by those names but had made contributions to four candidates. The last names of the candidates matched the names given as the corporations or labor organizations that pledged contributions to the committee. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code. Since the committee did not receive contributions from those individuals, the respondent was not required to disclose the principal occupation of those individuals. Therefore, there is credible evidence of no violation of section 254.151(6) of the Election Code.

Timely Filing of Report

21. For each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports. 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. ELEC. CODE § 254.154.

22. The respondent filed the 30-day pre-election report for the November 2010 general election eight days late. Therefore, there is credible evidence of a violation of section 254.154 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: 1) each report by a campaign treasurer of a general-purpose committee must include the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates, and the name of each identified officeholder or classification by party of officeholders assisted by the committee; 2) each 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, the full name and address of the person making the contributions, and the dates of the contributions; 3) each report must include the amount of political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) 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; 4) each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; 5) 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; and 6) for each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports. 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. 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 nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the commission imposes a \$750 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-3110477.

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

Kirk Tiner, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director