

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GREGORY PARKER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31112268

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on March 27, 2013, to consider sworn complaint SC-31112268. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of sections 252.001, 252.005, 252.010, 253.031, and 255.001 of the Election Code, 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 file a campaign treasurer appointment with the proper filing authority; 2) accepted political contributions and made political expenditures at a time when he did not have a campaign treasurer appointment in effect; 3) did not properly disclose political contributions and political expenditures; and 4) did not include on political advertising appearing on an Internet website the required disclosure statement.

III. Facts Supported by Credible Evidence

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

1. The respondent was a county commissioner in Comal County who later ran for railroad commissioner.

Campaign Treasurer Appointment

2. The complaint alleged that the respondent did not timely transfer his treasurer appointment from the county, which was the respondent's filing authority as a county commissioner, to the commission, which is the appropriate filing authority for a candidate for railroad commissioner. The complaint further alleged that, as a result of the respondent becoming a candidate for railroad commissioner, the respondent's treasurer appointment filed with the

- county terminated and the respondent consequently accepted political contributions and made political expenditures when a campaign treasurer appointment was not in effect.
3. The respondent was initially elected to the office of county commissioner in November 2004 and was reelected in 2008. During the period he was a candidate for and served as county commissioner, he filed four campaign treasurer appointments with the county. His third treasurer appointment, which was filed on July 30, 2009, and his final treasurer appointment, which was filed on April 11, 2011, did not disclose an office sought. The respondent filed his July 2011 semiannual campaign finance report with the county.
 4. There was also a treasurer appointment for a specific-purpose political committee named "Texans for Greg Parker" filed with the county on August 20, 2009. The purpose of the committee was disclosed as being to support the respondent as a candidate for county commissioner. The committee filed a dissolution affidavit on January 18, 2010.
 5. The complaint included two affidavits and one unsworn statement from individuals who stated that the respondent contacted them in August and September of 2009, soliciting contributions for his candidacy as railroad commissioner in the 2010 election. One of the affiants swore that on August 31, 2009, he spoke to the respondent by telephone and the respondent asked that he donate \$1,000 to his campaign for railroad commissioner. The affiant swore that he asked the respondent if he had filed a treasurer appointment with the Ethics Commission and that the respondent replied that he did not need to. The affiant swore that he made a contribution through the respondent's website on September 29, 2009, and also purchased some campaign promotional items, which stated "I Support Greg Parker-Republican for Railroad Commissioner-www.parkerfortexas.com." The complaint includes photographs of the items, a receipt of the affiant's purchase dated September 29, 2009, and a letter from Texans for Greg Parker dated September 29, 2009, thanking the affiant for his contribution.
 6. On October 2, 2009, the New Braunfels Herald-Zeitung published an article quoting the respondent as stating that he is hoping to be appointed to the Railroad Commission in the event a specific commissioner resigns and that he would run in a subsequent election to keep the office in the event he is actually appointed. He also states that he is taking donations and "setting up the groundwork" in case an appointment does take place. The article also stated that prior to the newspaper contacting the respondent, the respondent's website featured a logo stating "Greg Parker, Republican for Railroad Commissioner" and featured a link to an online store where visitors could purchase campaign promotional items with the same logo. After the newspaper contacted the respondent, the link to the online store was removed and the text on the website was changed to "Donate to Commissioner Greg Parker."
 7. The respondent's January 2010 report disclosed no political contributions accepted and \$37 in unitemized political expenditures made. The respondent did not file a July 2010 or January 2011 semiannual campaign finance report with the county. A specific-purpose

committee supporting the respondent filed a January 2010 semiannual campaign finance report that disclosed a contribution from one of the affiants mentioned above.

