

TEXAS ETHICS COMMISSION

IN THE MATTER OF
WILLIAM BURNETT,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2408125

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on November 12, 2004, to consider sworn complaint SC-2408125. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.063, 253.035(a), and 253.035(h) 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, a county commissioner in Hays County, failed to file two semiannual campaign finance reports and made impermissible expenditures from political contributions.

III. Facts Supported by Credible Evidence

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

1. The respondent is a county commissioner in Hays County.
2. The complainant alleges that the respondent failed to file semiannual campaign finance reports by the January 15, 2004, and July 15, 2004, filing deadlines. The respondent submitted date-stamped copies of his January and July 2004 semiannual campaign finance reports, which show that he filed the January 2004 semiannual report on August 24, 2004, and that he filed the July 2004 semiannual report on July 28, 2004.
3. The complainant also cites six expenditures on the respondent's July 2003 semiannual report and alleges that the expenditures were impermissible under section 253.035 of the Election Code, which governs the use of political contributions. The complainant cites the following expenditures from political contributions:

- The respondent made a \$105.40 payment to himself. In his response, the respondent states that he has reimbursed his political funds for this expenditure. None of the reports that the respondent filed in 2003 and 2004 show that the respondent ever reported political expenditures from personal funds.
- The respondent made a \$100 expenditure for a door prize for a local Rotary Club.
- The respondent made a \$75 expenditure for gift certificates for graduating high school seniors sponsored by a local Rotary Club.
- The respondent made a \$331.46 expenditure for a gun donated to a local Knights of Columbus organization for a fundraising auction.
- The respondent made a \$102 expenditure for “dues” to the Texas Real Estate Commission. Apparently this payment was for a professional license fee. In his response, the respondent states that he has reimbursed his political funds for this expenditure.
- The respondent made a \$104.98 expenditure for a child's bicycle seat for a campaign parade. In his response, the respondent states that he has reimbursed his political funds for this expenditure.

IV. Findings and Conclusions of Law

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

1. A candidate or officeholder is required to file semiannual reports by January 15 and July 15. ELEC. CODE § 254.063. The evidence shows that the respondent did not file the January and July 2004 semiannual reports by the applicable filing deadlines. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code in connection with those reports.
2. A person who accepts a political contribution as a candidate or as an officeholder may not convert the contribution to a personal use. ELEC. CODE § 253.035.
3. A person may use political contributions to make charitable contributions. Ethics Advisory Opinion No. 149 (1993). Therefore, there is credible evidence that the respondent did not violate section 253.035 of the Election Code in connection with the expenditures to support a local Rotary Club and a local Knights of Columbus organization.
4. The respondent originally purchased the child’s bicycle seat for a campaign parade. The respondent subsequently reimbursed his political funds for the bicycle seat. Therefore, there is credible evidence that the respondent did not violate section 253.035 of the Election Code in connection with the expenditure for the child’s bicycle seat.

5. A person may not use political contributions to pay a license fee unless the license is required for the office held or sought. Ethics Advisory Opinion No. 436 (2001). We are aware of no legal requirement that a county commissioner have a real estate license. Therefore, there is credible evidence that the respondent violated section 253.035 of the Election Code in connection with his payment to the Texas Real Estate Commission for a license fee.
6. A candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions only if: (1) the expenditures are timely reported; and (2) the report on which the expenditures from personal funds are disclosed clearly indicates that the expenditures were from personal funds and that the expenditures are subject to reimbursement. ELEC. CODE § 253.035(h). There is no evidence that the respondent complied with those reporting requirements in connection with the expenditures at issue here. Therefore, there is credible evidence that the respondent violated section 253.035(h) 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 a candidate or officeholder is required to file semiannual reports by January 15 and July 15; that a person who accepts a political contribution as a candidate or as an officeholder may not convert the contribution to a personal use; that a person may not use political contributions to pay a professional license fee unless the license is required for the office held or sought; and that a candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions only if: (1) the expenditures are timely reported; and (2) the report on which the expenditures from personal funds are disclosed clearly indicates that the expenditures were from personal funds and that the expenditures are subject to reimbursement. 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. 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 a \$400 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-2408125.

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

William Burnett, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director