

TEXAS ETHICS COMMISSION

IN THE MATTER OF

MARTIN BUCKLEY,
RALPH CARRIGAN, AND
ED KNIGHT,

RESPONDENTS

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-991033

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 10, 1999, and voted to accept jurisdiction of Sworn Complaint SC-201070 filed against Martin Buckley, Ralph Carrigan, and Ed Knight, Respondents. The commission met again on April 6, 2001, to consider Sworn Complaint SC-991033. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of Section 253.094, Election Code, and technical or *de minimis* violations of Section 255.001, Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondents acted as a political committee without filing a campaign treasurer appointment or campaign finance reports, made direct expenditures exceeding \$100 without filing campaign finance reports, failed to include the proper political advertising disclosure statement in political advertising, misrepresented the true source of and their identity in political advertising, and improperly used a city seal in political advertising.

III. Facts Supported by Credible Evidence

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

1. The complainant submitted with this complaint a copy of a flier that indicates it was from Citizens for the Preservation of Bunker Hill, a “non-profit civic group formed in 1998, for the primary purpose of preserving the quality of life.” The flier describes the group’s various activities, and includes a paragraph concerning the group’s “Participation in the Election Process.” The flier states that the group endorsed three candidates in the 1998

- city council election and “is again establishing a committee to interview potential candidates and report its recommendations to the citizens of Bunker Hill.”
2. The complainant also submitted a page of a campaign finance report filed by a Bunker Hill city council candidate in the 1998 election that discloses that on April 13, 1998, the candidate accepted an in-kind contribution from Citizens for the Preservation of Bunker Hill in the amount of \$167.73 for a “mailing prepared and sent by citizen’s group endorsing candidacy.”
 3. The complainant submitted another flier that indicates that it was from the non-profit civic group and that endorses two candidates in a May 1, 1999, city council election. The flier also states that the group’s commitment is “to preserve the quality of life enjoyed in Bunker Hill Village by striving to maintain single family residences, winding county lanes as opposed to concrete major thoroughfares, wooded lots with adequate set-backs, and prompt efficient municipal services with a fiscally responsible government.” The flier includes the name and address of the group but does not include the words “political advertising.”
 4. The complainant submitted another flier that supports one of the candidates endorsed by the non-profit civic group in the 1999 city council election. The flier states that the candidate is endorsed by the group. The flier includes a political advertising disclosure statement that states that it is a political advertisement paid for by the candidate and includes an address.
 5. In response to this complaint, the respondents submitted two letters that detail and disclose the respondents’ political activities, numerous internal documents that support or corroborate their response, and an affidavit that swears to the truth of their presentation to the commission.
 6. The respondents in this complaint are three individuals who are involved with the non-profit civic group Citizens for the Preservation of Bunker Hill. Respondents Buckley and Knight are officers and directors of the non-profit corporation that was eventually formed by the group. Respondent Carrigan was a member of the non-profit corporation’s candidate screening committee and, according to the respondents, was “closely involved” with the non-profit corporation’s activities and “shares responsibility” with the other respondents.
 7. The respondents state that they had no experience in the “political arena,” but began working together with other individuals in the community in 1997 to oppose a zoning proposal that was before the city council.

8. Initially, the group of individuals had no legal structure or organization. The respondents state that an attorney who was a member of the group advised the group on possible forms of organization. According to the respondents, a political committee “was considered but the decision was that a non-profit corporation would better fill our purposes.” The respondents provided the commission with minutes of a meeting of the group’s board of directors, in which the group’s attorney advised the board that, “If the civic club is organized exclusively for promoting social welfare, IRS has said that direct or indirect involvement in political campaigns may be allowed under their guidelines.” The minutes also state that, “Political involvement can also be handled through a separate account and organization established by the civic club.”
9. Citizens for the Preservation of Bunker Hill has not filed a campaign treasurer appointment as a political committee, nor has it filed any campaign finance reports.
10. On the advice of the attorney who was a member of the group, Citizens for the Preservation of Bunker Hill filed articles of incorporation as a non-profit corporation with the Texas Secretary of State on February 6, 1998. According to its articles of incorporation, the nonprofit corporation was “organized to promote the civic and social welfare in the City of Bunker Hill Village. . . .” The non-profit corporation’s by-laws further provide that the purpose of the corporation is “to promote accountability and communication with respect to city government, to encourage greater participation in city government, and to maintain the residential character of the city.”
11. In a document entitled “Unanimous Consent In Lieu Of Organizational Meeting Of Directors,” effective February 4, 1998, and signed April 3, 1998, the board of directors established a “Candidate Screening Committee . . . who shall recommend to the Board, persons who CPBH might endorse as candidates for office in the City of Bunker Hill Village.”
12. In February, 1998, after the group filed articles of incorporation, the group mailed a flier announcing that the group had formalized their organization. The flier stated that the non-profit corporation’s “initial goals” included “Participation In The Election Process” and referred to a “Nominating Committee” that would screen and endorse candidates for elected positions. The flier asked for recommendations for candidates to run for the three city council positions that would be voted on in an election to be held on May 2, 1998. According to the respondents, the flier and mailing costs were paid for by “founding members” of the group.
13. In another “Unanimous Consent In Lieu Of Organizational Meeting Of Directors,” effective March 8, 1998, (and signed April 23, 1998), the non-profit corporation endorsed three candidates in the city council election. In the unanimous consent document, the

