

TEXAS ETHICS COMMISSION

IN THE MATTER OF

MARK GILLIAM,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2912297, SC-2912299, AND SC-2912300

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 11, 2010, to consider sworn complaints SC-2912297, SC-2912299, and SC-2912300. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.001 and 254.031 of the Election Code (including a technical or *de minimis* violation), 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 disclose the purpose of a political expenditure, failed to properly disclose political contributions, accepted political contributions from a corporation, and accepted cash contributions without keeping a record of the contributions.

III. Facts Supported by Credible Evidence

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

1. The respondent is the former sheriff of Aransas County and was a candidate for re-election in the March 2008 Republican Party primary election.
2. Allegations of reporting violations that relate to reports that were filed more than two years before January 21, 2010, (the date the complaint was filed) are outside the statute of limitations and may not be considered. Ethics Commission Rules § 12.5. Some allegations in the complaint relate to the respondent's January 2008 semiannual report, which was filed more than two years before January 21, 2010. Therefore, allegations of reporting violations in that report were outside of the statute of limitations and were not considered. Allegations of corporate contributions related to that report have a three year statute of limitations and were considered by the commission. *Id.*

Purpose of Political Expenditure

3. The complaint alleged that the respondent failed to disclose on his July 2008 semiannual report the purpose of a \$219.20 political expenditure made to “Signman Creative Design” on February 29, 2008.
4. The purpose of the expenditure field for that expenditure was left blank on the report.
5. The respondent corrected the report to disclose the purpose of the expenditure at issue as “mag signs.”

In-kind Political Contributions/Corporate Contributions

6. The complaint alleged that the respondent failed to properly disclose in-kind political contributions of a truck that was used to display the respondent’s campaign sign from October 2007 through March 2008. The complaint alleged that the respondent did not disclose in his reports the true owner of the truck. In the alternative, the complaint alleged that the vehicle belonged to an incorporated business and the respondent accepted corporate contributions.
7. The respondent’s January 2008 semiannual report disclosed three in-kind political contributions of \$3,000 each from an individual on October 1, November 1, and December 1, 2007, for use of a Dodge truck.
8. The respondent’s 30-day pre-election report for the March 2008 primary election disclosed a \$3,100 in-kind political contribution from an individual on January 23, 2008, for use of a Dodge truck for 31 days at \$100 per day.
9. The respondent’s July 2008 semiannual report disclosed a \$2,900 in-kind political contribution from an individual on February 29, 2008, for use of a Dodge truck for 29 days in February at \$100 per day, and listed the contributor’s principal occupation as “partner Cantwell Automotive.”
10. The vehicle in question was owned by Cantwell Chrysler (Kingsville) Ltd, and the individual who was disclosed as the contributor was a name partner in the business.
11. According to records of the Texas Secretary of State, Cantwell Chrysler (Kingsville), Ltd. is a domestic limited partnership whose general partner as of August 7, 2007, is Cantwell GP, LLC, a Texas limited liability company.
12. The respondent filed corrections to the reports at issue to disclose “Cantwell Chrysler (Kingsville), Limited” as the contributor of the use of a Dodge truck.

Cash Political Contributions

13. The complaint alleged that the respondent accepted cash contributions of unknown amounts during the reporting period for the February 2008 8-day pre-election report, failed to keep a record of those political contributions, and failed to properly disclose them in his report. The allegations were based on a \$1,600 political contribution on February 1, 2008, for which the respondent disclosed the name of the contributor as “Misc. Cash” and the contributor’s address as “ticket sales from fundraiser dinner/dance (Lagoons RV Park).”
14. The respondent swore that during a fundraising event on February 1, 2008, he sold tickets for barbecue for \$5 each, sold soft drinks, and held silent auctions, all of which produced cash contributions that in the aggregate totaled \$1,600. He also swore that no more than \$50 was accepted from any one individual.
15. The respondent corrected the report to delete the political contribution at issue and to add those amounts to the amount of total political contributions of \$50 or less on the report’s cover page.
16. On June 2, 2010, the respondent’s campaign treasurer submitted an affidavit in which she swore that she kept a legal pad with the contributors’ name, address, and amount of each contribution received to ensure that no more than \$100 in cash was received from any one individual at the event. She swore that these pads were destroyed over a year ago.
17. The filing deadline for the 8-day pre-election report for the March 2008 primary election was February 25, 2008.

IV. Findings and Conclusions of Law

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

Purpose of Political Expenditure

1. 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. ELEC. CODE § 254.031(a)(3).
2. The purpose of an expenditure was left blank in the respondent’s July 2008 semiannual report. Although the respondent corrected the report to disclose the purpose, he failed to provide the information at the time the report was originally due. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code in connection with that political expenditure.

In-kind Political Contributions/Corporate Contributions

3. A campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
4. A person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b).
5. 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(a).
6. 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.
7. At the time the contributions at issue were made, the contributor was not a corporation and did not have a corporate partner. Therefore, there is credible evidence that the respondent did not violate sections 253.003 and 253.094 of the Election Code.
8. The respondent used a truck owned by Cantwell Chrysler (Kingsville), Ltd. for political advertising but improperly disclosed the owner of the business as the contributor. The individual disclosed as the contributor was a name partner in the business and one of the contributions at issue disclosed that fact. Therefore, there is credible evidence that the respondent committed a technical or *de minimis* violation of section 254.031(a)(1) of the Election Code in connection with these political contributions.

Cash Political Contributions

9. A candidate or officeholder is required to keep a record of all reportable activity. The record must contain the information that is necessary for filing required campaign finance reports. The record must be preserved for at least two years beginning on the filing deadline for the report containing the information in the record. ELEC. CODE § 254.001.
10. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
11. The respondent disclosed a political contribution of \$1,600 from an unnamed source on his 8-day pre-election report. Political contributions that in the aggregate exceed \$50 from a person must be itemized on a campaign finance report to disclose contributor information,

including the contributor's full name and address. The respondent's campaign treasurer swore that she obtained the contributors' names and addresses, and amount of each contribution when the \$1,600 in contributions at issue were received. However, those records were unavailable because they were destroyed less than two years after the filing deadline for the 8-day pre-election report. Therefore, there is credible evidence that the respondent violated section 254.001 of the Election Code.

12. While the respondent swore that the contribution at issue is an aggregate total of cash donations received at a fundraiser and that no more than \$50 was accepted from any one individual, there is no evidence to indicate whether the amount contributed by any one individual during the reporting period exceeded \$50. Therefore, there is insufficient evidence that the respondent violated section 254.031(a)(1) 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 these sworn complaints.
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 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 each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions.

The respondent further acknowledges that each candidate and each officeholder must maintain a record of all reportable activity, the record must contain the information that is necessary for filing required campaign finance reports, and the record must be preserved for at least two years beginning on the filing deadline for the report containing the information in the record.

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 \$200 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-2912297, SC-2912299, and SC-2912300.

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

Mark Gilliam, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director