

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SCOTT TOUPIN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2506122

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 11, 2006, to consider sworn complaint SC-2506122. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(7) and 254.161 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

1. The complaint alleges that the respondent failed to properly disclose direct expenditures and failed to properly disclose which candidates were supported by each direct expenditure on the committee's July 2003 semiannual report.
2. The complaint also alleges that the committee made political expenditures for four candidates as disclosed on the committee's July 2003 semiannual report, and that the respondent violated section 254.161 of the Election Code by failing to give written notice of the expenditures to those candidates.
3. The complaint also alleges that the respondent failed to file the 30-day and 8-day pre-election reports in violation of section 254.154 of the Election Code.

III. Facts Supported by Credible Evidence

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

1. The respondent is the campaign treasurer of a general-purpose political committee.
2. The July 2003 semiannual report discloses expenditures totaling \$15,697.46 that do not include any direct expenditure information.
3. The evidence indicates that the expenditures were made to support candidates.

4. The committee's July 2003 semiannual report listed the candidates the committee was supporting on the cover sheet page two. However, that report did not disclose the direct expenditure information that is required to be disclosed on the expenditure schedule (Schedule F, section 9).
5. Cover sheet, page two, of the committee's July 2003 semiannual report disclosed that the committee supported several candidates. The candidates' reports for this reporting period did not disclose that the candidates received notice that a political committee was making political expenditures supporting the candidates.
6. The evidence indicates that the respondent failed to give written notice of the expenditures to the candidates.
7. The complaint alleges that the respondent failed to file certain pre-election reports for the May 3, 2003, election and June 7, 2003, run-off election.
8. This complaint was filed June 8, 2005.

IV. Findings and Conclusions of Law

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

1. A report is required to include the name of each candidate or officeholder who benefits from a direct campaign expenditure made during the reporting period, and the office sought or held. ELEC. CODE § 254.031(a)(7). A campaign expenditure is an expenditure made by any person in connection with a campaign for an elective office or on a measure. ELEC. CODE § 251.001(7). A direct campaign expenditure is a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. ELEC. CODE § 251.001(8).
2. The evidence shows that the committee's expenditures were direct expenditures supporting candidates and that the respondent did not disclose the required direct expenditure information on section 9 of Schedule F of the committee's campaign finance report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(7) of the Election Code.
3. A general-purpose committee that makes political expenditures for a candidate must give written notice of that fact to the candidate. ELEC. CODE § 254.161. There is credible evidence that the committee made direct campaign expenditures supporting four candidates and that the respondent failed to give written notice of this fact to those candidates.
4. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. 1 T.A.C. §

12.5(3). The alleged violations of reporting requirements regarding the respondent's 30-day and 8-day pre-election reports for the May 3, 2003, city election, and the report for the runoff election held on June 7, 2003, would constitute Class C misdemeanors. ELEC. CODE § 254.041(b). The statute of limitations for Class C misdemeanors is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02.

5. The reporting violations relating to the respondent's 30-day and 8-day pre-election reports for the May 3, 2003, city election, and the report for the runoff election held on June 7, 2003, are based on alleged offenses that occurred more than two years before the complaint was filed. Therefore, the allegations are not within the commission's sworn complaint jurisdiction and cannot be considered.

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 a report is required to include the name of each candidate or officeholder who benefits from a direct campaign expenditure made during the reporting period, and the office sought or held. The respondent also acknowledges that a general-purpose committee that makes political expenditures for a candidate must give written notice of that fact to the candidate. 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 for the violations described under Sections III and IV.

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-2506122.

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

Scott Toupin, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director