

TEXAS ETHICS COMMISSION

IN THE MATTER OF
R. P. "PAT" BURNET, JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2410164

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on January 13, 2005, to consider sworn complaint SC-2410164. A quorum of the commission was present at the meeting. The commission determined that there is credible evidence of violations of sections 254.031 and 255.001 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The respondent was a successful candidate for re-election as county sheriff in Van Zandt County in the November 2004 election. The complaint alleges the following in regard to the respondent's report due 30 days before that election:

- that the respondent omitted addresses for 23 contributors;
- that the respondent did not provide complete addresses for 12 payees; and
- that the respondent reported incorrect contribution totals.

The complaint also alleges that the respondent failed to include a disclosure statement in political advertising.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful candidate for re-election as county sheriff in Van Zandt County in the November 2004 election.

2. In support of the allegations of reporting violations, the complainant submitted a copy of the respondent's 30-day pre-election report in connection with the November 2004 election.
3. The report itemizes 23 contributions. Of those contributions, 18 are contributions of more than \$50. The report does not list addresses for any of contributors. Those 18 contributors contributed a total of \$2,550.
4. The report itemizes 13 expenditures, all of which are expenditures of more than \$50. The report lists a complete address for one payee; a partial address for one payee; and no address for the remaining 11 payees. The respondent made a total of \$3,314.57 in payments to the 12 payees for whom the respondent did not provide complete addresses.
5. The report itemizes \$2,800 in contributions, and it discloses \$2,205.55 in unitemized contributions. The report discloses \$5,455.55 in total contributions, which is \$450 more than the combined total of itemized and unitemized contributions reported.
6. On October 28, 2004, the respondent filed a corrected report to provide missing contributor and payee addresses. The corrected report showed \$2,800 in itemized contributions; \$1,567 in unitemized contributions; and total contributions of \$4,367 (which is the sum of \$2,800 and \$1,567). He filed an affidavit saying that the errors in the original report were accidental.
7. In regard to the allegation regarding political advertising, the complainant submitted copies of an advertisement supporting the respondent that appeared in the September and October issue of a local newspaper. Neither advertisement includes a disclosure statement. In his response, the respondent acknowledges that he paid for the advertisements. He swears that he had e-mailed the advertisements to the owner of the newspaper and that the newspaper had included the proper disclosures in previous advertisements. He swears that the owner of the newspaper had agreed to publish a statement that the respondent paid for the advertisements in question.

IV. Findings and Conclusions of Law

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

1. A candidate's report of political contributions must include the address of a person who contributed more than \$50 to the candidate during the reporting period. ELEC. CODE § 254.031(a)(1). The respondent failed to report addresses for 18 contributors, who contributed a total of \$2,550 during the reporting period. Therefore, there is credible evidence that the respondent violated section 254.031(a)(1) of the Election Code.

2. A candidate's report of political expenditures must include the address of a person to whom the candidate paid more than \$50 during the reporting period. ELEC. CODE § 254.031(a)(3). The respondent failed to report complete addresses for 12 payees, to whom the candidate made a total of \$3,314.57 in payments. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code.
3. A candidate's report must include the total amount of all political contributions accepted during the reporting period. ELEC. CODE § 254.031(a)(6). The respondent's original report disclosed over \$1,000 more in total contributions than his corrected report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(6) of the Election Code.
4. A person may not knowingly cause to be published or distributed political advertising containing express advocacy that does not include a disclosure statement. ELEC. CODE § 255.001(a). The advertisements in question are political advertising because they are communications supporting a candidate for election to public office that were published in a newspaper in exchange for consideration. *Id.* § 251.001(16). The signs in question contain express advocacy because they were authorized by the respondent. *Id.* § 255.001(b).
5. In his affidavit, the respondent indicates that he may have assumed that the newspaper would take responsibility for including any required disclosure statements, but he acknowledges that he did not direct the newspaper to include a disclosure statement. Therefore, there is credible evidence that the respondent violated section 255.001 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 the entry of this order before any adversarial evidentiary hearings before the commission, and before any formal adjudication by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure provided by law.
3. The respondent acknowledges that a candidate's report of political contributions must include the address of a person who contributed more than \$50 to the candidate during the reporting period; that a candidate's report of political expenditures must include the address of a person to whom the candidate paid more than \$50 during the reporting period; that a candidate's report must include the total amount of all political contributions accepted during the reporting period; and that a person may not knowingly cause to be published or

distributed political advertising containing express advocacy that does not include a disclosure statement. The respondent agrees to fully comply with these requirements of the law.

VI. Confidentiality

Three of the violations contained in this order and agreed resolution are 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

The commission imposes a \$500 civil penalty for the violations described under Section IV.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed agreed resolution, this order and agreed resolution is a final and complete resolution of SC-2410164.

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

R. P. "Pat" Burnett, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director