

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
LEE LEFFINGWELL,  
RESPONDENT

§  
§  
§  
§  
§

BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-31007216

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on August 11, 2011, to consider sworn complaint SC-31007216. 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 accepted corporate contributions, failed to properly report political contributions, political expenditures, and total political contributions maintained on multiple campaign finance reports, failed to properly report political expenditures made by credit card, and failed to properly notarize the affidavit on a July 2009 semiannual campaign finance report.

### III. Facts Supported by Credible Evidence

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

1. The respondent is the Mayor of Austin, Texas.
2. The complaint alleged that, based on disclosures in two campaign finance reports, the respondent accepted 16 political contributions from corporations or labor unions. Seven of the contributions at issue did not come from a corporation or labor organization. For nine contributions, the evidence was inconclusive with regard to the status of the contributor or the respondent's knowledge of the contributor's status.

3. The complaint alleged that the respondent failed to disclose the names of 21 contributors for contributions totaling approximately \$4,750, and 9 payees for political expenditures totaling approximately \$16,000, on his July 2008, July 2009, and January 2010 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the May election. The complaint also alleged that the respondent failed to disclose the address for one payee on his January 2010 semiannual report and failed to properly disclose political contributions maintained on all but the July 2008 semiannual report.
4. The respondent's July 2008 semiannual report disclosed two contributions totaling \$500 that disclose the first and middle initial and last name of two individuals in the spaces provided to disclose the full name of the contributor.
5. The respondent's 30-day pre-election report filed in connection with the May 2009 election disclosed eight contributions totaling approximately \$2,650 that disclose "A/TCEMS Employee Association PAC," "BMcPAC," "CLEAT PAC," "PANTEX PAC," "AFSCME PAC," "CWA-COPE PAC," the first and middle initial and last name of one individual, and a single initial and last name of a second individual in the spaces provided to disclose the full name of the contributor.
6. The respondent's 8-day pre-election report filed in connection with the May 2009 election disclosed eight contributions totaling approximately \$870 that disclose "CDM PAC," and the first and middle initial and last name of seven individuals in the spaces provided to disclose the full name of the contributor.
7. The respondent's 30-day pre-election report filed in connection with the May 2009 election disclosed four expenditures totaling approximately \$7,100 that disclose the first and middle initial and last name of an individual in the spaces provided to disclose the payee name.
8. The respondent's 8-day pre-election report filed in connection with the May 2009 election disclosed two expenditures totaling approximately \$3,550 that disclose the first and middle initial and last name of an individual in the spaces provided to disclose the payee name.
9. The respondent's July 2009 semiannual report disclosed three expenditures totaling approximately \$5,350, that disclose the first and middle initial and last name of an individual in the spaces provided to disclose the payee name.
10. The respondent's January 2010 semiannual report disclosed a \$35.70 expenditure to American Express, with "New York, NY" in the space provided to disclose the payee address. This was the only expenditure disclosed to this payee on the report.

11. The complaint also alleged that the respondent incorrectly reported total political contributions maintained on his July 2009 and January 2010 semiannual reports and 30-day and 8-day pre-election reports filed in connection with the May 2009 election. The evidence was inconclusive that the amounts disclosed were incorrect.
12. The complaint alleged that the respondent failed to properly disclose the purpose of 134 expenditures totaling approximately \$161,915 on his July 2008 and July 2009 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the May 2009 election. The original descriptions adequately described the purposes of the expenditures.
13. The complaint alleged that the respondent improperly reported 18 reimbursements to staff totaling approximately \$24,275 on his January 2008, July 2008, and January 2009 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the May 2009 election. In all instances, the named payee was the actual vendor of the goods or services purchased.
14. The complaint alleged that the respondent failed to properly disclose on his July 2008 and January 2010 semiannual reports and 30-day pre-election report filed in connection with the May 2009 election, the name of five payees for political expenditures made by credit card.
15. The expenditures at issue included two political expenditures to American Express, totaling approximately \$90, that disclose purposes of "Credit card processing fee" and three political expenditures to Pay Pal, totaling approximately \$500, that disclose purposes of "transaction fee to Pay Pal."
16. The complaint alleged that the respondent failed to include a properly notarized affidavit with his July 2009 semiannual report.
17. The report was signed by the respondent, stamped by the notary, and dated, but the notary left blank the space provided for her signature, printed name and title on page two of the coversheet of the campaign finance report.
18. In response, the respondent swore that the "notary applied her seal, but did not sign the notarial certificate."

