

TEXAS ETHICS COMMISSION

IN THE MATTER OF
WILLIAM SPELMAN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31007200

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) held a preliminary review hearing on August 11, 2011, to consider sworn complaint SC-31007200. 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 and section 20.62 of the Ethics Commission Rules, 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, and 2) accepted political contributions from corporations or labor organizations.

III. Facts Supported by Credible Evidence

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

1. The respondent is Austin City Council Member, Place 5.

Total Political Contributions Maintained

2. The complaint alleged that the respondent failed to properly disclose total political contributions maintained on four campaign finance reports. Regarding the respondent's 30-day pre-election report for the May 2009 election and January 2010 semiannual report, the evidence was inconclusive as to whether the amounts were properly disclosed.
3. The respondent's 8-day pre-election report for the May 2009 election disclosed \$0 in total political contributions maintained. The complaint alleged that the total political contributions maintained should be \$20,887.63. In response to the complaint, the respondent filed a corrected report and acknowledged that the original report was

incorrect, but not as alleged. The respondent stated that the correct amount of total political contributions maintained was \$24,805.13.

4. The respondent's July 2009 semiannual report disclosed \$0 in total political contributions maintained. The complaint alleged that the total political contributions maintained should be \$12,175.81. In response to the complaint, the respondent filed a corrected report and acknowledged that the original report was incorrect, but not as alleged. The respondent stated that the correct amount of total political contributions maintained was \$21,160.51.

Political Contributions from Corporations or Labor Organizations

5. The complaint alleged that, based on disclosures in two campaign finance reports, the respondent accepted two political contributions from corporations or labor organizations. The respondent denied that he accepted political contributions from corporations or labor organizations. One of the contributions at issue did not come from a corporation or labor organization. For the remaining contribution, the evidence was inconclusive with regard to the status of the contributor or the respondent's knowledge of the contributor's status.

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

6. The complaint alleged that, based on disclosures in three campaign finance reports, the respondent failed to disclose the full name for 11 political contributions and three political expenditures. The following disclosures did not include a full name for the contributor or payee:

January 2009 Semiannual Report

- December 30, 2008, \$200, G.J. [_____]

30-day Pre-election Report, May 2009 Election

- March 12, 2009, \$350, AFSCME PAC
- March 25, 2009, \$77.77, JJ [_____]
- March 3, 2009, \$350, BMC PAC
- March 17, 2009, \$350, BOMA Austin PAC
- January 30, 2009, \$150, CT [_____]
- January 29, 2009, \$250, KT [_____]
- March 30, 2009, \$250, KT [_____]

8-day Pre-election Report, May 2009 Election

- April 1, 2009, \$250, KT [_____]

Disclosure of Purposes of Political Expenditures

7. The complaint alleged that, based on disclosures in four campaign finance reports, the respondent failed to properly disclose the purposes of 19 political expenditures. The respondent filed corrected reports to provide additional information for most of the political expenditures at issue. However, the original descriptions adequately described the purposes of the expenditures.

Disclosure of Actual Payee of Political Expenditures

8. The complaint alleged that the respondent improperly disclosed 18 political expenditures on four campaign finance reports because he did not disclose the actual vendor payee. The respondent failed to disclose the actual vendor payees for six political expenditures totaling approximately \$1,230.

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).
2. With regard to the respondent's 30-day pre-election report for the May 2009 election and January 2009 semiannual report, there is insufficient evidence of violations of section 254.031(a)(8) of the Election Code. The respondent corrected the 8-day pre-election report for the May 2009 election and the July 2009 semiannual report and disclosed discrepancies of approximately \$24,805.13 and \$21,160.51, respectively. Therefore, there is credible evidence of violations of section 254.031(a)(8) of the Election Code with respect to those reports.

Political Contributions from Corporations or Labor Organizations

3. 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.
4. 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.

5. 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.
6. For one of the political contributions at issue, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code and for the remaining political contribution, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.

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

7. 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).
8. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
9. Of the 14 disclosures at issue, six contributions totaling approximately \$1,480, did not include the full name of the contributor and three expenditures totaling \$750, did not include the full name of the payee. The entries were corrected. Therefore, there is credible evidence of violations of sections 254.031(a)(1) and 254.031(a)(3) of the Election Code. The remaining entries were correct or in substantial compliance. Therefore, there is credible evidence of no violation of sections 254.031(a)(1) and 254.031(a)(3) of the Election Code.

Disclosure of Purposes of Political Expenditures

10. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
11. The original purpose descriptions were adequate. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.

Disclosure of Actual Payee of Political Expenditures

12. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).

13. Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: 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 included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. Except as provided above, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows: the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee; the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee. Ethics Commission Rules § 20.62.
14. The respondent made political expenditures to reimburse individuals. The respondent failed to disclose the actual vendor payees for six political expenditures. The payments totaled approximately \$1,230. The payments were not disclosed in accordance with section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules. Therefore, there is credible evidence of violations of those provisions.

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 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. The respondent also 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 a campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. The respondent also acknowledges that the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules. 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 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 \$250 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-31007200.

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

William Spelman, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director