

TEXAS ETHICS COMMISSION

IN THE MATTER OF
DEWEY MILLER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-210427

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 8, 2001, and voted to accept jurisdiction of Sworn Complaint SC-210427 filed against Dewey Miller, Respondent. The commission met again on November 9, 2001, to consider Sworn Complaint SC-210427. 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 Section 254.063, Election Code, a law 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, a candidate for re-election to the office of constable in the November 7, 2000, general election, failed to file a campaign treasurer appointment and campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent was an opposed and unsuccessful candidate for constable in the November 7, 2000, general election in Walker County, Texas.
2. The respondent filed his treasurer appointment and a modified reporting declaration on December 2, 1999.
3. The respondent stated in a telephone conversation with staff that he had expenditures totaling \$75 and no contributions or other reportable activity in connection with the election, and he swears in an affidavit filed in response to the complaint that he “was told by the County clerk that if [he] filed the modified report [modified reporting declaration], it would not be necessary to file the semiannual reports.”

4. The respondent filed a final report on October 31, 2001, covering the reporting periods for the campaign finance reports that were due in 2000 and 2001 and disclosing that he had expenditures totaling \$75 and no contributions or other reportable activity in those reporting periods.

IV. Findings and Conclusions of Law

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

1. A candidate must file an appointment of a campaign treasurer. Section 252.001, Election Code. A candidate who files the campaign treasurer appointment must file semiannual reports due twice a year in January and July. Section 254.063, Election Code. An opposed candidate must also file pre-election reports due 30 days and 8 days before an election. Section 254.064, Election Code. A modified reporting declaration excuses an opposed candidate from filing pre-election reports if the candidate does not exceed the \$500 limits on political contributions or political expenditures in connection with the election, but it does not excuse the candidate from filing semiannual reports. Section 254.181, Election Code.
2. There is credible evidence that the respondent filed his campaign treasurer appointment with the county clerk on December 14, 1999. Therefore, there is credible evidence that the respondent did not violate Section 252.001, Election Code.
3. There is credible evidence that the respondent chose modified reporting and did not exceed the \$500 limits on political contributions or political expenditures. Therefore, there is credible evidence that the respondent was not required to file pre-election reports and did not violate Section 254.064, Election Code.
4. There is credible evidence that the respondent had a campaign treasurer appointment on file and did not file the January semiannual report due by January 18, 2000, the July semiannual report due by July 17, 2000, or the January semiannual report due by January 16, 2001. Therefore, there is credible evidence that the respondent violated Section 254.063, 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 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 who files an appointment of a campaign treasurer must file semiannual reports due twice a year in January and July. The respondent agrees to fully and strictly comply with this requirement 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, Paragraph 4, 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, 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 \$100 civil penalty for the violations described under Section IV, Paragraph 4.

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-210427;
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 \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than December 7, 2001; and
4. that the executive director shall promptly refer SC-210427 either to 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-210427 as proposed in this ORDER and AGREED RESOLUTION.

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

Dewey Miller, Respondent

EXECUTED ORIGINAL received by the commission on: _____

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director