

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ROBERT C. MCINTYRE, JR.
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-260371

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on September 21, 2006, to consider sworn complaint SC-260371. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031 of the Election Code, and credible evidence of technical or *de minimis* violations of sections 254.031 and 254.064 of the Election Code, laws administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

1. The complaint alleges that the respondent failed to disclose political contributions on his January 2006 semiannual campaign finance report.
2. The complaint alleges that the respondent failed to properly disclose political expenditures on his January 2006 semiannual campaign finance report.
3. The complaint alleges that the respondent failed to correctly report “total political expenditures” on his February 27, 2006, 8-day pre-election campaign finance report.
4. The complaint alleges that the respondent’s 30-day pre-election report filed on February 6, 2006, failed to cover the proper reporting period.
5. The complaint alleges that the respondent failed to report loans on his February 27, 2006, 8-day pre-election campaign finance report.
6. The complaint alleges that the political expenditures and political contributions of the respondent do not balance.

7. The complaint alleges that the respondent failed to report political contributions and political expenditures for a political website and a campaign telephone line.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for Dallas County constable.
2. The respondent failed to disclose political contributions on his January 2006 semiannual campaign finance report. The report discloses total political contributions as \$1,800. However, the report discloses the total political contributions of \$50 or less as \$0.00 and the total of itemized political contributions as \$350.
3. The respondent's January 2006 semiannual campaign finance report discloses total political expenditures of \$1,096, and the total unitemized political expenditures of \$50 or less as \$1,096, although the respondent had drawn a line through the one and zero of \$1096 in order to disclose \$96 in unitemized political contributions. Detailed political expenditures disclosed on Schedule F total \$1,066.
4. The respondent double reported his political expenditures of \$50 or less by reporting them as itemized expenditures on Schedule F, and also reporting those expenditures on the "total political expenditures of \$50 or less unless itemized" field.
5. The respondent filed a corrected report in response to the complaint disclosing "total political expenditures of \$50 or less unless itemized" as \$66 instead of \$1,096.
6. The expenditures on the February 27, 2006, 8-day pre-election report have an \$11.29 discrepancy between the actual total political expenditures and the total political expenditures as reported.
7. The discrepancy was a mathematical error. The respondent filed a corrected report to fix the discrepancy.
8. The reporting period covered by the respondent's 30-day pre-election report begins on January 16, 2006, and continues through February 5, 2006.
9. The beginning date is five days after the period covered for his last report. The ending date for the period covered by the report immediately preceding the 30-day pre-election report is January 11, 2006.

10. The respondent neither made political expenditures nor accepted political contributions during the omitted four-day period from January 12, 2006, through January 15, 2006.
11. The February 27, 2006, 8-day pre-election report is the first report that discloses any loans. The report discloses a \$1,000 loan from the respondent to his campaign. However, the total amount of all outstanding loans is reported as \$2,000.
12. All political expenditures were reported on Schedule F. The additional \$1,000 of loans reported on the totals page were included in an attempt to show that the respondent was spending his own money on his campaign.
13. In response to the website allegation, the respondent admitted that he had a political website. The website was created by a friend of his at no charge.
14. The respondent's friend was not being paid by anyone to make the website. Additionally, the respondent's friend created the website on his home computer and set it up free of charge. The company that provided the website provides free websites to everyone.
15. The respondent set up a 90-day account with the telephone company for a campaign phone line. The phone company sends one bill for the phone line at the end of a 90-day period. At the time of the respondent's most recent report the respondent had not yet received a bill.

IV. Findings and Conclusions of Law

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

1. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
2. Each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of political expenditures of \$50 or less made during the reporting period. ELEC. CODE § 254.031(a)(5).
3. The respondent failed to properly report \$1,450 of political contributions on his January 2006 semiannual campaign finance report. Therefore, there is credible evidence of a violation of sections 254.031(a)(1) and 254.031(a)(5) of the Election Code.

