

TEXAS ETHICS COMMISSION

IN THE MATTER OF
TERRI J. WILSON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2711226

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 14, 2008, to consider sworn complaint SC-2711226. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.063, and 254.064 of the Election 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 properly file 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 a successful opposed mayoral candidate in an election held on May 12, 2007, in the City of Krum.
2. The respondent's campaign treasurer appointment is not file stamped, but is dated February 13, 2007. The respondent selected modified reporting declaration on his treasurer appointment.
3. On May 9, 2007, the respondent filed an exceeded \$500 campaign finance report with the City of Krum. The report covered the period beginning February 13, 2007, through May 9, 2007, and disclosed \$400 in total political contributions and \$1,061.98 in total political expenditures.
4. The report did not disclose any political contributions or political expenditures for signs or newspaper advertising. The report discloses that the respondent received notice of a direct campaign expenditure from an individual.

5. On November 15, 2007, the respondent filed a final campaign finance report with the City of Krum. The report covered the period beginning May 9, 2007, through November 15, 2007, and disclosed \$273.20 in total political contributions and \$1,020 in total political expenditures.
6. The report discloses two expenditures to the Krum Star/Sanger Courier dated June 30, 2007, totaling approximately \$1,020 for political advertising. The report additionally discloses one \$273.20 in-kind contribution for yard signs, dated March 16, 2007.
7. On May 16, 2008, the respondent corrected her exceeded \$500 campaign finance report with the City of Krum.
8. In the correction affidavit, the respondent explains that her originally filed report disclosed notice of direct campaign expenditures for the political advertising signs at issue in this complaint. She swears that she should have instead disclosed the expenditures for signs as in-kind contributions.
9. The corrected report includes a \$273.20 in-kind contribution for signs from the individual who was listed on the original report as giving notice of a direct expenditure. The totals page is also adjusted accordingly.
10. On May 30, 2008 the respondent filed a corrected final report with the City of Krum. The corrected report deleted the \$273.20 in-kind contribution for yard signs contained on the report and adjusted the totals accordingly.
11. In the correction affidavit included with the corrected final report, the respondent swears that the Krum Star did not quote her a price for the political advertising when she contacted them since they did not know the size of the advertising. She swears that she then sent them the contents of the advertising and received a proof, which she approved with the understanding that a bill would follow.
12. The respondent swears that she never intended to not report the advertising but that she did not receive a bill for the newspaper advertising until June 30, 2008.
13. The respondent swears that she believes she spoke with the Krum Star on only one occasion about the advertising.
14. A letter the respondent received from the Krum Star indicates that the earliest advertising was published on April 13, 2007.
15. The letter also indicates that the respondent was overbilled by \$150.

IV. Findings and Conclusions of Law

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

1. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report shall be filed not later than the 30th day before election day. The 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, as applicable, and continuing through the 40th day before election day. The second report shall be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. ELEC. CODE § 254.064.
2. An opposed candidate who elects modified reporting, is not required to file 30-day and 8-day pre-election reports if the candidate does not accept political contributions that in the aggregate exceed \$500 or to make political expenditures that in the aggregate exceed \$500 in connection with the election. ELEC. CODE § 254.181.
3. To be entitled to modified reporting, an opposed candidate must file with the campaign treasurer appointment a written declaration of intent not to exceed \$500 in political contributions or political expenditures in the election. ELEC. CODE § 254.182.
4. If a candidate exceeds the \$500 threshold after the filing deadline for the 30-day pre-election report, the candidate is required to file a report no later than 48 hours after the \$500 threshold is exceeded. In addition, from that point on the candidate must file on the regular reporting schedule. ELEC. CODE § 254.183.
5. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 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.
6. A campaign expenditure must be reported in the reporting period in which it is made. ELEC. CODE § 254.031. 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(a). If the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received. ELEC. CODE § 254.035(b).
7. The evidence indicates that during the relevant time period the respondent was an opposed candidate for Mayor of the City of Krum. The evidence also indicates that the respondent elected to file on the modified reporting schedule. The respondent's exceeded \$500 report filed May 9, 2007, discloses approximately \$1,062 in political expenditures and \$400 in political contributions between February 13, 2007, and May 9, 2007. The evidence indicates

