

TEXAS ETHICS COMMISSION

IN THE MATTER OF

H.V. O'BRIEN,
CAMPAIGN TREASURER
BERC EDUCATION COMMITTEE,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31710144

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on February 27, 2020, to consider sworn complaint SC-31710144. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.031(a)(1), 254.031(a)(3) and 254.031(a)(6) of the Election Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleged that the respondent, as campaign treasurer for the specific-purpose committee, BERC Education Committee, did not properly report political expenditures and/or political contributions in the January 2017 semiannual report.

III. Facts Supported by Credible Evidence

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

1. BERC Education Committee (BERC) is a now-dissolved specific-purpose committee that formed on October 25, 2016, to support a bond measure proposed by Ranger College.
2. The complaint alleged the respondent reported on BERC's January 2017 semiannual report making political expenditures that Ranger College actually paid for.
3. Ranger College is a public junior college district formed under Chapter 130 of the Education Code. Ranger College's service area of Comanche, Brown, and Erath counties, and parts of Eastland and Young counties, is set by section 130.196 of the Education Code.

4. The campaign treasurer appointment (Form STA) filed by BERC appointed the respondent as its campaign treasurer. The respondent is the publisher of Eastland County Today, an Eastland-based media company that publishes several periodicals in the Eastland area.
5. The Form STA filed by BERC listed the chair of the Ranger College Board of Regents as the person appointing the treasurer. The Form STA also listed a now-former Ranger College vice-president, as the assistant treasurer.
6. The first campaign finance report the respondent filed was an 8-day pre-election report, filed with the Commission on October 31, 2016. The respondent reported \$750 in total political contributions, and \$890.40 in total political expenditures. The only contributors were the president of Ranger College (\$250) and the now former vice-president of Ranger College (\$500). The one payee of an unpaid incurred obligation (reported on Schedule F2) was Bryan's Signs, which was described as an \$890.40 "Advertising Expense" for "Yard signs."
7. The January semiannual report, filed on January 23, 2017, disclosed \$140.95 in total political contributions, \$6,507.33 in total political expenditures, and \$8,116.93 in a loan from the Ranger College president.
8. The report listed the following expenditures:

| Schedule | Payee | Description | Date | Amount |
|---|----------------------------|---------------------------------------|-------------|-------------------|
| F1 (political expenditures from political contributions) | Bryan's Signs | Advertising Expense—Yard Signs | 12/12/2016 | \$890.40 |
| F1 | Eastland County Newspapers | Advertising Expense—Newspaper Inserts | 12/12/2016 | \$5,242.40 |
| F1 | Spaeth Communications | Advertising Expense-Postcards | 12/12/2016 | \$255.53 |
| I (non-political expenditures from political contributions) | First Financial Bank | Check printing | 12/29/2016 | \$8.49 |
| Total | | | | \$6,396.82 |

9. The report also included a \$140.95 political contribution from the Ranger College president, accepted on December 12, 2016, and an \$8,116.93 loan from the Ranger College president accepted on December 12, 2016.
10. All expenditures disclosed by the respondent in BERC's January 2017 semiannual report had a date after the November 8, 2016, bond election. However, all the political expenditures were for political advertising for the bond measure.
11. Documents obtained from Ranger College show that Ranger College received the invoices and paid the expenditures for nearly all of the expenditures that the respondent reported as having been made directly by BERC.
12. In response to the complaint the respondent swore that:

In late November 2017 [sic] the BERC Education Committee was notified by Ranger College that expenses which were supposed to have been paid by the PAC had been charged and paid by Ranger College in error. The College had consulted with an attorney who determined that the College had erroneously paid for expenses which the PAC was intended to pay. One check was written by the PAC to the College on 12/12/2016 to reimburse the College for all the items noted in [the] complaint, and the PAC therefore incurred the costs for those expenses.

