

TEXAS ETHICS COMMISSION

IN THE MATTER OF
TIMOTHY HOLIFIELD,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2806249

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2009, to consider sworn complaint SC-2806249. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(6) and 254.031(a)(8) of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent failed to properly disclose total political contributions maintained, failed to disclose political contributions, and accepted political contributions from corporations.

III. Facts Supported by Credible Evidence

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

1. The respondent is the constable for Montgomery County, Precinct 3.

Failure to Properly Disclose Total Political Contributions Maintained

2. The complaint alleged that the respondent failed to properly disclose total political contributions maintained as of the last day of the reporting period on his semiannual reports filed in July 2006, January 2007, July 2007, and January 2008. Each report disclosed zero as the total political contributions maintained.
3. The respondent filed corrected semiannual reports that disclosed the following amounts for total political contributions maintained: July 2006 - \$13,759.09, January 2007 - \$12,514.19,

July 2007 - \$26,618.58, and January 2008 - \$24,908.58. The average amount of total political contributions maintained for each reporting period was approximately \$19,450.

Acceptance of Corporate Contributions

4. The complaint alleged that the respondent accepted six corporate contributions totaling \$1,550.
5. The respondent submitted a sworn response that stated that he was aware that candidates for elected office may not take contributions from corporations and that he had directed his campaign coordinator to call each of the contributors at issue prior to acceptance of the contributions to confirm that the contributions were not from corporations.
6. The complaint alleged that on May 29, 2007, the respondent accepted a \$450 corporate contribution from Chick-Fil-A.
7. The respondent's July 2007 semiannual report disclosed that on May 29, 2007, he accepted a \$450 political contribution from "Chickfila," whose address was 8000 Research Forest, The Woodlands, Texas, 77380.
8. The complaint included information from the Texas Secretary of State (SOS) for Chick-Fil-A, Inc., with the address of 5200 Buffington Rd, Atlanta, GA 30349-2945, which described the entity as a foreign for-profit corporation.
9. The respondent swore that the contribution from "Chickfila" was not from a corporation but was from a business named "Chick-Fil-A" owned by [an individual]. The respondent submitted a copy of a sales and use tax permit in the name of [an individual] that stated that the name of the business is Chick-Fil-A and that its address is 8020 Research Forest Drive, The Woodlands, Texas. The response stated that [the individual] is a franchisee of Chick-Fil-A and that the corporate information submitted with the complaint is about the franchisor of the Chick-Fil-A restaurants, which is a different entity.
10. Records of the SOS do not show that Chick-Fil-A is registered as a Texas corporation but show that there is a corporation registered in the state of Georgia by the name of Chick-Fil-A and that the individual listed as the corporation's registered agent has a name very similar to the name of the individual that the respondent swore was the contributor. The Texas Comptroller of Public Accounts records disclose under their Taxpayer and Vendor Account Information that individual as the "Individual – Sole Owner" of the Chick-Fil-A business at 8020 Research Forest Dr. The Texas Comptroller of Public Accounts records also show a Chick-fil-A Inc. with that same address. The attorney for the respondent stated that some of the equipment in the individual's Chick-Fil-A store is owned by Chick-Fil-A Inc.

11. The complaint alleged that on May 29, 2007, the respondent accepted a \$125 corporate contribution from Gullo Ford Mercury and included information from the myManta website about Gullo Cars Of Conroe, Inc. (Gullo Ford Mercury of Conroe) with an address of 925 I 45 S, Conroe, Texas 77301-4274.
12. The respondent's July 2007 semiannual report disclosed that on May 29, 2007, the respondent accepted a \$125 contribution from the Gullo Ford Mercury, 925 I-45 South, Conroe, Texas 77301.
13. The response stated that as far as they can ascertain, Gullo Ford Mercury is a limited partnership and not a corporation. The response included a copy of a sales and use tax permit for the taxpayer, Gullo Cars Of Conroe I LP, with the business name of Gullo Ford-Mercury Of Conroe, at 925 I 45 S, Conroe, Tx 77301-4274.
14. According to the records of the SOS, Gullo Cars of Conroe 1, LP, is registered as a partnership in Texas and that an associated name for the business is Gullo Ford Mercury of Conroe. SOS records show that the general partner of the partnership is Gullo Cars of Texas, Inc.
15. The complaint alleged that on May 29, 2007, the respondent accepted a \$150 corporate contribution from Sonic Drive In of College Park.
16. The respondent's July 2007 semiannual report disclosed that on May 29, 2007, the respondent accepted a \$150 contribution from Sonic Drive In of College Park, 3081 College Park, The Woodlands, Texas 77384.
17. The respondent swore that the contributor is Sonic Drive-in of College Park Drive, Ltd., a limited partnership. The response included a copy of a sales and use tax permit that gives the taxpayer's name and business name of Sonic Drive-In Of College Park Drive LTD.
18. Records of the SOS, show that the partnership has one general partner, College Park Drive General Partner, LLC., and that one of its members is a corporation named Solis Management Company, Inc.
19. The complaint alleged that on May 29, 2007, the respondent accepted a \$225 corporate contribution from The Woodlands Band Booster Club.
20. The respondent's July 2007 semiannual report disclosed that on May 29, 2007, the respondent accepted a \$225 contribution from The Woodlands Band Booster Club, 1415 Louisiana Houston, Texas 77002.

