

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

MAX MILLER,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-32105135

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (Commission) met on May 11, 2022, to consider sworn complaint SC-32105135. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Section 254.031 of the Election Code, a law administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

### II. Allegations

The complaint alleges that the respondent, as campaign treasurer of the political committee Baptist Ministers' Association of Houston & Vicinity PAC, failed to properly report political expenditures, political contributions, and/or total political contributions maintained on campaign finance reports filed between October 19, 2019, and January 15, 2021, in violation of Section 254.031 of the Election Code.

### III. Findings of Fact and Conclusions of Law

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

1. The respondent is the campaign treasurer for the political committee Baptist Ministers' Association of Houston & Vicinity PAC (the PAC).
2. The complaint alleges the respondent failed to properly report political expenditures, political contributions, and/or total political contributions maintained on campaign finance reports filed between October 19, 2021, and January 15, 2021.

<u>Reported Amounts</u>			
Report Filed On	Political Contributions Reported	Political Expenditures Reported	Total Political Contributions Maintained
October 19, 2019	0	0	400
October 31, 2019	10,350	0	10,350
January 15, 2020	7,550	0	350
February 2, 2020 <sup>1</sup>	0	0	350
February 24, 2020 <sup>2</sup>	12,400	0	12,400
July 3, 2020	0	0	500
October 29, 2020	1,000	0	1,500
January 15, 2021	2,000	0	500

3. In response to the complaint, the respondent denied all allegations.
4. In response to written questions, the respondent stated that he had been told years ago by “someone on the Ethics Commission” that he did not have to include the PAC’s expenditures on campaign finance reports. The respondent was unable to say who he spoke to or when, exactly, he had been told this. The respondent also provided, without any supporting documentation, the following amounts in response to written questions for political expenditures made from the PAC’s internal records, totaling \$40,082.76, and the bank account balance at the end of each reporting period.

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<sup>1</sup> This report was filed on March 5, 2020, to avoid confusion, it is referred to in charts by the date it was due.

<sup>2</sup> This report was filed on March 5, 2020, to avoid confusion, it is referred to in charts by the date it was due.

<u>Amounts Updated per Responses to Written Questions</u>				
Report	Political Contributions Accepted	Political Expenditures Made	Political Contributions Maintained	Bank Account Balance <sup>3</sup>
October 19, 2019	0	0	400	400
October 31, 2019	10,350	12,402.56	350	-2,002.56*
January 15, 2020	7,550	7,715.95	350	-165.95*
February 2, 2020	0	0	350	350
February 24, 2020	12,400	12,554.37	350	-154.37*
July 3, 2020	150	0	500	500
October 29, 2020	1,000	0	1,500	1,500
January 15, 2021	2,000	7,409.88	4,909.88	4,409.88*

5. In response to written questions and requests for production of documents, the respondent provided bank statements for time periods when contributions had been accepted. However, the respondent redacted the beginning and ending balance on each statement, as they “did not reflect the accurate balance of the PAC account,” because the funds had been commingled with other funds from other organizations. The respondent provided copies of the deposit slips used for depositing PAC contributions, and highlighted the corresponding contributions on the bank statements.

<sup>3</sup> Amounts marked by a \* are entries that the respondent stated some of the previous amount of cash on hand was not used, indicating that the respondent differentiates between “cash on hand” and total political contributions maintained.

Self Reported from Bank Account Report	Amt. on Deposit Slip	Amt. Highlighted on Invoice	Contributions Reported on Campaign Finance Report
October 31, 2019	9,350	10,150	10,350
January 15, 2020	7,000	7,000	7,550
February 22, 2020	9,900	9,900	12,400
October 29, 2020	1,000	1,000	1,000
January 15, 2021	2,020	2,020	2,000

6. Each report must include the amount of political contributions from each person that in the aggregate exceed \$50 (\$90 as of January 1, 2020) 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. Tex. Elec. Code § 254.031(a)(1).
7. Each report must include the amount of political expenditures that in the aggregate exceed \$100 (\$180 as of January 1, 2020; \$190 as of January 1, 2021) 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).
8. Each report must include the total amount or a specific listing of the political contributions of \$50 (\$90 as of January 1, 2020) or less and the total amount of political expenditures of \$100 (\$180 as of January 1, 2020; \$190 as of January 1, 2021) or less made during the reporting period. *Id.* § 254.031(a)(5).
9. Each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).
10. Each report must include, as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. *Id.* § 254.031(a)(8).

