

TEXAS ETHICS COMMISSION

IN THE MATTER OF

CHARLES RICHARD WHITEHURST,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2906142

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaint SC-2906142. 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. Allegation

The complaint alleged that the respondent accepted political contributions and made political expenditures over \$500 without filing a campaign treasurer appointment.

III. Facts Supported by Credible Evidence

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

1. The respondent was a former director and treasurer of the Benbrook Economic Development Corporation (EDC), located in Benbrook, Texas. The City of Benbrook, Texas, held an election on May 9, 2009, in which the office of mayor and four city council offices were up for election. The respondent was a candidate for mayor in that election, but he withdrew his candidacy.
2. The complaint alleged that the respondent accepted and spent over \$500 for a political committee to purchase newspaper advertisements that supported and opposed city council candidates in the election without filing a campaign treasurer appointment. The three advertisements at issue were published from April 23, 2009, to May 7, 2009, in the *Benbrook News*, local weekly newspaper that circulated in Benbrook.
3. The advertisements at issue discussed decisions and members of the Benbrook city council, the EDC, and the election held on May 9, 2009. The advertisements included such statements as, "pol. adv. pd. for by Citizens For A Better Benbrook," "pol. ad paid for by

citizensforbetterbenbrook, Rick Whitehurst, treasurer,” and “Political ad paid for by Rick Whitehurst.”

4. In response to the allegations, the respondent swore, in pertinent part:

Citizens for a Better Benbrook is not a group, but an individual; namely, Rick Whitehurst. I used that name for my letters to the editor because, as best I recall, I was told by the newspaper that I could not publish a letter to the editor without doing so under some sort of organizational name. That is what led to putting the name Citizens for Better Benbrook on the letters, but I made an effort to have my individual name printed on as many of them as possible as well. In total I spent less than \$3,000.00 on these letters to the editor which addressed numerous issues of concern to the citizens of Benbrook, including the city council races. At the time I did so, I was not aware of any committee or individual reporting requirements concerning my letters to the editor. I assure you I did not knowingly violate any Texas Ethics Commission reporting or other requirement. I believed that I had the right to purchase letters individually under the First Amendment, and apologize if I was wrong in this regard. Within the last week, I received most if not all of the credit card statements for my payments for these letters to the editor. Those statements confirmed I spent \$1,520.00 on all my letters to the editor and I spent no other money on any other medium to voice my views on the above issues. Many of the expenditures I made were less than \$100.00.

...

Citizens for a Better Benbrook is not a group, but an individual; namely Rick Whitehurst. I used exclusively my personal monies to purchase letters to the editor to express individual opinions concerning issues of concern to the citizens of Benbrook. In exercising my rights as an individual in this regard, I did not raise or accept any funds or accept any political contributions with regard to the letters to the editor cited by the complainant. ...

5. The respondent submitted a copy of a campaign finance report for a specific-purpose committee, filed on June 11, 2009. The space of the report for the committee name stated, “Has no,” “None,” “Citizens for Better Benbrook,” and “Not a PAC or [illegible].” The respondent was disclosed as the campaign treasurer. The cover sheet did not disclose a period of time covered by the report. The report disclosed no political contributions and “\$1,500+-” as the principal amount of all outstanding loans. The space for the total amounts of political expenditures was blank. The respondent also filed a correction to the report on June 11, 2009, in which the amount of outstanding loans was crossed out and the amount of political contributions maintained as of the last day of the reporting period was corrected to \$1,520. On or about November 18, 2009, the respondent corrected the report by disclosing the amount of total political expenditures as \$1,520 and itemizing the expenditures. According to the report, all of the expenditures were made to Benbrook News for “paid letter to editor.” Approximately \$585 in expenditures were made by April 23, 2009, and the

remaining approximate \$935 in expenditures were made between April 30, 2009, and June 11, 2009.

IV. Findings and Conclusions of Law

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

1. A political committee may not knowingly accept political contributions totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. ELEC. CODE § 253.031(b).
2. “Political committee” means a group of persons that has as a principal purpose accepting political contributions or making political expenditures. *Id.* § 251.001(12).
3. A political contribution includes a campaign contribution. *Id.* § 251.001(5). A campaign contribution means, in pertinent part, a contribution that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3). A contribution means, in pertinent part, a direct or indirect transfer of money and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2).
4. A political committee may not knowingly make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. *Id.* § 253.031(b). A general-purpose committee may not make or authorize political expenditures totaling more than \$500 unless the committee has filed its campaign treasurer appointment not later than the 60th day before the date the expenditure is made that causes the total expenditures to exceed \$500, and accepted political contributions from at least 10 persons. *Id.* § 253.037(a); Ethics Advisory Opinion No. 161 (1993).
5. A political expenditure includes a campaign expenditure. ELEC. CODE § 251.001(10). A campaign expenditure means, in pertinent part, an expenditure made by any person in connection with a campaign for an elective office. *Id.* § 251.001(7). An 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. *Id.* § 251.001(6).
6. Except as otherwise provided by law, 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 complies with Chapter 254 as if the individual were a campaign treasurer of a political committee and the individual receives no reimbursement for the expenditures. *Id.* § 253.062(a). A campaign treasurer of a specific-purpose committee is required to file a campaign finance report no later than the 30th day before election day and an additional report no later than the eighth day before election day. *Id.* § 254.124.

7. Some of the newspaper advertisements at issue in the complaint stated that they were political advertisements paid for by either “Citizens For A Better Benbrook,” “citizensforbetterbenbrook, Rick Whitehurst, treasurer.” The respondent’s sworn statements and campaign finance reports indicate that he purchased the advertisements as an individual with his personal funds and that the disclosure statements in the advertisements were included at the request of the newspaper. Thus, the evidence indicates that the respondent was not accepting political contributions or making political expenditures for a political committee when he purchased the advertisements. Therefore, there is credible evidence that the respondent did not violate section 253.031 of the Election Code.
8. There is also evidence that, prior to the election, the respondent was a candidate for mayor and that he was also a candidate in an unspecified Benbrook election in 2012. Based on the respondent’s specific-purpose committee campaign finance reports and sworn statements, the respondent made \$1,520 in political expenditures in connection with the advertisements. The evidence also indicates that the respondent’s expenditures in connection with the advertisements exceeded \$100 no later than April 23, 2009. Thus, the respondent was required to file a campaign finance report as if he were a campaign treasurer of a specific-purpose committee no later than May 1, 2009, which the respondent failed to do. Therefore, there is credible evidence that the respondent violated section 253.062(a) 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 except as otherwise provided by law, 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 complies with Chapter 254 as if the individual were a campaign treasurer of a political committee and the individual receives no reimbursement for the expenditures, and that a campaign treasurer of a specific-purpose committee is required to file a campaign finance report no later than the 30th day before election day and an additional report no later than the eighth day before election day. The respondent agrees to comply with these requirements 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 \$200 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-2906142.

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

Charles Richard Whitehurst, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director