

TEXAS ETHICS COMMISSION

IN THE MATTER OF

BRANDON SHERROD BARTIE,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-32207288

FINAL ORDER

I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on February 15, 2023, to consider sworn complaint SC-32207288. A quorum of the Commission was present. The respondent received legally sufficient notice of the hearing but did not appear at the hearing. The Commission proceeded with the hearing in the respondent's absence and found credible evidence of violations of Sections 252.001 and 253.031(a) of the Election Code, Section 571.1242(f) of the Government Code, and Section 12.83(a) of the Ethics Commission Rules. The Commission voted to issue this final order.

II. Allegations

Sworn complaint SC-32207288 was filed on July 13, 2022. The sworn complaint alleged that, as a candidate for Jefferson County Justice of the Peace, Precinct 2, in the November 8, 2022, election, the respondent: 1) made a public announcement of a definite intent to run for Justice of the Peace without having appointed a campaign treasurer, in violation of Section 252.001 of the Election Code; 2) accepted an in-kind campaign contribution in the form of campaign signs on July 8, 2022, without a campaign treasurer appointment in effect, in violation of Section 253.031(a) of the Election Code; and 3) made or authorized a campaign expenditure for campaign fliers before his campaign treasurer appointment was in effect, in violation of Section 253.031(a) of the Election Code.

The Commission also considered whether the respondent failed to respond to written questions propounded by the Commission, in violation of Section 571.1242(f) of the Government Code and Section 12.83(a) of the Ethics Commission Rules.

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 was an unsuccessful write-in candidate for Jefferson County Justice of the Peace, Precinct 2, in the November 8, 2022, election.

Failure to Timely File a Campaign Treasurer Appointment

2. On July 8, 2022, the respondent made a public announcement on the steps of the Jefferson County Courthouse declaring his intent to run as a write-in candidate for Justice of the Peace. However, the Jefferson County Clerk's Office had no campaign treasurer appointment on file for the respondent at the time he made his announcement.
3. In response to the complaint, the respondent admitted that he had not filed his campaign treasurer appointment before his announcement. According to the respondent, his failure to timely file was due to a misunderstanding of the law. He mistakenly believed that a candidate was not required to file a campaign treasurer appointment until he or she started accepting campaign contributions or making campaign expenditures. With his response, the respondent provided a filing confirmation printout from the Jefferson County Clerk's Office showing that he filed his campaign treasurer appointment on July 12, 2022.
4. Commission staff also performed a search of the Jefferson County Clerk's online records database and confirmed that the respondent filed his campaign treasurer appointment on July 12, 2022.
5. Each candidate and each political committee shall appoint a campaign treasurer. Tex. Elec. Code § 252.001.
6. "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement. *Id.* § 251.001(1)(E).
7. Credible evidence shows that the respondent publicly announced on July 8, 2022, his intent to run for Justice of the Peace, thereby becoming a candidate as defined by Section 251.001(1)(E) of the Election Code. Credible evidence further shows that the respondent did not file his campaign treasurer appointment until July 12, 2022, four days after his announcement. Therefore, there is credible evidence that the respondent violated the campaign treasurer filing requirement under Section 252.001 of the Election Code.

Failure to File a Campaign Treasurer Appointment Prior to Accepting Campaign Contributions and/or Making Campaign Expenditures

