

TEXAS ETHICS COMMISSION

IN THE MATTER OF

DEE ANDERSON,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-280264

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 4, 2008, to consider sworn complaint SC-280264. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 254.063 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 resolution to the respondent.

II. Allegation

The complaint alleges that the respondent failed to file 30-day and 8-day pre-election campaign finance reports as a candidate, failed to file semiannual campaign finance reports as a candidate or officeholder, failed to properly disclose required information on his January 2008 semiannual campaign finance report, and failed to keep a record of all reportable activity.

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 candidate for Tarrant County Sheriff in the 2000 primary and general elections.
2. Allegations of reporting violations that relate to reports that were filed more than two years before February 15, 2006, (two years before the complaint's postmark date) are outside the statute of limitations and may not be considered. Ethics Commission Rules § 12.5. Some allegations in this complaint relate to the respondent's semiannual reports filed prior to February 15, 2006, and pre-election campaign finance reports for the 2004 primary and general elections. Therefore, those allegations were not considered.

3. The respondent was an unopposed candidate for Tarrant County Sheriff in the 2004 primary and general elections and was an opposed candidate for that office in the 2008 primary and general elections.
4. The respondent filed his initial treasurer appointment with Tarrant County on April 26, 1999.
5. The respondent filed a January 2004 semiannual report on January 15, 2004, which covered June 30, 2003, through December 31, 2003. The report disclosed zero political expenditures and contributions, but left the spaces for total political contributions maintained and total principal amount of outstanding loans blank.
6. The respondent filed a July 2004 semiannual report on July 16, 2004, which covered January 1, 2004, through June 30, 2004. The report disclosed zero political expenditures and contributions, but left the spaces for total political contributions maintained, and total principal amount of outstanding loans blank. The report does not indicate that it is a final report.
7. The respondent filed a January 2008 semiannual report on January 15, 2008, covering July 1, 2007, through December 31, 2007. The report disclosed zero total political contributions and \$1,250 in total political expenditures. The report disclosed a \$1,250 expenditure to the Tarrant County Republican Party for, "primary filing fee." The report also disclosed \$12,019.79 in total political contributions maintained and no outstanding loans. The respondent signed the affidavit on the report swearing that the information contained on the report was true and correct.
8. The respondent filed a 30-day pre-election report on February 4, 2008, covering January 1, 2008, through January 24, 2008. The respondent also filed an 8-day pre-election report on February 25, 2008, covering January 25, 2008, through February 23, 2008. Both reports were filed in connection with the March 4, 2008, primary election.
9. The local filing authority does not have any campaign finance reports on file prior to the January 2004 semiannual report filed on January 15, 2004. The local filing authority's records show that the respondent did not file any campaign finance reports between July 16, 2004, and January 15, 2008.
10. The respondent swears that he had no activity during any of the intervening years until his 2008 campaign, and that the contribution balance of \$12,019.79 was maintained from his 2004 campaign.
11. As of December 4, 2008, the respondent has not filed the July 2006, January 2007, and July 2007 semiannual reports. The respondent filed a correction to his January 2004 semiannual report on or about October 7, 2008, to disclose a contribution balance of \$13,269.79.

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. The evidence indicates that the respondent was an opposed candidate in the primary election held on March 4, 2008. As an opposed candidate the respondent was required to file a 30-day pre-election report by February 4, 2008, and an 8-day pre-election report by February 25, 2008, (a date after the sworn complaint was filed). The evidence indicates that the respondent timely filed both pre-election reports. Therefore, there is credible evidence of no violation of section 254.064 of the Election Code.
3. A candidate is required to file two 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.
4. An officeholder is required to file two reports each year. The first report is due not later than July 15. The report covers the period beginning January 1, the day the officeholder takes office, 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 is due not later than January 15. The report covers the period beginning July 1, the day the officeholder takes office, 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 § 254.093.
5. If at the end of any reporting period prescribed by this subchapter an officeholder who is required to file a report with an authority other than the commission has not accepted political contributions that in the aggregate exceed \$500 or made political expenditures that in the aggregate exceed \$500, the officeholder is not required to file a report covering that period. ELEC. CODE § 254.095.

6. An officeholder remains a candidate for purposes of the reporting requirements under title 15 of the Election Code until the candidate files a final report. ELEC. CODE § 254.065.
7. The evidence indicates that the respondent filed a July 2004 semiannual report on July 16, 2004, which did not indicate that it was a final report. The evidence also indicates that the respondent did not file another campaign finance report until January 15, 2008. Since the respondent never filed a final report, the respondent was still a candidate for title 15 purposes after July 16, 2004. As a candidate, the respondent was required to file January 2005, July 2005, January 2006, July 2006, January 2007 and July 2007 semiannual reports. The respondent failed to do so. Campaign finance reports filed before February 15, 2006, are not within the commission's sworn complaint jurisdiction. Nevertheless, there is credible evidence of violations of section 254.063 of the Election Code as to the respondent's July 2006, January 2007, and July 2007 semiannual reports.
8. 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 report must also include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person 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 report must also 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. The report must also 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 the political expenditures of \$50 or less made during the reporting period. The report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The report must also include, as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031.
9. The evidence indicates that the respondent completed his January 2008 semiannual report, leaving no spaces blank and including information required by section 254.031 of the Election Code. On the affidavit for the report the respondent swears that the information contained on the report is true and correct. The report discloses a contribution balance of

\$12,019.79, which the respondent swears is maintained from his 2004 campaign. The respondent's originally filed January 2004 and July 2004 semiannual reports did not disclose any political contributions received or political contributions maintained. The respondent corrected his January 2004 semiannual report to add \$13,269.79 in political contributions maintained, but did not correct or file any additional reports to disclose any incoming contributions from April 26, 1999, (the day the respondent filed his initial treasurer appointment) through June 29, 2003, (the day before the first day covered on the respondent's January 2004 semiannual report). However, those reports are outside the statute of limitations. Therefore, although the respondent included the information required by section 254.031 of the Election Code on his January 2008 semiannual report, there is insufficient evidence to determine whether the respondent disclosed the correct amount of total political contributions maintained on that report. Thus, there is insufficient evidence of a violation of section 254.031 of the Election Code.

10. Each candidate and each officeholder is required to maintain a record of all reportable activity. The record must contain the information that is necessary for filing campaign finance reports. A person required to maintain a record is required to preserve the record for at least two years beginning on the filing deadline for the report containing the information in the record. ELEC. CODE § 254.001.
11. The complaint also alleged that the respondent failed to properly keep a record of all reportable activity. The respondent swore that he had no activity related to the unfiled semiannual reports. The evidence does not show that the respondent failed to maintain records as required by the Election Code. Therefore, there is insufficient evidence of a violation of section 254.001 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 a person remains a candidate for purposes of the reporting requirements of title 15 of the Election Code until the person files a final report as a candidate. The respondent acknowledges that a candidate is required to file two 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 agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations 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 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 \$1,500 civil penalty. In the alternative, the commission imposes a \$750 civil penalty if the respondent files the semiannual reports at issue and provides evidence to the commission of those filings by January 2, 2009.

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-280264.

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

Dee Anderson, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director