

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ALBERT W. MCKNIGHT,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2607172

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 28, 2006, to consider sworn complaint SC-2607172. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.231 of the Ethics Commission Rules, a law and rule 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 accepted campaign contributions and made campaign expenditures at a time when a campaign treasurer appointment for his candidacy was not in effect. The complaint also alleges that the respondent failed to properly report loans, political contributions maintained, and political expenditures, including the original payee on three political expenditures to McKnight HQ disclosed on his final report. The complaint also alleges that the respondent failed to sign the affidavit on his final report.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for re-election as justice of the peace.
2. The respondent accepted campaign contributions and made campaign expenditures between August 19, 2005, and September 15, 2005.
3. The respondent filed a campaign treasurer appointment on September 19, 2005, in order to change treasurers. The respondent had a campaign treasurer in effect at the time he accepted campaign contributions and made campaign expenditures between August 19, 2005, and September 15, 2005.

4. The respondent's January 2006 semiannual report disclosed \$1,980 for the total amount of political contributions maintained as of the last day of the reporting period. The respondent's 8-day pre-election report disclosed political contributions maintained of \$36.83. The respondent's final report discloses total political contributions of \$545, total political expenditures of \$1,633.59, and political contributions maintained of <\$1,129.35>.
5. The respondent's 30-day and 8-day pre-election reports disclose total outstanding loans of \$4,734.33. The respondent did not fill out the loans schedule to disclose the source of his loans.
6. The evidence indicates that the loans were made from the respondent's personal funds and that he reported the expenditure of those funds on Schedule F.
7. The complaint alleges that the respondent failed to report on his 30-day pre-election report political expenditures made to petition circulators, to a sign installer, and to an attorney for a campaign lawsuit. The available evidence does not support the allegations.
8. The respondent's final report disclosed "McKnight HQ" as the payee for political expenditures for a phone bank, a meeting, and a campaign rally totaling \$1,633.57.
9. The respondent's "designation of final report" filed on April 7, 2006, was signed by an individual other than the respondent. The respondent re-filed the "designation of final report" with his signature on it.

IV. Findings and Conclusions of Law

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

1. "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. An example of affirmative action is the soliciting or accepting of a campaign contribution or the making of a campaign expenditure. ELEC. CODE § 251.001(1)(G).
2. Each candidate shall appoint a campaign treasurer. ELEC. CODE § 252.001.
3. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE § 253.031(a).

4. "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. ELEC. CODE § 251.001(3).
5. "Campaign expenditure" means an expenditure made by any person in connection with a campaign for an elective office or on a measure. ELEC. CODE § 251.001(7).
6. The evidence indicates that the respondent accepted campaign contributions and made campaign expenditures between August 19, 2005, and September 15, 2005. Therefore, the respondent was a candidate during that time. The evidence indicates that the respondent had a campaign treasurer at all times. Therefore, there is credible evidence of no violation of sections 252.001 and 253.031(a) of the Election Code.
7. A campaign finance report must include the total amount of political contributions accepted and maintained in one or more accounts as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
8. The amount of political contributions maintained cannot always be determined by simply subtracting the total amount of political expenditures that have been reported on all of a filer's reports from the total amount of political contributions that have been reported on all of a filer's reports. Other activity information, such as the amount of expenditures from personal funds, and the amount of reimbursement of personal funds may also be needed to determine political contributions maintained. In addition, political contributions must be reported during the reporting period in which they are accepted. Political expenditures are reported when the expenditure is incurred, which may be a different reporting period than the one in which the political expenditure is actually paid. Based on the information disclosed in the reports, the evidence is insufficient to show that the amount disclosed as political contributions maintained is incorrect. Therefore, there is insufficient evidence that the respondent violated section 254.031(a)(8) of the Election Code.
9. A 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. ELEC. CODE § 254.031(a)(2).
10. A filer that makes political expenditures from his personal funds is not required to report the amount of such expenditures as a loan on the loans schedule. ELEC. CODE § 253.0351.
11. The evidence indicates that the loans at issue were made from the respondent's personal funds and that he reported the expenditure of those funds on Schedule F. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(2) of the Election Code.

12. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 for each person and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
13. The evidence is insufficient to show that the respondent made political expenditures to petition circulators, a sign installer, or an attorney for a campaign lawsuit. Therefore, there is insufficient evidence that the respondent violated section 254.031(a)(3) of the Election Code by not reporting such expenditures.
14. The respondent disclosed "McKnight HQ" as the payee for political expenditures for a phone bank, a meeting, and a campaign rally totaling \$1,633.57. The respondent did not disclose the names and addresses of the vendors that the original expenditures were made to or the dates of the original expenditures. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code by not reporting this information.
15. A candidate is required to sign the statement or statements that are applicable to him on the "designation of final report" page of the campaign finance report. Ethics Commission Rules § 20.231.
16. The "designation of final report" page of the final report that the respondent filed on April 7, 2006, was signed by an individual other than the respondent. The respondent re-filed that page with his signature. Therefore, there is credible evidence that the respondent violated section 20.231 of the Ethics Commission Rules.

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 a campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 for each person and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent also acknowledges that a candidate is required to sign the statement or statements that are

applicable to him on the "designation of final report" page of the campaign finance report. The respondent agrees to comply with these requirements of the law and rules.

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-2607172.

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

Albert W. McKnight, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director