

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
CAROL SIMS, CAMPAIGN	§	
TREASURER, TEXAS CIVIL	§	TEXAS ETHICS COMMISSION
JUSTICE LEAGUE PAC,	§	
	§	
RESPONDENT	§	SC-31209249

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 30, 2013, to consider sworn complaint SC-31209249. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.151, 254.156, and 254.157 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 properly disclose political contributions and political expenditures, 2) did not disclose or improperly disclosed information on campaign finance reports, 3) accepted contributions from corporations or labor organizations, and 4) did not timely file a campaign finance report.

III. Facts Supported by Credible Evidence

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

1. At the time relevant to the complaint, the respondent was campaign treasurer of the Texas Civil Justice League PAC.

Total Political Contributions Maintained

2. The complaint alleged that the respondent did not properly disclose total political contributions maintained on 24 campaign finance reports. In response to the complaint, the respondent submitted the committee's bank account statements covering the period at issue in the complaint.

3. With respect to the committee's monthly reports filed in December 2010, March-Corrected April 2011, July 2011, and May-June 2012, the reports disclosed discrepancies totaling approximately \$82,470, an average of \$3,440. The respondent filed corrections to the committee's March 2011 and corrected April 2011 reports and disclosed new amounts of contributions maintained that, although inconsistent with the amount disclosed on the committee's bank statements, did not exceed the lesser of 10% of the amount originally disclosed or \$2,500. The remaining reports were not corrected.

Disclosure of Full Names of Persons Making Political Contributions and Receiving Political Expenditures

4. The complaint alleged that, based on disclosures in seven campaign finance reports, the respondent did not disclose the contributor's full name for 18 political contributions and the payee for one political expenditure. With respect to 14 contributions, the names on the contribution checks were the same names disclosed on the respondent's campaign finance reports or were in substantial compliance. With respect to the expenditure at issue, the payee name was properly disclosed. With respect to two contributions, totaling \$125, the respondent swore that she was unable to locate copies of the contribution checks. However, the respondent was able to provide a copy of the contribution form filled out by the contributors at issue on which they provided their names as they are disclosed on the report. With respect to two contributions totaling \$75, the respondent swore that the contributors at issue were frequent contributors who made their contributions by credit card, and had consistently provided their names as they were disclosed in the report.

Disclosure of Political Expenditures

5. The complaint alleged that the respondent reported an incorrect amount of total political expenditures on 15 campaign finance reports. In each case, the respondent disclosed expenditures on Schedule I (used to disclose non-political expenditures) and did not include the amount in the total political expenditures section of the report. Based on the purpose descriptions, it appears that the expenditures were made in connection with committee activity and should have been disclosed on Schedule F (used to disclose political expenditures). The respondent filed corrections to each report and disclosed the expenditures on Schedule F and included them in the total political expenditures section of each report.
6. The complaint also alleged that the respondent did not disclose the actual payees, addresses, dates, and amounts pertaining to an expenditure on its January 2011 monthly report. The report disclosed a \$6,000 expenditure to TCJL (abbreviated name of the Texas Civil Justice League) with a purpose description of "Office administrative expenses 2010." In response to the complaint, the respondent swore that the TCJL billed the committee on December 16, 2010, for overhead and administrative expenses incurred in relation to the operation of the committee for the 2010 calendar year. The complaint did not include specific evidence to support the allegation.

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

7. 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 22 campaign finance reports. With respect to 13 of the reports at issue, political expenditures made to support candidates or assist officeholders were disclosed on Schedule F. However, the "Committee Activity" sections of the report cover sheets were left blank. With respect to nine of the reports at issue, there is no evidence that the committee supported or opposed candidates or assisted officeholders during the reporting periods.

Disclosure of Principal Occupation of Contributors

8. The complaint alleged that the respondent did not disclose the principal occupations for 13 contributions on four campaign finance reports. With respect to eight contributions totaling \$1,280, the respondent disclosed the principal occupation of contributors as "not provided," "unk," or "unknown." With respect to two contributions totaling \$100, the respondent disclosed the name of an entity in the space for the principal occupation of the contributors. The principal occupation of those contributors was not otherwise disclosed. The principal occupations of the remaining contributors were properly disclosed.
9. In response to the complaint, the respondent swore that the committee requests the employer and occupation information of every contributor on its standard contributor response form. The respondent further swore that in some cases, the occupation and employer information was not provided by the contributor.

