

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
ROBERT D. “BOBBY” WHITSON,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-31809313

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on November 20, 2019, to consider sworn complaint SC-31809313. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 255.001 and 254.031 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: 1) did not include a political advertising disclosure statement on political advertising, in violation of section 255.001 of the Election Code; and 2) did not report political contributions and/or political expenditures in violation of section 254.031 of the Election Code.

III. Findings of Fact and Conclusions of Law

Credible evidence supports the following findings of fact and conclusions of law.

1. At all times relevant to the complaint, the respondent was an opposed candidate for Bell County Commissioner, Precinct 2 in the March 6, 2018, primary election, the May 22, 2018, primary runoff election, and the November 6, 2018 general election.

Political Advertising Disclosure Statement

2. The complaint alleged that the respondent did include a political advertising disclosure statement on a flyer included in a newspaper and his campaign website. The complaint included images of the newspaper flyer and the respondent’s campaign website, both of which expressly advocated for the respondent’s election and did not contain a political advertising disclosure statement.

3. The respondent swore that he corrected his website to include the political advertising disclosure statement once he realized the error.
4. The respondent swore that he did not know why the newspaper flyer did not include the political advertising disclosure statement. He swore that the flyer he provided to the newspaper to publish included a political advertising disclosure statement. The respondent provided to the Commission a copy of the flyer he said he provided to the newspaper to publish, which included at the bottom “Political ad paid for by Bobby Whitson for County Commissioner.”
5. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001(a).
6. “Political advertising” means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that, in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication or on an Internet website. *Id.* § 251.001(16).
7. The respondent’s campaign website and the flyer the respondent paid to be distributed with the newspaper were political advertising that required the political advertising disclosure statement.
8. The respondent admitted he initially did not include the political advertising disclosure statement to his campaign website. Therefore, there is credible evidence of a violation of section 255.001 of the Election Code regarding the respondent’s campaign website.
9. The respondent swore that the flyer he provided to the newspaper included the political advertising disclosure statement, but somehow was cropped out of the flyer distributed by the newspaper. There is insufficient evidence the respondent knowingly caused to be published or distributed the flyer lacking a political advertising disclosure statement. Consequently, there is insufficient evidence of a violation of section 255.001 of the Election Code regarding the flyer.

Disclosure of Political Contributions and Expenditures

10. The complaint also alleged the respondent did not disclose on his campaign finance reports multiple expenditures or in-kind contributions for the purchase of political advertising in advance of the March 6, 2018, primary election, the May 22, 2018, primary runoff election, and the November 6, 2018, general election.
11. In response to the complaint, the respondent filed corrected reports and provided invoices showing that he made political expenditures that were not disclosed on his original reports.
12. The respondent reported on the 8-day pre-election report a \$650 political expenditure to the Temple Daily Telegram for political advertising that ran between February 5, 2018, and March 6, 2018, for the primary election. The invoice for the advertising is dated December 12, 2017. Based on the invoice date, the expenditure should have been reported in the January 2018 semiannual report or the 30-day pre-election report, not the 8-day pre-election report.
13. The respondent did not report a \$420 political expenditure to Salado Village Voice for political advertising for the primary election. Based on the invoice date of February 15, 2018, the expenditure should have been reported on the 8-day pre-election report for the March 2018 primary election.
14. In response to the complaint, the respondent filed a corrected 8-day pre-election report on October 16, 2018, which included the political expenditure to Salado Village Voice on Schedule F4 (used to report political expenditures made by credit card).
15. The respondent did not disclose a \$500 political expenditure he made to Bell County Living for advertisements he purchased for the March 2018 primary election. The ad ran in the Winter 2017 edition of Bell County Living magazine. The respondent swore he did not receive an invoice until August 30, 2018, and that he would report the expenditures on the "October 2018 campaign finance report." Based on when the ad was ordered and ran, there is credible evidence the cost of the ad was readily determinable during the 30-day pre-election reporting period for the March 2018 primary election.
16. The respondent admitted he did not report a \$1,697.04 political expenditure for campaign signs purchased for his runoff election. Based on the invoice date, the respondent was required to report the expenditure on the runoff report, due eight days before the May 22, 2018, primary runoff election. The respondent filed a corrected runoff report on October 16, 2018, which added the \$1,697.04 political expenditure for campaign signs.
17. The complaint also alleged the respondent did not report political expenditures or did not report the proper amount of the expenditures for ads placed in the Heights Herald and the Killeen Herald. Based on the invoices provided by the respondent, there is credible evidence that the respondent properly reported the political expenditures to those publications.

18. Each 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. ELEC. CODE § 254.031(a)(3).
19. The respondent was required to include all political expenditures made between January 1, 2018, and January 25, 2018, on his 30-day pre-election report for the March 6, 2018, primary election. *See id.* § 254.031(a)(3); *Id.* § 254.064(b).
20. The respondent was required to include all political expenditures made between January 26, 2018 and February 24, 2018, on his 8-day pre-election report for the March 6, 2018, primary election. *See id.* § 254.031(a)(3); *Id.* § 254.064(c).
21. The respondent was required to include all political expenditure made between February 25, 2018, and May 12, 2018, on his runoff report for the May 22, 2018, primary runoff election. *See id.* § 254.031(a)(3); *Id.* § 254.064(e).
22. The date of a political expenditure is generally the date the amount is readily determinable by the person making the expenditure. ETHICS COMMISSION RULES § 20.57; *see also* ELEC. CODE § 254.035.
23. For the reasons stated above, credible evidence indicates that the respondent did not disclose four political expenditures totaling \$3,267.04 on the 30-day and 8-day pre-election reports for the March 2018 primary election, and the runoff report for the May 22, 2018, primary runoff election. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.
24. Each report must also include the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6). By omitting expenditures made during the 30-day and 8-day pre-election reports for the March 2018 primary election, and the runoff report for the May 22, 2018, primary runoff election, the respondent also improperly reported the total political expenditures made during those reporting periods. Therefore, there is credible evidence of violations of section 254.031(a)(6) of the Election Code.
25. The respondent paid for all political advertising at issue with personal funds. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code regarding the allegation that the respondent did not disclose the acceptance of political contributions.

IV. 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 finding of facts described and conclusions of law described under Section III, 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: 1) a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person, candidate, or political committee who paid for it; 2) 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; 3) each campaign finance report must include the total amount of all political expenditures made during the reporting period; and 4) the date of a political expenditure is generally the date the amount is readily determinable by the person making the expenditure. The respondent agrees to fully and strictly comply with these requirements of the law.

V. 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

VI. Sanction

After considering the nature, circumstances and consequences of the violations described under section III, and after considering the sanction necessary to deter future violations, the Commission assesses a \$500 civil penalty.

VII. Order

The Commission hereby orders that if the respondent consents to the proposed resolution, this agreed resolution is a final and complete resolution of SC-31809313.

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

Robert D. "Bobby" Whitson, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters
Executive Director