

TEXAS ETHICS COMMISSION

IN THE MATTER OF

ASSOCIATION OF CONVENIENCE
STORE RETAILERS,

RESPONDENT

§
§
§
§
§
§

BEFORE THE

TEXAS ETHICS COMMISSION

SC-3130345

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 8, 2013, to consider sworn complaint SC-3130345. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of sections 253.003 and 253.094 of the Election Code and section 571.1242 of the Government 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. Allegation

The complaint alleged that the respondent used corporate funds to make a political contribution to a candidate.

III. Facts Supported by Credible Evidence

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

1. The respondent is a domestic non-profit corporation located in San Antonio, Texas.

Political Contribution from Corporation

2. The complaint alleged that the respondent made an unlawful political contribution to a candidate for San Antonio City Council. A candidate disclosed in a 30-day pre-election report for the May 14, 2011, uniform election, accepting a \$500 contribution from the respondent on March 23, 2011.

3. In response to the complaint, the respondent swore that the contribution was made unknowingly of the fact that corporations are prohibited from making political contributions. The respondent provided a copy of a check showing that the contribution was returned by the candidate.

Response to Notice of a Sworn Complaint

4. The commission sent a notice of the sworn complaint to the respondent by delivery confirmation on March 20, 2013. According to the United States Postal Service's record of the delivery, the notice of this complaint was delivered on March 21, 2013. The notice informed the respondent that the alleged violation in the sworn complaint was a Category Two violation, and that a response was required not later than 25 business days from the date the notice was received and that failure to respond constituted a separate violation for which a separate civil penalty may be assessed. Based on the delivery date of the notice, the respondent was required to respond to the sworn complaint by April 26, 2013. The commission received the response on August 2, 2013.

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.
2. 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.
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. ELEC. CODE § 253.091.
4. A 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. *Id.* § 251.001(2).
5. A political contribution means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
6. A campaign contribution means, in pertinent part, a contribution to a candidate that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3).

7. Credible evidence indicated that the political contribution at issue was made by the respondent, a prohibited corporation. Therefore, there is credible evidence of a violation of sections 253.003 and 253.094 of the Election Code.

Response to Notice of a Sworn Complaint

8. 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).
9. The commission received a written response to the sworn complaint on August 2, 2013, which was 98 days after the response deadline. Therefore, there is credible evidence that the respondent violated section 571.1242(c) of the Government Code by not timely responding to the complaint.

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 corporation may not make a political contribution to a candidate or officeholder. The respondent also acknowledges that a respondent must respond to a notice of a sworn complaint that contains a Category Two violation within 25 business days of receiving the notice of the sworn complaint. 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 \$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-3130345.

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

Association of Convenience Store Retailers,
Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director