

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BILL PATTERSON
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-200314

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 16, 2000, and voted to accept jurisdiction of Sworn Complaint SC-200314 filed against Bill Patterson, respondent, and another individual. The commission met again on April 6, 2001, to consider Sworn Complaint SC-200314. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence that the respondent Bill Patterson violated Sections 254.121 and 254.124, Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent, who was the campaign treasurer for the Better Safer Roads Campaign Committee, a specific-purpose committee, and an individual, who was a political consultant to the committee, knowingly accepted anonymous contributions, failed to disclose contributions accepted by the committee in the committee's campaign finance reports, and failed to timely file campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent was the campaign treasurer for, and the other individual was a political consultant to, the Better Safer Roads Campaign Committee, a specific-purpose committee that was formed to support a county road bond proposition. The bond proposition asked voters to approve the issuance of general obligation bonds in the amount of \$85,320,000 for constructing, improving, and maintaining county roads and bridges as provided in the county's better, safer roads program, and to approve the levy of a tax in payment of those

- bonds. The proposition was submitted to and passed by the voters in an election held on January 16, 1999.
2. According to records on file with the county clerk, the specific-purpose committee filed its campaign treasurer appointment on December 15, 1998, naming the respondent as the committee's campaign treasurer. The respondent thereafter filed an 8th day before election report on January 8, 1999. The report did not include a cover sheet. The report disclosed total political contributions in the amount of \$10,275 and total political expenditures in the amount of \$10,329. The respondent filed a dissolution report on April 12, 1999. The report disclosed total political contributions in the amount of \$11,500 and total political expenditures in the amount of \$81,754.
 3. The respondent corrected both the 8th day before election report and the dissolution report on March 22, 2000.
 4. The corrected 8th day before election report disclosed total political contributions and total political expenditures in the same amounts that were disclosed in the original 8th day before election report, but added the cover sheet that was omitted from the original report and deleted two contributions that were not required to be itemized from Schedules A and C. The corrected dissolution report disclosed total political contributions in the amount of \$71,800 and total political expenditures in the amount of \$71,754. The corrected report thus added \$60,300 to the committee's previously reported political contributions and subtracted \$10,000 from the committee's previously reported political expenditures. The respondent submitted a good-faith affidavit with each corrected report to explain the corrections.
 5. The corrected reports were filed before this complaint was filed with the Ethics Commission but after a newspaper reporter asked the committee's political consulting firm to explain why the committee's reports showed that the committee spent approximately \$70,000 more than it took in. The complainant swore that the omitted contributors were "developers . . . that own, or control property near areas where road extensions or improvements [were] to be made [using the proceeds of the bonds approved by the voters in the January 16, 1999, election]."

IV. Findings and Conclusions of Law

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

Failing to Timely File Campaign Finance Reports:

1. The campaign treasurer for a specific-purpose committee must file pre-election reports by the 30th and 8th day before any election in which the committee supports or opposes a measure. Section 254.124, Election Code. The county road bond proposition was a measure because it was a proposal submitted in an election for the approval of the county's voters. Section 251.001(19), Election Code. The committee in question supported that measure in the January 16, 1999, election because the committee accepted political contributions and made

- political expenditures to support the measure. Therefore, the committee's treasurer was required to file pre-election reports.
2. The 30th day before election report for the January 16, 1999, election was due by December 17, 1998, and the 8th day before election report was due by January 8, 1999. The committee was not required to file the 30th day before election report because its campaign treasurer appointment was filed after December 7, 1998, the last day covered by that report. The committee was, however, required to file the 8th day before election report, and the committee timely filed that report on January 8, 1999.
 3. There is no fixed time for a committee to file a dissolution report. A committee files a dissolution report when the committee does not expect to accept any more political contributions or make any more political expenditures. Section 254.125, Election Code. The respondent filed the committee's dissolution report on April 12, 1999.
 4. Therefore, there is credible evidence of no violation of Sections 254.124 and 254.125, Election Code.

Failing to Disclose Contributions and Expenditures and Failing to Include Cover Sheet:

5. A specific-purpose committee's campaign finance report must include the committee's name and address, the campaign treasurer's name and address, the campaign treasurer's phone number, and the election date and type of election on the cover sheet, page 1, of the report. Section 254.121, Election Code. A specific-purpose committee's campaign finance report must also include the name and address of each person who contributed more than \$50 in the aggregate during the reporting period and the date and amount of each contribution; the name and address of each person to whom the committee made expenditures of more than \$50 in the aggregate during the reporting period, the date and amount of each expenditure, and the purpose for which the expenditure was made; and the total amount of all contributions accepted and all expenditures made during the reporting period. Section 254.031, Election Code.
6. The respondent corrected both the committee's 8th day before election report and its dissolution report on March 22, 2000. The corrected 8th day before election report was filed more than one year after the date for the original report, and the corrected dissolution report was filed nearly one year after the original dissolution report was filed. The respondent submitted affidavits to explain the corrections.
7. In the affidavit submitted with the corrected 8th day before election report, the respondent swore that the cover sheet, page 1, was omitted from the original report; that the omission was not discovered until the committee requested copies of its filed reports from the County Clerk; and that Schedules A and C were amended to exclude two contributions that were itemized on the original report because those contributions were not required to be itemized. Thus, all of the committee's contributions and expenditures were disclosed in the original report. The report did not, however, include the cover sheet, page 1, and thus the report was

missing the committee's address, the campaign treasurer's address, the campaign treasurer's phone number, and the election date and type of election. (The name of the committee and the name of the campaign treasurer appeared on page 2 of the report.) Although the campaign treasurer appointment contained all of the information missing from the report except election information, the law requires the missing information on each report. There is credible evidence that the committee's 8th day before election report did not include all of the information required to be included on cover sheet, page 1. Although the respondent filed a corrected report and good-faith affidavit in connection with this report, a corrected 8th day before election report is treated as a late report for all purposes, including the assessment of a fine. Section 18.83, Ethics Commission Rules. Therefore, there is credible evidence that the respondent violated Sections 254.121 and 254.124, Election Code.