8. During the respondent's campaign announcement on July 8, 2022, campaign signs stating "Elect Brandon Bartie for Justice of the Peace Pct. 2 Write-In Candidate" were displayed at the event.
9. Additionally, on July 12, 2022, the respondent distributed fliers supporting his campaign at the Strong Tower Church of Port Arthur. The fliers stated in pertinent part, "Elect Brandon Bartie for Justice of the Peace Pct. 2 . . . Pol. Ad. Pd. For by the Committee to Elect Brandon Bartie for JP-Dr. Jeffrey Lewis, Campaign Treasurer, Chris Bates, Campaign Manager."
10. In his written response, the respondent denied that he paid for the campaign signs and stated that they were purchased by a friend as a "surprise" for the announcement without the respondent's knowledge. Additionally, the respondent said that if he had purchased or authorized the purchase of the campaign signs, he would have included a political advertising disclosure statement, which the signs did not contain.
11. The respondent also denied that his distribution of the campaign fliers violated the Election Code because they were distributed approximately five (5) hours after he filed his campaign treasurer appointment. To confirm the time of his filing, the respondent referred to the filing confirmation printout from the Jefferson County Clerk's Office showing that his campaign treasurer appointment was filed on July 12, 2022 at 2:02 p.m.
12. After receiving the respondent's response, Commission staff contacted the respondent by phone to obtain further details regarding the campaign signs and fliers. During that conversation, the respondent stated that he asked the friend who purchased the signs to collect them from the attendees when the respondent realized the signs did not contain a political advertising disclosure statement. However, by that point photographers had already taken photographs at the announcement with the signs in the background.
13. The respondent also stated that he was unaware that the campaign fliers existed until after they had been distributed. However, the respondent indicated that he knew who purchased the fliers.
14. Based on the phone call with the respondent, Commission staff asked if the respondent could provide documentation showing how much the campaign fliers cost. Staff also informed the respondent that his statements regarding the distribution of the campaign fliers contradicted his written response. Specifically, the respondent indicated in his written response that he distributed the fliers, whereas on the phone he denied knowledge of the fliers prior to their distribution. Therefore, staff requested that the respondent also provide written clarification regarding who purchased the fliers and when the respondent

became aware of them. The respondent stated that he would provide the requested information, but did not do so.

15. 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. Tex. Elec. Code § 253.031(a).
 16. “Contribution” means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a guarantee of a loan or extension of credit, including a loan described by this subdivision. The term does not include:
 - (A) a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made; or
 - (B) an expenditure required to be reported under Section 305.006(b), Government Code.
- Id.* § 251.001(2).
17. “Campaign contribution” means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.* § 251.001(3).
 18. “Expenditure” means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
 19. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7).
 20. The campaign signs at issue expressly state “Elect Brandon Bartie for Justice of the Peace Pct. 2” and were distributed at the respondent’s campaign announcement on July 8, 2022. Thus, the signs were intended to be used in connection with the respondent’s campaign. Additionally, the respondent was aware of the signs once they were distributed to the attendees and he did not request that the signs be removed from the event, but allowed them to be displayed. Furthermore, the respondent did not file his campaign treasurer

appointment until July 12, 2022. Therefore, there is credible evidence that by accepting the signs, the respondent accepted a campaign contribution at a time when his campaign treasurer appointment was not in effect, in violation of Section 253.031(a) of the Election Code.

21. The July 12, 2022 fliers expressly supported the respondent's campaign and were distributed for that purpose. The disclosure statement on the fliers also shows that the respondent's campaign paid for the fliers. Additionally, the respondent only denied that he distributed the fliers before filing his campaign treasurer appointment, not that the fliers were purchased prior to his filing. Therefore, there is credible evidence that the respondent violated Section 253.031(a) of the Election Code by making a campaign expenditure at a time when his campaign treasurer appointment was not in effect.

Failure to Respond to Written Questions

22. On July 13, 2022, the Commission received sworn complaint SC-32207288. That same day Commission staff contacted the respondent by phone and verified his contact information, including his email address. The respondent then provided a signed waiver allowing the Commission to send him notices and other communications via email.
23. In an effort to further investigate the facts surrounding the creation and distribution of the campaign signs and fliers, Commission staff emailed written questions and requests for production of documents to the respondent on November 16, 2022. Based on the delivery date of the discovery requests, the respondent was required to respond to the written questions by December 12, 2022, and the requests for production of documents by December 16, 2022. 1 Tex. Admin. Code §§ 12.83(a), 12.28(a). The respondent did not respond to the Commission's written questions or its requests for production of documents.
24. On December 21, 2022, Commission staff called the respondent to check on the status of his discovery responses. Since the respondent did not answer, Commission staff left a voicemail asking him to contact the Commission. Commission staff made a follow-up phone call on December 22, 2022, and left another voicemail for the respondent. Commission staff also sent the respondent an email on December 22, 2022, stating that his responses to the discovery requests were late and asking when his responses would be submitted. The respondent never responded to this email.
25. During a preliminary review, the commission staff may submit to the complainant or respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation. Tex. Gov. Code § 571.1242(f).
26. A complainant or respondent must respond to written questions not later than 15 business days after receiving the written questions. The executive director may grant an extension of the time period for good cause shown. 1 Tex. Admin. Code § 12.83(a).

