

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MICHAEL T. HUNTER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31812373

FINAL ORDER

The Texas Ethics Commission (Commission), having heard this case and voting to find violations of laws under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The respondent is Michael T. Hunter, who was a successful incumbent candidate for the Corpus Christi city council in the November 6, 2018, election. The sworn complaint was filed against the respondent on December 19, 2018.
2. The first Notice of Hearing was sent to the respondent on July 11, 2019, by United States Postal Service (USPS) certified mail and delivery confirmation. A second Notice of Hearing was sent to the respondent by delivery confirmation on August 27, 2019. Commission staff sent the respondent notice of the changed hearing date on October 18, 2019, by certified mail and delivery confirmation. USPS records of delivery show that the respondent received all three notices of the hearing.
3. The preliminary review hearing was held on November 20, 2019, by the Commission in Austin, Texas.
4. The respondent did not file a response to the notices of hearing or appear at the hearing.
5. The complainant alleged that, in connection with the November 2018 election, the respondent: 1) did not timely file his 30-day and 8-day pre-election campaign finance reports, in violation of section 254.064 of the Election Code; and 2) did not include the full address of persons to whom political expenditures were made on his 30-day and 8-day pre-election campaign finance reports, in violation of section 254.031 of the Election Code.
6. On January 17, 2019, the respondent filed his initial response to the complaint and acknowledged the violations. The respondent also stated that he would file corrected reports. On June 25, 2019, approximately six months after the complaint was filed, the respondent filed amended 30-day and 8-day pre-election reports that partially corrected the violations alleged by the sworn complaint. These corrected reports omitted several

previously-reported expenditures entirely and changed the reported dates for certain contributions and expenditures.

7. On August 14, 2019, Commission staff sent to the respondent written questions and requests for documents pursuant to section 571.125 of the Government Code and section 12.28 of the Ethics Commission Rules.
8. Throughout the sworn complaint process, the respondent only sporadically returned Commission staff's telephone calls, and was unreachable for months at a time. Furthermore, the respondent never responded to Commission staff's August 14, 2019, written questions.

Filing of the Pre-election Reports

9. The complaint alleged that the respondent did not timely file the 30-day and 8-day pre-election reports for the November 6, 2018, election.
10. In his sworn response to the complaint, the respondent admitted that he filed the pre-election reports late.
11. The 30-day pre-election report was due by October 9, 2018. The 8-day pre-election report was due by October 29, 2018. Records on file with the Corpus Christi city secretary indicate that the respondent filed the 30-day report on October 16, 2018, and the 8-day report on November 13, 2018, one week after the election. The respondent disclosed on the 30-day report \$32,889 in political contributions and \$25,510 in political expenditures; on the 8-day report, \$60,825 in political contributions and \$56,240 in political expenditures.

Failure to Include Complete Addresses for Expenditure Payees

12. The complaint further alleged that the respondent did not include the full address of persons to whom political expenditures were made on his 30-day and 8-day pre-election campaign finance reports.
13. In his sworn response to the complaint, the respondent admitted to the alleged reporting errors.
14. In his original 30-day pre-election report, the respondent failed to include a complete address for any of the 12 campaign expenditures totaling \$25,510 that he reported, providing only the payee's city and state, and for some expenditures a full or partial zip code. Ten of these reported expenditures exceeded \$100 in the aggregate.
15. On his original 8-day pre-election report, the respondent disclosed only the payee's city, state, and, in one instance, partial zip code for three campaign expenditures totaling \$3,760, each of which exceeded \$100 in the aggregate.

16. The respondent further disclosed on his original 30-day pre-election report two campaign expenditures of \$100 each, for which he did not provide a complete address.
17. The respondent also disclosed four campaign expenditures to “Steve Ray and Associates” on his original 8-day pre-election report, which totaled \$52,200 and included no payee address information. These expenditures appear to relate to the same transactions as four in-kind contributions disclosed on the same report, which are for the same amounts and for similar purposes, namely political consulting and advertising. The Commission staff sent written questions to the respondent for more information but the respondent did not respond.

