

TEXAS ETHICS COMMISSION

IN THE MATTER OF
FRANK DITTO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-240221

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on September 10, 2004, to consider sworn complaint SC-240221. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.063 and 254.064 of the Election Code and section 572.027 of the Government Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to file the campaign finance report due on January 15, 2004; the campaign finance report due 30 days before the primary election report; and the personal financial statement due on February 11, 2004.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful non-incumbent candidate for state representative in the March 9, 2004, primary election.
2. The respondent filed two campaign finance reports on March 18, 2004. One covered the period from January 1, 2004, through February 7, 2004. The other covered the period from February 8, 2004, through March 9, 2004, and was designated as a final report. He filed the personal financial statement on June 7, 2004.
3. The respondent stated that he came to the Ethics Commission's office on December 30, 2003, and submitted a campaign treasurer appointment. He stated that he requested that the campaign treasurer appointment take effect on January 2, 2004, and that he thought he was therefore not required to file a January 2004 semiannual report.

4. The respondent submitted an affidavit in which he states that, with the help of Ethics Commission staff, he tried to file reports electronically in February 2004 but that he was unable to transmit the reports.
5. In regard to the personal financial statement, the respondent explained that he did not receive notice of the requirement to file before the filing deadline and that after he received notice, he could not afford to have his report notarized.
6. The respondent submitted copies of bank statements showing that his checking account was overdrawn in February 2004.

IV. Findings and Conclusions of Law

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

1. The respondent filed a campaign treasurer appointment on December 30, 2003. An individual who had a campaign treasurer appointment on file before January 1, 2004, was required to file a report by the January 15, 2004, filing deadline. ELEC. CODE § 254.063 (semiannual reporting requirements for candidates); *see also* ELEC. CODE § 251.001 (person with a campaign treasurer appointment on file is a candidate). The respondent did not satisfy the reporting requirement until March 18, 2004. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code.
2. The respondent was an opposed candidate in the March 9, 2004, primary election. A candidate who has an opponent on the ballot in an election is required to file reports 30-days and 8-days before the election. ELEC. CODE § 254.064. Therefore, the respondent was required to file a 30-day pre-election report by February 9, 2004. The respondent did not satisfy the reporting requirement until March 18, 2004. Therefore, there is credible evidence that the respondent violated section 254.064 of the Election Code.
3. As a candidate for state representative, the respondent was required to file a personal financial statement by February 11, 2004. GOV'T CODE § 572.027. The respondent did not file a personal financial statement until June 7, 2004. Therefore, there is credible evidence that the respondent violated section 572.027 of the Government 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 an individual who has a campaign treasurer appointment is a candidate and is required to file semiannual reports, that a candidate who has an opponent on the ballot in an election is required to file reports 30-days and 8-days before the election, and that a candidate for state representative is required to file a personal financial statement by the 40th day after the date of the regular filing deadline for an application for a place on the ballot in the general election. The respondent agrees to fully comply with this requirement 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. No Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes no civil penalty for the violations described under Section IV.

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-240221.

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

Frank Ditto, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Sarah Woelk, Acting Executive Director