

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
JOHN ROACH, JR.,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-990519

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on July 9, 1999, and voted to accept jurisdiction of Sworn Complaint SC-990519 filed against John Roach, Jr., Respondent. The commission met again on August 13, 1999, to consider Sworn Complaint SC-990519. 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 a violation of Sections 253.031, 254.031, 254.036, and 254.064, 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 respondent accepted campaign contributions and made campaign expenditures before filing a campaign treasurer appointment, failed to properly itemize contributions and expenditures in excess of \$50, misclassified campaign expenditures from personal funds as loans, and reported most of his activity on forms that were not prescribed or approved by the Texas Ethics Commission.

The respondent alleges that this complaint is frivolous and was brought in bad faith and for purposes of harassment.

### III. Facts Supported by Credible Evidence

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

1. The respondent was a successful candidate for city council in a May 1, 1999, election.
2. The respondent's campaign treasurer appointment was received and stamped by the city secretary's office on February 17, 1999.

3. In his written response, the respondent stated that he never knowingly violated the Election Code and that he mistakenly filed his campaign treasurer appointment by mailing the form to the Texas Ethics Commission on February 1, 1999. He stated that the name, address, and phone number for the commission were listed on the form and that there was no indication that the form should be mailed to any other location. The respondent provided copies of his original campaign treasurer appointment which was date stamped by the commission office on February 8, 1999.
4. The respondent stated that he called the commission that same day to inquire as to when the appointment would take effect and was told by a staff attorney that the date of the postmark would be the effective date. He asserted that he had a good-faith belief that he had appointed a campaign treasurer.
5. The respondent stated that he was not informed of his error until February 16, 1999, when he received a letter from the commission notifying him that he should file his campaign treasurer appointment with the city secretary. The respondent stated that he filed his treasurer appointment with the city secretary the next day.
6. The respondent's corrected 30-day before election report discloses that he accepted campaign contributions and made campaign expenditures before filing a campaign treasurer appointment with the city secretary. The report shows approximately \$300 in contributions, \$950 in loans from the candidate, and \$280 in expenditures before the appointment was properly filed.
7. The respondent's reports show that he timely filed a 30-day before election report on April 1, 1999, and timely filed an 8-day before election report on April 23, 1999. The 30-day before election report shows the only contribution entry as "see exhibit A." Attached to that schedule is a computer printout of contributions which provides the names, addresses, and phone numbers of the contributors and the amounts of the contributions but does not provide the dates on which the contributions were accepted.
8. The 30-day before election report shows the only loan entry as "see exhibit B," and attached to that schedule is a computer printout titled "[Respondent] Loan to Campaign." The listing provides the dates and amounts of the expenditures and the payees' names but does not provide the purposes of the expenditures or the payees' addresses.
9. The 30-day before election report shows the only expenditure entry as "see exhibit C," and attached to that schedule is a computer printout of the respondent's expenditures. The listing provides the payees' names and the amounts of the expenditures. The listing does not provide the payees' addresses or the purposes or dates of the expenditures.
10. None of the attached listings are on a commission form.
11. The 8-day before election report provides attached computer printouts for the contributions, loans, and expenditures schedules. The contribution listing provides the required information. The listing for the loans provides the amounts, dates, and payees but does not provide the purposes of the expenditures or the payees' addresses. Finally, the expenditure listing provides the payees' names and the dates and amounts of the expenditures but does

- not provide the purposes of the expenditures or the payees' addresses. Again, none of the attached listings are on a commission form.
12. In his written response, the respondent stated that he inadvertently failed to list specific dates but that he complied with the spirit of the law and will ensure compliance in the future. The respondent stated that he reported expenditures from his personal funds as loans as permitted by Ethics Commission rules.
  13. The respondent states that, as the candidate is not a financial institution, it should be understood that there is no maturity date or interest rate to report. He also stated that the purposes of his expenditures are self-explanatory from the names of the payees.
  14. The respondent stated that he complied with the Election Code in the form of his reports in that he filed the appropriate affidavit and schedules, and that he filed attachments to each of the schedules in the form of computer printouts. The respondent stated that these attachments provided the same information as the schedules and were the same size as the commission form.
  15. The respondent filed a corrected report and good-faith affidavit for the 30-day before election report. The good-faith affidavit states that the dates of contributions and expenditures were inadvertently left off the original reports and that all information contained in the original reports is accurate. The respondent did not file a corrected report and good-faith affidavit for the 8-day before election report.

