

TEXAS ETHICS COMMISSION

IN THE MATTER OF

**MICHAEL PHILLIPS,
CAMPAIGN TREASURER,
LONE STAR DEMOCRATIC CLUB
OF MONTGOMERY COUNTY**

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31004119

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-31004119. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of sections 254.154, 254.031, and 254.151 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: 1) did not file 30-day and 8-day pre-election reports for the November 2008 general election, 2) did not disclose candidates supported or opposed and officeholders assisted by the committee, 3) incorrectly reported total political expenditures and total political contributions maintained, 4) did not disclose the actual payee for a \$1,000 political expenditure, and 5) did not disclose the purpose of four political expenditures totaling approximately \$290 on the 10th day after termination report filed on November 30, 2008, by the respondent.

III. Facts Supported by Credible Evidence

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

1. The respondent was appointed campaign treasurer of the Lone Star Democratic Club of Montgomery County (LSDCMC) on March 23, 2006. The respondent was replaced as treasurer on November 25, 2008.
2. The allegations that the respondent failed to file 30-day and 8-day pre-election reports are based on five expenditures totaling approximately \$3,365 disclosed on Schedule I (the

schedule used to disclose non-political expenditures) of the 10-day after termination report including:

- two expenditures to payee DemocraticStuff.com, on August 8 and August 19, 2008, totaling \$1,265, for the purpose of, “Campaign materials;”
 - \$500 to American Signs & Graphics, on October 8, 2008, for the purpose of, “Printing Services;”
 - \$1,095.59 to Impact Printing, on October 3, 2008, for the purpose of, “Printing Services;” and
 - \$504 to United State Post Office, on October 9, 2008, for the purpose of, “Postage Stamps.”
3. The complaint also alleged that the respondent failed to disclose the actual payee for a \$1,000 political expenditure to Montgomery County Democratic Party (disclosing a purpose of “Office Expenses”) and the purpose of four expenditures totaling approximately \$290, disclosed on Schedule I, including:
- \$32.46 to Best Buy on November 25, 2008, for “Software;”
 - \$89.65 to HEB on November 3, 2008, for “Food;”
 - \$107.24 to Intuit, Inc. on November 25, 2008, for “software;” and
 - \$59.40 to Party City on November 1, 2008, for “serving utensils.”
4. In response to notice of this complaint, the respondent acknowledged that he failed to file pre-election reports and swore that he would submit those reports. He also stated, “I now know what is actually considered a political expenditure and will correct this.” He further acknowledged that he failed to disclose candidates supported, and swore that he would correct the termination report to disclose required information. He also swore that the total disclosed for total political contributions maintained on the termination report was “the amount of funds available on 11/30/08.”
5. The last date of the period covered by the termination report is November 25, 2008. The report filed subsequent to the termination report, LSDCMC’s original January 2009 semiannual report, covered a period from November 26, 2008 through December 31, 2008, and disclosed activity during the period beginning November 26, 2008, and ending November 30, 2008.
6. To date, the respondent has not filed the 30-day or 8-day pre-election report in connection with the November 2008 general election, and has not corrected the termination report.

IV. Findings and Conclusions of Law

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

Pre-election Campaign Finance Reports

1. In addition to other required reports, for each election in which a general-purpose committee supports or opposes a candidate or measure, the committee's campaign treasurer shall file two reports. The first report must be filed not later than the 30th day before election day. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, and continuing through the 40th day before election day. The second report must be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. ELEC. CODE § 254.154.
2. A campaign expenditure is an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. ELEC. CODE § 254.154(7).
3. The respondent's termination report filed November 30, 2008, disclosed approximately \$1,265 in expenditures for campaign material made during the period covered by the 30-day pre-election report. There were additional expenditures totaling approximately \$1,135 during the period covered by that report, as well as expenditures totaling approximately \$1,610 during the 8-day pre-election reporting period. Although some expenditures did not specifically state they were for campaign activities, because LSDCMC was involved in the November 2008 election during the period covered by the reports at issue, the respondent was required to file both 30-day and 8-day pre-election reports for LSDCMC. The respondent failed to do so. Therefore, there is credible evidence of violations of sections 254.154(b) and (c) of the Election Code.

Political Expenditures and Political Contributions Maintained

4. Each campaign finance report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
5. Each campaign finance report must also include, as of the last day of a reporting period for which the person is required to file a report, 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).

6. The amount disclosed for total political expenditures on the report was incorrect. In light of the activity disclosed by the committee on its subsequent report and the statement made by the respondent, it is not clear whether the amount disclosed for total political contributions maintained on the termination report filed November 30, 2008, was correct as disclosed. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code and insufficient evidence of a violation of section 254.031(a)(8) of the Election Code.

Payee and Purpose Descriptions for Expenditures

7. 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).
8. Regarding the allegation related to the payee name, there is insufficient evidence of a violation of section 254.031(a)(3) of the Election Code in connection with the \$1,000 expenditure to the Montgomery County Democratic Party. There is credible evidence of no violation in connection with approximately \$290 in expenditures related to purpose descriptions, as the original disclosures were adequate.

Disclosure of Candidates or Officeholders Supported, Opposed or Assisted

9. Each report by a campaign treasurer of a general-purpose committee must include the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates, and the name of each identified officeholder or classification by party of officeholders assisted by the committee during the reporting period. ELEC. CODE §§ 254.151(4) and (5).
10. The report disclosed expenditures on Schedule I, including two expenditures to “DemocraticStuff.com” for “Campaign materials,” as well as printing and postage expenditures. The respondent swore in his response that he would correct the termination report to disclose the candidates or officeholders supported, opposed or assisted, but no correction was filed. The respondent was required to disclose candidates supported or opposed, or the name of the political party it supported. He did not meet this requirement. There is credible evidence of a violation of section 254.151(4) of the Election Code. There is insufficient evidence of a violation of section 254.151(5) of the Election Code regarding support of officeholders.

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, for each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day and covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day. The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day and covers the period beginning the 39th day before election day and continuing through the 10th day before election day. The respondent acknowledges that each report must include the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates assisted by the committee during the reporting period. The respondent acknowledges that each campaign finance report must also include the total amount of all political expenditures made 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 \$1,000 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-31004119.

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

Michael Phillips, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director