When filing the January 2017 report, the PAC showed each of the expenses as one by the PAC on the date which the College was reimbursed. The BERC Education Committee called the Ethics Commission to confirm that this was the proper method to report the expenses, using the credit card and staff reimbursement examples noted in the handbook, and reported the expense to each vendor as required.

The January 2017 report reflects all expenses incurred by the PAC for the reporting period ending 12/31/2016.

13. The respondent provided a copy of a canceled check dated December 12, 2016, which appears to be written on the BERC Education Committee account for \$5,616.93 with a memo of "reimburse for advertising."
14. The respondent also included an itemization of expenses that made up the \$5,616.93 amount and identified the expenses under the heading "Reimbursement due to Ranger College."

IV. Findings and Conclusions of Law

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

1. “Political committee” means a group of persons that has as a principal purpose accepting political contributions or making political expenditures. ELEC. CODE § 251.001(12).
2. “Specific-purpose committee” means a political committee that does not have among its principal purposes those of a general-purpose committee but does have among its principal purposes: (A) supporting or opposing one or more: (i) candidates, all of whom are identified and are seeking offices that are known; or (ii) measures, all of which are identified; (B) assisting one or more officeholders, all of whom are identified; or (C) supporting or opposing only one candidate who is unidentified or who is seeking an office that is unknown. *Id.* § 251.001(13).
3. Each campaign finance report filed by a specific-purpose committee must include, among other things:
 - 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 (*Id.* § 254.031(a)(1));
 - the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period (*id.* § 254.031(a)(2));
 - the amount of political expenditures that in the aggregate exceed \$100 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 (*id.* § 254.031(a)(3));
 - the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period (*id.* § 254.031(a)(6)).
4. “Contribution” means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a guarantee of a loan or extension of credit, including a loan described by this subdivision. The term does not

- include: (A) a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made; or (B) an expenditure required to be reported under Section 305.006(b), Government Code. *Id.* § 251.001(2).
5. “Campaign contribution” means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.* § 251.001(3). “Political contribution” means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
 6. “Expenditure” means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
 7. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7). “Political expenditure” is a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
 8. A person may not knowingly make or authorize a political contribution in the name of or on behalf of another unless the person discloses in writing to the recipient the name and address of the person actually making the contribution in order for the recipient to make the proper disclosure. *Id.* § 253.001(a).
 9. For purposes of reporting, 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.
 10. BERC filed a campaign treasurer appointment for a specific-purpose committee on October 25, 2016, appointing the respondent as campaign treasurer. The form indicated that a Ranger College vice president was the assistant campaign treasurer, and the Chair of the Board of Regents was the person appointing the respondent as treasurer. The respondent signed the campaign treasurer appointment (Form STA).
 11. The invoices and checks provided by Ranger College show that Ranger College initially paid for nearly all of BERC’s expenses and later received a check from BERC to reimburse Ranger College. The respondent contends Ranger College erroneously paid for the expenses it had intended for BERC to pay.
 12. The definition of a campaign contribution includes “a loan or extension of credit” not made by a commercial lender. *See id.* § 251.001(2). Even if the expenditures were a loan (*i.e.* Ranger College made the initial expenditure with the understanding that it would be reimbursed) they would be considered a type of contribution to BERC. The expenditures

made on behalf of BERC by Ranger College were either required to be reported as loans or in-kind contributions.

13. Instead of reporting the in-kind contributions from Ranger College, BERC reported making the expenditures itself and included an expenditure date much later than when Ranger College originally made the expenditures. Therefore, there is a violation of sections 254.031(a)(1) and 254.031(a)(6) of the Election Code for failing to report accepting in-kind contributions. There is also credible evidence of a violation of section 254.031(a)(3) of the Election Code for reporting political expenditures BERC did not make.

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 campaign finance report filed by a political committee 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 committee required to file a report, 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 \$100 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
 - the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting.

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 nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$2,500 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-31710144.

AGREED to by the respondent on this _____ day of _____, 2020.

H.V. O'Brien, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director