### **30-Day Pre-election Report due October 19, 2019**

11. The respondent filed the 30-day pre-election report for the November 5, 2019, election, on October 19, 2019. The report covered the period of July 1, 2019, through September 26, 2019. The report disclosed \$0 in total political contributions and total political expenditures, and \$400 in total political contributions maintained.

12. In response to the complaint, the respondent denied any allegations regarding the campaign finance report filed on October 19, 2019. In support of his denial, the respondent submitted only a copy of the campaign finance report, stating that it showed \$400 “cash on hand that was never used.” In response to written questions, the respondent swore that the PAC accepted no contributions and made no political expenditures during the period covered by this report.
13. There is no credible evidence to show the respondent improperly reported political contributions, expenditures, and contributions maintained. Therefore, there is no credible evidence of a violation of Section 254.031 of the Election Code regarding the 30-day pre-election report.

#### **8-Day Pre-election Report due October 31, 2019**

14. The respondent filed the 8-day pre-election report for the November 5, 2019, election, on October 31, 2019. The report covered the period of September 27, 2019, through October 26, 2019. The report disclosed \$10,350 in total political contributions, \$0 in total political expenditures, and \$10,350 in total political contributions maintained.
15. In response to the complaint, the respondent denied any allegations regarding the campaign finance report filed on October 31, 2019. The respondent submitted a copy of the campaign finance report, as well as a document titled “November 5, 2019 BMAH&V PAC Budget Expense Sheet” which accounted for \$12,402.56 of political expenditures that the PAC had made for the November 5, 2019, election. The respondent also included receipts and invoices to account for the amounts on the expense sheet. The expense sheet was undated. The attached receipts were dated, however they had been submitted to the PAC for reimbursement, and no reimbursement date was provided on the expense sheet. An attached page did include check numbers for the reimbursement checks, but the relevant pages were not included in the bank statements submitted in response to the Commission’s requests for production of documents.
16. The respondent stated in response to written questions that the PAC made \$12,402.56 in political expenditures and accepted \$10,350 in political contributions during the time period covered by this report. In addition, the respondent stated that the PAC’s actual bank balance on October 26, 2019, was -\$2,002.56, after using \$50 of the \$400 on-hand from the previous reporting period. Given the political expenditures from the internal reporting and the reported political contributions, the amount of political contributions maintained would have been zero, given that the political expenditures exceeded the political contributions maintained. That zero, plus the \$350 “cash on hand” which the respondent indicated was not part of the actual bank balance in his response to written questions, the political contributions maintained should have been \$350.

17. The bank invoice provided by the respondent in response to requests for production of documents showed a deposit of \$10,150 on October 21, 2019, which the respondent highlighted as being specifically related to the PAC. However, the invoice showed a total amount of \$13,265 deposited into the account and \$7,976.63 in withdrawals. At no point was the actual bank balance -\$2,002.56. None of the amounts on the invoice align with the amounts the respondent reported or provided in his response to written questions.
18. Credible evidence shows that the respondent did not report \$12,402.56 in political expenditures on the 8-day pre-election report. Therefore, there is credible evidence of a violation of Section 254.031(a)(6) and Section 254.031(a)(3) and/or 254.031(a)(5) of the Election Code.
19. Credible evidence shows that the respondent failed to properly report total political contributions maintained on the 8-day pre-election report. Therefore, there is credible evidence of a violation of Section 254.031(a)(8) of the Election Code.