- that the expenditures related to the yard signs were originally reported as a notice of a direct expenditure on her exceeded \$500 report. The evidence also indicates that the signs at issue were in fact in-kind contributions that were later disclosed on the respondent's corrected final report. The evidence also indicates that the contributions for yard signs were accepted on March 16, 2007, within the period covered by the exceeded \$500 report.
8. With respect to political expenditures, according to the exceeded \$500 report, the respondent did not exceed the \$500 modified reporting expenditure threshold until May 7, 2007. However, the evidence indicates that the respondent entered into an agreement with the Krum Star prior to April 13, 2007 (the date the first newspaper advertising was published). The cost of the newspaper advertising was approximately \$870 (the report discloses \$1,020, but the newspaper overbilled the respondent). The respondent swears that she believes that she spoke with the newspaper only one time. Therefore, it is reasonable to believe that the respondent ordered all of the advertising at only one time. Even though the newspaper indicated it would send the respondent a bill, the respondent could have inquired about the cost at the time the advertising was ordered. Therefore, the amount of the political expenditure for the advertising was readily determinable at that time.
 9. The exact date the respondent placed the order for the advertising is not known, but the evidence indicates that the order was placed before April 13, 2007. The 30-day pre-election report for the May 12, 2007, election was due on April 12, 2007. The last day covered by the report would have been April 2, 2007. The evidence is insufficient to show that the respondent made expenditures that exceeded the \$500 modified reporting threshold before the end of the reporting period for the 30-day pre-election report. Thus the evidence is insufficient to show that the respondent was required to file the 30-day pre-election report. With respect to an exceeded \$500 report, if the respondent had exceeded the \$500 threshold after the deadline for the 30-day pre-election report, she would have been required to file the exceeded \$500 report. However, the evidence indicates that she exceeded the threshold before the deadline for the 30-day pre-election report. Thus she was not required to file the exceeded \$500 report, but was required to file the 8-day pre-election report. That report was due on May 4, 2007, and the last day covered was May 2, 2007. The respondent did not file that report. Therefore, there is credible evidence that the respondent violated sections 254.031 and 254.064 of the Election Code with respect to the 8-day pre-election report. (The respondent filed an exceeded \$500 report on May 9, 2007. That report would not have been required if she had correctly filed the 8-day pre-election report).
 10. In addition to other required reports, a candidate shall file two campaign finance reports for each year. The first report shall be filed not later than July 15. The report covers the period beginning January 1, 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, as applicable, and continuing through June 30. The second report shall be filed not later than January 15. The report covers the period beginning July 1, 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, as applicable, and continuing through December 31. ELEC. CODE § 254.063.

11. The evidence indicates that the respondent did not file a final campaign finance report until November 15, 2007. The information included on that report was incorrect. As a candidate the respondent was required to file a semiannual report on July 15, 2007. The respondent failed to do so. Therefore, there is credible evidence of a violation of sections 254.031 and 254.063 of the 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 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 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 amount of political expenditures that in the aggregate exceed \$50 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 total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period; and the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The respondent also acknowledges that a candidate shall file two semiannual campaign finance reports for each year. The first report shall be filed not later than July 15. The report covers the period beginning January 1, 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, as applicable, and continuing through June 30. The second report shall be filed not later than January 15. The report covers the period beginning July 1, 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, as applicable, and continuing through December 31. The respondent also acknowledges that in addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The 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, as applicable, and continuing through the 40th day before election day. The second report must be received by the authority with whom the report is required to

be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. The respondent agrees to 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. 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 \$300 civil penalty.

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-2711226.

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

Terri J. Wilson, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director