

TEXAS ETHICS COMMISSION

IN THE MATTER OF
LANNY MORIARTY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2811371

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 16, 2009, to consider sworn complaint SC-2811371. 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 proposes this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent failed to properly report political contributions, political expenditures, and political contributions maintained, and accepted political contributions from corporations.

III. Facts Supported by Credible Evidence

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

1. The respondent is a justice of the peace of Montgomery County, Precinct 1.
2. The complaint is based on the respondent's January 2007, July 2007, January 2008, and July 2008 semiannual campaign finance reports.

Failure to Properly Disclose Political Contributions

3. The complaint alleged that the respondent failed to disclose the complete address of three contributors (out of 89 itemized political contributions) in his January 2007 semiannual report. The report disclosed an \$800 contribution on October 9, 2006, and a \$100 contribution on September 6, 2006, with an incomplete street address. The report also disclosed a \$550 contribution that was accepted on January 9, 2007, but did not disclose the contributor's entire address.

4. On December 16, 2008, the respondent filed corrections to the report at issue but failed to disclose one of the missing addresses.

Failure to Properly Disclose Political Expenditures

Payee's Address

5. The complaint alleged that the respondent failed to disclose the complete address of two payees (out of 42 itemized political expenditures) in his January 2007 semiannual report. The report at issue disclosed four political expenditures with an incomplete address. The report discloses a \$600 payment to Houston Livestock & Rodeo on January 9, 2007, a \$150 payment to Montgomery Co. Cattle Baron Ball on September 11, 2006, a \$100 payment to San Jacinto Lodge #106 on November 21, 2006, and a \$580 payment to St. Joseph Catholic Church on September 3, 2006. Three of the expenditures at issue were missing the payee's street address and zip code. The remaining expenditure was missing the payee's entire address.
6. The complaint alleged that the respondent failed to disclose the complete address of two payees (out of 46 itemized political expenditures) in his January 2008 semiannual report. The report at issue disclosed a \$100 payment to M.D.A. Fundraiser on October 1, 2007, and a \$60 payment to St. Joseph Catholic Church on October 2, 2007. The portion of the address that was not disclosed in the report was the payee's street address.
7. The complaint alleged that the respondent failed to disclose the complete address of one payee (out of 45 itemized political expenditures) in his July 2008 semiannual report. The report at issue disclosed a \$100 payment to the Children's Safe Harbor on June 17, 2008. The payee's zip code was not disclosed in the address section but listed in the section for describing the purpose of the expenditure. The report also disclosed an \$85 payment to the Historic Montgomery Association on February 21, 2008, with an incomplete street address.
8. On December 16, 2008, the respondent filed corrections to the reports at issue to disclose all portions of the missing addresses.

Purpose of Expenditure

9. The complaint alleged that the respondent failed to disclose the purpose of a political expenditure in his July 2008 semiannual report. The report at issue disclosed a \$60 payment to an individual on January 30, 2008, and a \$100 payment to the Children's Safe Harbor on June 17, 2008, but did not include a description of the purpose of either expenditure.
10. On December 16, 2008, the respondent filed corrections to the report at issue to disclose the purpose of the payment to the Children's Safe Harbor as a "donation," and the expenditure to the individual was marked through with the word "Void."

Reimbursements to Staff

11. The complaint alleged that certain political expenditures disclosed in the respondent's July 2007, January 2008, and July 2008 semiannual reports were reimbursements to staff and improperly reported. The allegations are based on the following political expenditures:

July 2007 semiannual report

- \$100 payment to Peggy Burris on April 11, 2007 – “Donation for Inured [*sic*] person”
- \$300 payment to Cody Mahala on June 28, 2007 – “Donation for Cancer Fundraiser”
- \$100 payment to Keller Williams on May 31, 2007 – “Donation for Cancer Victum [*sic*]”
- \$375 payment to Kindra Benge on June 13, 2007 – “Paint Office”

January 2008 semiannual report

- \$233 payment to Sandy Graham on December 14, 2007 – “Office Christmas Party”