#### **IV. Findings and Conclusions of Law**

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

1. Each candidate shall appoint a campaign treasurer as provided by Chapter 252 of the Election Code. Section 252.001, Election Code.
2. An individual must file a campaign treasurer appointment for the individual's own candidacy with the clerk or secretary of the governing body of the political subdivision of the office sought. Section 252.005(3), Election Code.
3. A candidate may not knowingly accept a campaign contribution or make a campaign expenditure at a time when a campaign treasurer appointment is not in effect. Section 253.031(a), Election Code.
4. A campaign treasurer appointment takes effect at the time it is filed with the authority specified by the Election Code. Section 252.011, Election Code.
5. Although the respondent believed that he had filed a campaign treasurer appointment on February 1, it was not filed with the authority specified by the Election Code, which is the city secretary, until February 17. The respondent's corrected 30-day before election report discloses that he accepted campaign contributions and made campaign expenditures before filing a campaign treasurer appointment with the city secretary. Therefore, there is credible

- evidence of a violation of Section 253.031(a), Election Code, for accepting contributions and making expenditures before filing a campaign treasurer appointment.
6. An opposed candidate must file campaign finance reports no later than the 30<sup>th</sup> and 8<sup>th</sup> day before election day. Section 254.064, Election Code. The respondent was an opposed candidate and therefore was required to file pre-election reports.
  7. A candidate who files a campaign finance report must disclose contributions accepted during a reporting period, and for those contributions that in the aggregate exceed \$50, the person must provide the full name and address of the contributor and the date and amount of the contribution. Section 254.031(a)(1), Election Code.
  8. The respondent's 30-day before election report does not disclose the dates of the contributions, but those dates are provided in his corrected report.
  9. Section 253.0351, Election Code, authorizes a candidate to report political expenditures made from personal funds as a loan to himself or herself. The report must disclose the amount of loans made during a reporting period, including the date the loans are made, the interest rate, the maturity date, the name and address of the person or financial institution making the loans, and information concerning the collateral and guarantors of the loans, if any. Section 254.031(a)(2), Election Code.
  10. The respondent's 30-day and 8-day before election reports disclose that the respondent made expenditures and reported them as loans to his campaign. As such, he was not required to report an interest rate, maturity date, the name and address of the financial institution making the loans, or any information concerning any collateral and guarantors of the loans. A filer who chooses to report in this way, however, must itemize the political expenditures giving rise to the loans.
  11. For political expenditures that in the aggregate exceed \$50 during a reporting period, a candidate filing a report must disclose the full names and addresses of the persons to whom the expenditures were made, as well as the amounts, dates, and purposes of the expenditures. Section 254.031(a)(3), Election Code.
  12. The respondent's corrected 30-day before election report did provide the required information for the entries reported as expenditures and reported the purposes for his expenditures from personal funds reported as loans. The respondent, however, did not report the payee addresses for the expenditures from personal funds, and the respondent's 8-day before election report did not provide the purposes or the payee addresses for political expenditures or for political expenditures made from personal funds and reported as loans.
  13. A filer may correct a reporting error at any time by filing a corrected report. Section 18.43, Ethics Commission Rules. A corrected report, other than one correcting a report due eight days before an election, is deemed to be timely filed and no fine is assessed if the filer submits an affidavit establishing that the corrected report was filed because of a good-faith error or lack of actual knowledge concerning information included in or omitted from the original report. The affidavit must explain why the information was not included in the original report. Sections 18.49 and 18.83, Ethics Commission Rules.

14. The respondent filed a corrected 30-day before election report and good-faith affidavit but did not correct every mistake. The respondent did not file a corrected 8-day before election report. Therefore, there is credible evidence that the respondent violated Sections 254.031 and 254.064, Election Code.
15. Each report filed under Title 15, Election Code, must be on a form prescribed by the commission unless it is a computer printout, in which case the printout must conform to the same format and paper size as the form prescribed by the commission. Section 254.036, Election Code.
16. The attachments to respondent's 30-day and 8-day before election reports are on the same size paper as the commission forms but do not contain the required information and thus do not have the same format as the commission forms. Therefore, there is credible evidence of a violation of Section 254.036, Election Code.
17. A frivolous complaint is defined as a complaint that is groundless and brought in bad faith, or groundless and brought for the purposes of harassment. Section 571.176, Government Code. This complaint is not groundless and therefore it is not frivolous.

#### **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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that a candidate may not knowingly accept a campaign contribution or make a campaign expenditure at a time when a campaign treasurer appointment is not in effect. The respondent further acknowledges that a campaign finance report must disclose specific information for contributions and expenditures that in the aggregate exceed \$50 during a reporting period. Finally, the respondent acknowledges that each report filed under Title 15, Election Code, must be on a form prescribed by the commission unless it is a computer printout, in which case the printout must conform to the same format and paper size as the form prescribed by the commission. Section 254.036, Election Code. The respondent agrees to fully and strictly comply with these requirements of the law.

4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violation described under Section IV, Paragraphs 5, 14, and 16, 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 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 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 this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$300 civil penalty for the violation described under Section IV, Paragraphs 5, 14, and 16.

## **VIII. Order**

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-990519;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$300 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than September 10, 1999; and
4. that the executive director shall promptly refer SC-990519 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 respondent does not agree to the resolution of SC-990519 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
John Roach, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Tom Harrison, Executive Director