

TEXAS ETHICS COMMISSION

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IN THE MATTER OF
MELISSA DUNGAN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3230349

RECEIVED
MAY 13 2024
Texas Ethics Commission

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on June 18, 2024, to consider sworn complaint SC-3230349. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Sections 254.031(a)(1), 254.031(a)(1-a), 254.031(a)(3), 254.031(a)(6), 254.031(a)(8), 254.061, and 254.063 of the Election Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleged that the respondent: 1) failed to disclose a political committee from which she received notice under Section 254.161 of the Election Code that the political committee made political expenditures for her, in violation of Section 254.061(3) of the Election Code; 2) failed to disclose in-kind contributions she accepted, in violation of Sections 254.031(a)(1) and 254.031(a)(6) of the Election Code; 3) failed to report political expenditures made and/or in-kind contributions accepted for campaign t-shirts and palm cards, in violation of Sections 254.031(a)(1) and/or 254.031(a)(3) and 254.031(a)(6) of the Election Code; 4) failed to properly report political contributor information on her January 2023 semiannual report, in violation of Sections 254.031(a)(1) and 254.031(a)(1-a) of the Election Code; 5) failed to properly report total political contributions received and total political expenditures made or authorized on her January 2023 semiannual report in violation of Sections 254.031(a)(6) and 254.031(a)(8) of the Election Code; and 6) failed to report the correct time period covered on her January 2023 semiannual report in violation of Section 254.063 of the Election Code.

III. Findings of Fact and Conclusions of Law

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

1. The respondent was a successful candidate for Conroe ISD Board of Trustees position 2 in the November 8, 2022 election.

Notice from Political Committee

2. The complaint alleged that the respondent did not include on her 8-day pre-election report notice received from a political committee under Section 254.161 of the Election Code.
3. The information submitted with the complaint showed that the general-purpose committee Texans for Educational Freedom (“PAC”) disclosed on their 8-day pre-election report, which was filed on October 31, 2022, and covered the period of time from July 1, 2022, through October 29, 2022, supporting the respondent under Section 14 of the campaign finance report form for general-purpose committees, labeled “Committee Activity.” The PAC’s 8-day pre-election report also disclosed four political expenditures from political contributions in support of the respondent, totaling \$9,504.72. The expenditures were not marked as direct expenditures. The information submitted with the complaint showed that the respondent disclosed only one of these expenditures, dated October 17, 2022, totaling \$3,832.19 as an in-kind contribution from the PAC on her 8-day pre-election report.
4. In response to the complaint on April 11, 2023, the respondent filed an amended 8-day pre-election report. The amendment did not add the PAC to section fourteen of the cover sheet, “notice from political committee(s).”
5. In addition to the contents required by Section 254.031, each report by a candidate must include for each political committee from which the candidate received notice under Section 254.161, the committee’s full name and address, an indication of whether the committee is a general-purpose committee or a specific-purpose committee, and the full name and address of the committee’s campaign treasurer. Tex. Elec. Code § 254.061(3).
6. If a general-purpose committee accepts political contributions or makes political expenditures for a candidate or officeholder, notice of that fact shall be given to the affected candidate or officeholder as provided by Section 254.128 for a specific-purpose committee. *Id.* § 254.161. If a specific-purpose committee accepts political contributions or makes political expenditures for a candidate or officeholder, the committee’s campaign treasurer shall deliver written notice of that fact to the affected candidate or officeholder not later than the end of the period covered by the report in which the reportable activity occurs. Tex. Elec. Code § 254.128(a).

7. The respondent received notice from the PAC that the PAC had made political expenditures for her, as she reported a \$3,832.19 political expenditure from the PAC on her 8-day pre-election report. The PAC disclosed supporting the respondent under Section 14 of the campaign finance report form for general-purpose committees, labeled “Committee Activity” and the respondent did not deny receiving notice in her response to the complaint. The respondent did not report receiving this notice as required by Section 254.061 of the Election Code. Therefore, there is credible evidence of a violation of Section 254.061 of the Election Code.

