

TEXAS ETHICS COMMISSION

IN THE MATTER OF

CHARLES A. SPENCER AND
LET US VOTE CORPUS CHRISTI,

RESPONDENTS

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-210313

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 6, 2001, and voted to accept jurisdiction of Sworn Complaint SC-210313 filed against Charles A. Spencer and Let Us Vote Corpus Christi. The commission met again on August 10, 2001, to consider Sworn Complaint SC-210313. 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 of a violation of Sections 253.001 and 253.003, 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 respondents.

II. Allegations

The respondents are Let Us Vote Corpus Christi, a specific-purpose committee formed to support a petition for a referendum to repeal a city ordinance, and Charles A. Spencer, the president of the committee. The complainant alleges that the president of the committee received a donation from a donor who requested anonymity and passed the donation on to the committee without disclosing in writing to the committee the name and address of the person actually making the contribution. The complainant further alleges that the committee accepted the anonymous donation and reported the donation as a contribution from the president of the committee instead of as a contribution from the donor.

III. Facts Supported by Credible Evidence

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

1. According to records on file with the city secretary, on November 13, 2000, the Corpus Christi City Council passed an ordinance establishing a reinvestment zone within the city's incorporated limits as authorized by the Tax Increment Financing Act (Chapter 311, Tax

Code). The City Council's objective in passing the ordinance and establishing the reinvestment zone was to provide a means of funding the dredging of a silted-over channel extending from the Gulf of Mexico to the Gulf Intracoastal Waterway, and to thereby facilitate the development of the zone, including the development of tourist and convention facilities. On November 15, 2000, five of the City's registered voters filed a statement of their intentions to circulate petitions for a referendum on the ordinance and a request that the City Council reconsider the ordinance. The City Council denied the voters' request for reconsideration on November 21, 2000, and the voters began collecting signatures on their petitions.

2. The committee filed its campaign treasurer appointment with the City Secretary on November 22, 2000. The committee's president is named in the treasurer appointment as the person who appointed the committee's treasurer. According to the president, the committee was formed "to allow citizens to have the right to vote on the use of public moneys . . . to finance the boat channel through the Island." On February 21, 2001, the City Secretary certified that the voters had filed petitions containing the valid signatures of at least five percent of the registered voters of the City—the number of signatures needed to force a referendum on the ordinance—and the City Council called a special election for April 7, 2001. The following proposition was submitted to the voters at the special election:

Shall the City Council continue Ordinance No. 024270 which creates a taxing Zone on part of Padre Island to pay, solely from the increased property values within the Zone, for construction and maintenance of Packery Channel and related beach restoration, a park, beach access, restrooms, showers, walkways, parking, fishing and related improvements?

The voters passed the proposition and the City Council continued in effect the ordinance establishing the reinvestment zone.

3. The committee filed two campaign finance reports with the city secretary: a January semiannual report filed on January 11, 2001, and a dissolution report filed on February 26, 2001. The semiannual report disclosed total political contributions in the amount of \$433.58 and total political expenditures in the same amount. The dissolution report disclosed total political contributions in the amount of \$9,674.37 and total political expenditures in the same amount. The dissolution report also disclosed that the committee accepted a contribution from its president in the amount of \$9,624.55 on January 30, 2001. The complainant alleges that the president received the money that he used to make that contribution from an anonymous donor, that the president should have disclosed in writing the name and address of the donor to the committee, and that the committee should have reported the donor as the contributor on the committee's dissolution report.
4. In support of her complaint, the complainant submitted a newspaper article in which the president was quoted as follows:

The donation to the campaign was ours” Spencer said. We received an unrestricted gift from an anonymous donor. We in turn donated it to (Let Us Vote).”

....

“The money was not earmarked in any way,” he said. “The donor trusted that we would use it for a cause that would prevent harm to the environment.

5. The president swore to the following statements in response to the complaint:

I received on January 30, 2001[,] in the form of a cashier’s check the amount of \$9,800. It was made payable to me and my wife. The person who gave this check to me asked that her name not be disclosed. She has a home on the Island and seeks to avoid severe harassment by her neighbors and the establishment if her name is disclosed. This is a real concern here in this community. She came to my home and delivered the check to me at my home. Since that one meeting with the lady, I have not seen her again.