July 2008 semiannual report

- \$60 payment to Rosa Botello on January 30, 2008 – no purpose of expenditure provided
- \$200 payment to Danielle Cheatham on March 20, 2008 – “Donation”
- \$200 payment to Sean Plank on February 13, 2008 – “Donation”

12. The respondent asserts that the expenditures were properly disclosed. Nevertheless, the respondent filed corrections to the reports at issue to clarify the purpose of the expenditures at issue as follows:

July 2007 semiannual report

- Purpose of payment to Peggy Burris – “Donation to Fundraiser for Accident Victum [*sic*]”
- Purpose of payment to Cody Mahala – “Donation to pay entry fee for Montgomery High student for Relay for life Cancer Fundraiser”
- Purpose of payment to Keller Williams – “Donation for fundraiser for cancer Victum [*sic*] hosted by Keller Williams Realty”

- Purpose of payment to Kindra Bengé – “Labor to Paint New Judge’s Office located in New J.P. #1 Complex in Montgomery, Texas”

January 2008 semiannual report

- Purpose of payment to Sandy Graham – “Reinburse [sic] Employee Sandy Graham for Office Christmas Party hosted at Rancho Grande Resturant [sic]”

July 2008 semiannual report

- Entry regarding payment to Rosa Botello was marked “Void”
- Purpose of payment to Danielle Cheatham – “Sponsor for School Feild [sic] Trip To New York”
- Purpose of payment to Sean Plank – “Sponsor for Montgomery High School Rodeo”

Failure to Properly Disclose Contributions Maintained

13. The complaint alleged that the respondent’s January 2007, July 2007, January 2008, and July 2008 semiannual reports failed to properly disclose the total political contributions maintained as of the last day of the reporting period.
14. The respondent’s January 2007 semiannual report does not disclose the amount of political contributions maintained as of the last day of the reporting period. The campaign finance report form that the respondent used to file that report does not include a line item under the totals section to enter that information.
15. The respondent’s July 2007, January 2008, and July 2008 semiannual reports disclosed \$0 as the amount of total political contributions maintained.
16. On December 16, 2008, the respondent filed corrections to the reports at issue. The corrected reports disclose the following total political contributions maintained:
 - January 2007 semiannual report: \$25,340.73
 - July 2007 semiannual report: \$12,582.86
 - January 2008 semiannual report: \$35,765.18
 - July 2008 semiannual report: \$22,170.39
17. The average amount of political contributions maintained that was not disclosed on each report at issue was approximately \$23,960. The correction affidavit filed with each corrected report did not note that the information was added.

Accepting Corporate Contributions

18. The complaint alleged that the respondent accepted six corporate contributions, totaling \$3,530. The allegations relate to the respondent's January 2007 and January 2008 semiannual reports.
19. The respondent's January 2007 semiannual report disclosed political contributions of \$250 from Multi-Shot on September 12, 2006, \$500 from Sam Houston Funeral Home on September 12, 2006, \$550 from Sam Houston Memorial Funeral Home on November 7, 2006, and \$300 from Schurr Insurance Agency on September 29, 2006.
20. The respondent's January 2008 semiannual report disclosed political contributions of \$800 from Alton Lane Homes on October 8, 2007, and \$1,130 from Champion Dirt on October 8, 2007.
21. The respondent's January 2007 semiannual report disclosed Multi-Shot's address as PO Box 3047, Conroe, Texas. In response to the allegation, the respondent submitted an affidavit in which he swears that Multi-Shot is a limited liability company, not a corporation. The Texas Secretary of State has a record of a business named Multi-Shot, LLC registered as a domestic limited liability company with the following address: PO Box 3047, Conroe, Texas, 77305. Its registered agent is listed as Ewing & Jones, PLLC.
22. The respondent's January 2007 semiannual report disclosed Sam Houston Funeral Home's address as 850 Eva, Montgomery, Texas, 77356. In the respondent's affidavit, he swears that he did not know that he could not accept a contribution from a funeral home and that he has returned the contributions. The Sam Houston Memorial Funeral Home's website lists three locations: Montgomery, Huntsville, and Willis (which includes Smith Memorial Park). The address for the Montgomery location is 20850 Eva St., Montgomery, Texas, 77356. The address for the Huntsville location is 1700 Normal Park Dr., Huntsville, Texas, 77340. The Willis location also appears to have a cemetery, although the funeral home's website indicates that it was purchased on October 5, 2006, after the first contribution at issue was made. The Texas Secretary of State has a record of a business named Sam Houston Memorial Funeral Home, LLC registered as a domestic limited liability company with the following address: 1700 Normal Park Drive, Huntsville, Texas, 77340.
23. The respondent's January 2007 semiannual report disclosed Schurr Insurance Agency's address as 15949 Hwy 105 W, Suite 8, Montgomery, Texas, 77356. In the respondent's affidavit, he swears that he did not know that he could not accept a contribution from an insurance company and that he has returned the contribution.
24. Schurr Insurance Agency is not included in the list of insurance companies that is found on the Texas Department of Insurance's website. However, the Texas Department of Insurance has a listing of Frederick Jacob Schurr in Montgomery, Texas, as a licensed insurance agent.

