

TEXAS ETHICS COMMISSION

IN THE MATTER OF

LON M. BURNAM,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2911288

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-2911288. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.0612, and 254.0912 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, 2) did not disclose the principal occupation or job title and the full name of the employer for each individual from whom he accepted political contributions that in the aggregate equaled or exceeded \$500 during a reporting period, 3) improperly reported political expenditures as reimbursements, and 4) 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 the state representative for District 90 and won re-election to that office in 2008. The reports at issue are the 30-day and 8-day pre-election campaign finance reports for the 2008 general election, and January 2008, July 2008, January 2009, and July 2009 semiannual campaign finance reports.

POLITICAL CONTRIBUTIONSName of Contributor

2. The complaint alleged that the respondent failed to fully disclose on four campaign finance reports the names of seven persons making 10 political contributions totaling \$2,500.
3. The respondent only disclosed the last name and the initial of the first name of a contributor of \$100 and a contributor of \$200.
4. The remaining contributions included an acronym that is on file with the Federal Election Commission or the Texas Ethics Commission, or is commonly used as the entity's name.

Principal Occupation or Job Title and Name of Employer of Contributor

5. The complaint alleged that the respondent failed to disclose on five campaign finance reports the principal occupation or job title and the full name of the employer of five individuals from whom the respondent accepted political contributions that in the aggregate equaled or exceeded \$500 during the reporting period. The contributions at issue totaled \$4,500.
6. The respondent disclosed the principal occupation or job title and the full name of the employer of one contributor as "physician / self-employed" and of another contributor as "dentist / self-employed."
7. The respondent left blank the spaces for the principal occupation or job title and the full name of the employer of an individual who contributed \$1,000.
8. The respondent incorrectly disclosed the principal occupation or job title and the full name of the employer of an individual who contributed \$2,000. In response to the sworn complaint, the respondent filed a corrected report that changed both of these entries.
9. The respondent left blank the space for the principal occupation or job title and disclosed a job title in the space for employer information for a \$500 contribution. In response to the sworn complaint, the respondent filed a corrected report that provided the job title and corrected the employer information.

Total Political Contributions Maintained

10. The complaint alleged that the respondent failed to properly disclose on six campaign finance reports total political contributions maintained.
11. The January 2008 semiannual report disclosed \$37,107.48 for total political contributions maintained. The complaint alleged that total political contributions maintained should be \$24,134.69. The respondent's bank statement disclosed the total balance for five political

accounts as \$50,146.49 on the last day of the reporting period. There is a \$13,039.01 difference between the total balance shown on the bank statement and the amount disclosed by the respondent on the report.

12. The July 2008 semiannual report disclosed \$53,054.51 for total political contributions maintained. The complaint alleged that total political contributions maintained should be \$23,742.10. The respondent's bank statement disclosed the total balance for five political accounts as \$52,956.51 on the last day of the reporting period. There is a \$98 difference between the total balance shown on the bank statement and the amount disclosed by the respondent on the report.
13. The 30-day pre-election report for the November 2008 General Election disclosed \$47,441.62 for total political contributions maintained on September 25, 2008. The complaint alleged that total political contributions maintained should be \$25,815.20. The respondent's bank statement disclosed the total balance for five political accounts as \$55,767.13 on September 30, 2008. There is an \$8,325.51 difference between the total balance shown on the bank statement and the amount disclosed by the respondent on the report.
14. The 8-day pre-election report for the November 2008 general election disclosed \$54,573.78 for total political contributions maintained on October 25, 2008. The complaint alleged that total political contributions maintained should be \$31,948.12. The respondent's bank statement disclosed the total balance for five political accounts as \$47,554.31 on October 31, 2008. There is a \$7,019.47 difference between the total balance shown on the bank statement and the amount disclosed by the respondent on the report.
15. The January 2009 semiannual report disclosed \$44,304.19 for total political contributions maintained. The complaint alleged that total political contributions maintained should be \$23,415.65. The respondent's bank statement disclosed the total balance for five political accounts as \$55,854.59 on the last day of the reporting period. There is an \$11,550.40 difference between the total balance shown on the bank statement and the amount disclosed by the respondent on the report.
16. The July 2009 semiannual report disclosed \$38,285.89 for total political contributions maintained. The complaint alleged that total political contributions maintained should be \$11,114.11. The respondent's bank statement disclosed the total balance for five political accounts as \$38,285.30. There is a \$.59 difference between the total balance shown on the bank statement and the amount disclosed by the respondent on the report.