Accepting Political Contributions from Corporations or Labor Unions

10. The complaint alleged that the respondent accepted a political contribution from a corporation or labor union. The allegation is based on a disclosure in the respondent's November 2010 campaign finance report. The report disclosed a \$100 contribution from Eliff Motors LTD. In response to the complaint, the respondent swore that she contacted the contributor at issue, and was informed that the contributor was a partnership. Records from the Texas Secretary of State show that the contributor is registered as a limited partnership with a corporate general partner.

Disclosure of Political Contributions from Corporations or Labor Unions

11. The complaint alleged that the respondent did not properly disclose political contributions from corporations or labor unions on the committee's November 2010 monthly report. The report disclosed a \$100 contribution from Eliff Motors LTD on Schedule A (used to disclose political contributions). Records from the Texas Secretary of State indicate that this entity is a limited partnership with a corporate general partner. The respondent stated that she was unaware of the contributor's status at the time that she accepted the contribution.

Timely Filing of Report

12. The complaint alleged that the respondent did not timely file the committee's February 2012 monthly campaign finance report. The report was due on February 6, 2012. The respondent filed the report on February 17, 2012.

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 the reporting period, 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). A *de minimis* error in calculating or reporting a cash balance under subsection (a)(8) is not a violation. ELEC. CODE §§ 254.031(a)(8) and (a-1).
2. With respect to the committee's monthly reports filed in December 2010, March-Corrected April 2011, July 2011, May-June 2012, the reports disclosed discrepancies totaling approximately \$82,470, an average of \$3,440 on the reports in violation. The respondent filed corrections to the committee's March 2011 and corrected April 2011 reports and disclosed new amounts of contributions maintained that, although inconsistent with the amount disclosed on the committee's bank statements did not exceed the lesser of 10% of the amount originally disclosed or \$2,500 and thus, fall within the *de minimis* category of reporting violations. The remaining reports were not corrected. Therefore, there is credible evidence of violations of section 254.031(a)(8) of the Election Code with respect to those reports.
3. With respect to the remaining reports, one disclosed the correct amount and for the rest, the difference between the contributions maintained disclosed and the bank statement amount does not exceed the lesser of 10% of the amount originally disclosed or \$2,500, thus, the errors are on their face *de minimis*. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code with respect to those reports.

Disclosure of Full Names of Persons Making Political Contributions and Receiving Political Expenditures

4. 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).
5. For committees that file monthly, reports must include names of contributors who contribute more than \$10 in a reporting period. ELEC. CODE § 254.156.

6. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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).
7. It is not a valid basis of a complaint to allege that a report required under Chapter 254, Election Code, contains the improper name or address of a person from whom a political contribution was received if the name or address in the report is the same as the name or address that appears on the check for the political contribution. GOV'T CODE § 571.122(e). (provision effective as of September 28, 2011).
8. With respect to 14 contributions, the names on the contribution checks were the same names disclosed on the respondent's campaign finance reports or were in substantial compliance. With respect to the expenditure at issue, the payee name was properly disclosed. There is credible evidence of no violation of sections 254.031(a)(1) and 254.031(a)(3) of the Election Code with respect to those entries. With respect to two contributions, totaling \$125, the respondent swore that she was unable to locate copies of the contribution checks. However, the respondent was able to provide a copy of the contribution form filled out by the contributors at issue on which they provided their names as they are disclosed on the report. There is insufficient evidence of violations of section 254.031(a)(1) of the Election Code with respect to those contributions. With respect to two contributions totaling \$75, there is insufficient evidence of violations of section 254.031(a)(1) of the Election Code.