The Better Business Bureau's website provides information on a business named Schurr Insurance Agency with Frederick J. Schurr listed as the owner and a business address of 15949 Highway 105 W #8, Montgomery, Texas, 77356. Further, no records were found that a business named Schurr Insurance Agency was ever registered as a corporation with the Texas Secretary of State.

25. The respondent's January 2008 semiannual report disclosed Alton Lane Homes' address as 11836 Mockingbird Hill, Conroe, Texas, 77303. The Texas Secretary of State has a record of a business named Alton Lane Homes, Inc. registered as a domestic for-profit corporation with the following address: 11836 Mockingbird Hill, Conroe, Texas, 77303.
26. The respondent's January 2008 semiannual report disclosed Champion Dirt's address as 1550 S. Pinelake Rd., Conroe, Texas, 77316. The Texas Secretary of State has a record of a business named Champion Dirt, Inc. registered as a domestic for-profit corporation. The address listed for its registered agent is 1550 South Pine Lake Drive, Montgomery, Texas, 77356.
27. In the respondent's affidavit, he swears that he was not aware that he could not accept political contributions from insurance companies and funeral homes, and that he did not know or believe that either contributor Alton Lane Homes or Champion Dirt was a corporation until he received notice of the sworn complaint. The respondent swore that he contacted contributors that he thought may be incorporated and those that he contacted told him they were not incorporated. The respondent has returned the contributions.

IV. Findings and Conclusions of Law

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

Failure to Properly Disclose Political Contributions

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. The evidence indicates that in his original January 2007 semiannual report the respondent failed to disclose the complete address of three contributors. This information was required because the contributions at issue exceeded \$50 during the reporting period. Therefore, there is credible evidence that the respondent violated section 254.031(a)(1) of the Election Code with respect to those political contributions.

Failure to Properly Disclose Political Expenditures

3. 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).

Payee's Address

4. The evidence indicates that in his original reports the respondent failed to disclose the complete address of the payee for eight political expenditures totaling \$1,775. This information was required because the expenditures at issue exceeded \$50 during the reporting periods. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code with respect to those political expenditures.

Purpose of Expenditure

5. The evidence shows that in his original July 2008 semiannual report the respondent failed to disclose the purpose of two political expenditures totaling \$160. This information was required because the expenditures at issue exceeded \$50 during the reporting period. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code with respect to those political expenditures.

Reimbursement to Staff

6. Political expenditures made out of personal funds by a staff member of an officeholder or candidate with the intent to seek reimbursement from the officeholder or candidate 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. Ethics Commission Rules § 20.62.
7. The evidence indicates that the respondent's staff member made a \$233 expenditure on the respondent's behalf and was subsequently reimbursed by the respondent.
8. The respondent's January 2008 semiannual report did not disclose the name and address of the vendor that was actually paid by the staff member as required. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules with respect to the political expenditure.