The lady described herself as a “bird watcher” who is interested in the environment on the Island. She named the birds she frequently observed from her home. For convenience she will be referred to as “B.W.”. [*sic*] B.W. has a continuing interest in not having her name published.

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On December 31, 2000[,] a significant article appeared in the San Antonio newspaper describing the progress of the LET US VOTE committee in Corpus Christi. The *New York Times* ran an article in January. The local newspaper refused until recently to give any coverage whatsoever of our efforts to solicit the eight thousand signatures needed to call an election. An organized and effective effort of the establishment froze out our solicitors from getting signatures at the shopping malls.

On or about January 19, 2001[,] I received a telephone call from B.W., who wishes to preserve the natural environment of the Island. She had read the *San Antonio Express News* article and offered to provide financial assistance.

Later on January 30[,] I received a cashier’s check from B.W. She gave me no specific instructions in writing or orally. She expressed only her concern about keeping the Island like it is without commercial development. B.W. gave no directions about how the check proceeds were to be spent. She has exercised no control over expenditure of the money. She did not ask for any reports of expenditures made, and I have made no accounting whatsoever to B.W. of expenditures. We have talked on the telephone, mostly about the complaint filed

against me with the Texas Ethics Commission. In fact, I receive [*sic*] no instructions from B.W. to limit my payments to only the L.U.V. Committee. In effect, B.W. trusted me to use the funds wisely as I saw fit to protect the Mustang Island sanctuary for her birds. I was not considered as a mere conduit of funds to be paid to the L.U.V. committee. I am free to use the money for purposes other than the L.U.V. committee.

After B.W. left, my wife and I discussed the best way to use the money: ads on TV, more brochures with more color, a mailing, a hiring of an agency? We decided first to hire an agency. This met with limited success. We advised B.W. of our failure at that point, and she was gracious, accepting that we had done our best. We then tried a different approach with several independent contractors with better results. All the expenditures of the L.U.V. Committee have been properly reported by the Treasurer, based upon details of expenditures made by me for the Committee. B.W. has never asked how much money was spent on L.U.V., how much I have spent or never asked for a return of unused money. I have never made any accounting reports to B.W. of expenditures.

On February 19, 2001[,] the L.U.V. Committee submitted petitions to the City containing some ten thousand signatures, a number in excess of the necessary eight thousand. The City ruled immediately on the 20th that the petition was short by 56 signatures. We submitted on February 21 a supplemental list of more than 56 additional valid signatures, as demanded by the City. The City agreed to call an election. This terminated successfully the limited objective of the L.U.V. committee. It was dissolved on February 26, 2001.

Most of the \$9,800 has been disbursed by me and reported as expenditures of the L.U.V. Committee but an unexpended balance remains in my hands. I have not decided where to spend the balance. This decision is totally mine, and B.W. has not been consulted, and she will not participate in the decision to be made by my wife and me.

Special purpose committees have been formed by other people for the campaign regarding the boat channel election, both pro and con. I have not been active or contributed money in any campaign committee. Sierra Club officials have created a committee (Packery No) to oppose the formation of a TIF for the boat channel. The establishment has raised over \$80,000 (Corpus Christi Yes) to promote the \$30 million boat channel.

The primary purpose of the L.U.V. committee was simply to get an election held, as indicated by its name, LET US VOTE. We accomplished our purpose, and the committee has disbanded and terminated.

The only thing that B.W. has asked me is that I not reveal her name. She is a shy person. She wants no threatening calls or letters from the “powers-that-be”, nor does she wish to lose any friends from among her neighbors. We gave our word to her, respecting her need for privacy. We believe the money was indeed a gift from her to me and my wife for us to use as we saw fit for the benefit of the Island’s natural environment, and that was exactly how it was used. I acted accordingly, treating it as a gift to Charles A. Spencer. I spent the money getting signatures to call an election on the establishment of a TIF for the cost of a boat channel.

(Italics added) (paragraph numbers omitted)

6. In addition to the sworn statements, the attorney for the president furnished a copy of the face and back of the cashier’s check that he and his wife received from the donor who requested anonymity. The check is in the amount of \$9,800, dated January 30, 2001, and made payable to the order of Charles or Betty Spencer. The name of the drawer is the Frost National Bank. The name of the remitter (the anonymous donor who sent the check to the president and his wife) has been redacted. The check itself contains no specific instructions as to how or for what purpose the money represented by the check should be used.

