

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BUCK WERNER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-290466 AND SC-2905120

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 11, 2010, to consider sworn complaints SC-290466 and SC-2905120. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.001, 253.031(a), 254.064(b), and 254.064(c) of the Election Code, and credible evidence of a technical or *de minimis* violation of section 255.006(b) of the Election Code, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaints alleged that the respondent: (1) failed to appoint a campaign treasurer and knowingly accepted campaign contributions and made or authorized campaign expenditures at a time when a campaign treasurer appointment was not in effect; (2) failed to timely file 30-day and 8-day pre-election reports for the May 9, 2009, election; and (3) knowingly represented on his campaign website that he held a public office that he did not hold at the time the representation was made.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for Duncanville City Council in the May 2009 election.
2. Sworn complaint SC-290466 included four pages from the respondent's Internet campaign website that were printed on April 13, 2009. The website address was www.wernerforcitycouncil.com. The website included the respondent's biographical information and proclaimed qualifications, as well as a request for campaign support. Each page of the website included a political advertising disclosure statement that read in part,

- “Paid for by Buck Werner for Duncanville City Council At-Large.” The website’s masthead included the name of the public office the respondent sought but did not include the word “for.” The respondent added the word “for” to the website’s masthead after sworn complaint SC-290466 was filed.
3. The local filing authority provided copies of the respondent’s campaign treasurer appointment, campaign finance reports, and application for a place on the ballot, filed on February 27, 2009.
 4. On May 7, 2009, the respondent filed a campaign treasurer appointment that listed the office sought as city council. The document indicated it was signed on February 25, 2009, and the respondent did not elect modified reporting.
 5. On May 7, 2009, the respondent filed a 30-day pre-election report for the May 2009 election that disclosed no political contributions, no political expenditures, and no political contributions maintained as of the last day of the reporting period.
 6. On May 7, 2009, the respondent filed an 8-day pre-election report for the May 2009 election that disclosed no unitemized political contributions, \$1,365.22 in total political contributions, no unitemized political expenditures, \$966.93 in total political expenditures, and \$398.29 in total political contributions maintained as of the last day of the reporting period. Schedule A (used for reporting political contributions) disclosed two political contributions totaling approximately \$750. Schedule F (used for reporting political expenditures) disclosed a political expenditure of \$376.71 for the purpose of “signs.” Schedule G (used for reporting political expenditures from personal funds) disclosed two political expenditures totaling approximately \$590 for the purpose of “campaign material” and indicated that the respondent intended to seek reimbursement from political contributions for both expenditures.
 7. In response to the complaints, the respondent submitted an affidavit in which he swore that he filed his campaign treasurer appointment and pre-election reports with the local filing authority. The respondent also included an updated printout from his campaign website that included the word “for” before the name of the office sought on the website’s masthead.
 8. The Ethics Commission staff contacted the respondent regarding the discrepancy between the amount of political contributions disclosed on Schedule A of his 8-day pre-election report and the total amount of political contributions disclosed on the report’s cover page. The respondent said he would look into the discrepancy in the amount of total political contributions on the 8-day pre-election report.
 9. To date, the respondent has not filed any corrected reports.

IV. Findings and Conclusions of Law

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

Campaign Treasurer Appointment

1. “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. ELEC. CODE § 251.001(1).
2. Each candidate shall appoint a campaign treasurer as provided by this chapter. *Id.* § 252.001.
3. A candidate for city council is required to file a campaign treasurer appointment with the clerk or secretary of the governing body of the political subdivision or, if the political subdivision has no clerk or secretary, with the governing body’s presiding officer. *Id.* § 252.005(3).
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. The respondent filed a campaign treasurer appointment in connection with his candidacy for city council on May 7, 2009 (after sworn complaint SC-290466 was filed). The respondent’s 8-day pre-election report for the May 2009 election disclosed that the respondent accepted political contributions totaling at least \$750 and made political expenditures totaling \$966.93 prior to the date he filed his campaign treasurer appointment. Additionally, the respondent filed his application for a place on the ballot in February 2009 and maintained a campaign website in April 2009. Thus, the respondent accepted campaign contributions and made campaign expenditures at a time when he did not have a campaign treasurer appointment in effect. Therefore, there is credible evidence of violations of sections 252.001 and 253.031(a) of the Election Code.

Pre-Election Campaign Finance Reports

6. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. *Id.* § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate’s campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b). The

second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.064(c).

7. The respondent filed his 30-day and 8-day pre-election reports for the May 9, 2009, election on May 7, 2009 (after sworn complaint SC-290466 was filed). The reports were due on April 9, 2009, and May 1, 2009, respectively. Therefore, there is credible evidence of violations of sections 254.064(b) and 254.064(c) of the Election Code.

Use of Office Title

8. “Campaign communication” means, in pertinent part, a written or oral communication relating to a campaign for nomination or election to public office. *Id.* § 251.001(17).
9. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. *Id.* § 255.006(b). A person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks, and the political advertising or campaign communication states the public office sought but does not include the word “for” in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. *Id.* § 255.006(c).
10. Ethics Advisory Opinion No. 385 indicates that while the word “for” is required, it is not necessarily required in every instance in which the candidate’s name is linked to the office sought within the same campaign communication. Ethics Advisory Opinion No. 385 (1997).
11. The respondent’s campaign website supported his candidacy for city council. Thus, the website was a campaign communication. The website’s masthead included the name of the public office sought but did not include the word “for” until after sworn complaint SC-290466 was filed. However, the website address and the political advertising disclosure statement on the website did include the word “for.” Therefore, there is credible evidence of a technical or *de minimis* violation of section 255.006(b) 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 these sworn complaints.

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 each candidate shall appoint a campaign treasurer. The respondent acknowledges that 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. The respondent acknowledges that, in addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports: the first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day and covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through the 40th day before election day; the second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day and covers the period beginning the 39th day before election day and continuing through the 10th day before election day. The respondent acknowledges that a person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. 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 a \$300 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-290466 and SC-2905120.

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

Buck Werner, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director