#### **Semiannual Report due January 15, 2020**

20. The respondent filed the January 2020 semiannual report on January 15, 2020. This report covered the period of October 27, 2019, through December 31, 2019. The report disclosed \$7,550 in total political contributions, \$0 in total political expenditures, and \$350 in total political contributions maintained.
21. In response to the complaint, the respondent denied any allegations regarding the campaign finance report filed on January 15, 2020. The respondent also submitted a copy of the campaign finance report, as well as a document titled "December 14, 2019 BMAH&V PAC Budget Expense Sheet (runoff no poll workers)" which accounted for \$7,715.95 of political expenditures that the PAC had made for the December 14, 2019, runoff election. \$2,052.56 of the amount on the expense sheet was for reimbursement for funds spent during the previous reporting period. The expense sheet was undated. Attached to the expense sheet was a single invoice dated December 14, 2019, for \$2,663.39, which was accounted for on the expense sheet.
22. The respondent stated in response to written questions that the PAC made \$7,715.95 in political expenditures and accepted \$7,550 in political contributions during the time period covered by this report. In addition, the respondent stated that the PAC's actual bank balance on December 31, 2019, was -\$165.95, and that the \$350 on hand from this cycle was not used. Given the actual bank balance of -\$2,002.56 from the previous reporting period and the amounts of political contributions and expenditures the respondent provided for this reporting period, the actual bank balance of the PAC should have been -\$1,836.61. The amount provided by the respondent, -\$165.95, only accounts for the difference between the political expenditures and political contributions for this reporting period. Given the political

expenditures from the internal reporting and the reported political contributions, the amount of political contributions maintained would have been zero, given that the political expenditures exceeded the political contributions maintained. That zero, plus the \$350 “cash on hand” which the respondent indicated was not part of the actual bank balance in his response to written questions, the political contributions maintained should have been \$350.

23. The bank invoice provided by the respondent showed a deposit of \$7,000 on December 13, 2019, which the respondent highlighted as being specifically related to the PAC. The invoice also showed \$7,938 in total deposits to the account, and \$3,780 in withdrawals. None of the amounts on the invoice align with the amounts the respondent reported or provided in his response to written questions.
24. Credible evidence shows that the respondent did not report \$7,715.95 in political expenditures on the campaign finance report filed on January 15, 2020. Therefore, there is credible evidence of a violation of Section 254.031(a)(6) and Section 254.031(a)(3) and/or 254.031(a)(5) of the Election Code.
25. Credible evidence does not show that the respondent failed to properly report total political contributions maintained on the campaign finance report filed on January 15, 2020. Therefore, there is no credible evidence of a violation of Section 254.031(a)(8) of the Election Code.

### **30-Day Pre-election Report due February 2, 2020**

26. The respondent filed the 30-day pre-election report for the March 3, 2020, election on March 5, 2020. This report covered the time period of January 1, 2020, through January 23, 2020. The report disclosed \$0 in total political contributions, \$0 in total political expenditures, and \$350 in total political contributions maintained.
27. In response to the complaint, the respondent denied any allegations regarding the 30-day pre-election report filed on March 5, 2020. The respondent submitted a copy of the campaign finance report, stating that it showed \$350 “money carried over unused.”
28. The respondent stated in response to written questions that the PAC made \$0 in political expenditures and accepted \$0 in political contributions during the time period covered by this report. In addition, the respondent stated that the PAC’s actual bank balance on January 23, 2020, was \$350, further clarifying that the \$350 was “on hand.”
29. Based on the information provided by the respondent, there is no credible evidence to show the respondent improperly reported political contributions, expenditures, and contributions maintained. Therefore, there is no credible evidence of a violation of Section 254.031 of the Election Code regarding the 30-day pre-election report.