non-profit corporation authorized \$450 to be spent for a mailing that announced the endorsement. The unanimous consent document also stated that the corporation “does not choose to establish a Political Action Committee (PAC) for the purpose of carrying out this endorsement being that the amount expended is less than \$500.00; and being that a PAC does not serve to support the purposes for which CPBH was formed; and . . . that, any further involvement by CPBH in the election of representatives to the City Council . . . be limited to endorsing correspondence which the Board approves and which CPBH is not responsible for preparing, mailing, or expending funds from its Treasury for carrying out such correspondence.”

14. In a letter in response to the complaint, the respondents stated that the Unanimous Consent document “specified that any further expenditure could not come from dues but only from a specially established account. This latter practice was never followed.” The respondents state that the non-profit corporation and the members of the group made the initial decision to not make any political contributions or political expenditures and thus decided not to create a political committee.
15. The respondents submitted to the commission a financial “register report” showing itemized “inflows” and “outflows” during the period from January 1, 1998, to June 22, 1998. The report discloses that the non-profit corporation had a total of \$9,753.00 in “inflows,” the majority of which are described as “donations.” The register report also discloses \$2,405.35 in total “outflows,” which include items described as “start up,” “postage,” “envelopes,” “Kinkos,” and “mailing.” The respondents also submitted invoices and other documents which relate to the items listed on the register report.
16. The respondents disclosed to the commission that after the March 8, 1998, unanimous consent document was issued, the non-profit corporation mailed a flier that endorsed three candidates for city council (referred to herein as “the March flier”). The March flier also solicited contributions to the non-profit corporation and included a statement that “no funds raised will be used to fund candidate campaigns.” The respondents submitted records to the commission that indicate that \$512.84 was paid by the non-profit corporation for stamps, envelopes, and copy costs in connection with the March flier. The respondents submitted copies of the receipts for the expenditures made in connection with the March flier, and a note attached to the receipts stating “I’m enclosing my expenses for the March 11th mailings” and referencing the total amount of \$512.84. The respondents state, however, that “approximately 200 stamps and envelopes were not used on the mailing, so the cost is under \$500.” The March flier includes the name of the non-profit corporation and an address, but does not include the words “political advertising.”
17. The respondents also disclosed to the commission that a second flier was mailed on or about April 13, 1998, that supported the three candidates endorsed by the non-profit

corporation (referred to herein as “the April flier”). The respondents state that the April flier “was accomplished by CPBH members and reflects it came from CPBH. This mailout was not however paid for by CPBH.” The respondents explain that the April flier was made without “too much thought as to how it would be financed.” The respondents state that the non-profit corporation board members recalled the statement in the March flier that no corporate funds would be used to finance candidate campaigns. To meet this pledge, individual members agreed to fund the April flier. The records submitted by the respondents do not indicate how much was spent on preparing and mailing the April flier. Additionally, the non-profit corporation’s register report does not include an expenditure entry corresponding to the April flier. The April flier includes the name of the non-profit corporation and an address, but does not specifically include the words “political advertising.”

18. In their response to this complaint, the respondents estimate that the April flier was sent on April 13, 1998, based on a disclosure in a campaign finance report by one of the candidates supported in the flier. This campaign finance report is the same report that was submitted by the complainant, and discloses that the candidate accepted an in-kind contribution from the non-profit corporation in the amount of \$167.73 on April 13, 1998, for a “mailing prepared and sent by citizen’s group endorsing candidacy.” In response to the complaint, the respondents state that the candidate was not consulted on the mailing and erroneously thought the April flier was financed by the non-profit corporation. The candidate also submitted a letter in connection with this complaint in which he states that he reported the April flier as an in-kind contribution in an attempt to provide full disclosure. He states that it was his understanding that the non-profit corporation would announce their endorsements via mailings to the residents of the suburb, and that it was the non-profit corporation’s decision whether and how to communicate their endorsement decisions. He further states that he does not believe that the non-profit corporation “was expending funds on my campaign and certainly not at my direction.”
19. After the May 2, 1998, city council election, the non-profit corporation mailed a third flier, dated May 20, 1998, (referred to herein as “the May flier”). The May flier congratulated the three successful candidates in the election, all of whom had been endorsed by the non-profit corporation. The records submitted by the respondents indicate that the non-profit corporation spent \$461.91 in connection with the May flier. The May flier includes the name of the non-profit corporation and an address, but does not include the words “political advertising.”
20. The non-profit corporation also became involved in a city election held on May 1, 1999. Before the election, the non-profit corporation mailed a flier (referred to herein as “the first 1999 flier”) that stated that it was establishing a committee to interview potential candidates and to “report its recommendations to the citizens of Bunker Hill.” The first

