

TEXAS ETHICS COMMISSION

IN THE MATTER OF

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BEFORE THE

LINDA LOU HARPER-BROWN,

TEXAS ETHICS COMMISSION

RESPONDENT

SC-240337

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on September 10, 2004, to consider sworn complaint SC-240337. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.032 and 254.031 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

The complaint alleges that the respondent:

- Converted political funds to a personal use by using political funds to pay for an advertisement for her spouse's business.
- Failed to include a disclosure statement on political advertising.
- Accepted political contributions from out-of-state political committees before obtaining certain documentation from the political committees.
- Accepted political contributions from corporations.
- Failed to report the full name of contributors.

III. Facts Supported by Credible Evidence

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

1. The respondent is a state representative.
2. In support of his allegation that the respondent converted political funds to a personal use, the complainant submitted a copy of an advertisement that appeared in the June 2003 Irving Parent magazine. The top half of the quarter-page advertisement relates to the private business of the respondent's husband, which, according to the Secretary of State's Corporations Division, is not incorporated. The bottom half, which is clearly separated from the top half, includes a picture of the respondent and information about the legislative session and information about how the respondent can be contacted.

3. The respondent's July 2003 semiannual report includes three \$125 expenditures to the Irving Parent Magazine. The purpose of the expenditure provided by the respondent is "ADVERTISING."
4. In response to the allegation that she converted political funds to a personal use, the respondent swore that her husband's business paid for the advertising but that the "intention was for the campaign to pay one-half of the ad at \$62.40 each." Her response included a copy of the three checks written on her husband's account that were used to pay the advertisement at issue. In June 2004, the respondent filed a corrected report to show that the three \$125 expenditures to Irving Parent Magazine were actually for \$62.40 each.
5. In support of his allegation that the respondent failed to include a disclosure statement on political advertising, the complainant refers to the advertisement described above in paragraph two.
6. The advertisement appeared in the Irving Parent Magazine on March 10, April 13, and May 13, 2003. The advertisement states as follows: "The Texas House of Representatives is in session through June 2, 2003. Citizens with comments and questions about any issue before the House or they wish to put before the house may call Rep. Linda Harper Brown." The advertisement includes a picture of the representative and her Capitol Address, e-mail address, and telephone number.
7. The following three reports filed by the respondent disclosed contributions from political committees that are not registered with the Texas Ethics Commission and that did not include documentation from the out-of-state political committees. In June 2004 the respondent filed corrected July 2002 and January 2004 reports to provide the missing information in those reports.
 - 8-day pre-election report filed March 4, 2002: \$2,500 contribution from The Committee for Quality Education PAC, Alexandria, Virginia, accepted February 28, 2002.
 - July 2002 semiannual report: \$2,500 contribution from The Committee for Quality Education PAC, Alexandria, Virginia, accepted March 5, 2002.
 - January 2004 semiannual report: \$1,000 contribution from Brinkerhoff Parsons, New York, New York, accepted October 29, 2003.
8. At issue in the allegation that the respondent accepted contributions from corporations is an 8-day pre-election report due on October 28, 2002. The respondent listed a contributor of a \$500 contribution as "Verizon Good Government." In June 2004 the respondent filed a corrected report to show that the contribution was from "Verizon Good Government Club-TX."

9. Also at issue in the allegation that the respondent accepted contributions from corporations is a 30-day pre-election report due on October 7, 2002. The respondent listed a contributor of a \$100 contribution as "Meredith Bolger Insurance Agency." In June 2004 the respondent filed a corrected report stating that this contributor is a sole proprietorship and not an insurance company.
10. The semiannual report due January 15, 2004, is also at issue in the allegation that the respondent accepted contributions from corporations. The original report incorrectly listed five corporations, rather than the corporation's PACs as the contributors and identified a contributor as an insurance company rather than as an insurance agency. The report also incorrectly listed the name of one contributor. In June 2004, the respondent filed a corrected report to correct the errors.
11. At issue in the allegation that the respondent failed to report the full name of contributors are some of the same contributions described above in paragraphs eight, nine, and ten. As stated previously, on June 2004, the respondent filed corrected reports to provide the correct name of the contributors at issue.

IV. Findings and Conclusions of Law

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

Conversion of Political Funds to Personal Use

1. A candidate or officeholder may not convert political contributions to personal use. ELEC. CODE § 253.035(a); *see also id.* ELEC. CODE § 251.001(5) (the term "political contribution" includes both campaign contributions and officeholder contributions). "Personal use" means "a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office." *Id.* § 253.035(d).
2. In June 2004, the respondent filed a corrected report to show that the three expenditures to the Irving Parent Magazine were for \$62.40 each instead of the \$125 each as initially reported. The \$62.40 represents the amount attributed to the portion of the advertisement relating to the respondent's duties or activities as a candidate for or holder of a public office. Therefore, there is credible evidence that the respondent did not convert political contributions to a personal use.

