

TEXAS ETHICS COMMISSION

IN THE MATTER OF

ALAN SADLER,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31010368

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 30, 2012, to consider sworn complaint SC-31010368. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.036, 254.061, and 254.064 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 on a campaign finance report; 2) did not include required information for out-of-state political committees on a campaign finance report; 3) did not include required information in a campaign finance report; 4) did not timely file a 30-day pre-election campaign finance report; and 5) converted political contributions to personal use.

III. Facts Supported by Credible Evidence

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

1. The respondent is Montgomery County Judge, and was an incumbent candidate for that office in a November 2010 election.
2. The report at issue was filed by the respondent with Montgomery County Elections on October 12, 2010, and covered the period beginning July 1, 2010, through October 2, 2010.
3. The complaint alleged that the respondent did not timely file his 30-day pre-election report for the November 2, 2010, election.

4. The respondent filed a campaign finance report with Montgomery County Elections on October 12, 2010. The report disclosed that it covered the period beginning July 1, 2010, through October 2, 2010. The report did not identify a report type.
5. The 30-day pre-election report for the November 2, 2010, election was due on October 4, 2010. The report was required to cover through September 23, 2010.
6. The respondent filed a corrected report indicating the report type (30-day before election), and removed some information that was required to be disclosed on his 8-day pre-election report. The respondent also filed a corrected 8-day pre-election report covering the correct period.
7. The complaint alleged that the respondent did not include the office sought on the report at issue.
8. The report at issue left a blank space for "office sought."
9. The complaint alleged that the respondent did not indicate the report type on the report at issue.
10. The respondent's campaign finance report that was filed on October 12, 2010, did not indicate a report type in the designated space of the report. The report disclosed that it covered the period beginning July 1, 2010, through October 2, 2010.
11. The respondent filed a corrected report showing the report type (30-day before election) for the report at issue.
12. The complaint alleged that the respondent did not disclose the address of a person making a political contribution on his 30-day pre-election report.
13. At issue is a September 1, 2010, \$1,000 political contribution from "Parsons, Brickerhoff, Inc. PAC." The address of the contributor was disclosed as, "One Penn Plaza, New York, New York, 10119." According to its website, Parsons Brinckerhoff Corporate Headquarters is located at this address.
14. According to Ethics Commission records, Parsons, Brickerhoff, Inc. PAC is a Texas general-purpose political committee. The address on file with the commission for that committee is 1401 K St. NW, Ste. 701, Washington, DC 20005. The committee's 30-day pre-election report for the November 2010 election disclosed an August 18, 2010, \$1,000 contribution to the respondent. Federal Election Commission (FEC) records disclose that Parsons, Brickerhoff, Inc. PAC, also files with the FEC and the committee's FEC report disclosed a \$1,000 political contribution to the respondent on August 18, 2010. The address for the FEC committee is the same as that for the Texas committee.

15. The complaint alleged that the respondent did not include information concerning an out-of-state political committee on his 30-day pre-election report.
16. At issue is a \$1,000 political contribution from “Parsons, Brickerhoff, Inc. PAC,” disclosed on the report at issue.
17. According to Ethics Commission records, Parsons, Brickerhoff, Inc. PAC is a Texas general-purpose political committee.
18. The complaint alleged that the respondent converted three political contributions to personal use.
19. The respondent swore that two of the expenditures at issue totaling approximately \$45 from political contributions were for constituent events where he met with citizens for campaign/officeholder activities.
20. The respondent swore that the third expenditure was for an advertisement congratulating a constituent.
21. The complaint alleged that the respondent did not fully disclose the purpose of four political expenditures. The disclosures at issue were adequate.
22. The complaint alleged that the respondent improperly reported political expenditures as reimbursements for three political expenditures totaling approximately \$90. The alleged expenditures are as follows:
 - A \$25 political expenditure to an individual with a category of “gift,” and description of “back to school supplies.”
 - A \$33.67 political expenditure to an individual with a category of “food and beverages,” and description of “fundraiser.”
 - A \$30 political expenditure to an individual with a category of “food,” and description of “2 lunches @ MCRW.”
23. The respondent filed corrections to his 30-day and 8-day pre-election reports for the November 2010 election to show the true payees for the expenditures at issue.
24. The complaint alleged that the respondent did not disclose the full names and addresses of persons receiving political expenditures totaling approximately \$1,200. The expenditures at issue are as follows:
 - An \$88 political expenditure to “U.S. Postal Service.”
 - A \$275 political expenditure to “Magnolia Parkway C. of C.”
 - A \$415 political expenditure to “G.C./LCA C of C.”