**8-Day Pre-election Report due February 24, 2020**

30. The respondent filed the 8-day pre-election report for the March 3, 2020, election on March 5, 2020. This report covered the time period of January 24, 2020, through February 22, 2020. The report disclosed \$12,400 in total political contributions, \$0 in total political expenditures, and \$12,400 in total political contributions maintained.
31. In response to the complaint, the respondent denied any allegations regarding the 8-day pre-election report filed on March 5, 2020. The respondent submitted a copy of the campaign finance report, as well as a document titled "March 3, 2020 BMAH&V PAC Budget Expense Sheet" which accounted for \$12,556.37 of political expenditures that the PAC made for the March 3, 2020, election. The respondent also included receipts and invoices to account for the amounts on the expense sheet. The expense sheet was undated. The attached receipts were dated, however they had been submitted to the PAC for reimbursement, and no reimbursement date was provided on the expense sheet. An attached page did include check numbers for the reimbursement checks, but the relevant pages were not included in the bank statements submitted in response to the Commission's requests for production of documents.
32. In response to written questions, the respondent stated that the PAC made \$12,554.37 in political expenditures and accepted \$12,400 in political contributions. In addition, the respondent stated that the PAC's actual bank balance on February 22, 2020 was -\$154.37, and that the \$350 on-hand from this cycle was not used. Given the political expenditures from the internal reporting and the reported political contributions, the amount of political contributions maintained would have been zero, given that the political expenditures exceeded the political contributions maintained. That zero, plus the \$350 "cash on hand" which the respondent indicated was not part of the actual bank balance in his response to written questions, the political contributions maintained should have been \$350.
33. The bank invoice the respondent provided showed a deposit of \$7,000 on February 18, 2020, a deposit of \$2,200 on February 19, 2020, and a deposit of \$700 on February 24, 2020, which the respondent highlighted as being specifically related to the PAC. The invoice also showed \$16,263 in total deposits to the account and \$4,391.81 in withdrawals between February 1, 2020, and February 28, 2020. The highlighted amounts on the bank invoice do not equal the amount of political contributions accepted that were reported on the 8-day pre-election report.
34. Credible evidence shows the respondent did not report \$12,554.37 in political expenditures on the 8-day pre-election report filed on March 5, 2020. Therefore, there is credible evidence of a violation of Section 254.031(a)(6) and Section 254.031(a)(3) and/or 254.031(a)(5) of the Election Code.

35. Credible evidence shows the respondent failed to properly report total political contributions maintained on the 8-day pre-election report filed on March 5, 2020. Therefore, there is credible evidence of a violation of Section 254.031(a)(8) of the Election Code.

**8-Day Pre-election Report due July 3, 2020**

36. The respondent filed the 8-day pre-election report for the July 14, 2020, election, on July 3, 2020. This report covered the period of February 23, 2020, through July 4, 2020. The report disclosed \$0 in total political contributions, \$0 in total political expenditures, and \$500 in total political contributions maintained.
37. In response to the complaint, the respondent denied any allegations regarding the campaign finance report filed on July 3, 2020. The respondent submitted a copy of the campaign finance report, stating that it showed \$500 “money carried over unused.” The respondent clarified in response to written questions that \$150 was added to the \$350 “on hand” that had been carried over from the previous two reporting periods. Given the \$0 in political contributions received during this reporting period, it is unclear where the additional \$150 came from.
38. Credible evidence shows that the PAC did not make political expenditures in the period covered by the 8-day pre-election report filed on July 3, 2020. Therefore, there is no credible evidence of a violation of Sections 254.031(a)(3), 254.031(a)(5), and 254.031(a)(6) of the Election Code.
39. Credible evidence shows that the respondent accepted at least \$150 of unreported political contributions during the period covered by the 8-day pre-election report filed on July 3, 2020. Therefore, there is credible evidence of a violation of Section 254.031(a)(6) and Section 254.031(a)(1) and/or 254.031(a)(5) of the Election Code.
40. There is no credible evidence to show the respondent improperly reported total political contributions maintained on the 8-day pre-election report filed on July 3, 2020. Therefore, there is no credible evidence of a violation of Section 254.031(a)(8) of the Election Code.

**8-Day Pre-election Report due October 29, 2020**

41. The respondent filed the 8-day pre-election report for the November 3, 2020, election, on October 29, 2020. This report covered the period of July 5, 2020, through October 24, 2020. The report disclosed \$1,000 in total political contributions, \$0 in total political expenditures, and \$1,500 in total political contributions maintained.
42. In response to the complaint, the respondent denied any allegations regarding the campaign finance report filed on October 29, 2020. The respondent submitted a copy of the campaign

finance report, with a cover page that read “no expenditures (see 30-day report).” The PAC did not file a 30-day pre-election report for the November 3, 2020, election. The respondent did not provide bank statements or other supporting documentation for the time period covered by this report.

