

TEXAS ETHICS COMMISSION

IN THE MATTER OF

TREY MARTINEZ FISCHER,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2807285

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 13, 2008, to consider sworn complaint SC-2807285. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(3) and 254.035 of the Election Code and section 20.59 of the Ethics Commission Rules, 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 failed to properly report political expenditures made by credit card.

III. Facts Supported by Credible Evidence

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

1. The respondent is a state representative of District 116.
2. The allegations are based on the respondent's October 2006 30-day pre-election report and his January 2007, July 2007, and January 2008 semiannual reports.
3. The respondent disclosed the credit card company as payee on a total of approximately \$9,100 in political expenditures without disclosing the full name and address of the vendors of the goods and services purchased.

4. In addition, some of the political expenditures at issue that were made during the reporting period for the October 2006 30-day and 8-day pre-election reports disclosed the date of the credit card statement as opposed to the actual date of the expenditures.
5. The respondent corrected the reports at issue.

IV. Findings and Conclusions of Law

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

1. Each campaign finance report must include the full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period. ELEC. CODE § 254.031(a)(3).
2. A report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. Ethics Commission Rules § 20.59.
3. A political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. ELEC. CODE § 254.035(a); Ethics Commission Rules § 20.57(a).
4. The amount of the political expenditure made by credit card is readily determinable by the person making the expenditure on the date the person receives the credit card statement that includes the expenditure, unless the political expenditure is made during the reporting period for a pre-election campaign finance report. ELEC. CODE § 254.035(c), and (d), and Ethics Commission Rules § 20.57(c), and (d). Political expenditures made by credit card during the reporting period for a pre-election campaign finance report must be disclosed in the report covering that period and disclose the actual date that the charge was made.
5. The evidence shows that the respondent failed to disclose the required information for political expenditures (totaling approximately \$9,100) on multiple campaign finance reports. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules. The evidence shows that the respondent corrected his reports to disclose the missing information.
6. The evidence indicates that the respondent failed to properly disclose the date of political expenditures that were made during the reporting periods for the October 2006 pre-election reports. Therefore, there is credible evidence that the respondent violated section 254.035 of the Election Code. The evidence shows that the respondent corrected these dates.

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 full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period. The respondent also acknowledges that a report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. The respondent acknowledges that a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. The respondent further acknowledges that the amount of the political expenditure made by credit card is readily determinable by the person making the expenditure on the date the person receives the credit card statement that includes the expenditure, unless the political expenditure is made during the reporting period for a pre-election campaign finance report. The respondent acknowledges that political expenditures made by credit card during the reporting period for a pre-election campaign finance report must be disclosed in the report covering that period and disclose the actual date that the charge was made. 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 \$900 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-2807285.

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

Trey Martinez Fischer, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director