

TEXAS ETHICS COMMISSION

IN THE MATTER OF

GAYLE FALLON,
CAMPAIGN TREASURER,
HOUSTON FEDERATION OF
TEACHERS COPE,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31109202

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 30, 2012, to consider sworn complaint SC-31109202. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.003, 253.037, 254.031, 254.151, 254.153, and 254.154 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 proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent: 1) did not properly disclose total political contributions maintained; 2) did not disclose the full name of a person receiving political expenditures; 3) did not disclose the actual payees of political expenditures; 4) did not include on the committee's reports the name of each identified candidate supported or opposed, and officeholder assisted by the committee; 5) made unlawful political contributions to general-purpose committees without identifying the recipient committees in a campaign treasurer appointment; and 6) did not timely file a 30-day pre-election report, January 2010 semiannual report, and July 2010 semiannual report.

III. Facts Supported by Credible Evidence

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

1. The respondent is the campaign treasurer for Houston Federation of Teachers COPE (HFT), a general-purpose political committee that files campaign finance reports with the commission.

Total Political Contributions Maintained

2. The complaint alleged that the respondent did not properly disclose total political contributions maintained on 10 committee reports. The allegations are as follows:
 - 30-day Pre-election Report for the November 2009 General Election - disclosed \$2,956; alleged \$3,954
 - 8-day Pre-election Report for the November 2009 General Election - disclosed \$10,906; alleged \$12,410
 - Runoff Election Report for the December 2009 Runoff Election - disclosed \$3,045.16; alleged \$14,894.33
 - January 2010 Semiannual Report - disclosed \$3,304.66; alleged \$15,653.33
 - July 2010 Semiannual Report - disclosed \$5,527; alleged \$18,845.33
 - 30-day Pre-election Report for the November 2010 General Election - disclosed \$55,224.60; alleged \$70,672.43
 - 8-day Pre-election Report for the November 2010 General Election - disclosed \$17,797.37; alleged \$33,774.46
 - Runoff Election Report for the November 2010 Runoff Election - disclosed \$49,038.51; alleged \$98,767.27
 - January 2011 Semiannual Report - disclosed \$18,458.87; alleged \$70,637.57
 - July 2011 Semiannual Report - disclosed \$27,286; alleged \$77,145.99

Payee's Name

3. The complaint alleged that the respondent did not disclose the full name of a person who received two political expenditures totaling \$840. The political expenditures at issue were disclosed on Schedule F (used to disclose political expenditures) of the committee's 8-day pre-election report for the November 2, 2010, general election, and the committee's runoff election report for the November 30, 2010, runoff election. For the two political expenditures at issue, the respondent disclosed the payee's name using a last name and initials and indicated that the expenditures were for "Support for Harris County Dems campaign – contract labor."

Actual Payee of Political Expenditures

4. The complaint alleged that the respondent did not disclose the actual vendor payee, address, date, and amount pertaining to the stated purpose of five political expenditures totaling approximately \$48,400. The political expenditures at issue were disclosed on Schedule F of the committee's reports as follows:

30-day Pre-election Report for the November 2010 General Election

- September 14, 2010, \$9,784.80 to the Houston Federation of Teachers under the category of "Salary/Wages/Contract Labor" with a description of "HFT staff time supporting Harris County Dems campaign"

8-day Pre-election Report for the November 2010 General Election

- September 27, 2010, \$3,821.63 to American Express under the category of "OTHER - equipment supply purchase" with a description of "support/coordinate blockwalking in support of Harris County Democratic campaign"

Runoff Election Report for the November 2010 Runoff Election

- November 17, 2010, \$17,650.66 to American Express under the category of "OTHER - rental of vans supplies" with a description of "Rental of vans supplies in support of Harris County Democratic campaign"

January 2011 Semiannual Report

- November 30, 2010, \$16,416.70 to American Express under the category of "OTHER - equipment supply purchase" with a description of "support/coordinate blockwalking in support of Harris County Democratic campaign"

July 2011 Semiannual Report

- January 21, 2011, \$703.08 to American Express under the category of “Office Overhead/Rental Expense” with a description of “Purchase of office supplies gas for PAC administration”
5. The respondent did not file corrected reports.