Political Advertising Disclosure Statement

3. Section 255.001 of the Election Code requires certain political advertising to include a disclosure statement. The Court of Criminal Appeals held, however, that the applicable version of section 255.001 of the Election Code (the version that was in effect before September 1, 2003) was unconstitutional. Therefore, the commission cannot find a violation of section 255.001 of the Election Code.

Documentation from Out-of-State Political Committees

4. Before accepting a contribution received from an out-of-state political committee, a candidate or officeholder must have received certain documentation from the out-of-state committee. ELEC. CODE § 253.032. Regardless of the amount of the contribution, if the out-of-state political committee is registered with the Federal Election Commission (FEC), this documentation requirement may be satisfied by receiving a copy of the committee's statement of organization filed with the FEC and certified by an officer of the committee. *Id.*
5. If the out-of-state political committee is not registered with the FEC, this documentation requirement must be satisfied by a document providing certain information about the out-of-state political committee. *Id.* That requirement does not apply to a contribution from a committee that has a campaign treasurer appointment on file in Texas at the time the contribution is made. *Id.*
6. The commission may not consider a complaint if the alleged violation is also a criminal offense and is barred from criminal prosecution by the operation of the applicable statute of limitations. Ethics Commission Rules § 12.5(3). Failing to obtain from an out-of-state political committee information that is required by section 253.032 of the Election Code is a Class A misdemeanor. ELEC. CODE § 253.032. An indictment or information for any misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward. Article 12.02, Code of Criminal Procedure.
7. 8-day pre-election report filed March 4, 2002, and July semiannual report filed July 15, 2002: The complaint was filed March 26, 2004. The contributions from The Committee for Quality Education PAC, were accepted on February 28, 2002, and March 5, 2002, periods outside of the applicable statute of limitations. Therefore, the commission does not have jurisdiction to consider the allegation regarding these contributions.
8. January 2004 semiannual report: The commission has jurisdiction to consider the allegation relating to the contribution from Brinckerhoff Parsons. The respondent's original January 2004 semiannual report failed to include documentation from Brinckerhoff Parson. The respondent filed a corrected report and good-faith affidavit in which she included the missing documentation from the political committee. She also clarified that the contribution was from "Parsons Brinckerhoff, Inc. PAC."
9. Therefore, there is credible evidence that the respondent violated section 253.032 of the Election Code by failing to include on her January 2004 report certain documentation from an out-of-state political committee from which she accepted a political contribution.

Corporate Contributions

10. A corporation organized under the Texas Business Corporations Act or the Texas Non-Profit Corporation Act may not make a political contribution to a candidate or officeholder. ELEC. CODE § 253.094. A candidate may not knowingly accept a political contribution that the candidate knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b).
11. For purposes of the corporate restriction, insurance companies, whether incorporated or not, are considered to be corporations covered by this subchapter. ELEC. CODE § 253.093.
12. The Ethics Commission has determined that an insurance agency is not an insurance company for purposes of the restrictions on corporate political contributions and political expenditures.
13. The respondent's corrected report lists the contributions that are alleged to be from corporations as being from the corporations' political committees or from individuals. Additionally, the corrected report lists contributions that were originally reported as being from insurance companies as being from an insurance agency.
14. There is credible evidence that the contributions at issue were not from corporations. Thus, there is credible evidence that the respondent did not violate section 253.003(b) of the Election Code.

Name of Contributor

15. Each report must include the full name of each contributor from whom the filer accepted contributions that exceed \$50 during the reporting period. ELEC. CODE § 254.031.
16. As to the 8-day pre-election report, the respondent did not include the complete name of one contributor. As to the January 15, 2004, semiannual report, the respondent did not include the complete name of six contributors. Therefore, there is credible evidence that the respondent violated section 254.031 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 before accepting a contribution from an out-of-state political committee, a candidate or officeholder must have received certain documentation from the out-of-state committee. The respondent also acknowledges that each report must include the full name of each contributor from whom she accepted contributions that exceed \$50 during the reporting period. The respondent agrees to fully 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. No 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 no civil penalty for the violations described under Section 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-240337.

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

Linda Lou Harper-Brown, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Sarah Woelk, Acting Executive Director