4. Each campaign finance report must include the total amount or a specific listing of political expenditures of \$50 or less made during the reporting period. ELEC. CODE § 254.031(a)(5).
5. Each campaign finance report must include the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
6. On the respondent's originally filed January 2006 semiannual campaign finance report the respondent drew a line through the one and zero of \$1,096 of political expenditures of \$50 or less. Thus, the respondent disclosed \$96 of political expenditures of \$50 or less. However, the amount of political expenditures of \$50 or less was actually \$66.
7. Because the respondent itemized all of his political expenditures on his campaign finance report, the respondent should have disclosed \$0 of "political expenditure of \$50 or less, unless itemized."
8. The respondent's initial report disclosed "total political expenditures" as \$1,096. The respondent's actual political expenditures for the period in question were \$1,066. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code.
9. The respondent failed to correctly report the total amount of political expenditures on his 8-day pre-election campaign finance report. The discrepancy was \$11.29. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code.
10. The 30-day pre-election report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through the 40th day before election day. ELEC. CODE § 254.064.
11. The ending date for a January semiannual report is December 31. ELEC. CODE § 254.063(b).
12. The respondent included too many days on the January 2006 semiannual report. As filed, the ending date was January 11, 2006. Therefore, the first day after the period covered by the last report required to be filed by the respondent was January 12, 2006.
13. The period covered by the respondent's 30-day pre-election report did not begin until January 16, 2006. However, no reportable activity occurred during the omitted period. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.064 of the Election Code.

14. Each campaign finance report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
15. A candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may report the amount expended as a loan and may reimburse those personal funds from political contributions in the amount of the reported loan. ELEC. CODE § 253.0351.
16. While a candidate may report political expenditures from personal funds as a loan, because that transaction is not truly a loan it is not required to be reported on the totals page of the campaign finance report. Ethics Advisory Opinion No. 349 (1996).
17. The respondent reported \$2,000 of loans from himself on the totals page of his 8-day pre-election campaign finance report. If the respondent was attempting to report political expenditures made from personal funds as a loan, the amount disclosed on the loan schedule should have only been the amount actually expended. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(2) of the Election Code.
18. While section 254.031 of the Election Code generally regulates the contents of a candidate's campaign finance report, there is no requirement that political expenditures, political contributions, and political contributions maintained balance.
19. Because of the statutory reporting requirements, political contribution and political expenditure totals will often not "balance." The available evidence is insufficient to show that the respondent violated section 254.031 of the Election Code by failing to disclose political contributions, other than those previously addressed.
20. A political contribution consisting of an individual's personal service is not required to be reported if the individual receives no compensation for the service. ELEC. CODE § 254.033.
21. For reporting purposes a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. ELEC. CODE § 254.035.

22. A campaign contribution is any thing of value given with the intent that it be used in connection with a campaign for elective office. ELEC. CODE § 251.001(3).
23. Regarding the website, a person who was not being reimbursed contributed his personal services by creating the respondent's website. This contribution was a non-reportable personal service.
24. The website was provided free of charge by a business that provides free websites to anyone, and there is no evidence that the company intended to make a political contribution to the respondent. Because it is within the company's normal course of business to provide free websites to individuals regardless of whether they are running for elective office, providing the website was not a campaign contribution.
25. Therefore, there is credible evidence of no violation of section 254.031 of the Election Code regarding the alleged failure to report political contributions and political expenditures for a website.
26. Regarding the failure of the respondent to report a political expenditure related to his campaign telephone line, at the time the respondent filed his 8-day pre-election campaign finance report the respondent had not yet received a bill.
27. The billing period for the respondent's 90-day account did not expire until after the campaign finance report at issue was due. Therefore, the amount of the expenditure was not readily determinable by the end of the reporting period at issue. There is credible evidence of no violation of section 254.031 of the Election Code related to the telephone bill.

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 the entry of this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person required to file a report, the full name and

address of the person making the contributions, and the dates of the contributions. The respondent acknowledges that each campaign finance report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period.

The respondent also acknowledges that each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of political expenditures of \$50 or less made during the reporting period. The respondent further acknowledges that each campaign finance report must include the total amount of all political expenditures made during the reporting period. The respondent acknowledges that each campaign finance report must include the total amount of all political expenditures made during the reporting period. The respondent acknowledges that the 30-day pre-election report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through the 40th day before election day. The respondent agrees to fully and strictly comply with these requirements 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. 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 a \$200 civil penalty for the violations described under Sections III and 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-260371.

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

Robert C. McIntyre, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director