Disclosure of Names of Candidates and Officeholders Supported or Assisted by the Committee

6. The complaint alleged that the respondent did not disclose the names of each identified candidate supported or opposed by the committee, and each identified officeholder assisted by the committee on the following nine campaign finance reports: 8-day pre-election report for the November 2009 general election, runoff election report for the December 2009 runoff election, January 2010 semiannual report, July 2010 semiannual report, 30-day and 8-day pre-election reports for the November 2010 general election, runoff election report for the November 2010 runoff election, January 2011 semiannual report, and the July 2011 semiannual report.
7. On the reports at issue, the “Committee Activity” sections of the report cover sheets were left blank. However, Schedule F of the reports at issue disclosed multiple political expenditures that were made in support of identified candidates. For example, Schedule F of the January 2010 semiannual report disclosed a \$1,000 political expenditure to “Adrian Collins Campaign” for the purpose of “Support runoff candidate for Houston ISD board.” Thus, information showing which candidates the committee supported was readily apparent to anyone who may have viewed Schedule F of the reports. Moreover, Schedule F of some of the reports at issue disclosed numerous political expenditures to individuals for contract labor with stated descriptions of “Support for Harris County Dems campaign – contract labor.” Thus, the respondent disclosed the classification by party of candidates supported so that someone viewing Schedule F of the reports could have reasonably ascertained which candidates the committee was supporting.

Contributions to General-Purpose Political Committees

8. The complaint alleged that HFT made political contributions to other general-purpose committees without disclosing those committees on its campaign treasurer appointment. At issue was the respondent’s 8-day pre-election report for the November 2009 general election, runoff election report for the December 2009 runoff election, and 30-day and 8-day pre-election reports for the November 2010 general election. The reports disclosed five contributions totaling \$1,075 to two general-purpose committees. The names and addresses of the general-purpose committees were not disclosed on the respondent’s campaign

treasurer appointment filed on October 6, 2003, or on any other preceding treasurer appointment.

9. In response to the complaint, the respondent filed an amended appointment of a campaign treasurer by a general-purpose committee on October 25, 2011, and disclosed the names and addresses of the recipient general-purpose committees at issue.

Timely Filing of Campaign Finance Reports

10. The complaint alleged that the respondent did not timely file the 30-day pre-election report for the November 3, 2009, general election, the January 2010 semiannual report, and the July 2010 semiannual report.
11. The 30-day pre-election report was due by October 5, 2009. The respondent filed the report on October 7, 2009, two days after the deadline. On October 23, 2009, the respondent paid the \$500 penalty for the late filing of that report.
12. The January 2010 semiannual report was due by January 15, 2010. The respondent filed the report on January 19, 2010, four days after the deadline. On January 19, 2010, the respondent filed an affidavit of defense for the late filing of the January 2010 semiannual report. As permitted by commission rule, the respondent was granted a waiver of the civil penalty by the executive director due to the technical issues. The report disclosed \$1,759 in total political contributions and \$1,000 in total political expenditures.
13. The July 2010 semiannual report was due by July 15, 2010. The respondent filed the report on July 16, 2010, one day after the deadline. On August 10, 2010, the respondent filed an affidavit of defense for the late filing of the July 2010 semiannual report. In the affidavit, the respondent swore that the report was submitted to the commission on July 15, 2010, in the form of an electronic diskette, but the diskette contained the wrong account password due to a typographical error. As permitted by commission rule, the respondent was granted a waiver of the civil penalty by the executive director due to the technical issues. The report disclosed \$4,692 in total political contributions and \$1,500 in total political expenditures.

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. Each report must 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).
2. There is insufficient evidence of violations of section 254.031(a)(8) of the Election Code.

Payee's Name

3. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 at time of complaint) and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
4. The respondent was required to list the payee's full name because the political expenditures exceeded \$50 in the aggregate. The respondent did not disclose the full name of the payee at issue. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.