#### **IV. Findings and Conclusions of Law**

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

1. 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.

2. 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.
3. 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.
4. A partnership or limited liability company that has a corporate partner or member is subject to the prohibition on corporate political contributions. Ethics Advisory Opinion Nos. 221 (1994) and 383 (1997).
5. For seven of the political contributions at issue, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code. Regarding the remaining contributions, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.
6. 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).
7. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 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. ELEC. CODE § 254.031(a)(3).
8. Each campaign finance report must also 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).
9. The respondent disclosed the initials and last names of the contributors for 11 contributions totaling approximately \$1,570. The respondent filed corrected reports disclosing the full names of these individual contributors. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code with regard to those contributions.
10. The respondent disclosed a \$350 contribution from CWA-COPE PAC, and a \$350 contribution from AFSCME PAC. Neither of these names or acronyms sufficiently disclosed the name of the contributor. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code with regard to these contribution.

11. As to the remaining contributions totaling approximately \$1,750, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code with regard to those expenditures.
12. The respondent disclosed the initials and last name of a payee for nine expenditures, totaling approximately \$16,000. The respondent filed corrected reports disclosing the full name of this individual payee. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code with regard to those expenditures.
13. With regard to the \$35.70 expenditure to American Express, because the total amount of political expenditures to this payee does not exceed \$50 during the reporting period, the respondent was not required to itemize this expenditure on Schedule F (used for political expenditures). Therefore, as to this expenditure, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.
14. Regarding political contributions maintained, there is insufficient evidence of a violation of section 254.031(a)(8) of the Election Code.
15. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 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. ELEC. CODE § 254.031(a)(3).
16. The expenditure purposes disclosed by the respondent were adequate. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.
17. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 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. ELEC. CODE § 254.031(a)(3).
18. 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 \$50 or less made during the reporting period. *Id.* § 254.031(a)(5).
19. Ethics Commission Rule § 20.62 states that political expenditures made out of personal funds by a staff member of a candidate with the intent to seek reimbursement from the candidate that in the aggregate do not exceed \$5,000 (\$500 until October 2007) during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made:

- (1) The amount of political expenditures that in the aggregate exceed \$50 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
  - (2) Included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period.
20. The named payee was the actual vendor of the goods or services purchased in the expenditures at issue. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.
21. A campaign finance report must include the full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period. ELEC. CODE § 254.031(a)(3).
22. 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.
23. The evidence indicates that the payees at issue were reported correctly by the respondent. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules.
24. Each campaign finance report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: “I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code.” ELEC. CODE § 254.036(h).
25. An affidavit is a voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths, such as a notary public. Black’s Law Dictionary, 8th ed., 1999.
26. The Election Code does not specifically define “affidavit,” but the generally accepted definition includes the requirement that the facts being sworn to be done so before an officer qualified to administer an oath. The affidavit accompanying the respondent’s July 2009 semiannual report did not include the notary’s signature, nor her printed name or title. The affidavit did contain the notary seal and the respondent’s signature in the affidavit section. Absent any evidence to the contrary, it appears that the respondent executed the affidavit and the notary neglected to sign her name. Therefore, with regard to the respondent’s July 2009 semiannual report, there is credible evidence of no violation of section 254.036(h) 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 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. The respondent also acknowledges that each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 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. 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 \$500 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-31007216.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Lee Leffingwell, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director