

TEXAS ETHICS COMMISSION

IN THE MATTER OF
TODD M. SMITH,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-31404103

FINAL ORDER

I. Recitals

On October 14, 2016, the Texas Ethics Commission (Commission) held a preliminary review hearing to consider sworn complaint SC-31404103. After the completion of the preliminary review hearing, the Commission proposed a resolution to the respondent to resolve and settle the complaint, but the respondent did not agree to the proposed resolution. The Commission held a formal hearing to consider the complaint on February 16, 2017. A quorum of the Commission was present.

II. Findings of Fact

1. The respondent is Todd M. Smith, who was represented by counsel. The Commission mailed the notice of the formal hearing to the respondent's counsel on October 21, 2016, by overnight delivery and by e-mail. The respondent's counsel received the notice on October 24, 2016.
2. The Commission held the formal hearing on February 16, 2017, at 8:30 A.M. in Austin, Texas. The respondent did not appear at the formal hearing but was represented at the hearing by counsel.
3. The complaint alleged that the respondent did not include on his lobby registration covering calendar year 2013 the full names and addresses of seven individuals who used political contributions to compensate the respondent for services. The allegations were based on January 2014 semiannual campaign finance reports filed by seven candidates or officeholders. Each candidate or officeholder disclosed on Schedule F of their report one or more political expenditures to "Todd Smith & Associates" or "Todd Smith" for various expenses, including consulting expenses. The expenditures at issue total approximately \$48,825 and were made on or after September 1, 2013. Schedule F is a schedule on the campaign finance report that is required to be used to disclose political expenditures made from political contributions.
4. On March 12, 2013, the respondent filed with the Commission a registration as a lobbyist covering calendar year 2013.

5. The 2013 Texas Legislature adopted section 305.005(m) of the Government Code, which requires a registered lobbyist to disclose on their registration the full name and address of each person who compensates or reimburses the lobbyist from political contributions for services rendered by the lobbyist, including political consulting services. This requirement became effective on September 1, 2013, and applied to compensation or reimbursement received beginning on September 1, 2013.
6. On August 29, 2013, the Commission sent an e-mail notice to all registered lobbyists, including the respondent, informing them of the new law and its disclosure requirements.
7. Sworn statements from five of the individuals who made payments to the respondent also indicated that their payments were for services personally rendered by the respondent. The sworn statements were introduced into evidence.
8. In response to the complaint, the respondent submitted a general denial. The respondent offered no evidence at the formal hearing.
9. The respondent has not corrected his improper reports.
10. In the past, the respondent had failed to timely file 53 reports with the Commission, for which the Commission assessed \$14,600 in civil penalties.

III. Conclusions of Law

1. Disposition of this case is within the jurisdiction of the commission. Gov't Code § 571.061.
2. The respondent received legally sufficient notice of the hearing in this case. *Id.* §§ 571.032, 2001.051, 2001.052; 1 Tex. Admin. Code § 12.21.
3. A lobby registration form must include, in pertinent part, the full name and address of each person who compensates or reimburses the registrant for services, including political consulting services, rendered by the registrant from a political contribution as defined by Title 15, Election Code. Gov't Code § 305.005(m)(1).
4. Section 305.005(m) of the Government Code applies to compensation or reimbursement received by a registrant on or after September 1, 2013. Act of May 9, 2013, 83rd Leg., R.S., ch. 147 (H.B. 1422).
5. The payments at issue were made by seven individuals from political contributions to compensate or reimburse the respondent for his rendered services. The payments were made on or after September 1, 2013. The respondent did not disclose any of the seven individuals on his 2013 lobby registration form as compensating or reimbursing him from

political contributions for his services. Accordingly, the Commission has found a preponderance of credible evidence of seven violations of section 305.005(m) of the Government Code.

IV. Confidentiality

This final order entered by the Commission after the completion of a formal hearing on this complaint describes violations that the Commission has determined are neither technical nor *de minimis*. Accordingly, this final order is not confidential pursuant to Section 571.140 of the Government Code, and may be disclosed by members and staff of the Commission.

V. Sanction

The Commission imposes a \$5,000 civil penalty against the respondent. The Commission orders that the respondent pay the penalty within 30 days of the date of this order.

Date: _____

FOR THE COMMISSION

Chase Untermeyer
Chair
Texas Ethics Commission