

TEXAS ETHICS COMMISSION

IN THE MATTER OF
STEVE FLOWERS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31506132

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on October 13, 2016, to consider sworn complaint SC-31506132. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.031, 254.036, 255.001, and 255.007 of the Election Code and technical or *de minimis* violations of section 254.031 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 disclose political contributions and political expenditures; 2) did not file a 30-day pre-election report, or in the alternative, exceeded the \$500 political expenditure and/or contribution threshold after the filing deadline for the 30-day pre-election report, but did not file a campaign finance report 48 hours after exceeding the threshold; 3) filed a campaign finance report that was not accompanied by the affidavit executed by the person required to file the report; 4) filed a campaign finance report in a format that was not prescribed by the Commission; 5) did not include a disclosure statement on political advertising; and 6) did not include the highway right-of-way notice on political advertising.

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 Alderman of Dalworthington Gardens in the May 9, 2015, election.

Disclosure of Political Contributions and Political Expenditures

2. The complaint alleged that the respondent did not report or did not properly report political contributions and political expenditures. Moreover, the complaint alleged that the

respondent did not indicate whether the political expenditures were made from political contributions or personal funds.

3. On April 29, 2015, the respondent sent an email to the city administrator of Dalworthington Gardens that contained his exceeded \$500/8-day pre-election report before the May 9, 2015, election. The respondent's report included a single-page Schedule F (used to disclose political expenditures made from political contributions) and three invoices/receipts from vendors. The respondent disclosed in the report making three political expenditures of \$294.33 on April 2, 2015, \$180.43 on April 9, 2015, and \$569.40 on April 17, 2015.
4. On April 30, 2015, the respondent also faxed a copy of his exceeded \$500/8-day pre-election report to the Commission. The Commission notified the respondent that his report did not include the two required cover sheet pages that are used to disclose political contributions of \$50 or less, principal amount of outstanding loans, political expenditures of \$100 or less, total political contributions and political expenditures, and total political contributions maintained. On May 1, 2015, the respondent sent another email to the Dalworthington Gardens's city administrator stating that the Commission said his report "looks fine" and that the two cover sheet pages of the report "had been delivered" to her previously. However, there is no evidence that the two pages of the cover sheet were filed with the city administrator.
5. In response to the complaint, the respondent stated that he interpreted the city administrator's response of "Thank you" to the email dated May 1, 2015, as "meaning that everything was in order." The respondent also stated that he did not accept contributions and he disclosed all of the political expenditures he made. In response to written questions submitted to the respondent by the Commission, the respondent stated that the political expenditure made on April 2, 2015, for \$294.33 was paid for with another individual's personal funds, and the individual was later reimbursed from the respondent's personal funds.
6. Also in response to the Commission's written questions, the respondent stated that two political expenditures totaling \$749.83 were paid for with funds from a business entity that the respondent owns.

30-day Pre-Election or Exceeded \$500 Report

7. The complaint alleged that the respondent did not file a 30-day pre-election report before the May 9, 2015, election, or in the alternative, exceeded the \$500 political expenditure and/or contribution threshold after the filing deadline for the 30-day pre-election report, but did not file a campaign finance report 48 hours after exceeding the threshold. On April 6, 2015, the respondent filed a second campaign treasurer appointment and elected to file on the modified reporting schedule for the 2015 election cycle. The respondent had an opponent whose name appeared on the ballot in the May 9, 2015, election at issue.

8. The reporting periods for the 30-day and 8-day pre-election reports before the May 9, 2015, election were January 1, 2015, through March 30, 2015, and March 31, 2015, through April 29, 2015, respectively. The respondent reported, on Schedule F, making three political expenditures of \$294.33 on April 2, 2015, \$180.43 on April 9, 2015, and \$569.40 on April 17, 2015, in his report filed on April 29, 2015.
9. In response to the complaint and to written questions submitted to the respondent by the Commission, the respondent swore that his political contributions and political expenditures were under the \$500 threshold 30 days prior to the May 9, 2015, election. The respondent further stated that although the invoice for the \$569.40 political expenditure for his campaign flyers was dated April 17, 2015, he was not aware of the amount of the expenditure because he was out of town and the invoice was sent to his place of business. In addition, the respondent stated that he uses the printer regularly for his business and trusts the printer to charge him fairly, so the printer did not give him an estimate of the cost for printing of the flyers on the day he ordered them. The respondent also stated that on April 28, 2015, a staff member of his business emailed the invoice to him and on April 29, 2015, the respondent notified the Dalworthington Gardens's city administrator, by email, that he had exceeded \$500. The respondent submitted the email dated April 29, 2015, which was sent to the city administrator and showed a document entitled "Schedule F – Updated.pdf" was attached to the email. Lastly, the respondent stated in his response that:

Once I became aware of [sic] existence of the April 17, 2015 [i]nvoice on April 28, 2015, I immediately took action to report my political expenditures and the fact that I had exceeded the \$500 limitation. I believe that these actions were taken with [sic] the required 48 hour requirement.

