

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MARY M. TOLLETT,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-270337

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 14, 2008, to consider sworn complaint SC-270337. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(3), 254.031(a)(5), 254.121(7), and 254.128 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent, as campaign treasurer of a political committee, failed to: (1) properly report the total political expenditures and total political contributions maintained on the committee's reports, (2) properly report the payee address for political expenditures on the committee's reports, (3) notify candidates or officeholders that the respondent's committee accepted political contributions or made political expenditures for the candidate or officeholder, and (4) identify payments from political contributions made to a business in which a candidate supported or opposed by the committee or an officeholder assisted by the committee had a participating interest of more than 10 percent, held a position on the governing body of the business, or served as an officer of the business.

III. Facts Supported by Credible Evidence

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

1. The respondent is the campaign treasurer of "Citizens to Keep the NHMCCD Trustees" a specific-purpose political committee supporting candidates for and officeholders of the North Harris Montgomery Community College District Board of Trustees (NHMCCD).

Failure To Properly Disclose Political Expenditures

2. The complaint alleges that the respondent failed to correctly disclose the total political expenditures on the committee's 8-day pre-election report for the May 13, 2006, trustee election. The complaint alleges that the total is \$37 too high.
3. The committee's 8-day pre-election report discloses \$100.94 for total political expenditures of \$50 or less, unless itemized. The report itemizes \$10,345.86 of political expenditures on Schedule F. The total of these two amounts is \$10,446.80 which is \$37 less than the \$10,483.82 disclosed for total political expenditures.

Failure To Properly Disclose Total Political Contributions Maintained

4. The complaint alleges that the respondent failed to correctly disclose the total political contributions maintained on the committee's 8-day pre-election report for the May 13, 2006, trustee election, July 2006 semiannual report, 30-day pre-election report for the November 7, 2006, trustee election, and dissolution report, that the amount of political contributions maintained reported on the 8-day pre-election report was \$37 less than it should be, and that the amounts of political contributions maintained reported on the July 2006 semiannual report, the 30-day pre-election report, and dissolution report were all \$521.53 less than they should have been.
5. The committee's 8-day pre-election report discloses \$2,346.18 for total political contributions maintained as of the last day of the reporting period. (The report discloses \$1,280 for total political contributions of \$50 or less, other than pledges, loans, or guarantees of loans, and \$12,830 for total political contributions. The report discloses \$10,483.82 for total political expenditures). The committee's July 2006 semiannual report discloses \$3,325.63 for total political contributions maintained as of the last day of the reporting period. (The report discloses \$240 for total political contributions of \$50 or less, other than pledges, loans, or guarantees of loans, and \$4,874.53 for total political contributions. The report discloses \$3,410.55 for total political expenditures). The committee's 30-day pre-election report discloses \$3,367.63 for total political contributions maintained as of the last day of the reporting period. (The report discloses \$42 for total political contributions of \$50 or less, other than pledges, loans, or guarantees of loans, and \$42 for total political contributions. The report discloses zero for total political expenditures). The committee's dissolution report discloses zero for total political contributions maintained as of the last day of the reporting period. (The report discloses zero for total political contributions of \$50 or less, other than pledges, loans, or guarantees of loans, and zero for total political contributions. The report discloses \$3,367.63 for total political expenditures).
6. Regarding the committee's 8-day pre-election report, the respondent's affidavit states that a contribution check that the committee received in the amount of \$30 was returned for non-sufficient funds and the bank fee for the returned check was \$7, which she failed to include

on the report. The evidence shows that the \$30 insufficient funds check was included in the contribution total. Regarding the omission of \$521.53 from the other reports, the respondent's affidavit states that there was an "in-kind" contribution of \$484.53 for a reception held for the candidates, that she reported this as a political contribution on the July 2006 semiannual report but did not include it in the political contributions maintained balance, and that the \$484.53 "in-kind" contribution and the \$37 for the non-sufficient funds check and bank fee accounts for the \$521.53 difference.

Failure To Properly Disclose the Payee Address for Political Expenditures

7. The complaint alleges that the respondent failed to properly disclose the payee address for political expenditures reported on the committee's 8-day pre-election report for the May 13, 2006, trustee election, and on the committee's dissolution report.
8. The committee's 8-day pre-election report discloses a political expenditure of \$1,034 and a political expenditure of \$821.46. The report discloses the names of the payees and the addresses of the payees except for their zip codes. The committee's dissolution report discloses a political expenditure of \$367.63, but does not disclose the payee's address.

