

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BRANDON CREIGHTON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3110228

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 30, 2012, to consider sworn complaint SC-3110228. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.0612 of the Election Code and section 20.61 of the Ethics Commission Rules, laws 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: 1) did not properly disclose on one or more campaign finance reports the full name of contributors, the full name of persons receiving political expenditures, and total political contributions maintained; 2) did not include on campaign finance reports the principal occupation or job title and the full name of the employer for individuals who contributed \$500 or more during a reporting period; 3) did not disclose information required for a political contribution from an out-of-state political committee; 4) accepted political contributions from corporations or labor organizations; 5) did not adequately describe the purpose of political expenditures disclosed on campaign finance reports as "Gifts;" and 6) did not provide the category of political expenditures on a report.

III. Facts Supported by Credible Evidence

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

1. The respondent is the state representative for District 16.
2. The reports at issue are the July 2009, January 2010, July 2010, and January 2011 semiannual reports.

Total Political Contributions Maintained

3. The complaint alleged that the respondent disclosed an incorrect amount for the total political contributions maintained as of the last day of the reporting period in the January 2011 semiannual report.
4. In the January 2011 semiannual report, the respondent disclosed \$227,192.08 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the amount of total political contributions maintained should be \$223,783.47.
5. The respondent's bank statement for his political funds account indicated that the balance on December 31, 2010, was \$227,192.08, the amount he disclosed for contributions maintained on his report.

Full Names of Contributors

6. The complaint alleged that the respondent did not properly disclose the full names of 16 contributors that made 20 contributions. The political contributions were disclosed on Schedule A (used to disclose political contributions) of the January 2010 and January 2011 semiannual reports.
7. The name or proper acronym was not disclosed for four contributors – Emergency Medicine PAC of Texas, PBK INC PAC, MOTPAC, and TSA-PAC. The name or proper acronym was disclosed for the remaining 12 contributors.

Principal Occupation or Job Title and Employer Information for Contributors

8. The complaint alleged that the respondent did not include the principal occupation or job title and employer for contributors in “37 places” for contributions totaling approximately \$38,980 disclosed on the respondent's January 2010, July 2010, and January 2011 semiannual reports. The contributions are from 21 individuals and four couples for a total of 29 contributors. Some of the contributors that the respondent disclosed as “self-employed” were employed by business entities.

Principal Occupation or Job Title

9. The respondent left the contributor's principal occupation or job title blank for eight contributors.
10. The January 2010 semiannual report disclosed that the principal occupation or job title of one individual was “Lawyer.” A search of the Texas State Bar website shows that there is not a lawyer by that name on file with that entity.

11. There was insufficient evidence to show that the respondent improperly disclosed the principal occupation or job title of three contributors.
12. The evidence indicated that the respondent properly disclosed the principal occupation or job title of the remaining 17 contributors.

Employer

13. The respondent disclosed an employer for one of the contributing couples. The evidence indicated that the respondent properly disclosed the employer of one of the individuals. There was insufficient evidence to show that the respondent improperly disclosed the employer of the other individual.
14. The respondent left the employer space blank for seven contributors.
15. The respondent disclosed “self-employed” for the employer of 20 contributors.
16. The evidence indicated that eight of the contributors disclosed as “self-employed” are sole proprietors of businesses that bear their names.
17. There was insufficient evidence to show that the respondent improperly disclosed the employer of one of the contributors disclosed as “self-employed.”
18. The evidence indicated that the respondent properly disclosed the employer of five of the contributors disclosed as “self-employed.”
19. The evidence indicated that the respondent improperly disclosed the employer of six of the contributors disclosed as “self-employed.”
20. The respondent did not provide evidence that would show that he used best efforts to obtain the required information from contributors who did not provide the required information.

Political Contribution from Out-of-State Political Committee

21. The complaint alleged that by not disclosing the out-of-state PAC identification number of the contributor of \$1,500 on August 30, 2010, disclosed on the January 2011 semiannual report, the respondent did not fulfill the requirements of section 253.032 of the Election Code.
22. The contributor is registered with the Texas Ethics Commission as a general-purpose committee. The committee’s 30-day pre-election report for the November 2010 general election disclosed a contribution of \$1,500 to the respondent on August 30, 2010.

Accepted a Political Contribution from a Corporation or Labor Organization

23. The complaint alleged that, based on disclosures in the January 2010 and January 2011 semiannual reports, the respondent accepted seven political contributions from corporations or labor organizations.
24. The evidence indicated that three of the contributions came from political committees and that one of the contributions came from a domestic limited partnership with no corporate partners. As to two of the contributors, the evidence showed that the contributors are not corporations or labor organizations. As to the remaining contributor the evidence was insufficient to show that the contributor was a corporation or labor organization.

