



TEXAS ETHICS COMMISSION

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December 9, 2014

Mr. James N. Higdon
Former Campaign Treasurer
Judicial Roundup PAC in Support of
Solomon Casseb III, Renee McElhaney & Janet Littlejohn

**RE: Notice of Reporting Error
SC-3120372
(James N. Higdon, Respondent)**

Dear Mr. Higdon:

The Texas Ethics Commission (Commission) met on December 2, 2014, to consider SC-3120372. A quorum of the Commission was present. **The Commission determined that there is credible evidence of reporting errors that do not materially defeat the purpose of disclosure.** To resolve and settle this case without further proceedings, the Commission proposed this Notice of Reporting Error Agreement (agreement).

The Commission **found credible evidence** that:

1. The respondent, as campaign treasurer for Judicial Roundup PAC in Support of Solomon Casseb III, Renee McElhaney & Janet Littlejohn (Roundup), did not properly disclose total political contributions maintained in a semiannual report as required by section 254.031(a)(8) of the Election Code;
2. The respondent did not properly disclose the full names of the employers or law firms of seven contributors as required by sections 254.1211 and 254.0611 of the Election Code;
3. The respondent did not properly disclose the payees or purposes of 10 political expenditures as required by section 254.031(a)(3) of the Election Code and sections 20.59, 20.61, and 20.62 of the Ethics Commission Rules;
4. The respondent did not disclose the address of a payee of a political expenditure as required by section 254.031(a)(3) of the Election Code.

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The Commission **did not find credible evidence** that:

1. The respondent accepted contributions from corporations as prohibited by sections 253.003 and 253.094 of the Election Code;
2. The respondent did not properly disclose total political contributions maintained on the committee's dissolution report as required by section 254.031(a)(8) of the Election Code;
3. The respondent did not properly disclose the full names of the employers or law firms of four contributors as required by sections 254.1211 and 254.0611 of the Election Code;
4. The respondent did not properly disclose the payees or purposes of five political expenditures as required by section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

Corporate Contributions

1. It was contended that Roundup accepted three contributions totaling \$3,600 from prohibited corporations. According to records from the Texas Secretary of State (SOS), the first contributor is a domestic for-profit corporation with a forfeited status. The corporation forfeited its charter in 2005 and to date has not been reinstated. According to records from the SOS, the other two contributors are domestic professional corporations based in San Antonio, Texas. Two of the contributions at issue were made by professional corporations and one was made by a corporation that was inactive on the date of the contribution. **Because the contributions were not made by prohibited corporations, there is credible evidence of compliance with sections 254.003 and 253.094 of the Election Code.**

Total Political Contributions Maintained

2. It was contended that the respondent improperly disclosed the total political contributions maintained on Roundup's January 2011 semiannual report and the committee's dissolution report.
3. The January 2011 report disclosed \$0 in total contributions maintained. The last day of the period covered by Roundup's January 2011 semiannual report should have been December 31, 2010, but the report mistakenly covered through January 15, 2011. The respondent provided bank records that showed Roundup's ending balance on December 31, 2010, was \$1,494.31. Roundup's January 2011 semiannual report disclosed an expenditure of \$1,494.31 to the "Janet Littlejohn Campaign" on December 10, 2010. The description stated that this expenditure was made with PAC check #1096. Roundup's bank records indicated that this check did not clear the account until January 19, 2011. It appears the respondent may have disclosed \$0 in contributions maintained to reflect the expected bank balance rather than the actual bank balance on the last day of the reporting period. The respondent did not properly report the total political contributions maintained as of the last day of the

reporting period. **Therefore, there is credible evidence of noncompliance with section 254.031(a)(8) of the Election Code with respect to that report.**

4. The committee's dissolution report disclosed \$0 in total contributions maintained. The last day of the period covered by Roundup's dissolution report was June 28, 2011. The respondent stated that Roundup's bank account was closed in January of 2011. Roundup's bank records indicate a \$0 balance on January 31, 2011. The respondent properly reported the total political contributions maintained. **Therefore, there is credible evidence of compliance with section 254.031(a)(8) of the Election Code with respect to that report.**