Failure to Notify Candidates or Officeholders of the Committee's Support

9. The complaint alleges that the respondent failed to notify two candidates or officeholders that the respondent's committee accepted political contributions or made political expenditures for the candidate or officeholder.
10. The committee's reports disclose that the purpose of the committee is to support as candidates and to assist as officeholders Martin Basaldua, David McIver, and Randy Bates. The allegation relates to David McIver and William R. "Randy" Bates.
11. The January 2007 campaign finance reports of David McIver and William R. "Randy" Bates do not disclose that the candidates received notice of political expenditures by a political committee to support them.
12. The respondent's affidavit states that she inadvertently failed to give written notice to candidates David McIver and Randy Bates that the committee had accepted political contributions and made political expenditures on their behalf.

Failure to Identify Payments from Political Contributions Made to a Business of a Candidate or Officeholder

13. The complaint alleges that the respondent failed to identify payments from political contributions made to a business in which a candidate or officeholder supported by the

committee, had a participating interest of more than 10 percent, held a position on the governing body of the business, or served as an officer of the business.

14. The committee's 8-day pre-election report for the May 13, 2006, trustee election discloses a political expenditure of \$1,326 to Basaldua & Heller, PA, for "Postage – used office postage meter." The committee's July 2006 semiannual report discloses a political expenditure of \$148.20 to Basaldua & Heller, PA, for "postage used office postage meter." The committee's reports disclose that one of the purposes of the committee is to support as a candidate and to assist as an officeholder, Martin Basaldua. Records of the Secretary of State show that Martin Basaldua is an officer, director, and member of Basaldua & Heller, PA.
15. The respondent's affidavit acknowledges that the payments to Basaldua & Heller, PA were not reported on the correct form.

IV. Findings and Conclusions of Law

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

Failure To Properly Disclose Political Expenditures

1. Each report must include the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
2. Each report must include the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. ELEC. CODE § 254.031(a)(5).
3. The evidence indicates that the respondent failed to properly disclose \$37 in political expenditures. Therefore, there is credible evidence that the respondent violated section 254.031(a)(5) of the Election Code.

Failure To Properly Disclose Total Political Contributions Maintained

4. Each report must include as of the last day of the reporting period, 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. ELEC. CODE § 254.031(a)(8).
5. As discussed above, the evidence indicates that the respondent received a \$30 contribution check that was returned for non-sufficient funds and that her bank account was charged a \$7 returned check fee. The respondent properly did not include these amounts in the amount for political contributions maintained on the 8-day pre-election report. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(8) of the Election Code as to the 8-day pre-election report.

6. As to the other reports at issue, the evidence indicates that the \$521.53 that the complaint alleges should have been included in the total for political contributions maintained is accounted for by the \$37 discussed above and an “in-kind” contribution worth \$484.53. These amounts should not have been included in the total for political contributions maintained. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(8) of the Election Code as to these reports.

Failure To Properly Disclose the Payee Address for Political Expenditures

7. Each report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
8. The evidence indicates that the respondent failed to disclose a complete address for the three expenditures at issue. As to the two expenditures missing a zip code, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(3) of the Election Code. As to the remaining expenditure, which was missing the entire address, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.

Failure to Notify Candidates or Officeholders of the Committee’s Support

9. 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. ELEC. CODE § 254.128.
10. The evidence indicates that the respondent failed to provide written notice to two candidates that the committee supported. Therefore, there is credible evidence that the respondent violated section 254.128 of the Election Code.

Failure to Identify Payments from Political Contributions Made to a Business of a Candidate or Officeholder

11. Each report by a campaign treasurer of a specific-purpose political committee must include on a separate page or pages of the report, the identification of any payment from political contributions made to a business in which a candidate supported by the committee or an officeholder assisted by the committee has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business. ELEC. CODE § 254.121(7). The form used to disclose such expenditures is Schedule H.

12. The evidence indicates that the committee made payments from political contributions to a business in which a candidate supported by the committee had a participating interest of more than 10 percent, held a position on the governing body of the business, or served as an officer of the business, and the respondent failed to identify the payments on a separate page of the report, i.e. Schedule H. Therefore, there is credible evidence that the respondent violated section 254.121(7) of the 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 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 each campaign finance report must include the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. The respondent also acknowledges that each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent also acknowledges that if a specific-purpose committee accepts political contributions or makes political expenditures for a candidate or officeholder, the committee's campaign treasurer is required to 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. The respondent also acknowledges that each campaign finance report by a campaign treasurer of a specific-purpose political committee must include on a separate page or pages of the report, the identification of any payment from political contributions made to a business in which a candidate supported by the committee or an officeholder assisted by the committee has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business. 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, 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-270337.

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

Mary M. Tollett, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director