- 1999 flier included a form to be returned by those individuals interested in serving on the nominating committee or running for city council or mayor. The records submitted by the respondents do not indicate the amount spent by the non-profit corporation on the first 1999 flier or the date of this expenditure.
21. According to the respondents, the non-profit corporation endorsed two candidates in the 1999 city council elections and mailed out a flier that supported these candidates (referred to herein as “the second 1999 flier”). The records submitted by the respondents do not indicate the amount spent by the non-profit corporation on the second 1999 flier or the date of this expenditure. The second 1999 flier includes the name of the non-profit corporation and an address, but does not specifically include a political advertising disclosure statement indicating that it is political advertising.
 22. The complainant submitted a copy of a political advertisement supporting one of the candidates in the 1999 election who was endorsed by the non-profit corporation. The advertisement includes a complete political advertising disclosure statement that states that it was paid for by the candidate. The respondents state that the advertisement was paid for by the candidate, not the non-profit corporation, and include a copy of the printing bill sent to the candidate and a copy of the candidate’s Visa bill showing that he was billed for the political advertisement.
 23. The respondents state that since the 1999 election, the non-profit corporation has continued to be involved in issues affecting the city. The respondents state that the non-profit corporation has spent more than \$3,500 in connection with several issues affecting the city. Based on the respondent’s statements, these expenditures do not appear to have been made in connection with a campaign for an elective office or on a measure or to support officeholders.
 24. In their response to this complaint, the respondents emphasize that they made a “serious and sincere effort” to comply with the state law and sought and relied upon legal advice in taking the actions described in this summary. The respondents also state that they were advised by their attorneys that the endorsement of candidates by the non-profit corporation in its newsletters was permissible under the First Amendment’s protection for freedom of the press. The respondents emphasize that had they known that including their endorsement of a candidate in their newsletter violated the law, they would not have done so. The respondents state that they have provided this information to the commission “so the [commission] could judge not only the nature of the complaint, but in fact judge everything we had done. If mistakes have been made, we are anxious to make certain that such mistakes are not repeated in the future.”

IV. Findings and Conclusions of Law

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

1. A political committee is a “group of persons that has as a principal purpose accepting political contributions or making political expenditures.” Section 251.001(12), Election Code.
2. A political committee may not make more than \$500 in political expenditures or accept more than \$500 in political contributions without first appointing a campaign treasurer. Section 253.031(b), Election Code.
3. A political expenditure includes a campaign expenditure, which is a payment of money or any other thing of value made by any person in connection with a campaign for an elective office or on a measure. Sections 251.001(6), (7), and (10), Election Code. A political contribution includes a campaign contribution, which is defined as a transfer of money or any other thing of value to a candidate or political committee with the intent that it be used in connection with a campaign for elective office or on a measure. Sections 251.001(2), (3), and (5), Election Code.
4. Corporations are prohibited from making political contributions or expenditures that are not authorized under Subchapter D, Chapter 253, Election Code. Section 253.094, Election Code. With limited exceptions not applicable in this complaint, corporations are not authorized to make political expenditures that support a candidate for elective public office. The prohibition applies to both for-profit and non-profit corporations and to the officers, directors, and other agents of those corporations. Sections 253.091 and 253.095, Election Code.
5. The non-profit corporation paid \$512.84 in connection with the March 1998 flier that supported candidates in the May 2, 1998, city council election. Additionally, although the respondents state that the April flier that supported candidates in the 1998 election was paid for by individual members of the non-profit corporation, the expenditures were made at the direction of and on behalf of the corporation. The respondents also state that the non-profit corporation made an expenditure for the second 1999 flier that endorsed candidates in the May 1, 1999, city council election. These expenditures constitute campaign expenditures made by the non-profit corporation because they were made in connection with campaigns for elective office.
6. Because there is credible evidence that the non-profit corporation made corporate expenditures to support candidates for public office, and because there is evidence that

