

TEXAS ETHICS COMMISSION

IN THE MATTER OF

ROBERT W. PRATT,
CAMPAIGN TREASURER,
ABETTERLUBBOCK.ORG,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-3100376

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) held a preliminary review hearing on August 30, 2012, March 27, 2013, and May 30, 2013, to consider sworn complaint SC-3100376. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.154 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 proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent, as campaign treasurer for abetterlubbock.org, did not file special pre-election campaign finance reports and did not deliver written notice to a candidate that the political committee accepted political contributions or made political expenditures for the candidate. The facts as stated in the complaint also raised allegations that the respondent did not file 30-day and 8-day pre-election reports for the committee.

III. Facts Supported by Credible Evidence

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

1. On March 28, 2001, Kenneth Corbin filed a campaign treasurer appointment for abetterlubbock.org, a general-purpose committee, which named the respondent as the committee's campaign treasurer. The respondent signed the treasurer appointment, just below the acknowledgement that states, "I understand that I have been appointed as the campaign treasurer for this general-purpose committee and that I am responsible for filing all

- required reports and that I may be subject to fines for failure to do so.” The campaign treasurer appointment listed Kenneth Corbin and the respondent as the contribution and expenditure decision makers for the committee. To date, the respondent is listed as the committee’s campaign treasurer.
2. The complaint allegations were based on a political advertising mailer that opposed a candidate for state representative for District 84 in the March 2, 2010, primary election. The political advertising mailer included a disclosure statement that indicated that it was paid for by abetterlubbock.org and that listed the respondent as the committee’s treasurer.
 3. The respondent did not file a 30-day pre-election report or an 8-day pre-election report for the committee for the March 2010 primary election.
 4. The respondent did not file a special pre-election report for the committee for the March 2010 primary election.
 5. The respondent did not disclose a political expenditure for the political advertising at issue in semiannual reports filed for the committee.
 6. Each semiannual report filed for the committee from July 2009 through July 2010 disclosed \$0 in total political contributions and less than \$20 in total political contributions maintained. The committee’s semiannual report filed in January 2011 disclosed \$665 in total political contributions and \$565 in total political contributions maintained.
 7. Campaign finance reports filed by two candidates that ran against the candidate named in the political advertising mailer at issue did not disclose that they received notice from the respondent that the committee accepted political contributions or made political expenditures for their benefit.
 8. In response to the sworn complaint allegations, the respondent provided an affidavit in which he swore that the committee did not raise or expend any funds for political activity in connection with the 2010 primary election. The respondent also swore that he did not authorize any other party to expend funds for any political activity related to the 2010 primary election.
 9. The respondent included with his response an April 5, 2010, Texas Tribune article,¹ which stated that a political consultant said he designed and mailed the political advertising at issue. The article quoted the political consultant as saying that he had never actually spoken to the respondent, and indicated that the political consultant would not say until after the election who paid him to design and mail the political advertising at issue. The respondent swore

¹ Ross Ramsey, *Lubbock’s Frullo and Griffin in State House Runoff*, The Texas Tribune, April 5, 2010, <http://www.texastribune.org/texas-politics/2010-legislative-runoffs/lubbocks-frullo-and-griffin-in-state-house-runoff/>.

that, to the best of his knowledge, he has never met the political consultant named in the Texas Tribune article.