8. On May 17, 2011, the New Braunfels Herald-Zeitung published an article in which the respondent stated that he would not seek reelection as county commissioner. In the article he did not state whether he intended to seek another office.
9. The respondent's July 2011 semiannual campaign finance report filed with the county disclosed \$45,250 in political contributions accepted, including a \$40,000 in-kind contribution for video production services, \$2,000 in in-kind contributions for photo shoots, and a \$3,000 in-kind contribution for website development. Each of the in-kind contributions was disclosed as being accepted in June 2011. The report also disclosed approximately \$1,300 in expenditures with purpose descriptions such as "polling and research services," "marketing services," "website template," and "printing." These expenditures were disclosed as being made between April 18, 2011, and June 24, 2011.
10. The respondent's social media accounts contain invitations to events that took place in August and September of 2011. One event was a meet and greet held on August 24, 2011, in Frisco, Texas, and invited guests to "get ready to hear from Commissioner Greg Parker, a real energy expert, as he works his way toward a run for Texas Railroad Commissioner." The invitation further stated "Commissioner Parker is seriously (did I say seriously?) considering a run for Texas Railroad Commissioner but he NEEDS YOUR HELP! Come join us at this meet and greet, listen to Greg Parker speak, ask him questions, and decide whether you want to donate to his efforts! While Commissioner Parker is planning to run a fiscally Conservative campaign, it is nonetheless a statewide campaign, and we need your support, both financially and as volunteers." A link to the event appeared on the respondent's twitter account, "@parkerfortexas" with the text "Come meet Commissioner Greg Parker and encourage his run for the Texas Railroad Commission." The posts on the twitter account were dated August 17, 2011.
11. A second event was a fundraising reception that took place on September 28, 2011, in Austin, Texas. The invitation stated: "I cordially invite you to attend a fundraising reception honoring Commissioner Greg Parker and encourage his run for Texas Railroad Commissioner so that he can fight for Texans and protect Texas energy....Bring a friend and get ready to hear from Comal County Commissioner Greg Parker, a real energy expert, that is seriously, seriously (did I say seriously?) considering a run for Texas Railroad Commissioner....Come join us, hear what Greg has to say about Texas energy and **DONATE** to his efforts!" The invitation was from an individual affiliated with Political Gravity, a payee for and in-kind contributor of consulting services disclosed on the respondent's campaign finance reports. The email contact for the event was "rsvp@parkerfortexas.com." The respondent promoted the event on his twitter account with the text "Fundraising Reception Honoring Commissioner Greg Parker." The respondent's

January 2012 campaign finance report disclosed an in-kind contribution for the cost to host the fundraiser and a \$100 monetary contribution accepted on the date of the fundraiser.

12. On December 15, 2011 the respondent filed a campaign treasurer appointment with the commission indicating that he was seeking the office of railroad commissioner. An email formally announcing the respondent's candidacy was sent on December 16, 2011. The email directed recipients to the respondent's website, www.parkerfortexas.com (the site has since been disabled). Registration documents for the site list the respondent as the registrant of the website. The registrar of the website is an entity listed as a payee in the respondent's campaign finance reports for expenditures for "website domain renewal." The complaint contains a screenshot from the website, which is dated November 15, 2011. The page in the screen shot contains the text "Republican Greg Parker – Protecting Texans – Protecting Texas Energy." The page also contains a "donate now" button and factual information about the Railroad Commission.
13. The respondent's January 2012 semiannual campaign finance report filed with the Ethics Commission disclosed \$53,674.28 in itemized contributions accepted before he filed a treasurer appointment with the Ethics Commission. The contributions pre-dating the treasurer appointment include six in-kind contributions totaling \$12,000 for "campaign communication services" beginning July 1, 2011, an in-kind contribution valued at \$364.28 for "cost to host meet and greet at Austin Club" on September 28, 2011, an in-kind contribution valued at \$20,000 for "video production services," four in-kind contributions totaling \$7,000 for "consulting," and three in-kind contributions totaling \$3,000 for "photography." The report disclosed \$5,649.90 in expenditures made before the treasurer appointment was filed with the commission with descriptions such as "marketing services," "campaign website fee," "email advertising," "sign binding," "website domain renewal," "consultant services," "ad space," and "political push card printing." The respondent also disclosed \$1,663.55 in expenditures for fuel, lodging, food, and airline tickets to payees located outside Comal County prior to the date he filed his treasurer appointment with the commission. The category "Travel in District" was disclosed for virtually all of the expenditures.
14. In his response, which was dated January 9, 2012, the respondent stated:

"While I have spoken privately to a number of individuals about my desire to seek the office of Railroad Commissioner, I did not state in any public meeting or press release which is the standard, that I was a candidate for any particular office, during the time of this complaint. Further, given the myriad of possibilities with redistricting it was more than possible for me to seek election for my current seat as county commissioner. Also, with the filling [sic] period being reopened by the state political parties, I can still seek election for my current seat as county commissioner."