21. The respondent stated that the contribution was from an individual and that the report mistakenly disclosed The Woodlands Band Booster Club as the contributor. The respondent filed a corrected July 2007 semiannual report to disclose that the contribution was from [an individual].
22. The complaint alleged that on May 29, 2007, the respondent accepted a \$500 corporate contribution from World Health and Golf Association.
23. The respondent's July 2007 semiannual report disclosed that on May 29, 2007, the respondent accepted a \$500 contribution from World Health and Golf Association, 601 Jefferson Street, Suite 3600, Houston, Texas 77002.
24. Records of the SOS, show that World Health And Golf Association is registered as a corporation in Texas.
25. The respondent swore that he believed the contribution was from an unincorporated association and that he has returned the contribution.
26. The respondent filed a corrected January 2009 semiannual report, which disclosed that the contribution from the World Health and Golf Association was returned on July 22, 2008.
27. The complaint alleged that on June 15, 2007, the respondent accepted a \$100 corporate contribution from Diamond Star Ranch Youth.
28. The respondent's July 2007 semiannual report disclosed Diamond Star Ranch Youth as the payee for a \$100 expenditure made on June 16, 2007. It did not disclose a contribution from this entity.

Failure to Properly Disclose Total Political Contributions

29. The complaint alleged that the respondent failed to properly disclose total political contributions on his July 2007 semiannual report. The complaint alleged that the report should have disclosed \$19,397.21 for this amount instead of \$18,272.21.
30. The respondent filed a corrected report changing this amount to \$18,897.21.

IV. Findings and Conclusions of Law

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

Failure to Properly Disclose Total Political Contributions Maintained

1. 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).
2. The evidence indicates that the respondent failed to properly disclose total political contributions maintained. Therefore, there is credible evidence that the respondent violated section 254.031(a)(8) of the Election Code.

Acceptance of Corporate Contributions

3. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003.
4. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094.
5. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
6. A partnership that has corporate partners is subject to the same restrictions on political activity that apply to corporations. Ethics Advisory Opinion No. 221 (1994).
7. In order to show a violation of section 253.003 of the Election Code, the evidence must show that the contributor was a corporation, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
8. With respect to the contribution from “Chickfila,” there is insufficient evidence to show that the respondent violated section 253.003 of the Election Code.
9. With respect to the contribution from Gullo Ford Mercury of Conroe, there is insufficient evidence to show that the respondent violated section 253.003 of the Election Code.
10. With respect to the contribution from “Sonic Drive In of College Park,” there is insufficient evidence to show that the respondent violated section 253.003 of the Election Code.

11. The evidence indicates that the contribution disclosed as being made by The Woodlands Band and Booster Club, was made by an individual. Therefore, there is credible evidence of no violation of section 253.003 of the Election Code with respect to this political contribution.
12. With respect to the contribution from World Health and Golf Association, there is insufficient evidence of a violation of section 253.003 of the Election Code.
13. The evidence shows that the respondent did not accept a contribution from Diamond Star Ranch Youth, but instead made an expenditure to that entity. Therefore, there is credible evidence of no violation of section 253.003 of the Election Code with respect to this political contribution.

Failure to Properly Disclose Total Political Contributions

14. Each report must disclose the total amount of all political contributions accepted during the reporting period. ELEC. CODE § 254.031(a)(6).
15. The evidence indicates that the respondent failed to properly disclose total political contributions on his report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(6) 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 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. The respondent also acknowledges that each report must disclose the total amount of all political contributions accepted during the reporting period. 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 \$2,000 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-2806249.

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

Timothy Holifield, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director