10. Pursuant to section 571.137 of the Government Code,² the commission issued a Subpoena for the Production of Documents to the political consultant that designed and mailed the political advertising mailer. In response to the subpoena, the consultant provided an invoice from his company for the mailer in the amount of \$8,948.29 that was addressed to the respondent. The invoice disclosed March 1, 2010, as the date for various expenses related to the design and mailing of the political advertising at issue.
11. The consultant provided an affidavit explaining the sequence of events surrounding the political advertising mailer. The consultant swore that in mid-February 2010 he was contacted by former state representative Carl Isett to do the mail piece for the respondent. The consultant swore that he communicated with Carl Isett and an associate of the respondent, Kenneth Corbin, regarding the mailer at issue. The consultant swore that Kenneth Corbin provided him with information used in the mailer. The consultant swore that, on or about the Wednesday before the election, Carl Isett told him to send the mailer. The consultant swore that it was his full belief that he was producing the mailer for abetterlubbock.org, and that he had no intent to hide the source of the material. The consultant swore that he had expected to be paid for the mailer in a timely manner, but indicated that, to date, he had not received any payment.
12. Pursuant to section 571.137 of the Government Code, the commission issued a Subpoena for the Production of Documents to the president and chief executive officer of the graphics and printing company that produced the political advertising mailer. In response to the subpoena, the individual provided an invoice dated February 26, 2010, from his company for the mailer that was addressed to the political consultant.
13. Kenneth Corbin provided to the political consultant a mailing list that was used to distribute the political advertising mailer at issue.
14. In the weeks prior to the March 2010 primary election, former state representative Carl Isett promised abetterlubbock.org that he would pay for or find others to pay for the political advertising mailer at issue.

² In connection with a preliminary review, the commission, for good cause and as authorized by this chapter, may subpoena documents and witnesses on application by the commission staff and a motion adopted by a vote of at least six members of the commission, for the purpose of attempting to obtain from the documents or witnesses specifically identified information, if the commission reasonably believes that the specifically identified information: (1) is likely to be determinative as to whether the subject of an investigation has violated a law within the jurisdiction of the commission, (2) can be determined from the documents or is known by the witnesses, and (3) is not reasonably available through a less intrusive means. GOV'T CODE § 571.137(a-1).

IV. Findings and Conclusions of Law

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

1. In addition to other required reports, for each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports. ELEC. CODE § 254.154(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day and covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day. *Id.* § 254.154(b). The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day and covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.154(c).
2. If a general-purpose committee other than the principal political committee of a political party or a political committee established by a political party's county executive committee accepts political contributions or makes political expenditures for a candidate or officeholder, notice of that fact shall be given to the affected candidate or officeholder as provided by section 254.128 for a specific-purpose committee. *Id.* § 254.161.
3. Except as otherwise provided by this chapter, each report filed under this chapter must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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 expenditure. *Id.* § 254.031(a)(3).
4. For purposes of reporting under this chapter, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. *Id.* § 254.035(a).
5. After a general-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded \$500 in political contributions or expenditures. Ethics Commission Rules § 20.405(b). With the exception of the campaign treasurer appointment, the individual named as a committee's campaign treasurer is legally responsible for filing all reports of the general-purpose committee, including a report following the termination of his or her appointment as campaign treasurer. *Id.* § 20.405(c).
6. The political advertising mailer at issue included a disclosure statement that indicated that it was paid for by abetterlubbock.org and that listed the respondent as the committee's treasurer. The political consultant that designed and mailed the political advertising mailer provided an invoice from his company for the mailer in the amount of \$8,948.29 that was

addressed to the respondent, and swore that it was his full belief that he was producing the mailer for abetterlubbock.org. In the weeks prior to the March 2010 primary election, an individual listed as a contribution and expenditure decision maker for abetterlubbock.org communicated with the political consultant and former state representative Carl Isett about the production and distribution of the political advertising mailer at issue. Even if the respondent was not personally involved in the decision to accept a political contribution or make a political expenditure, the respondent, as campaign treasurer of abetterlubbock.org, was legally responsible for filing all reports for the committee. The respondent was required to file a report required by section 254.154 of the Election Code in connection with the March 2010 primary election and did not do so. Therefore, there is credible evidence of a violation of section 254.154 of the Election Code. The respondent was also required to deliver the written notice required by section 254.161 of the Election Code to the affected candidate not later than the end of the period covered by the report in which the reportable activity occurred and did not do so. Therefore, there is credible evidence of a violation of section 254.161 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.

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 nature, circumstances, and consequences of the violations described under Sections III and IV, and the sanction necessary to deter future violations, the commission imposes a \$500 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-3100376.

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

Robert W. Pratt, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director