Report Format and Affidavit

10. The complaint alleged that the respondent did not file a report in the proper format when he filed a single-page Schedule F and three invoices/receipts from vendors as his exceeded \$500/8-day pre-election report before the May 9, 2015, election. The complaint also alleged that the respondent's exceeded \$500/8-day pre-election report did not include the respondent's affirmation or signature, or the signature of an officer administering the oath.
11. In response to the allegation regarding the report's format, the respondent stated that he reported "the required information regarding campaign finance reports; it just was not in proper format." In response to the allegation regarding the report's affidavit, the respondent stated that he relied on information and guidance from the city administrator, and she did not inform him that the report must be accompanied by an executed affidavit.

Disclosure Statement and Highway Right-of-Way Notice on Political Advertising

12. The complaint alleged that the respondent did not include a political advertising disclosure statement on his campaign yard sign, a picture of which was included in the complaint. The complaint also alleged that the respondent did not include the highway right-of-way notice on the campaign yard sign at issue. The yard sign at issue reads:

Vote Steve
Flowers
for the Gardens
DWG City Council

The picture of the yard sign that was included in the complaint indicates that the sign did not contain a political advertising disclosure statement and a highway right-of-way notice.

13. In response to the complaint, the respondent admitted to not including the political advertising disclosure statement and the highway right-of-way notice on his campaign yard sign. The respondent stated that the omission of the disclosure and highway right-of-way notice was not done intentionally or purposefully, but rather it occurred because he did not have knowledge of the requirement.

IV. Findings and Conclusions of Law

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

Disclosure of Political Contributions and Political Expenditures

1. 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).
2. Each report filed under this chapter must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. *Id.* § 254.031(a)(2).

3. Each report filed under this chapter must include the amount of political expenditures that in the aggregate exceed \$100 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. *Id.* § 254.031(a)(3).
4. Each report filed under this chapter must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$100 or less made during the reporting period. *Id.* § 254.031(a)(5).
5. Each report filed under this chapter must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).
6. Each report filed under this chapter 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. *Id.* § 254.031(a)(8).
7. The respondent disclosed in his exceeded \$500/8-day pre-election report before the May 9, 2015, election, three political expenditures on Schedule F. However, one of the political expenditures was made from his personal funds, so it should have been disclosed on Schedule G (used to disclose political expenditures made from personal funds). Also, the respondent paid for political expenditures using funds from his business entity and should have disclosed the activity as in-kind political contributions from this business entity on Schedule A (used to disclose political contributions, currently Schedule A2 is used for non-monetary political contributions). Lastly, the respondent did not include the two required cover sheet pages of the pre-election report, so he did not disclose the total amount of political contributions of \$50 or less, total amount of political expenditures of \$100 or less, principal amount of outstanding loans, total political contributions, total political expenditures, and total political contributions maintained. Credible evidence indicates that the actual amounts for political contributions of \$50 or less, political expenditures of \$100 or less, principal amount of outstanding loans, and total political contributions maintained were \$0. Therefore, there is credible evidence of technical or *de minimis* violations of sections 254.031(a)(2), 254.031(a)(5), and 254.031(a)(8) of the Election Code. Also, there is credible evidence that the respondent did not disclose or properly disclose political contributions that exceeded \$50, political expenditures that exceeded \$100, total amount of political contributions, and total amount of political expenditures. Therefore, there is credible evidence of violations of sections 254.031(a)(1), 254.031(a)(3), and 254.031(a)(6) of the Election Code.