Corporate or Labor Organization Contributions

17. The complaint alleged that the respondent unlawfully accepted 16 political contributions totaling \$7,960 from corporations or labor organizations. Thirteen of the political contributions at issue did not come from a corporation or labor organization. For three contributions, the evidence was insufficient to show that the contributor was a prohibited source or the respondent's knowledge of the status of the contributor.

POLITICAL EXPENDITURESReimbursement of Political Expenditures

18. The complaint alleged that the respondent failed to disclose on six campaign finance reports the actual vendor's name and address and the date and amount of the expenditures for 84 political expenditures totaling approximately \$20,590. Fifty of the expenditures at issue totaling approximately \$13,030 disclosed the actual vendor as the payee.
19. For reimbursements totaling approximately \$7,600, the respondent disclosed the information regarding the reimbursement of the individual who made the original expenditures and did not disclose the actual recipient of the expenditure (the vendor), their address, or the date and amount of the original expenditures.

Name of Payee

20. The complaint alleged that, the respondent failed to fully disclose on five campaign finance reports the names of three payees for six expenditures totaling approximately \$23,180.
21. The respondent disclosed MSHC Partners as the payee of a \$20,858.76 expenditure for "Campaign mailing."
22. The respondent disclosed ACLU Texas as the payee of a \$75 expenditure for "Contribution" and disclosed NAACP as the payee of expenditures totaling \$2,250.

Purpose of Expenditure

23. The complaint alleged that the respondent failed to properly disclose on five campaign finance reports the purposes of 52 political expenditures totaling approximately \$2,700.
24. The disclosures of the purposes were adequate.

Political Expenditures for Travel Outside of the State of Texas

25. The complaint alleged that the respondent failed to properly disclose on two campaign finance reports two expenditures totaling approximately \$540 for travel outside of the State of Texas.
26. The respondent's July 2008 semiannual report disclosed a January 22, 2008, expenditure of \$145 to a hotel in Washington, DC, for "Conference lodging."
27. The respondent's 8-day pre-election report disclosed an October 14, 2008, expenditure of \$394.50 to Southwest Airlines in Dallas Texas, for "Airline ticket DAL [Dallas, Texas] to HRL [Harlingen, Texas] RT."

IV. Findings and Conclusions of Law

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

POLITICAL CONTRIBUTIONSName of Contributor

1. Each 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 respondent failed to disclose the full name for a contributor of \$100 and a contributor of \$200. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code with regard to these contributions.
3. As to the other contributions, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code regarding these contributions.

Principal Occupation or Job Title and Name of Employer of Contributor

4. Each report by a candidate for or holder of a statewide office in the executive branch or a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 during the reporting period, the individual's principal occupation or job title and the full name of the individual's employer. ELEC. CODE § 254.0612.

5. Each report by a holder of a statewide office in the executive branch or a legislative office must include the contents prescribed by section 254.0612. ELEC. CODE § 254.0912.
6. The following descriptions facially complied with the requirement to disclose the contributor's principal occupation or job title and the full name of the individual's employer:

physician / self-employed
dentist / self-employed
7. Therefore, regarding these disclosures, there is credible evidence of no violation of sections 254.0612 and 254.0912 of the Election Code.
8. The respondent failed to properly disclose the principal occupation or job title or the full name of the employer for a \$1,000 political contribution where the spaces for this information were left blank, for \$2,000 in political contributions where this information was incorrect, and for a \$500 political contribution where the space for the principal occupation or job title was left blank and the employer information was incorrect. Therefore, there is credible evidence of violations of sections 254.0612 and 254.0912 of the Election Code with respect to those contributions.

Total Political Contributions Maintained

9. 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).
10. A *de minimis* error in calculating or reporting a cash balance under subsection (a)(8) is not a violation of this section. ELEC. CODE § 254.031(a-1).
11. For the January 2008 semiannual report there is a \$13,039.01 difference between the total balance shown on the respondent's bank statement and the amount disclosed by the respondent on the report.
12. For the July 2008 semiannual report there is a \$98 difference between the total balance shown on the respondent's bank statement and the amount disclosed by the respondent on the report.
13. For the 30-day pre-election report for the November 2008 general election there is an \$8,325.51 difference between the total balance shown on the respondent's bank statement and the amount disclosed by the respondent on the report.