Actual Payee of Political Expenditures

5. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 at time of complaint) and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
6. 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.
7. Regarding the political expenditure to the Houston Federation of Teachers of \$9,784.80, there is insufficient evidence to show that the respondent did not properly disclose the payee. Therefore, there is insufficient evidence of a violation of section 254.031(a)(3) of the Election Code with respect to that expenditure.

8. Regarding the four political expenditures to American Express totaling approximately \$38,590, the respondent did not disclose the ultimate vendors who received the payments. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules with respect to those four expenditures.

Disclosure of Names of Candidates and Officeholders Supported or Assisted by the Committee

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. ELEC. CODE §§ 254.151(4) and (5).
10. The activity at issue for which a violation may be found appears to be candidate, not officeholder, related. Although the committee reports at issue disclosed political expenditures to candidates on Schedule F, the reports did not disclose the information in the "Committee Activity" section of the cover sheets. However, the disclosures on Schedule F of the reports at issue made apparent the names of the candidates and the party classification that the committee supported. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.151(4) and (5) of the Election Code.

Contributions to General-Purpose Political Committees

11. The campaign treasurer appointment of a general-purpose committee must include the full name and address of each general-purpose committee to whom the committee intends to make political contributions. ELEC. CODE § 252.003(a)(2).
12. A general-purpose committee may not knowingly make a political contribution to another general-purpose committee unless the other committee is listed in the campaign treasurer appointment of the contributor committee. ELEC. CODE § 253.037(b).
13. The respondent filed an amended appointment of a campaign treasurer by a general-purpose committee and disclosed the names and addresses of the recipient general-purpose committees that received contributions from HFT. At the time the contributions were originally made, this information was not disclosed on the committee's campaign treasurer appointment. However, the names and addresses of the recipient committees were disclosed on Schedule F of the committee's campaign finance reports. Thus, the information was readily apparent to anyone who may have viewed the report, and in context did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of sections 252.003(2) and 253.037(b) of the Election Code.

Timely Filing of Campaign Finance Reports

14. The campaign treasurer of a general-purpose committee shall file two reports each year as provided by this section. ELEC. CODE § 254.153(a). The first report shall be filed not later than July 15. *Id.* § 254.153(b). The second report shall be filed not later than January 15. *Id.* § 254.153(c).
15. 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. *Id.* § 254.154(b).
16. A report is late if it is: incomplete; not filed by the applicable deadline; or not filed by computer diskette, modem, or other means of electronic transfer and the filer is required by law to file using one of these methods. Ethics Commission Rules §18.7(c).
17. The 30-day pre-election report for the November 3, 2009, general election was due by October 5, 2009. The respondent filed the 30-day pre-election report on October 7, 2009, which was two days late. Although the respondent paid the administrative penalty, the report was not timely filed. Therefore, there is credible evidence of a violation of section 254.154(b) of the Election Code. That report was also considered through the administrative process.
18. The January 2010 semiannual report was due by January 15, 2010. The respondent filed the report on January 19, 2010, four days after the deadline. Therefore, there is credible evidence of a violation of section 254.153(c) of the Election Code. That report was also considered through the administrative process.
19. The July 2010 semiannual report was due by July 15, 2010. The respondent filed the report on July 16, 2010, one day after the deadline. Therefore, there is credible evidence of a violation of section 254.153(b) of the Election Code. That report was also considered through the administrative process.

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 amount of political expenditures that in the aggregate exceed \$100 (\$50 at time of complaint) and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made, and the dates and purposes of the expenditures; a report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company; 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, and the name of each identified officeholder or classification by party of officeholders assisted by the committee; the campaign treasurer appointment of a general-purpose committee must include the full name and address of each general-purpose committee to whom the committee intends to make political contributions; and a general-purpose committee may not knowingly make a political contribution to another general-purpose committee unless the other committee is listed in the campaign treasurer appointment of the contributor committee. The respondent further acknowledges that: the campaign treasurer of a general-purpose committee shall file two reports each year - the first report shall be filed not later than July 15 - the second report shall be filed not later than January 15; in addition to other required reports, 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 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 \$5,000 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-31109202.

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

Gayle Fallon, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director