8. In the affidavit submitted with the corrected dissolution report, the respondent swore that a staff member employed by the committee's professional consulting firm was responsible for "book-keeping and preparation" of the committee's campaign finance reports; that the staff member failed to include \$60,309 in campaign contributions in the original dissolution report; and that the staff member was not available to "document" what occurred because she left the consulting firm early in the summer of 1999. He also swore that the contribution information disclosed in the campaign finance reports was based on bank records because campaign contributions to the committee were received at various locations after the election, volunteers deposited the contributions directly to the committee's account, and deposit slips made by the volunteers did not always document the source of the contribution. The respondent further swore that several reporting errors regarding the committee's campaign expenditures were identified and corrected "by reviewing the actual bank records and balancing with actual checks written."
9. There is credible evidence that the committee's dissolution report did not disclose \$60,309 in contributions (three of which were itemized on Schedule A and eight of which were itemized on Schedule C of the corrected report and none of which was itemized or included in the contribution totals on the original report) and incorrectly disclosed the amount of one of the committee's political expenditures (an itemized expenditure made to the committee's consultant, the amount of which was reported as \$18,922 in the original report and as \$8,922 in the corrected report). The reporting errors and omissions were corrected in the corrected dissolution report, however, and the respondent filed a good-faith affidavit with that report. Ethics Commission Rules provide that both a corrected report and the original report shall be deemed to have been timely filed, and no fine is assessed against a filer who files a corrected report (other than an 8th day before election report), if the corrected report is accompanied by the filer's good-faith affidavit explaining why the information on the corrected report was not included in the original report or was reported in error. Sections 18.49 and 18.83, Ethics Commission Rules. There is credible evidence that the respondent filed such a good-faith affidavit with the corrected dissolution report. Therefore, there is credible evidence that the respondent did not violate Sections 254.031 and 254.125, Election Code.

Accepting Anonymous Contributions:

10. A political committee must know the name of each contributor and the amount of each contribution, and the committee's campaign treasurer must keep records of all information necessary to file the committee's campaign finance reports. Section 254.001, Election Code. The committee must report the name of each person who contributed more than \$50 in the aggregate during the reporting period and the amount of each contribution that person made. Section 254.031, Election Code. Because the detailed reporting threshold represents an aggregate amount, the committee must know the names of contributors of even the smallest amounts in order to report the information if a person's small contributions add up to a total of more than \$50 by the end of the reporting period. For the same reason, the committee must know the name of each individual who contributes cash and the amount of the cash contribution in order to comply with the prohibition against accepting more than \$100 in cash during a reporting period from a single contributor. Section 253.033, Election Code; *see* Ethics Advisory Opinion No. 207 (1994).

11. The complainant alleges that the committee accepted anonymous contributions. The only evidence that the complainant submitted to support that allegation is a newspaper article in which a member of the committee's consulting firm is paraphrased and quoted as follows:

In the four months after the successful election, pledges from developers and business leaders kept pouring in, [the consultant] said. Many contributions were funneled through the office of former County Judge Jeff Moseley, some anonymously, [the consultant] said.

. . . .

“The person at my office handling this, who is no longer with us, did not get deposit slips before the filing of the second report,” [the consultant] said. “When [she] did get the deposit slips, some had no identification and just check numbers.”

12. The statements contained in the newspaper article are hearsay, however, with respect to whether the committee accepted contributions from anonymous donors. *Sherrill v. Estate of Plumley*, 514 S.W.2d 286, 290 (Tex. Civ. App.—Houston [1st Dist.] 1974 writ ref'd n.r.e.). Moreover, the affidavits of the respondent submitted with the corrected reports establish, not that the names of the contributors were undisclosed or unknown to the committee, but rather that the committee and its consultant allowed volunteers to deposit contributions directly to the committee's bank account without forwarding the deposit slips and copies of the checks to the committee or to its consultant so that the contributions could be timely disclosed in the committee's campaign finance reports. There is, therefore, no credible evidence that the respondent violated Section 254.001, 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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that a specific-purpose committee's campaign finance report must include the information required to be disclosed on the cover sheet, page 1, including the committee's address, the campaign treasurer's address, the campaign treasurer's phone number, and the election date and type of election. Section 254.121, Election Code. The respondent agrees to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violation described under Section IV, Paragraphs 6 and 7, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

VI. Confidentiality

This ORDER and AGREED RESOLUTION describes a violation that the commission has determined is 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 seriousness of the violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, after considering the fact that no previous violations by the respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$200 civil penalty upon the respondent for the violation described under Section IV, Paragraphs 6 and 7.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-200314 as to the respondent;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$200 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 4, 2001; and
4. that the executive director shall promptly refer SC-200314 either to the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-200314 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2001.

Bill Patterson, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director