Full Names of Payees

25. The complaint alleged that the respondent did not fully disclose the names of eight payees in the July 2009, January 2010, July 2010, and January 2011 semiannual reports.
26. The evidence indicated that the respondent disclosed the full name, a substantially similar name, or a commonly recognized acronym for all of the payees at issue.

Purpose of Political Expenditures

27. The complaint alleged that the respondent did not adequately describe the purpose of political expenditures disclosed on campaign finance reports as “Gifts.” The total amount at issue for all of the reports is approximately \$6,610.

Category of Expenditures

28. The complaint alleged that the respondent did not provide the category of political expenditures on his January 2011 semiannual report. The respondent’s January 2011 semiannual report disclosed 112 expenditures totaling approximately \$34,330.00 without disclosing the category of the expenditures.

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. A campaign finance 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. ELEC. CODE § 254.031(a)(8).

2. The total amount of political contributions maintained in one or more accounts includes balance on deposit in banks, savings and loan institutions and other depository institutions, and the present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc. Ethics Commission Rules § 20.50(a).
3. The complaint alleged that the respondent did not correctly disclose the total political contributions maintained as of the last day of the reporting period in the January 2011 semiannual report.
4. The respondent's bank statement for his political funds account indicated that the balance on December 31, 2010, was \$227,192.08, the amount he disclosed for contributions maintained on his report. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code.

Full Names of Contributors

5. Each report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
6. The name of an entity that is required to be included in the name of the committee may be a commonly recognized acronym by which the entity is known. ELEC. CODE § 252.003(d).
7. The name or proper acronym was not disclosed for four contributors – Emergency Medicine PAC of Texas, PBK INC PAC, MOTPAC, and TSA-PAC. Therefore, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code with regard to those contributors.
8. With respect to the remaining 12 contributors, the names as disclosed by the respondent are the same or substantially similar to the names or acronyms that the entities use to identify themselves. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code with respect to those contributors.

Principal Occupation or Job Title and Employer Information for Contributors

9. The respondent was an incumbent who had an active campaign treasurer appointment on file during the periods at issue. Thus, the respondent was a candidate, and officeholder, for title 15 filing purposes. Each report by a candidate for a statewide office in the executive branch or a legislative office must include, for each individual from whom the person filing the

- report has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period, the individual's principal occupation or job title and the full name of the individual's employer. ELEC. CODE § 254.0612.
10. A person required to file a report under this chapter is considered to be in compliance with section 254.0612 of the Election Code only if the person or the person's campaign treasurer shows that the person has used best efforts to obtain, maintain, and report the information required by those sections. A person is considered to have used best efforts to obtain, maintain, and report that information if the person or the person's campaign treasurer complies with this section. ELEC. CODE § 254.0312(a).
 11. Each written solicitation for political contributions from an individual must include, in pertinent part, a clear request for the individual's principal occupation or job title, and the full name of the individual's employer, and an accurate statement of the law regarding the collection and reporting of individual contributor information. ELEC. CODE § 254.0312(b).
 12. For each political contribution received from an individual that, when aggregated with all other political contributions received from that individual during the reporting period, equal or exceeds \$500 and for which the information required by section 254.0612 of the Election Code is not provided, the person must make at least one oral or written request for the missing information. A request under this subsection: (1) must be made not later than the 30th day after the date the contribution is received; (2) must include a clear and conspicuous statement that complies with subsection (b); (3) if made orally, must be documented in writing; and (4) may not be made in conjunction with a solicitation for an additional contribution. ELEC. CODE § 254.0312(c).
 13. Black's law Dictionary defines "employer" as "a person who controls and directs a worker under an express or implied contract of hire and who pays the worker's salary or wages." Black's Law Dictionary 565 (8th ed. 2004).
 14. The commission has previously determined that there is no violation of section 254.0612 of the Election Code for listing a contributor as self-employed as long as the contributor is an officer or principal of an entity that bears the contributor's name, or if the contributor is otherwise self-employed.

Principal Occupation or Job Title

15. The respondent left the contributor's principal occupation or job title blank for eight contributors.

16. The respondent has not provided evidence that he complied with the “best efforts” requirements. Therefore, there is credible evidence of violations of section 254.0612 as to these eight contributors.
17. The January 2010 semiannual report disclosed that the principal occupation or job title of one individual was “Lawyer.” A search of the Texas State Bar website shows that there is not a lawyer by that name on file with that entity. There is credible evidence of a violation of section 254.0612 of the Election Code.
18. There was insufficient evidence to show that the respondent improperly disclosed the principal occupation or job title of three contributors. There is insufficient evidence of a violation of section 254.0612 of the Election Code.
19. The evidence indicated that the respondent properly disclosed the principal occupation or job title of the remaining 17 contributors. Therefore, there is credible evidence of no violation of section 254.0612 of the Election Code as to those contributors.

