

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
JAMES L. BURK,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-200529

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on June 16, 2000, and voted to accept jurisdiction of Sworn Complaint SC-200529 filed against James L. Burk, Respondent. The commission met again on August 11, 2000, to consider Sworn Complaint SC-200529. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of Sections 254.031(a)(6), 254.061, and 254.064, Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

### II. Allegations

The complainant alleged that the respondent did not timely file pre-election reports in connection with the May 6, 2000, school board election and failed to accurately report contributions and expenditures on his pre-election and final campaign finance reports. The complainant also alleged that the respondent failed to amend his campaign treasurer appointment to name his new campaign treasurer.

### III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for school board who was opposed in the May 6, 2000, election. The respondent filed his campaign treasurer appointment in March 2000, and did not elect modified reporting.
2. The respondent's 30-day before election report shows that the respondent signed the report on May 2, 2000. The respondent disclosed on the cover sheet that he did not make any political expenditures or accept any political contributions. On Schedule G, however, the respondent disclosed that he made two expenditures from his personal funds which totaled \$949.75.

3. The respondent's 8-day before election report shows that the respondent signed the report on May 2, 2000. The respondent disclosed on the cover sheet that he did not make any political expenditures or accept any political contributions. On Schedule G, however, the respondent disclosed that he made two expenditures from his personal funds which totaled \$1,103.47.
4. The respondent's final report shows that the respondent signed the report on May 16, 2000. The respondent disclosed on the cover sheet that he did not accept any political contributions or make any political expenditures. On Schedule G, however, the respondent disclosed that he made three expenditures from his personal funds which totaled \$248.72.
5. In his sworn response, the respondent admitted that he filed the two pre-election reports late. The respondent swore that all of the expenditures were paid from his personal funds.
6. The respondent's campaign finance reports list the respondent as the campaign treasurer. The respondent's campaign treasurer appointment names his wife as campaign treasurer. The respondent did not amend his campaign treasurer appointment to name himself as the campaign treasurer.

#### **IV. Findings and Conclusions of Law**

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

1. An opposed candidate is required to file pre-election reports by the 30<sup>th</sup> day and 8<sup>th</sup> day before the election. Section 254.064, Election Code. For the May 6, 2000, election, the 30-day before election report was due by April 6, 2000, and the 8-day before election report was due by April 28, 2000. The pre-election reports were both notarized on May 2, 2000, and the respondent admitted in his sworn response that he filed the pre-election reports late. Therefore, there is credible evidence that the respondent violated Section 254.064, Election Code.
2. A candidate is required to disclose the total amount of all political expenditures made during the reporting period. Section 254.031(a)(6), Election Code. The respondent reported the political expenditures that he made from his personal funds on Schedule G of all three campaign finance reports. The respondent did not include the total amount of the political expenditures on the cover sheet of the reports. Therefore, there is credible evidence that the respondent committed a technical or *de minimis* violation of Section 254.031(a)(6), Election Code.
3. A candidate is required to include his or her campaign treasurer's name on each campaign finance report. Section 254.061, Election Code. The respondent's campaign finance reports failed to include the name of the individual who was his campaign treasurer. Therefore,

there is credible evidence that the respondent committed a technical or *de minimis* violation of Section 254.061, Election 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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that a candidate for public office is required to timely file campaign finance reports and accurately disclose all required information. The respondent agrees to fully and strictly comply with these requirements of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations described under Section IV, Paragraphs 1, 2, and 3, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

### **VI. Confidentiality**

This ORDER and AGREED RESOLUTION describes a violation that the commission has determined is 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$200 civil penalty for the violation described under Section IV, Paragraph 1.

**VIII. Order**

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-200529;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$200 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than September 8, 2000; and
4. that the executive director shall promptly refer SC-200529 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-200529 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
James L. Burk, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Tom Harrison, Executive Director