

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ABRAHAM DIAZ,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31011401 AND SC-31011403

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaints SC-31011401 and SC-31011403. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031 of the Election Code, a law administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaints alleged that the respondent failed to properly disclose political contributions and political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for city council of Leon Valley, Texas, in an election held on May 8, 2010.
2. On March 8, 2010, the respondent filed a campaign treasurer appointment with the city of Leon Valley indicating that he was a candidate for Leon Valley City Council Place 4. The respondent filed a 30-day pre-election report that was received by the filing authority on April 5, 2010. The report covered the period from March 8, 2010, to April 8, 2010. The report disclosed that no activity occurred during the reporting period.
3. The respondent's 8-day pre-election report was received by the filing authority on April 30, 2010. The report covered the period from April 9, 2010, to April 30, 2010. The report disclosed the following:

- \$0 in total political contributions of \$50 or less
 - \$600 in total political contributions
 - \$0 in total political expenditures of \$50 or less
 - \$0 in total political expenditures
 - \$600 in total political contributions maintained
 - \$0 in total principal amount of outstanding loans
4. The respondent filed a final report on July 15, 2010. The report covered the period from May 1, 2010, to July 15, 2010, and included a designation of a final report on which the respondent indicated that he terminated his campaign treasurer appointment and that he maintained unexpended contributions or assets purchased with contributions. The report disclosed:
- \$0 in total political contributions of \$50 or less
 - \$600 in total political contributions
 - \$0 in total political expenditures of \$50 or less
 - \$330.26 in total political expenditures
 - \$269.74 in total political contributions maintained
 - \$0 in total principal amount of outstanding loans
5. The final report itemized the following political expenditures:
- \$171.32 on May 8, 2010, for “Food/Beverage Expense” and described as “Campaign Celebration”
 - \$158.94 on May 15, 2010, for “Advertising Expense” and described as “Campaign T-shirts”
6. The final report did not itemize any political contributions. The complaints alleged that the respondent made political expenditures for flyers, push cards, and yard signs that were not disclosed. The complaints also alleged that the respondent did not disclose at least \$600 in political contributions. The complaints included a copy of a two-sided political advertising flyer that stated it was from the respondent’s campaign. The flyer included the dates for early voting (April 16, 2010, to May 4, 2010) and election day (May 8, 2010).
7. In response to the allegations, the respondent swore:
- For the reporting period ending on June 30, 2010, all contributions and expenditures were properly reported. For the expenditures and/or contributions that the complainant alleges were not properly and timely reported, the invoice for such expenditures was received after June 30, 2010 and, pursuant to Texas Election Code 254.035. Time of Making Expenditure, the expenditures reflected in such invoice will be contained in the report for the period ending on December 31, 2010.

8. The respondent submitted a copy of an invoice to “Diaz for City Council” from a company in San Antonio, Texas. The invoice was dated July 1, 2010, and listed the following:

Quantity:	Description:	Amount:
1,934	Turnkey Direct Mail Services: Leon Valley Targeted households 2 postcards, 967 households each	\$1,160.40
2	Setup	\$100
100	Campaign Signs	\$300
1,201	Walklist: Leon Valley Targeted households	\$72.06
734	Phonelist: Leon Valley Targeted households	\$73.40

9. The invoice included \$37.83 in taxes. The grand total on the invoice was \$1,743.70.
10. The respondent filed a January 2011 semiannual report on January 11, 2011. The report indicated that it covered the period from July 1, 2010, to December 31, 2010. The report disclosed:
- \$0 in total political contributions of \$50 or less
 - \$732.73 in total political contributions
 - \$0 in total political expenditures of \$50 or less
 - \$1,743.70 in total political expenditures
 - \$269.74 in total political contributions maintained
 - \$0 in total principal amount of outstanding loans
11. The report itemized a \$732.73 in-kind political contribution from an individual on July 1, 2010, described as “Letter of support.” The report also itemized a political expenditure of \$1,743.70 on July 1, 2010 to the company in San Antonio, for “Campaign Expense” and described as “Campaign Consulting Service.”

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 amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).

2. 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. *Id.* § 254.031(a)(3).
3. A political contribution includes a campaign contribution. *Id.* § 251.001(5). A campaign contribution means, in pertinent part, a contribution that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3). A contribution means, in pertinent part, a direct or indirect transfer of money and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2).
4. A political expenditure includes a campaign expenditure. *Id.* § 251.001(10). A campaign expenditure means, in pertinent part, an expenditure made by any person in connection with a campaign for an elective office. *Id.* § 251.001(7). An expenditure means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
5. A political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. *Id.* § 254.035(a); Ethics Commission Rules § 20.57(a).
6. The respondent accepted \$600 in political contributions during the period covered by the final report. The respondent's final report disclosed that he did not accept any political contributions that were \$50 or less that were unitemized. Thus, the respondent was required to itemize the contributions. None of the contributions were itemized. Therefore, there is credible evidence that the respondent violated section 253.041(a)(1) of the Election Code by failing to properly disclose \$600 in political contributions.
7. The respondent made \$1,743.70 in political expenditures for postcards, signs, a "walklist," a "phonelist," and a setup fee. The respondent swore that he received the invoice detailing the expenditures after June 30, 2010, and that he was not required to disclose the expenditures until he filed his January 2011 report. The invoice was dated July 1, 2010.
8. The preparation, distribution, and use of the advertisements and other information occurred before the election on May 8, 2010. Although the respondent swore that he did not receive the invoice until after June 30, 2010, the invoice was dated July 1, 2010. The amounts of the expenditures were readily determinable before that date, because the respondent could have simply asked the vendor to provide the amounts, regardless of when he received the invoice. Thus, the respondent was required to disclose the expenditures no later than July 15, 2010.
9. The respondent filed a final pre-election report on July 15, 2010, that covered the period from May 1, 2010, to July 15, 2010, and the respondent was required to disclose all political expenditures during that period of time. The expenditures at issue were readily determinable before July 1, 2010, and were not disclosed in the final report that covered that period of

time or in either of the earlier pre-election reports. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) 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 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 period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. The respondent also acknowledges that a 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 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-31011401 and SC-31011403.

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

Abraham Diaz, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director