- the respondents participated in this corporate activity, there is credible evidence that the respondents violated Section 253.094, Election Code.
7. The respondents raise the issue of whether they are excepted from the requirements of Title 15, Election Code, based on the First Amendment right of freedom of the press. The non-profit corporation in this complaint is a charitable, civic organization that is not engaged in the news-media business. Additionally, although the non-profit corporation does produce newsletters, the actual expenditures at issue were not included in regular newsletters, but were mailed out as individual fliers intended to persuade citizens to vote for particular candidates. Therefore, the respondents were not excepted from compliance with the campaign finance provisions in Title 15, Election Code, under the First Amendment right of freedom of the press.
 8. The requirement to file campaign finance reports, which disclose political contributions and expenditures, falls upon the campaign treasurer of a political committee. Sections 254.153 and 254.154, Election Code.
 9. Although Citizens for the Preservation of Bunker Hill should have appointed a campaign treasurer, they instead incorporated and made expenditures as a non-profit corporation. Therefore, no individual can be held responsible for a violation of the requirement to file campaign finance reports. Rather, the group's failure to appoint a campaign treasurer resulted in a violation of the prohibition on corporate political expenditures. Therefore, there is credible evidence that the respondents did not violate Sections 254.153 and 254.154, Election Code.
 10. 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 if the individual complies with Chapter 254, Election Code, as if the individual were the campaign treasurer of a political committee, and the individual receives no reimbursement for the expenditures. Section 253.062, Election Code.
 11. There is credible evidence that the respondents acted in concert with each other (and others) to form a non-profit corporation. Because the direct expenditure provisions apply only to "an individual not acting in concert with another person," there is credible evidence that the respondents did not violate Section 253.062, Election Code.
 12. Political advertising is defined in relevant part as a communication that supports a candidate or a public officer and that is in the form of a pamphlet, circular, flier, or similar form of written communication. Section 251.001(16), Election Code.
 13. A person may not knowingly enter into a contract or other agreement to print political advertising that does not indicate that it is political advertising, and that does not contain

the full name and address of the individual who entered into the contract or agreement to print the advertising, or the full name and address of the person that individual represents. Section 255.001, Election Code.

14. The March and April, 1998, fliers and the second 1999 flier specifically endorsed and supported candidates for election to city council and thus constitute political advertising. The fliers include the name and address of the non-profit corporation but do not specifically indicate that they are political advertising.
15. Two of the respondents, who are corporate board members, specifically authorized these expenditures on behalf of the non-profit corporation. The third respondent, who is a member of the non-profit corporation's Candidate Screening Committee, is acknowledged to have been "closely involved" with the non-profit corporation's activities and "shares responsibility" with the other respondents. Accordingly, there is credible evidence that the respondents committed technical or *de minimis* violations of Section 255.001, Election Code, by failing to include the words "political advertising" on three fliers.
16. A person may not, with intent to injure a candidate or influence the result of an election, knowingly represent in a campaign communication that the communication emanates from a source other than its true source. Section 255.004, Election Code.
17. A person may not, with intent to injure a candidate or influence the result of an election, misrepresent the person's identity or, if acting as an agent, misrepresent the identity of the agent's principal, in a campaign communication. Section 255.005, Election Code.
18. The complainant alleges that the political advertisement that states that it was paid for by a candidate was actually paid for by the respondents. The respondents state that neither they nor the non-profit corporation paid for this political advertisement and provide copies of the candidate's bills for the flier to support their statement. Thus, there is credible evidence that the respondents did not violate Sections 255.004 and 255.005, Election Code.
19. The complainant alleges that the respondents unlawfully used the city's seal on political advertising. The use of the state seal in political advertising by a person other than an officeholder is prohibited by Section 255.006, Election Code. That provision, however, does not apply to the use of a municipal seal. Additionally, there are no other laws within the commission's jurisdiction that restrict the use of a municipal seal in political advertising. Violations relating to the use of a municipal seal are not within the commission's sworn complaint jurisdiction.

V. Representations and Agreement by Respondents

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondents neither admit nor deny the facts described under Section III and the commission's findings and conclusions of law described under Section IV, and consent to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondents consent to the entry of this Order. The respondents waive any right to a hearing before the commission or an administrative law judge, and further waive any right to a post-hearing procedure established or provided by law.
3. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondents understand and agree that the commission will consider the respondent to have committed the actions described under Section IV, Paragraphs 6 and 15, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

VI. Confidentiality

This ORDER and AGREED RESOLUTION describes activities that the commission determined fell into three categories: (a) no violations of law, (b) technical or *de minimis* violations, and (c) violations that are neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under Section 571.140, 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, consequences, extent, and gravity of the violations, after considering the fact that no previous violations by these respondents are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a civil penalty of \$350 for the violations described under Section IV, Paragraphs 6 and 15.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondents;

2. that if the respondents consent to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-991033;
3. that the respondents may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original, together with the \$350 civil penalty, to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than July 20, 2001; and
4. that the executive director shall promptly refer SC-991033 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondents do not agree to the resolution of SC-991033 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondents on this _____ day of _____, 200__.

Mr. Martin Buckley, Respondent

Mr. Ralph Carrigan, Respondent

Mr. Ed Knight, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director