30-day Pre-Election or Exceeded \$500 Report

8. 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. ELEC. CODE § 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).
9. An opposed candidate or specific-purpose committee required to file reports under Subchapter C or E may file a report under this subchapter instead if the candidate or committee does not intend to accept political contributions that in the aggregate exceed \$500 or to make political expenditures that in the aggregate exceed \$500 in connection with the election. *Id.* § 254.181(a).
10. An opposed candidate or specific-purpose committee that exceeds \$500 in political contributions or political expenditures in the election shall file reports as required by Subchapter C or E, as applicable. *Id.* § 254.183(a).
11. If a candidate or committee exceeds the \$500 maximum after the filing deadline prescribed by Subchapter C or E for the first report required to be filed under the appropriate subchapter, the candidate or committee shall file a report not later than 48 hours after the maximum is exceeded. *Id.* § 254.183(b).
12. The date of a political expenditure is the date the amount is readily determinable by the person making the expenditure, except as provided by subsection (b) of this section. Ethics Commission Rules § 20.57(a). If under normal business practices, the amount of an expenditure is not known or readily ascertainable until receipt of a periodic bill, the date of the expenditure is the date the bill is received. Examples of expenditures to which this subsection is applicable are expenditures for use of electricity or for long-distance telephone calls. *Id.* § 20.57(b).
13. The respondent was an opposed candidate in the May 9, 2015, election. However, the respondent chose modified reporting for the 2015 election cycle and was not required to file a 30-day or 8-day pre-election report unless he exceeded \$500 in political contributions or political expenditures. On April 17, 2015, the respondent ordered campaign flyers from a printer, but the evidence indicates that the amount of the political expenditure was not readily

ascertainable until he received the invoice from the printer on April 28, 2015. The campaign flyers cost \$569.40, and therefore, this political expenditure caused the respondent to exceed the \$500 threshold for modified reporting on April 28, 2015. Since the threshold was exceeded after the filing deadline for the 30-day pre-election report before the May 9, 2015, election, the respondent was required to file a campaign finance report after exceeding the \$500 threshold by April 30, 2015. The respondent sent his campaign finance report to the local filing authority, by email, on April 29, 2015. Thus, the respondent was not required to file a 30-day pre-election report prior to the May 9, 2015, election, and the respondent filed a campaign finance report after he exceeded the \$500 threshold within the 48 hour deadline. Therefore, there is credible evidence of no violation of sections 254.064(b) or 254.183(b) of the Election Code.

Report Format and Affidavit

14. Each report filed under this chapter with an authority other than the Commission must be in a format prescribed by the Commission. ELEC. CODE § 254.036(a).
15. Each report filed under this chapter that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: “I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code.” Each report filed under this chapter by electronic transfer must be under oath by the person required to file the report and must contain, in compliance with Commission specifications, the digitized signature of the person required to file the report. A report filed under this chapter is considered to be under oath by the person required to file the report, and the person is subject to prosecution under Chapter 37, Penal Code, regardless of the absence of or a defect in the affidavit. *Id.* § 254.036(h).
16. The respondent filed with the Dalworthington Gardens’s city administrator a single-page of Schedule F and three invoices/receipts from vendors as his exceeded \$500/8-day pre-election report before the May 9, 2015, election. Credible evidence indicates that the respondent did not file the required two-page cover sheet of the report that contained the required affidavit. There is credible evidence that the respondent did not file the exceeded \$500/8-day pre-election report in the proper format prescribed by the Commission or the required affidavit in violation of sections 254.036(a) and 254.036(h) of the Election Code.

Disclosure Statement and Highway Right-of-Way Notice on Political Advertising

17. 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.

18. The following notice must be written on each political advertising sign:

“NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY.”

Id. § 255.007(a). A person commits an offense if the person: 1) knowingly enters into a contract to print or make a political advertising sign that does not contain the notice required by subsection (a); or 2) instructs another person to place a political advertising sign that does not contain the notice required by subsection (a). *Id.* § 255.007(b). Under section 255.007 of the Election Code, “political advertising sign” means a written form of political advertising designed to be seen from a road but does not include a bumper sticker. *Id.* § 255.007(e).

19. “Political advertising” includes a communication supporting or opposing a candidate for nomination or election to a public office that appears on an Internet website. *Id.* § 251.001(16). “Campaign communication” includes a written communication relating to a campaign for nomination or election to public office. *Id.* § 251.001(17).
20. The respondent’s campaign yard sign is a communication supporting the respondent for election to the Dalworthington Gardens’s city council and thus, is political advertising. Additionally, the sign was designed to be seen from a road. The respondent did not include the political advertising disclosure statement and the highway right-of-way notice on the campaign yard sign at issue. Therefore, there is credible evidence of violations of sections 255.001 and 255.007 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 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 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; 2) each report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period; 3) each report must include the amount of political expenditures that in the aggregate exceed \$100 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; 4) each report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$100 or less made during the reporting period; 5) each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; 6) each 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; 7) each report filed with an authority other than the Commission must be in a format prescribed by the Commission; 8) each report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code;" 9) 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; and 10) the following notice must be written on each political advertising sign: "NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY." A person commits an offense if the person knowingly enters into a contract to print or make a political advertising sign that does not contain the notice required by section 255.007(a) of the Election Code or instructs another person to place a political advertising sign that does not contain the notice required by section 255.007(a) of the Election Code.

The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes certain 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 \$250 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 sworn complaint SC-31506132.

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

Steve Flowers, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director