9. Regarding the expenditures at issue in the respondent's July 2007 and July 2008 semiannual reports, there is no evidence that the respondent reimbursed an individual for making a political expenditure out of personal funds. Instead, the evidence indicates that the respondent paid the individuals named for services provided or to make a donation. Thus, the respondent properly disclosed the name and address of the payee and the purpose of the payment for the expenditures at issue. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code with respect to those political expenditures.

Failure to Properly Disclose Contributions Maintained

10. Each campaign finance report must include, as of the last day of the 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).
11. Each campaign finance report must be in a format prescribed by the commission. ELEC. CODE § 254.036(a); Ethics Commission Rules § 20.19.
12. The evidence shows that the respondent filed his January 2007 semiannual report on a form that did not include a line item to enter the amount of total political contributions maintained as of the last day of the reporting period. Each campaign finance report must be filed in the proper format as prescribed by the commission. The proper forms were available at the time the respondent filed his January 2007 semiannual report. The evidence indicates that the respondent filed a corrected report using the proper form to disclose the amount of total political contributions maintained. However, at the time the original report was filed, the respondent failed to use the proper form and thus failed to disclose the amount of total political contributions maintained.
13. The evidence also indicates that the respondent filed corrections to his July 2007, January 2008, and July 2008 semiannual reports to disclose the correct amount of total political contributions maintained as of the last day of the respective reporting periods. At the time the original reports were filed, the respondent had disclosed \$0 as the amount of total political contributions maintained.
14. The average amount that was not disclosed on each of the four reports at issue was approximately \$23,960. Therefore, there is credible evidence that the respondent violated section 254.031(a)(8) of the Election Code with respect to those reports.

Accepting Corporate Contributions

15. 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.
16. 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. 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.
17. Cemetery companies and insurance companies, whether incorporated or not, are considered to be corporations for the purpose of the prohibition on corporate contributions. ELEC. CODE § 253.093(a).
18. 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 he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
19. The evidence indicates that Multi-Shot and Sam Houston Funeral Home are limited liability companies and not corporations.
20. The evidence shows that the funeral home was not a cemetery company at the time it made the September 2006 contribution. Therefore, there is credible evidence that the respondent did not violate sections 253.003 and 253.094 of the Election Code with respect to these two contributions.
21. An insurance agency is not necessarily an insurance company. An insurance company is required to be chartered by the Texas Department of Insurance and only an insurance company may issue policies. On the other hand, insurance agents may only write policies for an insurance company but they are not considered the issuer. The licensing provisions for agents are in Article 21.07 of the Insurance Code, which provides a definition of insurance company and agent. Under that law, agents are agents of the insurance company but are not considered the insurance company.
22. The evidence indicates that Schurr Insurance Agency is an insurance agency and not an insurance company. Thus, the contributor was not prohibited from making a political contribution to a candidate or officeholder. Therefore, there is credible evidence that the respondent did not violate sections 253.003 and 253.094 of the Election Code with respect to this contribution.

23. The evidence indicates that Alton Lane Homes and Champion Dirt are corporations registered with the Texas Secretary of State. Based on the records of the Texas Secretary of State and Sam Houston Memorial Funeral Home's website, it appears that the funeral home may have been a cemetery company at the time that it made the November 2006 contribution. However, the respondent has sworn that he did not know that these contributors were corporations at the time he accepted the contributions. The evidence is insufficient to refute his statement. Therefore, there is insufficient evidence that the respondent violated sections 253.003 and 253.094 of the Election Code with respect to these contributions.

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 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 the full name and address of the person making the contributions, and the dates of the contributions; 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, 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. The respondent also acknowledges that the proper method to report a political expenditure made by the staff member of a candidate or officeholder 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 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 \$2,800 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-2811371.

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

Lanny Moriarty, Respondent

EXECUTED ORIGINAL received by the commission on: _____
Texas Ethics Commission

By: _____
David A. Reisman, Executive Director