

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOHN R. BARTON,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-2910271

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2010, to consider sworn complaint SC-2910271. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 253.062(a), a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent made direct expenditures exceeding \$100 supporting city council candidates and opposing a home rule charter, and failed to file a campaign finance report disclosing those expenditures.

III. Facts Supported by Credible Evidence

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

1. The City of Bulverde held an election on May 9, 2009, in which city council offices and a proposed home rule charter were submitted to the voters.
2. The complaint included copies of a mailer that was postmarked on May 1, 2009, a flyer that was distributed inside a local newspaper in May 2009, a flyer dated May 12, 2009, and entitled "Home Rule Survey," and a sign displayed on the respondent's truck.
3. The mailer at issue contained statements supporting certain candidates for city council, opposing certain city council members, and opposing the home rule charter. The mailer indicated it was "Written and distributed by Bob Barton, former Mayor for four years and Aldermen for one term . . ."

4. The flyer at issue contained statements opposing certain city council members. The flyer included a political advertising disclosure statement that states, "Political ad paid for and distributed by Bob Barton 2962 Barton Hill Dr."
5. The sign at issue contained a statement opposing certain city council members. The sign included a political advertising disclosure statement that states, "Political ad paid for and distributed by Bob Barton 2962 Barton Hill Dr."
6. The complaint alleged that the respondent distributed the Home Rule Survey document at a home owners' association meeting to meet city council candidates. The bottom of the flyer included the following: "Bob Barton former Mayor 2962 Barton Hill Dr."
7. In response to the allegations, the respondent submitted an affidavit in which he swore that the document entitled "Home Rule Survey" was presented to the city council and other attendees during the public comment period of the May 12, 2009, city council meeting.
8. The respondent submitted a copy of a campaign finance report which he filed with the local filing authority on November 24, 2009. The report was filed on Form SPAC and covered the period beginning April 15, 2009, through June 15, 2009. The report indicated that the respondent supported two candidates for city council and opposed the home rule charter in the May 10, 2009, election. The report disclosed \$0 in total political contributions, \$40 in total political expenditures of \$50 or less, and \$2,053.69 in total political expenditures made between April 28, 2009, and May 8, 2009. Based on the report, the respondent made political expenditures exceeding \$100 no later than May 1, 2009.

IV. Findings and Conclusions of Law

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

1. An individual not acting in concert with another person may make one or more direct campaign expenditures in an election from the individual's own property that exceed \$100 on any one or more candidates or measures if the individual files campaign finance reports as if the individual were a campaign treasurer of a political committee, and the individual receives no reimbursement for the expenditures. ELEC. CODE § 253.062(a).
2. "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. ELEC. CODE § 251.001(6).
3. "Campaign expenditure" means an expenditure made by any person in connection with a campaign for an elective office or on a measure. ELEC. CODE § 251.001(7).

4. “Direct campaign expenditure” means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. ELEC. CODE § 251.001(8).
5. A campaign expenditure is not a contribution from the person making the expenditure if it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made; or it is made in connection with a measure, but is not a political contribution to a political committee supporting or opposing the measure. Ethics Commission Rules § 20.1(5).
6. The evidence indicates that the respondent acted alone and spent over \$100 of his personal funds to print and distribute political advertising supporting two candidates and opposing a measure. Thus, the expenditures were direct campaign expenditures, and the respondent was required to file a campaign finance report as if he were the treasurer of a specific-purpose committee. The respondent made the expenditures between April and May 2009. The respondent exceeded the \$100 direct expenditure threshold during the period covered by the July 2009 semiannual report. The respondent filed a report on November 24, 2009. However, the respondent was required to file the report by the July 15, 2009, deadline. Therefore, there is credible evidence that the respondent violated section 253.062 of the Election Code by failing to timely file a campaign finance report.

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 or 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 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 an individual not acting in concert with another person may make one or more direct campaign expenditures in an election from the individual’s own property that exceed \$100 on any one or more candidates or measures if the individual files campaign finance reports as if the individual were a campaign treasurer of a political committee, and the individual receives no reimbursement for the expenditures. The respondent agrees to comply with this requirement of the law.

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 violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 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-2910271.

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

John R. Barton, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director