

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
ROBERT BARNARD,	§	
CAMPAIGN TREASURER,	§	TEXAS ETHICS COMMISSION
HOUSTON POLICE RETIRED	§	
OFFICERS ASSOCIATION – P.A.C.,	§	
	§	SC-31310207
RESPONDENT	§	

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on April 16, 2015, to consider sworn complaint SC-31310207. A quorum of the Commission was present. Respondent did not appear but was represented by counsel. The Commission determined that there is credible evidence of violations of sections 254.031, 254.151, and 254.156 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 or did not itemize political and non-political expenditures from political contributions on multiple campaign finance reports; 2) did not properly disclose total political contributions maintained on multiple campaign finance reports; 3) did not disclose the full names of contributors; 4) did not disclose the candidates, or classification by party of candidates, supported or opposed by the committee; and 5) did not disclose the principal occupation of a contributor.

III. Facts Supported by Credible Evidence

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

1. The respondent is the campaign treasurer for Houston Police Retired Officers Association - P.A.C. (HPRO-PAC), a general-purpose political committee that files monthly.

Disclosure of Political and Non-Political Expenditures from Political Contributions

2. The complaint alleged that the respondent did not disclose or did not itemize political expenditures on HPRO-PAC's 24 monthly reports filed between November 2011 and October 2013.
3. The respondent's counsel acknowledged that the respondent did not disclose or itemize political expenditures properly in the reports in question in the complaint.
4. The respondent did not itemize any expenditures on any of the reports at issue.
5. In response to the complaint, the respondent filed corrections for 17 of the reports at issue that itemized approximately \$39,582 in previously undisclosed expenditures and approximately \$19,113 in previously unitemized expenditures. The 17 corrected reports were the November 2011, February 2012, April 2012, July 2012, and the 13 consecutive monthly reports from October 2012 through October 2013.
6. The respondent also provided copies of HPRO-PAC's bank statements for the periods covered by the reports at issue. Additionally, the respondent provided copies of approximately 100 checks issued by the committee during the periods covered by the reports at issue.
7. The committee's November 2011 report disclosed \$0 in total political expenditures. The corrected report itemized political expenditures totaling \$12,150.
8. The committee's February 2012 report disclosed \$500 in total political expenditures. The report did not itemize any expenditures. The corrected report itemized a \$500 political expenditure to a candidate and disclosed \$1,000 in total political expenditures.
9. The committee's March 2012 report disclosed \$17,227.34 in total political expenditures. The report did not itemize any expenditures. The respondent provided a copy of a check that showed that the committee made a \$250 expenditure to a candidate during the period covered by the March 2012 report. The respondent did not correct the report to disclose this expenditure.
10. The committee's April 2012 report disclosed \$500 in total political expenditures of \$10 or less. The report did not itemize any expenditures. The corrected report itemized a \$500 expenditure to a candidate and changed the total amount of political expenditures of \$10 or less to \$0.

11. The committee's July 2012 report disclosed \$0 in total political expenditures. The corrected report itemized political expenditures totaling \$19,250.
12. The committee's October 2012 report disclosed \$1,500 in total political expenditures. The report did not itemize any expenditures. The corrected report itemized political expenditures totaling \$1,500 and disclosed \$3,000 in total political expenditures.
13. The committee's November 2012 report disclosed \$2,500 in total political expenditures. The report did not itemize any expenditures. The corrected report itemized political expenditures totaling \$2,500 and disclosed \$5,000 in total political expenditures.
14. The committee's December 2012 report disclosed \$2,500 in total political expenditures. The report did not itemize any expenditures. The corrected report itemized political expenditures totaling \$2,500 and disclosed \$5,000 in total political expenditures.
15. The committee's January 2013 report disclosed \$3,500 in total political expenditures of \$10 or less. The report did not itemize any expenditures. The corrected report itemized political expenditures totaling \$3,500 and changed the total amount of political expenditures of \$10 or less to \$0.
16. The committee's February 2013 report disclosed \$500 in total political expenditures of \$10 or less. The report did not itemize any expenditures. The corrected report itemized a \$500 expenditure to a political committee and changed the total amount of political expenditures of \$10 or less to \$0.
17. The committee's March 2013 report disclosed \$6,403.20 in total political expenditures of \$10 or less. The report did not itemize any expenditures. The corrected report itemized expenditures (some of which were non-political) totaling \$6,382.20 and changed the total amount of total political expenditures of \$10 or less to \$0.
18. The committee's April 2013 report disclosed \$500 in total political expenditures of \$10 or less. The report did not itemize any expenditures. The corrected report itemized a \$500 political expenditure to a political committee and changed the total amount of political expenditures of \$10 or less to \$0.
19. The committee's May 2013 report disclosed \$750 in total political expenditures of \$10 or less. The report did not itemize any expenditures. The corrected report itemized expenditures (some of which were non-political) totaling \$3,808.15 and changed the total amount of political expenditures of \$10 or less to \$0.