- A \$120 political expenditure to “L.C.A.R.W.”
 - A \$270 political expenditure to “L.C.A.R.W.”
 - A \$30 political expenditure to “South Montgomery County / Woodlands C of C.”
25. Excluding the expenditure to the U.S. Postal Service, the expenditures at issue disclosed complete addresses. The expenditure to the U.S. Postal Service disclosed an address of “Conroe GPO, Conroe, TX 77309998.” According to United States Postal Service records, “Conroe GPO, Conroe, TX 77309998” is not a valid address, and “7309998” is not a valid zip code.
26. U.S. Postal Service is a commonly used acronym used for the name of the United States Postal Service.
27. “L.C.A.R.W.” is a recognized acronym commonly used as the name of the Lake Conroe Area Republican Women and is used in commission’s records.
28. “G.C./LCA C of C” appears to refer to the Greater Conroe/Lake Conroe Area Chamber of Commerce. Although, the designation was not readily found using public information resources, newsletters from the Greater Conroe/Lake Conroe Area Chamber of Commerce refer to the organization using the acronym GC/LCACC.

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 person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. ELEC. CODE § 254.064(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. The report covers the period beginning the day the candidate’s campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed, and continuing through the 40th day before election day. ELEC. CODE § 254.064(b).
2. The 30-day pre-election report for the November 2, 2010, election was due on October 4, 2010. The respondent did not file that report until October 12, 2010. Thus, the report was filed late. Therefore, there is credible evidence of a violation of section 254.064(b) of the Election Code.
3. In addition to the contents required by section 254.031 of the Election Code, each report by a candidate must include the candidate’s full name and address, the office sought, and the identity and date of the election for which the report is filed. ELEC. CODE § 254.061(1).

4. The respondent did not include the office sought on the report at issue. Therefore, there is credible evidence of a violation of section 254.061(1) of the Election Code.
5. Each campaign finance report filed with an authority other than the commission must be in a format prescribed by the commission. ELEC. CODE § 254.036(a). The executive director shall prescribe forms for campaign finance reports. Ethics Commission Rules §§ 18.1, 20.19.
6. The complaint alleged that the respondent did not indicate the report type of his campaign finance report filed on October 12, 2010. There is no statute or rule that specifically requires that information. However, the report was required to be filed in a format prescribed by the commission. The report filed on October 12, 2010, disclosed that it covered the period beginning July 1, 2010, through October 2, 2010. The report did not identify a report type. The respondent used the forms prescribed by the commission for that report. The respondent corrected the report at issue to indicate that it was his 30-day pre-election report. Therefore the respondent did not check the box on the coversheet that indicates “report type” on his originally filed report. Therefore, there is credible evidence of a *de minimis* violation of section 254.036(a) of the Election Code.
7. A campaign finance 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, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
8. The complaint alleged that the respondent did not disclose the contributor address for “Parsons, Brickerhoff, Inc. PAC.” The address for both the FEC committee and Texas committee is different than the one disclosed on the report. In context, the error was minor. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(1) of the Election Code.
9. A person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee required to file its statement of organization with the Federal Election Commission shall either enter the out-of-state committee’s federal PAC identification number in the appropriate place on the report or timely file a certified copy of the out-of-state committee’s statement of organization that is filed with the Federal Election Commission. ELEC. CODE § 253.032; Ethics Commission Rules § 20.29(a).
10. The complaint alleged that “Parsons, Brickerhoff, Inc. PAC,” was an out-of-state political committee, and that the respondent did not include the additional information required concerning an out-of-state political committee on the report at issue. Ethics Commission records, show that Parsons, Brickerhoff, Inc. PAC is a Texas general-purpose political committee. A committee that files with both the FEC and the commission would typically disclose the contribution on the report filed with each entity. Therefore, the additional

information was not required on or with the report, and there is credible evidence of no violation of section 253.032 of the Election Code and section 20.29(a) of the Ethics Commission Rules.

11. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a).
12. “Personal use” means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. The term does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder. *Id.* § 253.035(d)(1).
13. The respondent made two expenditures totaling approximately \$45 from political contributions that he swore were constituent events where he met with citizens for campaign/officeholder activities. The third expenditure was for an advertisement congratulating a constituent. The expenditure for the advertisement does not appear to have been for a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. Therefore, there is credible evidence of no violation of section 253.035(a) of the Election Code with regard to the advertisement. Regarding the other two expenditures, there is insufficient evidence that the respondent violated section 253.035(a) of the Election Code.
14. A campaign finance report must include 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 political expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
15. The purpose of an expenditure must include both a description of the category of goods or services received in exchange for the expenditure and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. A description of an expenditure that merely states the item or service purchased is not adequate because doing so does not allow a person reading the report to know the allowable activity for which an expenditure was made. Ethics Commission Rules § 20.61.
16. The disclosures for the political expenditures at issue were adequate. Therefore, with regard to those allegations, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.
17. 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).

18. Ethics Commission Rule § 20.62 states that 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:
 - (1) 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
 - (2) Included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period.
19. Ethics Commission Rule § 20.62 also states, in relevant part, that if the staff member is not reimbursed during the same reporting period, or is reimbursed more than \$5,000 in the aggregate during the reporting period, then a political expenditure made out of personal funds by the staff member of an officeholder or candidate with the intent to seek reimbursement from the officeholder or candidate must be reported as follows:
 - (1) 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, or candidate;
 - (2) The expenditure made by the staff member is reported as a political expenditure by the officeholder or candidate; and
 - (3) The reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder or candidate.
20. The complaint alleged that the respondent improperly reported political expenditures as reimbursements for three political expenditures on the report at issue. The respondent has corrected his campaign finance reports to show different payees than those disclosed on the original report for the expenditures at issue. The change in payees indicates that the respondent improperly reported reimbursement, and the amounts at issue were not included in the total for political expenditures of \$50 or less. 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.
21. A campaign finance 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, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(3).
22. The complaint alleged that the respondent did not disclose the full names and addresses for six political expenditures.

23. It appears that two of the expenditures at issue only shortened the term chamber of commerce to “C of C.” It is clear that the expenditures to the “Magnolia Parkway C. of C.” and “South Montgomery County / Woodlands C of C,” refer to those respective chambers of commerce. “L.C.A.R.W.” is a recognized acronym commonly used as the name of the Lake Conroe Area Republican Women. Those expenditures disclosed what appear to be recognized acronyms commonly used as the names of the entities at issue, and each of them disclose complete addresses on the report at issue. Therefore, with regard to those approximately \$700 in political expenditures, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.
24. “G.C./LCA C of C” appears to refer to the Greater Conroe/Lake Conroe Area Chamber of Commerce. However, the complete name of the entity was not readily apparent based on the acronym. Thus, the respondent did not include the full name of the person receiving the political expenditure at issue. Therefore, with regard to that expenditure, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.
25. U.S. Postal Service is a commonly used acronym used for the name of the United States Postal Service; however, the respondent did not include a complete and valid address for that expenditure. The error was minor. Therefore, with regard to that \$88 expenditure, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(3) 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 in addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. 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. The report covers the period beginning the day the candidate’s campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through the 40th day before election day.

The respondent acknowledges that in addition to the contents required by section 254.031 of the Election Code, each campaign finance report filed by a candidate must include the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed.

The respondent acknowledges that each campaign finance report filed with an authority other than the commission must be in a format prescribed by the commission.

The respondent acknowledges that each campaign finance 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.

The respondent acknowledges that each campaign finance report must include 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. Staff reimbursement must be reported in compliance 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 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 \$100 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-31010368.

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

Alan Sadler, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director