Conclusions of Law

1. The Commission shall administer and enforce, among other laws, Title 15 of the Election Code. GOV’T CODE § 571.061(a). Disposition of this case is within the jurisdiction of the Commission.
2. A notice required to be sent to a respondent under chapter 571 of the Government Code shall be sent to the address provided by the complainant or to the address most recently provided by the respondent. ETHICS COMMISSION RULES § 12.21(b).
3. The respondent received legally sufficient notice of the November 20, 2019, preliminary review hearing in this case.
4. If a respondent fails to appear at a hearing, the Commission may proceed in the respondent’s absence and may find credible evidence of the violations alleged in the complaint and may issue a final order imposing a civil penalty. *Id.* § 12.23. The November 20, 2019, preliminary review hearing was held in accordance with section 12.23, Ethics Commission Rules.

Filing of the Pre-election Reports

5. 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 under chapter 254, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b). The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.064(c)

6. As an opposed candidate not filing under the modified reporting schedule, the respondent was required to file the 30-day and 8-day pre-election reports for the November 6, 2018, election.
7. The 30-day pre-election report was required to be filed not later than October 9, 2018, and the 8-day pre-election report was required to be filed not later than October 29, 2018. Credible evidence indicates that the respondent filed the 30-day pre-election report late on October 16, 2018, and filed the 8-day pre-election report late on November 13, 2018. Therefore, there is credible evidence of violations of sections 254.064(b) and 254.064(c) of the Election Code.

Failure to Include Complete Addresses for Expenditure Payees

8. A campaign finance report must include the amount of political expenditures from each person 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).
9. As noted above, in his original 30-day pre-election report, the respondent failed to include a complete address for any of the 12 campaign expenditures totaling \$25,510 that he reported, providing only the payee's city and state, and for some expenditures a full or partial zip code. Ten of these reported expenditures exceeded \$100 in the aggregate, and were therefore required to be individually reported.
10. On the respondent's 8-day pre-election report, the respondent disclosed only the payee's city, state, and, in one instance, partial zip code for three campaign expenditures totaling \$3,760, each of which exceeded \$100 and were therefore required to be individually reported.
11. There is therefore credible evidence of 13 violations of section 254.031(a)(3) of the Election Code.
12. The two expenditures of \$100 each for which the respondent failed to provide a complete address, disclosed on the respondent's 30-day pre-election report, were not required to be itemized. *See id.* (requiring individual disclosure only of political expenditures that exceed \$100 in the aggregate during a reporting period). Therefore, the respondent's failure to fully itemize them is not a violation.
13. The respondent's four campaign expenditures to "Steve Ray and Associates," which were also disclosed on Schedule A2, were most likely actually in-kind contributions. An in-kind contribution, which is defined as "a contribution of goods, services, or any other thing of value, except money," is not an expenditure by the filer of a campaign finance report. *See* ETHICS COMMISSION RULES § 20.1(8). The evidence is not clear whether the in-kind contributions were political expenditures, and therefore there is insufficient evidence of violations of section 254.031(a)(3) of the Election Code for failure to properly disclose them as political expenditures.

Sanction

1. The Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for a violation of a law administered and enforced by the Commission. GOV'T CODE § 571.173.
2. The Commission shall consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations; and 5) any other matters that justice may require. *Id.* § 571.177.
3. The consequences of the violations and the respondent's lack of good faith in responding to the complaint and written questions are relevant to the appropriate penalty for this sworn complaint. In particular, the harm to disclosure from the respondent's failure to disclose \$60,825 in political contributions and \$56,240 in political expenditures on his 8-day pre-election report until after the election and the respondent's lack of cooperation with the sworn complaint process are factors the Commission considers in assessing the civil penalty. *See id.*
4. Therefore, the Texas Ethics Commission orders that the respondent pay to the Commission, within 30 days of the date of this Order, a civil penalty in the amount of \$3,000. If the respondent does not pay the \$3,000 civil penalty within 30 days of the date of this Order, then the civil penalty is increased to \$5,000 and the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

Order Date: _____

FOR THE COMMISSION

Anne Temple Peters
Executive Director
Texas Ethics Commission