

TEXAS ETHICS COMMISSION

IN THE MATTER OF

PETER HWANG,
CAMPAIGN TREASURER,
HOUSTON 80-20 PAC,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-3120259

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2014, to consider sworn complaint SC-3120259. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.151, and 254.157 of the Election Code and section 571.1242 of the Government 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, as the campaign treasurer of a general-purpose committee: 1) did not, on multiple campaign finance reports, disclose political contributions maintained or, in the alternative, failed to report additional political contributions, political expenditures, or non-political expenditures; 2) did not, on multiple campaign finance reports, identify the candidates supported or opposed and the officeholders assisted by the committee; 3) did not, on multiple campaign finance reports, timely disclose political contributions; 4) accepted a corporate political contribution; and 5) did not timely file multiple campaign finance reports.

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 80-20 PAC, a general-purpose committee that files with the commission.

2. The reports at issue are the 24 monthly reports due between March 5, 2010, and February 6, 2012.

Committee Activity

3. The complaint alleged that the respondent did not complete the “Committee Activity” section of the reports by disclosing the names of each identified candidate supported or opposed by the committee and each identified officeholder assisted by the committee. The campaign finance reports at issue are the committee’s monthly reports due: March 5, 2010; June 7, 2010; December 5, 2011; and January 5, 2012.
4. On the reports at issue, the “Committee Activity” sections of the report cover sheets were left blank.
5. The committee’s report due on March 5, 2010, disclosed approximately \$1,660 in political expenditures for “Campaign materials printing exp.” and advertising. The committee’s report due on December 5, 2011, disclosed a \$3,278.55 political expenditure for a printed “Election information mailer.” The remaining expenditures at issue were not clearly related to any candidates or officeholders.
6. The respondent submitted an affidavit in which he swore:

The Houston 80-20 PAC committee does not financially support nor campaign for a single candidate during the race. We do review the candidate’s written response and make a list of the endorsements who meets our endorsement guideline and will send out a news release.
7. News articles and press releases indicate the committee endorsed local candidates in the 2009, 2011, and 2013 general elections.

Total Political Contributions Maintained

8. The complaint alleged that the respondent reported an incorrect balance for total political contributions maintained in each of the reports at issue or, in the alternative, if the balance for contributions maintained was correct, that the respondent did not report additional contributions or expenditures. The complaint included no specific information to support the allegations other than disclosures in the respondent’s reports.
9. The respondent has disclosed \$0.00 in cash on hand in each report filed from as early as January 1, 2009, through the period of time at issue in the complaint. Since the March 2010

report, the respondent disclosed approximately \$24,560 in political contributions and approximately \$27,190 in political expenditures.

Timely Disclosure of Political Contributions

10. The complaint alleged that the respondent did not timely disclose \$400 and \$300 political contributions from a judicial officeholder.
11. The committee's June 2010 monthly report disclosed a \$400 political contribution from the officeholder. The officeholder disclosed a contribution of \$400 to the political committee with the date of March 26, 2010, in his July 2010 semiannual report.
12. The committee's December 2011 monthly report disclosed a \$300 political contribution from the officeholder. The officeholder disclosed a contribution of \$300 to the political committee with the date of October 6, 2011, in his January 2012 semiannual report.
13. The respondent's affidavit stated: "[The individual at issue's] contribution made on 10/06/2011 was reported on 10/30/2011 and the contribution made on 3/26/2010 was reported on 4/27/2010 because they had mailed a check."

Timely Filing of Campaign Finance Reports

14. The complaint alleged that the respondent did not timely file the committee's monthly report due December 6, 2010, and the six monthly reports due from April 5, 2011, through September 6, 2011.
15. Each of these reports was late.

Political Contribution from a Corporation

16. The complaint alleged that, based on disclosures in the respondent's September 2010 monthly report, the respondent accepted a political contribution from a corporation.
17. The respondent's September 2010 monthly report disclosed a political contribution of \$100 from Tradition Bank on July 26, 2010. The contribution was described as "Bellaire Blvd July 4th Project." According to Texas Secretary of State (SOS) records, Tradition Bank is a Texas state financial institution. In the same report, the respondent disclosed a political expenditure of \$373.46 to "Fast Signs" on August 4, 2010, for "Bellaire Blvd July 4th Flag Project."

18. In his response to the complaint, the respondent swore that:

The \$100 check received and reported on 7/26/2010 was never deposited into any bank. This donation was for the Bellaire Blvd. July 4th flag project but the check was made to Houston 80 20 PAC. Enclosed please review the attached copy of this check, front and back, which has never been deposited.

