

TEXAS ETHICS COMMISSION

IN THE MATTER OF
DAVID SWINFORD,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-220893

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 13, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220893 filed against David Swinford. The commission met again on April 10, 2003, to consider Sworn Complaint SC-220893. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of a violation of section 254.031 of the 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 disclosed credit card companies as payees on two campaign finance reports instead of the actual person or vendor to whom the expenditures were made.

III. Facts Supported by Credible Evidence

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

1. This complaint was filed August 12, 2002.
2. The complainant's allegations are based on expenditures that the respondent disclosed in his July 2000 and January 2001 semiannual campaign finance reports.
3. There are 12 entries on Schedules F for which credit card companies are disclosed as payees, rather than the actual person or vendor to whom the expenditures were made. Five of the entries totaling \$7,229.51 are disclosed on the semiannual report filed July 14, 2000, and seven totaling \$16,753.64 are disclosed on the semiannual report filed January 2, 2001.

4. The allegations related to the July 14, 2000, semiannual report are outside the statute of limitations.
5. After the complaint was filed, the respondent filed a correction affidavit and corrected the January 2001 report to show the actual payees.

IV. Findings and Conclusions of Law

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

1. A person filing a campaign finance report is required to provide details about expenditures exceeding \$50 during a reporting period, including the name and address of the payee and the date, amount, and purpose of the expenditure. Elec. Code § 254.031.
2. A report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. Ethics Commission Rules § 20.59.
3. Filing an untimely or incomplete report is a Class C misdemeanor and thus subject to a two year statute of limitations. Elec. Code § 254.041.
4. The complaint was filed August 12, 2002. The commission does not have jurisdiction to consider the allegations related to the report filed July 14, 2000, because they are outside the applicable limitations period. Therefore the allegations related to that report are dismissed.
5. The respondent does not deny the allegations, and his reports clearly show that he reported the credit card company as the payee on Schedules F of the reports at issue. Therefore, there is credible evidence that the respondent violated section 254.031 of the Election Code by failing to report on his campaign finance report the actual person or vendor to whom he made political expenditures.

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 person filing a campaign finance report is required to provide details about expenditures exceeding \$50 during a reporting period, including the name and address of the payee and the date, amount, and purpose of the expenditure, and that a report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. 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, Paragraph 5, 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 violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, 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 \$1,000 civil penalty for the violation described under Section IV, Paragraph 5.

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-220893;

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 \$1,000 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 9, 2003; and
4. that the executive director shall promptly refer SC-220893 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-220893 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2003.

David Swinford, Respondent

EXECUTED ORIGINAL received by the commission on: _____.
Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director