Employer

20. The respondent disclosed an employer for one of the contributing couples. The evidence indicated that the respondent properly disclosed the employer of one of the individuals. There is credible evidence of no violation of section 254.0612 of the Election Code as to that contributor. There was insufficient evidence to show that the respondent improperly disclosed the employer of the other individual. There is insufficient evidence of a violation of section 254.0612 of the Election Code as to that contributor.
21. The respondent left the employer space blank for seven contributors.
22. Regarding the contributions with blank spaces for the name of employer, the respondent has not provided evidence that he complied with the “best efforts” requirements. Therefore, there is credible evidence of violations of section 254.0612 of the Election Code as to these seven contributors.
23. The respondent disclosed “self-employed” for the employer of 20 contributors.
24. The evidence indicated that eight of the contributors disclosed as “self-employed” are sole proprietors of businesses that bear their names. There is credible evidence that the respondent did not violate section 254.0612 of the Election Code as to those contributors.
25. There was insufficient evidence to show that the respondent improperly disclosed the employer of one of the contributors disclosed as “self-employed.” There is insufficient evidence of a violation of section 254.0612 of the Election Code as to those contributors.

26. The evidence indicated that the respondent properly disclosed the employer of five of the contributors disclosed as “self-employed.” There is credible evidence that the respondent did not violate section 254.0612 of the Election Code as to those contributors.
27. The evidence indicated that the respondent improperly disclosed the employer of six of the contributors disclosed as “self-employed.” There is credible evidence of a violation of section 254.0612 of the Election Code as to those contributors.

Political Contribution from Out-of-State Political Committee

28. The complaint alleged that by not disclosing the out-of-state PAC identification number of the contributor at issue, the respondent did not fulfill the requirements of section 253.032 of the Election Code, which requires that information.
29. The contributor at issue was registered with the Texas Ethics Commission and was not an out-of-state committee for purposes of section 253.032 of the Election Code. Therefore, there is credible evidence of no violation of section 253.032(a) of the Election Code.

Accepted a Political Contribution from a Corporation or Labor Organization

30. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b).
31. A corporation or labor organization may not make a political contribution that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094. That subchapter does not authorize a corporation or labor organization to make a political contribution to a candidate or officeholder.
32. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
33. The evidence indicated that three of the contributions at issue came from political committees and that one of the contributions came from a domestic limited partnership with no corporate partners. As to two of the contributors, the evidence showed that the contributors are not corporations or labor organizations. Therefore, there is credible evidence of no violation of sections 253.003(b) and 253.094 of the Election Code as to those contributions.
34. As to the remaining contributor the evidence was insufficient to show that the contributor was a corporation or labor organization. Therefore, there is insufficient evidence of a violation of sections 253.003(b) and 253.094 of the Election Code as to this contribution.

Full Names of Payees

35. Each report must include the amount of political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) 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. ELEC. CODE § 254.031(a)(3).
36. There is credible evidence that the respondent disclosed the full name, a substantially similar name, or a commonly recognized acronym for all of the payees at issue. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code as to these payee names.

Purpose of Political Expenditures

37. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) 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. ELEC. CODE § 254.031(a)(3).
38. The respondent did not adequately describe the purpose of political expenditures disclosed on campaign finance reports as “Gifts” totaling approximately \$6,610. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.

Category of Expenditures

39. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) 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. ELEC. CODE § 254.031(a)(3).
40. For reporting required under section 254.031 of the Election Code, the purpose of an expenditure means: a description of the category of goods, services, or other thing of value for which an expenditure is made and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. Ethics Commission Rules § 20.61(a).
41. There is credible evidence that the respondent did not provide the category of 112 political expenditures totaling approximately \$34,330.00 on his January 2011 semiannual report. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules.

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: 1) each report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions; 2) each report by a candidate for, or holder of, a statewide office in the executive branch or a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period, the individual's principal occupation or job title and the full name of the individual's employer; 3) each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) 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; and 4) for reporting required under section 254.031 of the Election Code, the purpose of an expenditure means: a description of the category of goods, services, or other thing of value for which an expenditure is made and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes an \$800 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-3110228.

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

Brandon Creighton, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director