Response to Sworn Complaint

19. The commission sent a notice of the sworn complaint to the respondent by certified mail return receipt requested. The respondent received the notice of the complaint. The notice informed the respondent that the alleged violations in the sworn complaint were Category Two violations, and that a response was required not later than 25 business days from the date the notice was received and that failure to respond constituted a separate violation for which a separate civil penalty may be assessed. The respondent submitted a sworn response that was filed approximately 50 days after the response deadline.

IV. Findings and Conclusions of Law

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

Committee Activity

1. 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).
2. The expenditures for the printed mailers and advertising supported candidates. The candidates that the committee endorsed were required to be disclosed as candidates that the committee supported. The respondent did not disclose that the committee supported any candidates during the period at issue. Therefore, there is credible evidence of violations of section 254.151(4) of the Election Code as to the two campaign finance reports covering the periods in which the expenditures were made.
3. It is unclear whether the committee supported or opposed any candidates or assisted any officeholders during the periods covered by the other reports at issue. There is insufficient evidence of a violation of section 254.151(4) of the Election Code as to those reports.

4. There is no evidence that the committee assisted any officeholders. Therefore, there is credible evidence of no violation of section 254.151(5) of the Election Code.

Total Political Contributions Maintained

5. 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).
6. Based upon the amounts of political contributions and political expenditures disclosed in the reports, it appears that the respondent did not properly disclose the amount of political contributions maintained in several reports. There is credible evidence of violations of section 254.031(8) of the Election Code.

Timely Disclosure of Political Contributions

7. Each 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).
8. There is no evidence that the respondent disclosed incorrect dates for the contributions at issue. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code.

Timely Filing of Campaign Finance Reports

9. The campaign treasurer of a general-purpose committee filing monthly reports shall file a report not later than the fifth day of the month following the period covered by the report. A report covering the month preceding an election in which the committee is involved must be received by the authority with whom the report is required to be filed not later than the fifth day of the month following the period covered by the report. ELEC. CODE § 254.157(a).
10. Each of the reports was late. Therefore, there is credible evidence of violations of section 254.157(a) of the Election Code.

Political Contribution from a Corporation

11. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b). In order to show a violation of section 253.003(b) of the Election Code, the evidence must show that the contributor was a corporation or labor organization, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation or labor organization.
12. 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.
13. A corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose committee. In addition to any other expenditure that is considered permissible under this section, a corporation may make an expenditure for the maintenance and operation of a general-purpose committee. ELEC. CODE § 253.100(a).
14. 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.
15. A bank, whether incorporated or not, is considered to be a corporation covered by this subchapter. ELEC. CODE § 253.093.
16. Section 254.034 of the Election Code states in pertinent part: a determination to accept or refuse a political contribution that is received by a candidate, officeholder, or political committee shall be made not later than the end of the reporting period during which the contribution is received. If the determination to accept or refuse a political contribution is not made before the time required by Subsection (a) for purposes of this chapter, the contribution is considered to have been accepted on the last day of that reporting period. A political contribution that is received but not accepted shall be returned to the contributor not later than the 30th day after the deadline for filing a report for the reporting period during which the contribution is received. A contribution not returned within that time is considered to be accepted. ELEC. CODE § 254.034.
17. The complaint alleged that the respondent accepted a \$100 political contribution from a bank, which is considered to be a corporation. There is insufficient evidence that the \$100 at issue was intended as a political contribution. Therefore, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.

Response to Sworn Complaint

18. If the alleged violation in a sworn complaint is a Category Two violation, the respondent must respond to the notice required by section 571.123(b) not later than the 25th business day after the date the respondent receives the notice. GOV'T CODE § 571.1242(b)(1). A respondent's failure to timely respond to a sworn complaint as required by subsection (a)(1) or (b)(1) is a Category One violation. GOV'T CODE § 571.1242(c).
19. The evidence indicates that the respondent did not file a timely response to the notice of the sworn complaint.

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: 1) 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; 2) 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; 3) the campaign treasurer of a general-purpose committee filing monthly reports shall file a report not later than the fifth day of the month following the period covered by the report. A report covering the month preceding an election in which the committee is involved must be received by the authority with whom the report is required to be filed not later than the fifth day of the month following the period covered by the report; and 4) if the alleged violation in a sworn complaint is a Category Two violation, the respondent must respond to the notice required by section 571.123(b) of the Government Code not later than the 25th business day after the date the respondent receives the notice. 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 nature, circumstances, and consequences of the violations described under Sections III and IV, and 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-3120259.

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

Peter Hwang, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director