

TEXAS ETHICS COMMISSION

IN THE MATTER OF
WALTER "BEN" BIUS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3120491

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) held a preliminary review hearing on May 30, 2013, to consider sworn complaint SC-3120491. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.031 and 254.0612 of the Election Code and section 571.1242 of the Government 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: 1) accepted campaign contributions and made or authorized campaign expenditures at a time when a campaign treasurer appointment was not in effect, and 2) did not properly disclose political contributions.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for state senate, District 5, in the May 29, 2012, primary election.
2. The complaint alleged that the respondent accepted campaign contributions and made campaign expenditures from November 19, 2011, to December 13, 2011, without an active campaign treasurer appointment. The respondent filed a campaign treasurer appointment as a candidate for state senate, District 5, on September 10, 2009, and filed a final campaign finance report on January 17, 2011. The final report terminated the respondent's campaign treasurer appointment. The respondent did not file any additional campaign treasurer appointments until December 14, 2011. The respondent was not an officeholder during the period at issue.

3. The respondent filed a January 2012 semiannual campaign finance report on January 12, 2012. The report covered the period from November 19, 2011, to December 31, 2011, and disclosed the following activity:
 - \$0 in total political contributions of \$50 or less
 - \$16,751.98 in total political contributions (not including pledges or loans)
 - \$0 in total political expenditures of \$100 or less
 - \$8,791.05 in total political expenditures
 - \$8,717.98 in total political contributions maintained
 - \$757.05 in total principal amount of outstanding loans
4. The report disclosed approximately \$146,490 in political contributions from November 19, 2011, to December 13, 2011. The contributions included a \$50,000 pledge from the respondent, a \$50,000 pledge from the respondent's spouse and approximately \$34,600 in pledges from other individuals. The report also disclosed that the respondent made approximately \$6,530 in political expenditures from political contributions during the same period.
5. The complaint also alleged that the respondent did not disclose the principal occupation, job title, or employer information for political contributions that were disclosed in the respondent's January 2012 semiannual report. Not including the \$50,000 pledge from the respondent, the respondent disclosed approximately \$86,800 in political contributions for which principal occupation, job title, or employer information was not disclosed. All of the contributions were from individuals who contributed \$500 or more during the reporting period. One contribution was a \$50,000 pledge from the respondent's spouse.

Response to Sworn Complaint

6. The commission sent a notice of the sworn complaint to the respondent on May 7, 2012. United States Postal Service records show that the respondent received the notice on May 9, 2012. The response to the complaint was due on June 14, 2012. The respondent submitted a response on February 27, 2013.

IV. Findings and Conclusions of Law

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

1. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE § 253.031(a).
2. A candidate's use of personal funds for campaign purposes is not a political contribution to the candidate. Ethics Advisory Opinion Nos. 258 (1995), 391 (1998).

3. The complaint alleged that the respondent accepted approximately \$146,490 in campaign contributions and made approximately \$6,530 in campaign expenditures at a time when a campaign treasurer appointment was not in effect. The respondent had a campaign treasurer appointment in effect for a previous campaign, but the appointment was terminated on January 17, 2011. The respondent did not file a new campaign treasurer appointment until December 14, 2011.
4. The respondent disclosed that he accepted approximately \$146,490 in political contributions from November 19, 2011, to December 13, 2011. Of the contributions at issue, one contribution was a pledge of \$50,000 from the respondent, which did not constitute a contribution under title 15, and another contribution was a pledge of \$50,000 from the respondent's spouse, which would generally be presumed to be community property. Thus, the \$50,000 reported as a contribution from the respondent's spouse was not a contribution under title 15.
5. The contributions at issue also included approximately \$34,600 in pledges. It is not clear from the report totals whether the respondent actually received the pledged contributions. Nevertheless, the face of the report indicates that the respondent accepted a total of approximately \$46,490 in campaign contributions at a time when a campaign treasurer appointment was not in effect. Therefore, there is credible evidence that the respondent violated section 253.031(a) of the Election Code.
6. The respondent also disclosed that he made approximately \$6,530 in campaign expenditures from November 19, 2011, to December 13, 2011, when a campaign treasurer appointment was not in effect. Therefore, there is credible evidence that the respondent violated section 253.031(a) of the Election Code.

Principal Occupation or Job Title and Employer Information

7. Each report by a candidate for 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 and that are accepted 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.
8. The respondent disclosed approximately \$86,800 in political contributions from individuals who contributed \$500 or more during the reporting period without disclosing the principal occupation, job title, and employer information for the contributors. One of the contributions at issue was a \$50,000 pledge from the respondent's spouse, which did not constitute a contribution. Therefore, there is credible evidence that the respondent violated section 254.0612 of the Election Code in connection with approximately \$36,800 in political contributions.

Response to Sworn Complaint

9. If an alleged violation in a sworn complaint is a Category Two violation, the respondent must respond to the notice required by section 571.123(b) not later than the 25th business day after the date the respondent receives the notice. GOV'T CODE § 571.1242(b)(1). A respondent's failure to timely respond to a sworn complaint as required by subsection (b)(1) is a Category One violation. *Id.* § 571.1242(c).
10. United States Postal Service records indicated that the respondent received notice of the complaint on May 9, 2012. The response to the complaint was due on June 14, 2012. The respondent did not submit a response to the complaint by that date. Therefore, there is credible evidence that the respondent violated section 571.1242(c) of the Government 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 may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. The respondent acknowledges that each report by a candidate for 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 and that are accepted during the reporting period, the individual's principal occupation or job title and the full name of the individual's employer. The respondent acknowledges that if an alleged violation in a sworn complaint is a Category Two violation, the respondent must respond to the notice required by section 571.123(b) of the Government Code not later than the 25th business day after the date the respondent receives the notice, and that a respondent's failure to timely respond to a sworn complaint is a separate Category One violation. 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 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-3120491.

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

Walter "Ben" Bius, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director