20. The committee's June 2013 report disclosed \$500 in total political expenditures of \$10 or less. The report did not itemize any expenditures. The corrected report itemized a \$500 political expenditure to a political committee and changed the total amount of political expenditures of \$10 or less to \$0.
21. The committee's July 2013 report disclosed \$2,354.70 in total political expenditures of \$10 or less. The report did not itemize any expenditures. The corrected report itemized a \$500 expenditure to a political committee and changed the total amount of political expenditures of \$10 or less to \$0.
22. The committee's August 2013 report disclosed \$2,354.70 in total political expenditures of \$10 or less. The report did not itemize any expenditures. The corrected report itemized expenditures (some of which were non-political) totaling \$2,354.70 and changed the total amount of political expenditures of \$10 or less to \$0.
23. The committee's September 2013 report disclosed \$250 in total political expenditures of \$10 or less. The report did not itemize any expenditures. The corrected report itemized a \$250 expenditure to a candidate and changed the total amount of political expenditures of \$10 or less to \$0.
24. The committee's October 2013 report disclosed \$1,500 in total political expenditures of \$10 or less. The report did not itemize any expenditures. The corrected report itemized political expenditures totaling \$1,500 and changed the total amount of political expenditures of \$10 or less to \$0.
25. Three of the expenditures itemized on the corrected reports were made to the Houston Police Retired Officers Association, the committee's establishing corporation, to reimburse the corporation for expenses it accrued for the committee's lobbyists to reside in Austin during the 2013 legislative session. These expenditures totaled approximately \$6,565 and were itemized on Schedule F (used to report political expenditures) of the corrected March 2013, May 2013, and August 2013 reports.
26. The remaining expenditures, totaling approximately \$52,130, were made to various candidates' campaigns or to a general-purpose political committee. The expenditures ranged from \$200 to \$5,000.
27. Regarding the six reports at issue that the respondent did not correct (excluding the March 2012 report), there were no checks written during the periods covered. Those reports were the December 2011, January 2012, May 2012, June 2012, August 2012, and September 2012 reports.

Total Political Contributions Maintained

28. The complaint alleged that the respondent did not properly disclose total political contributions maintained on HPRO-PAC's 24 monthly reports filed between November 2011 and October 2013. In response to the complaint, the respondent provided copies of the committee's bank statements.
29. Regarding 10 of the reports at issue, the respondent disclosed total political contributions maintained that differed from the amounts shown in the bank statements by more than \$2,500. The total amount of the differences is approximately \$44,443.32. Regarding these reports, the original disclosures along with the amounts shown on the bank statements are as follows:
 - a. The committee's November 2011 report disclosed \$69,486.98 in total political contributions maintained. The bank statement showed a balance of approximately \$81,636 on the last day of the period. The difference is approximately \$12,000.
 - b. The committee's December 2011 report disclosed \$71,388.62 in total political contributions maintained. The bank statement showed a balance of approximately \$75,288.62 on the last day of the period. The difference is approximately \$3,900.
 - c. The committee's January 2012 report disclosed \$73,043.09 in total political contributions maintained. The bank statement showed a balance of approximately \$76,193.09 on the last day of the period. The difference is approximately \$3,000.
 - d. The committee's February 2012 report disclosed \$76,481.43 in total political contributions maintained. The bank statement showed a balance of approximately \$80,137.43 on the last day of the period. The difference is approximately \$3,650.
 - e. The committee's August 2012 report disclosed \$76,586.22 in total political contributions maintained. The bank statement showed a balance of approximately \$80,987.66 on the last day of the period. The difference is approximately \$4,400.
 - f. The committee's December 2012 report disclosed \$80,821.68 in total political contributions maintained. The bank statement showed a balance of approximately \$83,903.87 on the last day of the period. The difference is approximately \$3,080.
 - g. The committee's January 2013 report disclosed \$79,906.73 in total political contributions maintained. The bank statement showed a balance of approximately \$83,486.68 on the last day of the period. The difference is approximately \$3,580.