27. As of the date of this Final Order, the respondent has not responded to the Commission's discovery requests despite receiving multiple notices, nor has he requested an extension to respond. Therefore, there is credible evidence that the respondent has violated Section 571.1242(f) of the Government Code and Section 12.83(a) of the Ethics Commission Rules.

IV. Default Judgment

1. The preliminary review hearing was held in person and by video teleconference on February 15, 2023, at the State Capitol Extension, Room E1.014, in Austin, Texas. The respondent failed to appear at the hearing, either in person or remotely.
2. Each written notice, decision, and report required to be sent under this chapter shall be sent by registered or certified mail, restricted delivery, return receipt requested. Tex. Gov. Code § 571.032. 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. 1 Tex. Admin. Code § 12.21(b).
3. A respondent or complainant in a complaint may waive the right under section 571.032 of the Government Code to receive written notices related to the complaint by registered or certified mail, restricted delivery, return receipt requested, and may agree to receive written notices related to the complaint by first class mail, electronic mail, or other means. *Id.* § 12.21(d).
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.
5. On July 13, 2022, the respondent provided the Commission with a signed waiver allowing all Commission notices to be to him by email.
6. On December 30, 2022, the Commission sent a notice of the February 15, 2023 preliminary review hearing to the respondent by email to the address provided in the respondent's signed waiver. The Commission also sent a copy of this notice by USPS delivery confirmation to the mailing address previously verified by the respondent. USPS confirmed delivery of the mailed notice on January 3, 2023, but then later returned the notice as "return to sender, insufficient address, unable to forward." The notice stated that the hearing would be held on February 15, 2023 at 1:45 p.m., in the State Capitol Extension, Room E1.014, Austin, Texas 78701. The notice further stated that the respondent could participate in the hearing either by appearing physically or by video teleconference. The notice cautioned that if the respondent failed to appear at the hearing, then the allegations could be deemed admitted as true and the relief sought may be granted by default.

7. On January 12, 2023, the Commission sent a second notice of hearing to the respondent by email. Additionally, a copy was sent by USPS delivery confirmation to the mailing address previously verified by the respondent. This notice also stated the date, time, and place of the hearing, and that the allegations could be deemed admitted as true and the relief sought may be granted by default if the respondent failed to appear. USPS records confirm the second notices were delivered on January 17, 2023, but the notice was later returned to the Commission, marked “return to sender, not deliverable as addressed, unable to forward.” However, on January 12, 2023, the respondent confirmed receipt of the emailed notice.
8. The Commission finds that the respondent received legally sufficient notice of the February 15, 2023 preliminary review hearing in this case. The Commission proceeded in the respondent’s absence and issued this final order in accordance with Section 12.23 of the Ethics Commission Rules. By failing to appear at the preliminary review hearing, the respondent forfeited his right to further proceedings before the Commission in this matter. This final order is a final and complete resolution of this complaint before the Commission, except for the issue of collection of the civil penalty.
9. The Commission finds credible evidence of violations of Sections 252.001 and 253.031(a) of the Election Code, Section 571.1242(f) of the Government Code, and Section 12.83(a) of the Ethics Commission Rules.

IV. 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 violation of a law administered and enforced by the Commission. Tex. 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. Although the violations in this case are technical in nature and the respondent has no history of previous violations, a civil penalty is warranted based on the respondent’s lack of good faith and cooperation during the preliminary review of this case. To start, the respondent has not responded to the discovery requests Commission staff propounded on November 16, 2022, nor has he responded to any phone calls or emails regarding these requests since they were sent. Had the respondent provided a response to the discovery, Commission staff could have identified an appropriate resolution for this case.

4. Furthermore, the respondent has not been honest and forthcoming with Commission staff. The political advertising disclosure statement on the fliers shows that the fliers were a campaign expenditure made by the respondent's campaign. However, over the phone the respondent not only denied that he paid for the fliers, but stated that he was unaware of their existence until after they were distributed. This statement not only contradicts the disclosure statement on the fliers, but the respondent's own written statement in which he admits to distributing the fliers himself.
5. The respondent was given the opportunity to clarify these inconsistencies for the Commission, but failed to do so.
6. Therefore, the 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 \$2,500. If the respondent does not pay the \$2,500 civil penalty within 30 days of the date of this order, then 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

J.R. Johnson
Executive Director
Texas Ethics Commission