43. Based on the information provided by the respondent, there is no credible evidence to show the respondent improperly reported political contributions, expenditures, and contributions maintained. Therefore, there is no credible evidence of a violation of Section 254.031 of the Election Code regarding the 8-day pre-election report.

#### **Failure to Report Political Activity in the Semiannual Report due January 15, 2021**

44. The respondent filed the January semiannual campaign finance report on January 14, 2021. This report covered the period of October 25, 2020, through December 31, 2020. The report disclosed \$2,000 in total political contributions, \$0 in total political expenditures, and \$500 in total political contributions maintained.
45. In response to the complaint, the respondent denied any allegations regarding the campaign finance report filed on January 14, 2021. The respondent submitted a copy of the campaign finance report, as well as a document titled “November 03, 2020 BMAH&V PAC Budget Expense Sheet” which accounted for \$7,409.88 of political expenditures the PAC had made for the November 3, 2020, election. The respondent also included receipts and invoices to account for some of the amounts on the expense sheet, as well as an invoice for a different checking account, which had all but one withdrawal blacked out. The attached documents were dated, however it was unclear if they had been paid directly from the PAC account or were requests for reimbursement. An attached page did include a check number for a reimbursement check, but the relevant pages were not included in the bank statements submitted in response to requests for production of documents.
46. In response to written questions, the respondent stated that the PAC made \$7,409.88 in political expenditures and accepted \$2,000 in political contributions. In addition, the respondent stated that the PAC’s actual bank balance on December 31, 2020, was \$4,409.88, and that “\$500 on hand was not used.” Given the political expenditures from the internal reporting and the reported political contributions, the amount of political contributions maintained would have been \$5,409.88. The response to written questions further indicated that \$1,000 of the \$1,500 contribution maintained from the previous reporting period was somehow subtracted from \$5,409.88 to reach the provided number of \$4,409.88. Given that amount, plus the \$500 “cash on hand” which the respondent indicated was not part of the actual bank balance in his response to written questions, the political contributions maintained should have been \$4,909.88.

47. The bank invoice that the respondent provided in response to a request for production of documents showed a deposit of \$1,000 on November 3, 2020, and two deposits of \$520 and \$500 on November 4, 2020, which the respondent highlighted as being specifically related to the PAC. The invoice also showed generally \$9,916.96 in deposits into the account, and \$11,299.40 in withdrawals.
48. Credible evidence shows that the respondent did not report \$7,409.88 in political expenditures on the semiannual campaign finance report filed on January 15, 2021. Therefore, there is credible evidence of a violation of Section 254.031(a)(6) and Section 254.031(a)(3) and/or 254.031(a)(5) of the Election Code.
49. Credible evidence shows that the respondent failed to properly report total political contributions maintained on the semiannual campaign finance report filed on January 15, 2021. Therefore, there is credible evidence of a violation of Section 254.031(a)(8) of the Election Code.
50. In sum, credible evidence shows that the respondent did not report \$40,083.34 in political expenditures and \$150 in political contributions, and that the respondent failed to properly disclose total political contributions maintained on multiple campaign finance reports filed between October 19, 2019, and January 15, 2021.

#### **IV. Representations and Agreement by Respondent**

By signing this order and agreed resolution and returning it to the Commission:

1. The respondent admits to the findings of fact 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) each report must include the amount of political contributions from each person that in the aggregate exceed \$50 (\$90 as of January 1, 2020) 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; 2) each report must include the amount of political expenditures that in the aggregate exceed \$100 (\$180 as of January 1, 2020, \$190 as of January 1, 2021) and that are made during the reporting report, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures; 3) each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; 4) each report must include the total amount or a specific listing of the political expenditures

of \$100 or less made during the reporting period; and 5) each report must include as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. 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 Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$5,500 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-32105135.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Max Miller, Respondent

EXECUTED by the Commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Anne Temple Peters, Executive Director