Disclosure of Political Expenditures

9. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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).
10. A campaign finance report must include the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment. ELEC. CODE § 254.031(a)(4).
11. Each report must include the total amount of all political contributions and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
12. With respect to the expenditures disclosed on the committee's monthly reports, it appears that the expenditures were made in connection with committee activity. Thus, the expenditures were political expenditures that should have been disclosed in the totals sections of the reports. The respondent filed corrections to each report to disclose the expenditures on Schedule F and included them in the total political expenditures sections. However, the expenditures were disclosed on the incorrect schedule on the original

reports. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code with respect to those expenditures.

13. With respect to the \$6,000 expenditure disclosed on the committee's January 2011 report, it appears that the expenditure should have been disclosed on Schedule F as a political expenditure but was otherwise properly disclosed as an expenditure to TCJL. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code with respect to that expenditure.

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

14. 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).
15. Although 13 of the reports at issue disclosed political expenditures to support candidates and assist officeholders on Schedule F, the reports did not disclose that information in the "Committee Activity" section of the report cover sheets. However, the information was readily apparent to anyone who may have viewed the reports. Therefore, there is credible evidence of technical or *de minimis* violations of sections 254.151(4) and 254.151(5) of the Election Code with respect to those reports. With respect to nine of the reports at issue, there is no evidence that the committee supported or opposed candidates or assisted officeholders during the reporting periods. Therefore, there is credible evidence of no violation of sections 254.151(4) and 254.151(5) of the Election Code with respect to those reports.

Disclosure of Principal Occupation of Contributors

16. In addition to the contents required by section 254.031 of the Election Code, each report by a campaign treasurer of a general-purpose committee must include the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period. ELEC. CODE § 254.151(6).
17. Each monthly report by a campaign treasurer of a monthly filing general-purpose committee must comply with sections 254.031 and 254.151 of the Election Code except that the maximum amount of a political contribution, expenditure, or loan that is not required to be individually reported is \$10 in the aggregate. ELEC. CODE § 254.156(1).
18. With respect to eight contributions totaling \$1,280, the respondent did not disclose the principal occupation of the contributors. With respect to two contributions totaling \$100, the respondent disclosed the name of an entity as the principal occupation of the contributors. The principal occupation of those contributors were not otherwise

disclosed. There is credible evidence of violations of sections 254.151(6) and 254.156(1) of the Election Code with respect to those contributions. The remaining entries were properly disclosed. Therefore, there is credible evidence of no violation of sections 254.151(6) and 254.156(1) of the Election Code with respect to those contributions.

Accepting Political Contributions from Corporations or Labor Unions

19. 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.
20. 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.
21. 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.
22. In order to show a violation of section 253.003 of the Election Code, the evidence must show that the contributor was a corporation, that at the time the respondent accepted the contribution she knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
23. The contributor at issue is a limited partnership with a corporate general partner. There is no evidence that the respondent was aware of the contributor's status prior to accepting the contribution. Therefore, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.

Disclosure of Political Contributions from Corporations or Labor Unions

24. Each report by a campaign treasurer of a general-purpose committee must include on a separate page or pages of the report, the identification of any contribution from a corporation or labor organization made and accepted to establish or administer the political committee. ELEC. CODE § 254.151(8).
25. The respondent stated that she was unaware of the contributor's status at the time the contribution was accepted. There is no evidence that the contribution when originally accepted was accepted to establish or administer the committee and was required to be disclosed as such. Therefore, there is insufficient evidence of a violation of section 254.151(8) of the Election Code.

Timely Filing of Report

26. 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. ELEC. CODE § 254.157(a).

27. The report at issue was due on February 6, 2012. The respondent filed the report on February 17, 2012, after the report due date. Therefore, there is credible evidence of a violation of section 254.157(a) 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 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 must include as of the last day of the reporting period, 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; 2) each report must include the total amount of all political contributions and the total amount of all political expenditures made during the reporting period; 3) 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; 4) in addition to the contents required by section 254.031 of the Election Code, each report by a campaign treasurer of a general-purpose committee must include the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period (\$10 for a committee filing monthly); 5) each monthly report by a campaign treasurer of a monthly filing general-purpose committee must comply with sections 254.031 and 254.151 of the Election Code except that the maximum amount of a political contribution, expenditure, or loan that is not required to be individually reported is \$10 in the aggregate; and 6) 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. 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 \$300 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-31209249.

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

Carol Sims, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director