Failure to Disclose In-Kind Contributions

8. The complaint alleged that the respondent failed to disclose in-kind contributions accepted from the PAC and from Texas House Representative Steve Toth.
9. As noted above, the information submitted with the complaint showed that the general-purpose committee Texans for Educational Freedom (“PAC”) disclosed supporting the respondent on the “Committee Activity” section of their 8-day pre-election report, which was filed on October 31, 2022, and which covered the period of time from July 1, 2022, through October 29, 2022. The PAC’s 8-day pre-election report also disclosed four political expenditures from political contributions in support of the respondent, totaling \$9,504.72. The first expenditure was dated October 17, 2022, in the amount of \$3,832.19 to CAZ Consulting, LLC, with the description “Direct Mail: in-kind to Melissa Dungan Campaign.” The second was dated October 24, 2022, in the amount of \$2,172.53 to CAZ Consulting, LLC, with the description “Texting Service: in-kind to Melissa Dungan Campaign.” The third was dated October 10, 2022, in the amount of \$166.67 to Edgerton Strategies, LLC, with the description “Consulting: In-kind to Melissa Dungan.” The fourth was dated October 10, 2022, in the amount of \$3,333.33 to Edgerton Strategies, LLC, with the description “Digital Media: In-kind to Melissa Dungan Campaign.”
10. The information submitted with the complaint also showed that the respondent disclosed receiving one of these expenditures, the one dated October 17, 2022 totaling \$3,832.19, as an in-kind contribution on her 8-day pre-election report.
11. Finally, the information submitted with the complaint showed that Texas House Representative Steve Toth had posted pictures of the respondent on a parade float on July 4, 2022, holding one of her political advertising signs. The sworn complaint alleged that this was an in-kind contribution of “an advertising spot to ride in the Woodlands Township Fourth of July Parade.” The respondent did not address this allegation in her response, nor did she amend her report to include any disclosure regarding this in-kind contribution.

12. In response to the complaint, the respondent filed an amended campaign finance report on April 11, 2023, which disclosed a single additional in-kind contribution, dated October 24, 2022, in the amount of \$2,172.53, from CAZ Consulting, LLC, with the description of "MMS." The two remaining in-kind contributions from the PAC were not included on the amended report.
13. Each report must include the amount of political contributions from each person that in the aggregate exceed \$50 (\$90 as of January 1, 2022) and that are accepted during the reporting period by the person or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. Tex. Elec. Code § 254.031(a)(1).
14. 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. *Id.* §254.031(a)(6).
15. Credible evidence indicates that the respondent did not report in-kind contributions received on her 8-day pre-election report. Therefore, credible evidence indicates a violation of Sections 254.031(a)(1) and 254.031(a)(6) of the Election Code.

Failure to Report Political Expenditures

16. The complaint alleged that the respondent did not report political expenditures made and/or in-kind contributions accepted on her campaign finance report for palm cards (also referred to as push cards) and campaign t-shirts.
17. The information submitted with the complaint showed pictures of the palm cards and the t-shirt, neither of which appeared in the respondent's campaign finance reports. The respondent did disclose a political expenditure dated November 3, 2022, in the amount of \$1,562 to CAZ Consulting, LLC, for advertising, with the description "campaign."
18. In response to the complaint, the respondent filed a corrected January 2023 semiannual report, and added the description of "palm cards" to the expenditure.
19. With regard to the t-shirts, the respondent swore in her response that no expenditure or in-kind contribution was made to produce the shirt, as it was created using homemade iron-on transfers and a shirt that was already owned.
20. Each report must include the amount of political expenditures that in the aggregate exceed \$100 (\$190 as of January 1, 2022) and that are made during the reporting period, the full name and address of the person to whom the expenditures are made, and the dates and purposes of the expenditures. Tex. Elec. Code § 254.031(a)(3).

21. For reporting required under § 254.031 of the Election Code, the purpose of an expenditure means: 1) a description of the category of goods, services, or other thing of value for which an expenditure is made; and 2) a brief statement or description of the candidate activity that is conducted by making the expenditure. 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, service or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure. 1 Tex. Admin. Code § 20.61(a)(1-2).
22. A technical, clerical, or *de minimis* violation for purposes of § 571.0631 of the Government Code may include a first-time allegation against a respondent for filing an incomplete or corrected campaign finance report if the incomplete or corrected information is not misleading and does not substantially affect disclosure, including the purpose of a political expenditure. *Id.* § 12.81(a)(8)(G).
23. Credible evidence indicates that the respondent did not include a proper description for her expenditure for palm cards on her January 2023 semiannual campaign finance report. However, credible evidence indicates that the respondent had no previous allegations for filing an incomplete campaign finance report and that the failure to include a proper description for her political expenditure for palm cards did not substantially affect disclosure. Therefore, credible evidence indicates a technical or *de minimis* violation of Section 254.031(a)(3) of the Election Code with regard to the palm cards.
24. Credible evidence indicates that the respondent did not accept an in-kind contribution or make or authorize a campaign expenditure in the creation of her campaign t-shirt. Therefore, credible evidence indicates no violation of Sections 254.031(a)(1) or 254.031(a)(3) of the Election Code with regards to the campaign t-shirt.

Failure to Report Contributor Information

25. The complaint alleged that the respondent did not report contributor information on her January 2023 semiannual campaign finance report.
26. Information submitted with the complaint showed that the respondent disclosed receiving \$655.29 in political contributions on the cover sheet of her report, but disclosed nothing on Schedule A1 for monetary political contributions but the letters “SU” in the first field provided on the form for the name of a contributor.