15. The respondent also stated that his own website had only one reference to the Railroad Commission and argued that providing information on the function of a government agency does not constitute a statement of candidacy.
16. The respondent cited a Texas Supreme Court case and several attorney general opinions to support his argument that in order to become a candidate, he must make an unambiguous statement of candidacy. The authority cited by the respondent interprets provisions of the Texas Constitution addressing eligibility for legislative office (art. III, §19) and automatic resignation of office (art. XVI, §65). The respondent further stated that because he never made an unambiguous statement of candidacy, section 251.001 of the Election Code does not apply. The opinion he attached to support this argument, GA-0769, interprets the constitution's "resign-to-run" provision, and also contains a footnote that states that section 251.001 of the Election Code expressly defines terms for purposes of title 15 of the Election Code.

Disclosing Political Contributions

17. The complaint alleged that the respondent did not disclose political contributions on his January 2010 semiannual campaign finance report. The complaint includes an affidavit from an individual who swore that the respondent solicited a campaign contribution from him on August 31, 2009. He swore that on or about September 29, 2009, he donated to the respondent's campaign for railroad commissioner through the respondent's website and also purchased some campaign promotional items which stated "I Support Greg Parker-Republican for Railroad Commissioner-www.parkerfortexas.com." The complaint includes photographs of the items, a receipt of the affiant's purchase dated September 29, 2009, and a letter from Texans for Greg Parker dated September 29, 2009, thanking the affiant for his contribution.
18. Texans for Greg Parker was a specific-purpose committee that filed locally in Comal County and filed a dissolution affidavit on January 18, 2010. The respondent was not the treasurer for the committee. The respondent's campaign finance report covering the report at issue did not disclose any political contributions accepted during the reporting period. The committee's report for the same reporting period disclosed one contribution from the affiant accepted on September 29, 2009.

Political Advertising Disclosure Statement

19. The complaint alleged that the respondent's campaign website contained an insufficient political advertising disclosure statement. The evidence submitted with the complaint indicates the disclaimer at the bottom of the website stated "Paid for by Greg Parker Campaign" as of November 15, 2011. The complaint alleged the statement is insufficient because the statement did not include an indication that advertisement was political

advertising and because “Greg Parker Campaign” is not the name of a registered political committee. The website has since been disabled.

20. The site contained the text “Republican Greg Parker – Protecting Texans – Protecting Texas Energy.” The page also contained a “donate now” button and factual information about the Railroad Commission.
21. In his response, the respondent does not address this allegation, but admits to having control over the website.

IV. Findings and Conclusions of Law

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

Campaign Treasurer Appointment

1. Each candidate shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. ELEC. CODE § 252.001.
2. An individual must file a campaign treasurer appointment for the individual’s own candidacy with the commission, if the appointment is made for candidacy for a statewide office. *Id.* § 252.005(1)(A).
3. If a candidate who has filed a campaign treasurer appointment decides to seek a different office that would require the appointment to be filed with another authority, a copy of the appointment certified by the authority with whom it was originally filed must be filed with the other authority in addition to the new campaign treasurer appointment. The original appointment terminates on the filing of the copy with the appropriate authority or on the 10th day after the date the decision to seek a different office is made, whichever is earlier. *Id.* § 252.010.
4. 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. *Id.* § 253.031(a).
5. “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: (1) 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; (2) before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication; and (3) the soliciting