Full Names of Employers or Law Firms of Contributors

5. It was contended that the respondent did not disclose the full names of the employers or law firms of 11 contributors on Roundup's 30-day and 8-day pre-election reports for the November 2010 general election.
6. For three of the contributions at issue, the respondent disclosed that the contributors were either self-employed or repeated the contributor's name in the "employer" section. The respondent did not list the formal name of the entities employing each contributor. However, the evidence indicated that the contributors' names were included in the names of their employing entities. The commission has previously determined that there is no violation of section 254.0611(a)(2)(A) of the Election Code for listing a contributor as self-employed as long as the contributor is an officer or principal of an entity that bears the contributor's name, or if the contributor is otherwise self-employed. **Therefore, there is credible evidence of compliance with sections 254.1211 and 254.0611 of the Election Code with respect to those three contributions.**
7. One of the contributions at issue included the full and correct name of the contributor's employer. **Therefore, there is credible evidence of compliance with sections 254.1211 and 254.0611 of the Election Code with respect to that contribution.**
8. For five of the contributions at issue, the respondent either omitted the name of the employer or wrote "none" in the relevant section. For two of the contributions at issue, the respondent disclosed incorrect employer information. **Therefore, there is credible evidence of noncompliance with sections 254.1211 and 254.0611 of the Election Code with respect to those seven contributions.**

Payee and Purpose of Political Expenditures

9. It was contended that the respondent did not properly disclose the payee or purpose of multiple political expenditures on Roundup's 8-day pre-election report for the November 2010 general election and the January 2011 semiannual report.

10. Eight of the expenditures at issue were made to individuals and a law firm. The evidence indicates that the expenditures were made as reimbursements to Roundup employees or to Higdon, Hardy & Zuflacht, LLP, a law firm that shared an address and many employees with Roundup. The evidence indicates that these expenditures were made as reimbursements. All eight expenditures were categorized as “Event Expenses.” Five of those were described as “General Supplies,” and the others were described as “Postage for invitations and general supplies,” “Reimburse Discover card paid for shotgun shells and clay pigeons,” and “Coca Cola Reimbursement.” The total amount of these expenditures was approximately \$3,136. The respondent did not disclose the full names of the persons or vendors who actually received payment for the goods or services. With respect to the expenditures described as “general supplies,” the description given was not sufficient to make the reasons for the expenditures clear. **Therefore, there is credible evidence of noncompliance with section 254.031(a)(3) of the Election Code, and sections 20.61 and 20.62 of the Ethics Commission Rules with respect to those eight expenditures.**
11. Two of the expenditures at issue were made to “AMEX” on October 26, 2010, for \$112.48 and \$438. The respondent did not identify the actual vendor who received payment from the credit card company. **Therefore, there is credible evidence of noncompliance with section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules with respect to those two expenditures.**
12. Five of the expenditures at issue were made to various payees and categorized as “Event Expense” and described as “Music- DJ,” “Custodial,” “Security,” “Shaved Ice,” and “Hay Rides & Custodial Service.” Each of these identified payees was the actual person who received payment for the goods or services purchased. The respondent properly identified the payees and purposes of five of the expenditures at issue. **Therefore, there is credible evidence of compliance with section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules with respect to those five expenditures.**

Address of Payee of Political Expenditure

13. It was contended that the respondent did not disclose the address of a payee of a \$250 political expenditure on Roundup’s 8-day pre-election report for the November 2010 general election. The space for the payee’s address was left blank. The respondent did not include the address for the payee of a political expenditure exceeding \$100. However, the incomplete information was not misleading nor did it substantially affect disclosure. **Therefore, there is credible evidence of technical or *de minimis* noncompliance with section 254.031(a)(3) of the Election Code.**

By signing this agreement and returning it to the Commission:

1. You consent to this agreement.
2. You accept the determinations made by the Commission in this agreement.

3. You waive any right to further proceedings in this matter.
4. You understand and agree that the Commission will consider this agreement in any future proceedings against you.
5. You acknowledge that:

Each campaign finance 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.

Each report by a specific-purpose committee for supporting or opposing a candidate must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period, the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any.

Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 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. A report of a political expenditure by credit card must identify the vendor who receives payment from the card company. The purpose of an expenditure means a description of the category of goods, services, or other thing of value for which an expenditure is made and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Political expenditures made as staff reimbursements must be reported in accordance with section 20.62 of the Ethics Commission Rules.

You agree to comply with these requirements of the law.

This agreement describes reporting errors that the Commission has determined are neither technical nor *de minimis*. Accordingly, this agreement is not confidential under section 571.140 of the Government Code.

The respondent agrees to tender a \$500 assessment fee to the Commission.

This agreement is a final and complete resolution of SC-3120372.

James N. Higdon, Respondent

Date signed by Respondent

Executed original agreement received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley
Executive Director