27. In response to the complaint, the respondent filed an amended January 2023 semiannual campaign finance report, which disclosed \$425 in contributions accepted on Schedule A1 for monetary political contributions and \$230.29 on Schedule A2 for non-monetary (in-kind) political contributions. The respondent properly disclosed the date and amount of the contributions, as well as the name and address of the contributors.
28. Each report must include the amount of political contributions from each person that in the aggregate exceed \$50 (\$90 as of January 1, 2022) and that are accepted during the reporting period by the person or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. Tex. Elec. Code § 254.031(a)(1).
29. Each report must include the amount of political contributions from each person that are made electronically and that are accepted during the reporting period by the person required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. *Id.* § 254.031(a)(1-a).
30. Credible evidence indicates that the respondent failed to disclose the dates of contributions and the full name and address of the persons making the contributions on her January 2023 semiannual campaign finance report. Therefore, credible evidence indicates a violation of Sections 254.031(a)(1) and 254.031(a-1) of the Election Code.

Failure to Report Total Political Contributions Maintained and Total Political Expenditures Made or Authorized

31. The sworn complaint alleged that the respondent failed to properly report total political contributions received and total political expenditures made or authorized on her January 2023 semiannual report.
32. Information submitted with the sworn complaint shows that on her January 2023 semiannual report, the respondent reported received \$3,640.25 in total unitemized political contributions, \$655.29 in total political contributions, \$0 in total political expenditures, and \$700.11 in total political contributions maintained as of the last day of the reporting period on the cover sheet. On Schedule A1 for monetary political contributions, the respondent disclosed receiving \$655.29. On Schedule F1, Political Expenditures Made from Political Contributions the respondent disclosed \$3,640.25 in political expenditures.
33. In response to the complaint, on April 11, 2023, the respondent filed an amended January 2023 semiannual report. The report disclosed \$655.29 in total political contributions, \$3,640.25 in total political expenditures, and \$10,692.70 in total political contributions maintained.

34. Each report filed must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. Tex. Elec. Code § 254.031(a)(6).
35. Each report filed must include as of the last day of the 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. *Id.* § 254.031(a)(8).
36. A technical, clerical, or *de minimis* violation for purposes of § 571.0631 of the Government Code may include a first-time allegation against a respondent for typographical or incomplete information on a campaign finance report that is not misleading and does not substantially affect disclosure. 1 Tex. Admin. Code § 12.81(a)(1).
37. Credible evidence indicates that the respondent failed to properly report the amount of contributions maintained on her January 2023 campaign finance report. Therefore, credible evidence indicates a violation of Section 254.031(a)(8) of the Election Code.
38. Credible evidence indicates that the respondent included the amount of total political expenditures made or authorized on her January 2023 semiannual report on the wrong line on Cover Sheet Page 2. However, the correct amount was in the correct place on Cover Sheet Page 3 and the expenditures were reported on Schedule F1. Therefore, the typo did not substantially affect disclosure and, when taken in context with the rest of the report, was not misleading. Therefore, there is credible evidence of a technical or *de minimis* violation of Section 254.031(a)(6) of the Election Code.

Incorrect Period Covered on January 2023 Semiannual Report

39. The complaint alleged that the respondent reported the incorrect period of time in Section 10, Period Covered, on the cover sheet of her January 2023 semiannual report.
40. Information submitted with the complaint showed that the respondent reported the period covered as November 1, 2022, through December 31, 2023 (emphasis added).
41. In response to the complaint the respondent filed a corrected January 2023 semiannual report, which reported the period covered as October 30, 2022, through December 31, 2022.
42. A candidate shall file two reports for each year as provided by this section. Tex. Elec. Code § 254.063(a). The second report shall be filed not later than January 15. The report covers the

period beginning July 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 under this subchapter, as applicable, and continuing through December 31. *Id.* § 254.063(c).

43. A technical, clerical, or *de minimis* violation for purposes of §571.0631 of the Government Code may include a first-time allegation against a respondent for filing an incomplete or corrected campaign finance report if the incomplete or corrected information is not misleading and does not substantially affect disclosure, including the period covered by the report. 1 Tex. Admin. Code § 12.81(a)(8)(H).
44. The respondent's use of the incorrect year on the period covered on her January 2023 semiannual report was not misleading and did not substantially affect disclosure as it was merely a typographical error. Therefore, credible evidence indicates a technical or *de minimis* violation of Section 254.063 of the Election Code.

IV. 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 findings of fact and conclusions of law described under Section III, 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 the filing requirements and restrictions prescribed by Sections 254.031(a)(1), 254.031(a)(1-a), 254.031(a)(3), 254.031(a)(6), 254.031(a)(8), 254.061, and 254.063 of the Election Code. The respondent agrees to comply with these requirements of the law.

V. 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.


VI. Sanction

After considering the nature, circumstances, and consequences of the violations described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$750 civil penalty.

VII. 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-3230349.

AGREED to by the respondent on this 10th day of May, 2024.



Melissa Dungan, Respondent

EXECUTED by the Commission on: June 20, 2024.

Texas Ethics Commission

By: J.R. Johnson

J.R. Johnson, Executive Director