- or accepting of a campaign contribution or the making of a campaign expenditure. *Id.* § 251.001(1).
6. With regard to the 2010 election, there is evidence that the respondent was soliciting contributions as a candidate for railroad commissioner in August and September of 2009. The respondent never filed a campaign treasurer appointment with the commission regarding this election.
 7. With regard to the 2012 election, the respondent participated in fundraising and meet and greet events as a potential candidate for railroad commissioner before he filed a campaign treasurer appointment with the commission, which is the appropriate filing authority for that office. There is also evidence the respondent accepted in-kind contributions and made expenditures for campaign materials, fundraising functions, and travel in connection with his candidacy for railroad commissioner before filing a treasurer appointment with the commission. The travel was disclosed as in district travel. His county commissioner district is in Comal County. The district for railroad commissioner would be statewide. These are affirmative actions for the purpose of gaining nomination or election to public office. Therefore, the respondent was a candidate for railroad commissioner and was required to file a campaign treasurer appointment with the commission in 2009 and 2011. The respondent did not file a treasurer appointment with the commission until December 15, 2011. Therefore, there is credible evidence of a violation of sections 252.001, 252.005, and 252.010 of the Election Code.
 8. Based on the sworn statements provided with the complaint, there is evidence the respondent took affirmative action as a candidate in the 2010 election as early as August 31, 2009. Therefore, his treasurer appointment filed with the county was terminated by September 10, 2009, and he did not have a treasurer appointment in effect until he filed one with the county on April 11, 2011. During the period between September 10, 2009, and April 11, 2011, any political contribution accepted or political expenditure made was done so without a treasurer appointment in effect (however, because of the statute of limitations, only the period between December 7, 2009, and April 11, 2011, may be considered). The respondent did not file July 2010 or January 2011 semiannual campaign finance reports, which would have covered the period from January 1, 2010, to December 31, 2010; there is no detailed activity disclosed during the relevant period on the respondent's January 2010 semiannual report; and there is no other evidence of contributions or expenditures during the period at issue. Therefore, there is insufficient evidence of a violation of section 253.031 of the Election Code with regard to the period between December 7, 2009, and April 11, 2011.
 9. The respondent's July 2011 and January 2012 campaign finance reports disclosed political contributions accepted and political expenditures made prior to the campaign treasurer appointment filed on December 15, 2011, with the commission. While the respondent did file a treasurer appointment with the county on April 11, 2011, his campaign finance reports indicate he accepted in-kind contributions related to his 2012 campaign for railroad commissioner as early as July 1, 2011, if not earlier. Therefore, his treasurer appointment

was terminated with the county by July 11, 2011, and he was without a treasurer appointment until he filed one with the commission on December 15, 2011. Therefore, there is credible evidence of a violation of section 253.031 of the Election Code with regard to the period between July 11, 2011, and December 15, 2011.

Disclosing Political Contributions

10. Except as otherwise provided by this chapter, each report filed under this chapter must include the amount of political contributions from each person that in the aggregate exceed \$50 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. ELEC. CODE § 254.031(a)(1).
11. While there is evidence that a contribution was made by the affiant during the reporting period for the January 2010 semiannual campaign finance report for reporting purposes, there is insufficient evidence that a contribution was made to the respondent as opposed to the respondent's political committee. Therefore, there is insufficient evidence of a violation of section 254.031(a)(1) of the Election Code.

Political Advertising Disclosure Statement

12. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising, and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001(a). Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy. ELEC. CODE § 255.001(b).
13. Political advertising means, in pertinent part, a communication supporting or opposing a candidate for election to a public office that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication, or on an Internet website. *Id.* § 251.001(16).
14. The advertising at issue appears to have been authorized by the respondent and supported the respondent as a candidate for public office. Therefore, it was political advertising on which a political advertising disclosure statement was required. The website contained a disclosure statement that disclosed the full name of the person who paid for the advertising, but did not indicate that the advertising was political advertising. However from the text of the website, it was readily apparent that the advertising at issue was political advertising. Consequently, there is credible evidence of a technical or *de minimis* violation of section 255.001 of the 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 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 candidate shall appoint a campaign treasurer as provided by chapter 252 of the Election Code; 2) an individual must file a campaign treasurer appointment for the individual's own candidacy with the commission, if the appointment is made for candidacy for a statewide office; 3) if a candidate who has filed a campaign treasurer appointment decides to seek a different office that would require the appointment to be filed with another authority, a copy of the appointment certified by the authority with whom it was originally filed must be filed with the other authority in addition to the new campaign treasurer appointment; the original appointment terminates on the filing of the copy with the appropriate authority or on the 10th day after the date the decision to seek a different office is made, whichever is earlier; 4) 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; and 5) a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising, and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. 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 Sections III and IV, and after considering the sanction necessary to deter future violations, the commission imposes a \$600 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-31112268.

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

Gregory Parker, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director