- h. The committee's February 2013 report disclosed \$80,077.73 in total political contributions maintained. The bank statement showed a balance of approximately \$83,262.73 on the last day of the period. The difference is approximately \$3,190.
 - i. The committee's May 2013 report disclosed \$84,591.31 in total political contributions maintained. The bank statement showed a balance of approximately \$88,649.46 on the last day of the period. The difference is approximately \$4,060.
 - j. The committee's July 2013 report disclosed \$87,255.72 in total political contributions maintained. The bank statement showed a balance of approximately \$90,537.29 on the last day of the period. The difference is approximately \$3,300.
30. Regarding 13 of the reports at issue, the respondent disclosed total political contributions maintained that differed from the amounts shown in the bank statements by less than \$2,500 and 10% of the amount originally disclosed.
31. Regarding the September 2013 report, the respondent disclosed total political contributions maintained that matched the amount shown on the bank statement.
32. The respondent did not correct any of the reports at issue to disclose the correct amount of total political contributions maintained.

Full Names of Contributors

33. The complaint alleged that the respondent did not disclose the full names of 34 contributors making political contributions totaling \$850 on 18 of HPRO-PAC's reports. The respondent disclosed the first names, middle initials, and last names of each contributor at issue.
34. In his response, the respondent stated that the names of these contributors were disclosed as initials because they had previously made contributions to the committee using checks that listed first and middle initials rather than full first names. Commission software stores the information of previous contributors. When a filer begins typing the last name of a recurring contributor, the Commission software attempts to automatically fill in the remaining contributor information. The respondent stated that he would use the auto-filled information if it reflected the correct address, but did not change the first name from initials to a full first name. Because of this, the respondent used initials to identify contributors, all of whom had changed their checks to show their full name.

Disclosure of Names of Candidates Supported or Opposed by the Committee

35. The complaint alleged that the respondent did not disclose the names of each identified candidate supported or opposed by the committee on HPRO-PAC's March 2012 report.
36. HPRO-PAC's March 2012 report did not itemize any expenditures on Schedule F (used to disclose political expenditures). However, a check included with the respondent's response shows a \$250 expenditure made to a candidate's campaign during the period covered by the March 2012 report. The respondent did not address this allegation in his response and did not correct the report.

Principal Occupation of Contributor

37. The complaint alleged that the respondent did not disclose the principal occupation of a person making two political contributions. Each contribution at issue was for \$25 and was made by an individual. The respondent disclosed the contributor's principal occupation as "Homemaker." The first contribution was disclosed on HPRO-PAC's October 2012 report, and the second on the September 2013 report. The complaint alleged that the individual's actual principal occupation was justice of the peace. The evidence indicates that the individual was a justice of the peace at all times relevant to the complaint. The individual is also a retired police officer.

IV. Findings and Conclusions of Law

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

Disclosure of Political and Non-Political Expenditures from Political Contributions

1. A campaign finance 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. ELEC. CODE § 254.031(a)(3).
2. A campaign finance report must include the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment. *Id.* § 254.031(a)(4).
3. A campaign finance report 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).

4. For general-purpose committees filing monthly, the maximum amount of a political contribution, expenditure, or loan that is not required to be individually reported is \$10 in the aggregate. *Id.* § 254.156.
5. A non-political expenditure is an expenditure from political contributions that is not an officeholder expenditure or a campaign expenditure. Ethics Commission Rules § 20.1(9). A “political expenditure” means a campaign expenditure or an officeholder expenditure. ELEC. CODE § 251.001(10). A “campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7). An “officeholder expenditure” means an expenditure made by any person to defray expenses that are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(9).
6. An expenditure made for lobbying purposes is not a political expenditure since it does not meet the definition of either a campaign expenditure or officeholder expenditure. *See* Ethics Advisory Opinion No. 131 (1993).
7. With regard to the three expenditures made to Houston Police Retired Officers Association as reimbursement for lobbying expenses, those expenditures were non-political expenditures made from political contributions. The respondent either did not itemize or did not disclose these expenditures in the original reports, therefore there is credible evidence of violations of section 254.031(a)(4) of the Election Code.
8. Regarding the 17 corrected reports, the respondent either did not itemize or did not disclose political expenditures exceeding \$10. Therefore, there is credible evidence of violations of sections 254.031(a)(3), 254.031(a)(6), and 254.156 of the Election Code regarding those 17 reports.
9. Regarding the March 2012 report, the respondent did not disclose a \$250 political expenditure. Therefore, there is credible evidence of a violation of sections 254.031(a)(3), 254.031(a)(6), and 254.156 of the Election Code regarding that report.
10. For each of the six reports that were not corrected, the evidence indicates that the committee did not make political expenditures during the periods covered by the reports. Therefore, there is credible evidence of no violations of sections 254.031(a)(3) and 254.031(a)(6) of the Election Code regarding those six reports.