14. For the 8-day pre-election report for the November 2008 general election there is a \$7,019.47 difference between the total balance shown on the respondent's bank statement and the amount disclosed by the respondent on the report.
15. For the January 2009 semiannual report there is an \$11,550.40 difference between the total balance shown on the respondent's bank statement and the amount disclosed by the respondent on the report.
16. For the July 2009 semiannual report there is a \$.59 difference between the total balance shown on the respondent's bank statement and the amount disclosed by the respondent on the report.
17. There was a *de minimis* error in reporting the cash balance on the July 2008 and July 2009 semiannual reports. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code as to those reports.
18. There is credible evidence of violations of section 254.031(a)(8) of the Election Code as to the other reports.

Corporate or Labor Organization Contributions

19. A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by subchapter D, Chapter 253, Election Code. ELEC. CODE § 253.094. That subchapter does not authorize a corporation or labor organization to make a political contribution to a candidate.
20. "Corporation" means a corporation that is organized under the Texas Business Corporation Act, the Texas Non-Profit 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.
21. 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(b).
22. The evidence indicated that 13 of the political contributions at issue were not from a corporation or labor organization. Therefore, there is credible evidence of no violation of sections 253.003(b) and 253.094(a) of the Election Code, with regard to those contributions. Regarding the remaining political contributions, there is insufficient evidence of violations of sections 253.003(b) and 253.094(a) of the Election Code.

POLITICAL EXPENDITURESReimbursement of Political Expenditures

23. 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).
24. 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; 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.
25. The respondent failed to properly report reimbursements totaling approximately \$7,600, because he disclosed the information regarding the reimbursement of the individual who made the original expenditures and did not disclose the actual recipient of the expenditure (the vendor), their address, or the date and amount of the original expenditures. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

Name of Payee

26. 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).
27. The respondent disclosed the name of the payee for political expenditures totaling \$20,858.76 as “MSHC Partners.” The respondent corrected the report to disclose that the entity’s name is “MSHC Partners Inc.” The error in context is minor and did not affect

disclosure. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code as to the reporting of this expenditure.

28. ACLU is a commonly known abbreviation for the American Civil Liberties Union and NAACP is a commonly known abbreviation for the National Association for the Advancement of Colored People. The organizations commonly use the acronyms as their name. The use of the acronyms did not affect disclosure. Therefore, there is credible evidence of no violations of section 254.031(a)(3) of the Election Code as to the reporting of these expenditures.

Purpose of Expenditure

29. 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).
30. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61.
31. The disclosures of the purposes of the expenditures were adequate. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code or section 20.61 of the Ethics Commission Rules.

Political Expenditures for Travel Outside of the State of Texas

32. The description of a political expenditure for travel outside of the state of Texas must provide the following:
- (1) The name of the person or persons traveling on whose behalf the expenditure was made;
 - (2) The means of transportation;
 - (3) The name of the departure city or the name of each departure location;
 - (4) The name of the destination city or the name of each destination location;
 - (5) The dates on which the travel occurred; and
 - (6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

Ethics Commission Rules § 20.61(b).

33. The respondent made an expenditure of \$145 for lodging in Washington, DC. An expenditure for lodging is not an expenditure for travel that is required to be disclosed on Schedule T (used for reporting in-kind contributions or political expenditures for travel outside the state of Texas). The respondent made an expenditure of approximately \$395 for travel inside the state of Texas. An expenditure for travel inside the state of Texas is not an expenditure for travel that is required to be disclosed on Schedule T. Therefore, there is credible evidence of no violation of section 20.61(b) of the Ethics Commission Rules.

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 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; each report by a candidate for or holder of a statewide office in the executive branch or a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 during the reporting period, the individual's principal occupation or job title and the full name of the individual's employer, 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; 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; and political expenditures made out of personal funds by a staff member of an officeholder or candidate with the intent to seek reimbursement from the candidate or officeholder must be disclosed 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 \$1,000 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-2911288.

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

Lon M. Burnam, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director