IV. Findings and Conclusions of Law

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

1. A person may not knowingly make or authorize a political contribution in the name of or on behalf of another unless the person discloses in writing to the recipient the name and address of the person actually making the contribution so that the recipient can make the proper disclosure. Section 253.001, Election Code. In addition, a person may not knowingly make a political contribution in violation of Chapter 253, Election Code, and a person may not knowingly accept a political contribution the person knows to have been made in violation of Chapter 253, Election Code. Section 253.003, Election Code.
2. Thus, if a person receives a political contribution that is earmarked for a specific candidate, officeholder, or political committee and passes on that contribution without exercising direction or control over the selection of the recipient of the earmarked contribution, the person must disclose in writing to the candidate, officeholder, or political committee for whom the contribution was intended the name and address of the source of the contribution. The source is the person who had the uncontrolled power of disposing of the funds that were used to make the contribution. *See* Ethics Advisory Opinion No. 299 (1996); *see also* *Goland v. United States*, 903 F.2d 1247 (9th Cir. 1990); FEC Advisory Opinion No. 1981-57 (1982).
3. Therefore, the critical question is who had the uncontrolled power of disposing of the funds that the president used to make the contribution to the committee—the president or the

person from whom the president received those funds. On this question, the statements sworn to by the president in the affidavit submitted with the president's response to this complaint indicate that the money was not earmarked for the committee and that the donor trusted that the president and his wife would use the money for a cause that would prevent harm to the environment.

4. However, no other possible use that might be an alternative to making contributions to the committee is set out in any detail in the president's sworn statements. According to those statements, the check was delivered to the president after the committee had been organized and after the donor had read a newspaper account describing the committee's efforts to obtain signatures on the petition for an election, and the donor's wish to "preserve the natural environment of the Island" was clearly consistent with those efforts. The president swore that the donor "had read the *San Antonio Express News* article and offered to provide financial assistance." (Italics added.) According to the committee's dissolution report, the money represented by the check from the donor represented \$9,624.55 of the total \$9,674.37 in contributions reported by the committee. Moreover, the attorney for the president stated unequivocally that the donor would not furnish the commission an affidavit of her intentions with respect to the check. Therefore, there is credible evidence that the president violated Section 253.001, Election Code, by knowingly making or authorizing a political contribution to the committee in the name or on behalf of another person without disclosing in writing to the committee the name and address of the person actually making the contribution; credible evidence that the president violated Section 253.001, Election Code, by knowingly making a political contribution in violation of Chapter 253, Election Code; and credible evidence that the committee violated Section 253.001, Election Code, by knowingly accepting a contribution the committee knew to have been made in violation of Chapter 253, Election Code.

V. Representations and Agreement by Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondents neither admit nor deny the facts described under Section III and the commission's findings and conclusions of law described under Section IV, and consent to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondents consent 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 respondents waive any right to a hearing before the commission or an administrative law judge, and further waive any right to a post-hearing procedure established or provided by law.

3. The respondents acknowledge that a person may not knowingly make or authorize a political contribution in the name of or on behalf of another unless the person discloses in writing to the recipient the name and address of the person actually making the contribution so that the recipient can make the proper disclosure, a person may not knowingly make a political contribution in violation of Chapter 253, Election Code, and a person may not knowingly accept a political contribution the person knows to have been made in violation of Chapter 253, Election Code. The respondents agree to fully and strictly comply with this requirement 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations, after considering the fact that no previous violations by these respondents are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty upon Charles A. Spencer, and a \$300 civil penalty upon Let Us Vote Corpus Christi, for the violations described under Section IV, Paragraph 4.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondents;
2. that if the respondents consent to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-210313;
3. that the respondents may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$500 and \$300 civil penalties to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than September 7, 2001; and
4. that the executive director shall promptly refer SC-210313 to either 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-210313 as proposed in this ORDER and AGREED RESOLUTION.

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

Charles A. Spencer

Let Us Vote Corpus Christi

By: _____
Charles A. Spencer, President

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director