Total Political Contributions Maintained

11. 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. ELEC. CODE § 254.031(a)(8). A *de minimis* error in calculating or reporting a cash balance under Subsection (a)(8) is not a violation of this section. Id. § 254.031(a-1). There is no violation of section 254.031(a)(8) of the Election Code if the difference between the amount of political contributions maintained as originally disclosed and the correct amount does not exceed the lesser of 10% of the amount originally disclosed or \$2,500.
12. Regarding the 10 reports that disclosed total political contributions maintained differing from the amounts shown in the bank statements by more than \$2,500, there is credible evidence of violations of section 254.031(a)(8) of the Election Code.
13. Regarding the 13 reports that disclosed total political contributions maintained differing from the amounts shown in the bank statements by less than \$2,500 and 10% of the amounts originally disclosed, there is credible evidence of no violations of section 254.031(a)(8) of the Election Code.
14. Regarding the September 2013 report that disclosed total political contributions maintained that matched the amount shown in the bank statement, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code.

Full Names of Contributors

15. Each campaign finance 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. ELEC. CODE § 254.031(a)(1).
16. For general-purpose committees filing monthly, the maximum amount of a political contribution, expenditure, or loan that is not required to be individually reported is \$10 in the aggregate. Id. § 254.156.
17. It is not a valid basis of a complaint to allege that a report required under Chapter 254, Election Code, contains the improper name or address of a person from whom a political contribution was received if the name or address in the report is the same as the name or address that appears on the check for the political contribution. GOV'T CODE § 571.122(e).

18. The respondent was required to disclose the full names of the contributors at issue because each contribution exceeded \$10 in the aggregate. The respondent did not disclose the full names of the contributors for the 34 contributions at issue. Although previous contributions by the same contributors had been given using checks that listed only first and middle initials, the political contributions at issue were given using checks that listed the contributors' full first names. Therefore, there is credible evidence of violations of sections 254.031(a)(1) and 254.156 of the Election Code.

Disclosure of Names of Candidates Supported or Opposed by the Committee

19. Each report by a campaign treasurer of a general-purpose committee must include the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates. ELEC. CODE § 254.151(4).
20. HPRO-PAC made an expenditure to support a candidate during the period covered by the March 2012 monthly report. The candidate was not disclosed in the "Committee Activity" section. In addition, the expenditure was not disclosed on Schedule F. Therefore, there is credible evidence of a violation of section 254.151(4) of the Election Code.

Principal Occupation of Contributor

21. Each campaign finance report by a campaign treasurer of a general-purpose committee must include the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period. ELEC. CODE § 254.151(6).
22. For general-purpose committees filing monthly, the maximum amount of a political contribution, expenditure, or loan that is not required to be individually reported is \$10 in the aggregate. *Id.* § 254.156.
23. The reports at issue disclosed incorrect information about a contributor's principal occupation. Therefore, there is credible evidence of violations of sections 254.151(6) and 254.156 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) a campaign finance 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) a campaign finance 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; 3) a campaign finance report must include the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment; 4) a campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; 5) 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; 6) for a general-purpose political committee filing monthly, the maximum amount of a political contribution, expenditure, or loan that is not required to be individually reported is \$10 in the aggregate; 7) a campaign finance report by a campaign treasurer of a general-purpose committee must include the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates; and 8) a campaign finance report by a campaign treasurer of a general-purpose committee must include the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period.

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 \$6,000 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-31310207.

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

Robert Barnard, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director