

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JOY BOWEN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31305107

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 8, 2013, to consider sworn complaint SC-31305107. 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 this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent did not 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 a candidate for Flower Mound Town Council, Position 1, in the May 11, 2013, uniform election.

Contributor Address

2. The complaint alleged that the respondent did not disclose the address for three individuals who each made a political contribution of \$106.49.
3. The contributions at issue were disclosed on Schedule A (used to disclose political contributions) of the respondent's 8-day pre-election report for the May 11, 2013, uniform election. For two of the contributors at issue, the respondent did not disclose any

address information. For one of the contributors at issue, the respondent disclosed the street name, city, state, and zip code, but did not provide a street number.

4. In response to the complaint, the respondent acknowledged the omissions and swore that she made a good faith effort to ascertain the contributors' address information before the report was required to be filed. The respondent corrected the report after the complaint was filed and disclosed a complete address for two of the contributors at issue.

Disclosure of Political Expenditures

5. The complaint alleged that the respondent did not timely report political expenditures that were made for a campaign website, automated robocalls, campaign mailers, and a campaign Facebook page. The political expenditures at issue were disclosed on Schedule F (used to disclose political expenditures) of the respondent's July 2013 semiannual report. The complaint alleged that the respondent was required to disclose the political expenditures in the 30-day or 8-day pre-election reports for the May 11, 2013, uniform election.
6. In response to the complaint, the respondent provided copies of the invoices for each service and swore that the amounts were not readily determinable until she received the bills, which was after the periods covered by the 30-day and 8-day pre-election reports for the May 11, 2013, uniform election.

Campaign Website

7. Regarding the respondent's campaign website, the complaint alleged that the respondent's campaign website was created in early March 2013. The invoice provided by the respondent was dated May 9, 2013, and showed three \$100 charges for "Web Development." The invoice does not appear to be a periodic bill. The invoice contained a note stating that "[t]his is the March, April & May invoice for services to the Joy Bowen for Town Council campaign." Accordingly, the invoice indicates that the respondent was charged \$100 per month of service, for a total charge of \$300.

Automated Robocalls

8. Regarding the automated robocalls, the complaint alleged that the robocalls were made on April 29, 2013. One of the invoices provided by the respondent was from a subcontractor for placing the robocalls. The subcontractor's invoice was dated May 2, 2013, and was for \$289.74. The other invoice was from the contractor for providing a call list to the subcontractor. The contractor's invoice was dated May 3, 2013, and was for \$162.38. Both invoices do not appear to be periodic bills. Moreover, since the services were performed on or before April 29, 2013, credible evidence indicates that the cost for each service would have been readily determinable by May 1, 2013, which is the last day covered by the 8-day pre-election report.

Campaign Mailers

9. Regarding the campaign mailers, the complaint alleged that the mailers were received by voters on April 29, 2013. The invoice provided by the respondent was dated May 3, 2013, and was for \$3,606.97. The invoice does not appear to be a periodic bill. Moreover, since the service was performed on or before April 29, 2013, credible evidence indicates that the cost would have been readily determinable by May 1, 2013, which is the last day covered by the 8-day pre-election report.

Facebook Page

10. Regarding the Facebook page, the invoice shows that the respondent was charged \$74.60 for Facebook services from April 9, 2013, through April 30, 2013. In response to the allegation, the respondent swore that she reported the \$74.60 in her 8-day pre-election report for the May 11, 2013, uniform election as a non-itemized political expenditure of \$100 or less. According to the respondent's 8-day pre-election report, the respondent disclosed \$199.03 in total political expenditures of \$100 or less.

Payee's Address

11. The complaint alleged that the respondent did not disclose the address for the payee of a \$385 political expenditure that was disclosed on Schedule F of the respondent's 8-day pre-election report for the May 11, 2013, uniform election.
12. Based on the report, the expenditure at issue was made on April 3, 2013, to a business for a "Promotional Video." The respondent did not disclose any address information for the business when the 8-day pre-election report was originally filed.
13. In response to the complaint, the respondent acknowledged the omission and swore that the address was not ascertainable because the information was not available on the business' website at the time of filing. The respondent corrected the report after the complaint was filed and disclosed a complete address for the payee at issue.

IV. Findings and Conclusions of Law

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

Contributor Address

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. Regarding the three contributions at issue, the respondent was required to provide an address for each contributor because they each made political contributions that exceeded \$50 during the reporting period. For two of the contributions at issue totaling approximately \$215, the respondent did not disclose any address information for the contributors when the 8-day pre-election report was originally filed. For one of the contributions at issue totaling approximately \$105, the respondent disclosed the contributor's street name, city, state, and zip code, but did not provide a street number. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code.

Disclosure of Political Expenditures

3. Each campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
4. Each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$100 or less made during the reporting period. *Id.* § 254.031(a)(5).
5. Each campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).
6. A political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure, except as provided by Subsection (b). *Id.* § 254.035(a).
7. If the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received. *Id.* § 254.035(b).
8. 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).
9. A political expenditure means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10). Campaign expenditure means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7).

Campaign Website

10. Credible evidence indicates that the respondent entered into an agreement for website development services for the months of March, April, and May 2013, and that the respondent was charged \$100 per month of service. Based on the fixed monthly rate, it is reasonable to conclude that the amount of the expenditure would have been readily determinable by the respondent at the time she entered into the agreement, or at least by the end of each month of service. If the amount was readily determinable at the time the respondent entered into the agreement, then the respondent would have been required to disclose the full \$300 political expenditure in the 30-day pre-election report for the May 11, 2013, uniform election, which the respondent marked as covering from March 1, 2013, through April 1, 2013. At a minimum, the respondent would have been required to disclose some or all of the expenditure in the pre-election reports for the May 11, 2013, uniform election. Credible evidence indicates that the respondent did not timely disclose the political expenditure at issue. Therefore, there is credible evidence of a violation of sections 254.031(a)(3) and 254.031(a)(6) of the Election Code.

Automated Robocalls

11. Regarding the two expenditures totaling approximately \$450 for the automated robocalls, credible evidence indicates that the amounts were readily determinable and could have reasonably been ascertained by the respondent by May 1, 2013. Accordingly, the respondent was required to disclose the expenditures in her 8-day pre-election report for the May 11, 2013, uniform election. There is credible evidence of violations of sections 254.031(a)(3) and 254.031(a)(6) of the Election Code with respect to those expenditures.

Campaign Mailers

12. Regarding the \$3,606.97 expenditure for the automated robocalls, credible evidence indicates that the amount was readily determinable and could have reasonably been ascertained by the respondent by May 1, 2013. Accordingly, the respondent was required to disclose the expenditure in her 8-day pre-election report for the May 11, 2013, uniform election. There is credible evidence of a violation of sections 254.031(a)(3) and 254.031(a)(6) of the Election Code with respect to that expenditure.

Facebook Page

13. Regarding the expenditure for the Facebook page, credible evidence indicates that the respondent was charged \$74.60 for the service and disclosed the amount in her 8-day pre-election report as a non-itemized political expenditure of \$100 or less. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code with respect to that expenditure.

Payee's Address

14. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
15. Regarding the \$385 political expenditure at issue, the respondent was required to provide the payee's address because the expenditure exceeded \$100 during the reporting period. The respondent did not provide any address information for the payee when the report was originally filed. Based on the amounts disclosed in the 8-day pre-election report at issue, there is credible evidence of a violation of 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 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 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; 2) 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; and 3) each campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. 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-31305107.

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

Joy Bowen, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director