

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOE SHOCKLEY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2803131

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 13, 2008, to consider sworn complaint SC-2803131. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.063 of the Election Code, and credible evidence of a technical or *de minimis* violation of section 571.1242 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 semiannual campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. At the time of the complaint the respondent was a Montgomery city councilperson. The respondent was unopposed in the May 2006 election. The complaint alleges that the respondent failed to file semiannual campaign finance reports from July 2006 through January 2008.
2. On March 17, 2008, the commission sent a notice by certified mail to the respondent that a sworn complaint had been filed against him. The notice stated that the sworn complaint would be processed as a Category One violation and that the respondent was required to respond to an allegation of a Category One violation within 10 business days of receipt of the notice.
3. The United States Postal Service (USPS) attempted delivery of the notice of sworn complaint and left notice for the respondent on March 20, 2008, and March 28, 2008. On April 22,

- 2008, the notice of sworn complaint was returned to the commission because it was unclaimed by the respondent.
4. On April 25, 2008, the commission resent the original notice of sworn complaint to the respondent by certified mail and delivery confirmation. The evidence indicates that the respondent did not personally receive the notice. USPS records show the notice of sworn complaint was delivered at the respondent's address on April 28, 2008.
 5. On May 30, 2008, the commission sent another notice of sworn complaint to the respondent by certified mail and delivery confirmation. USPS records show the respondent signed for the document on June 11, 2008.
 6. On June 13, 2008, the commission received a campaign finance report from the respondent covering the period from July 2006 through January 2008. The report indicates the office held and office sought are city councilperson. The report discloses zero total political contributions, zero total political expenditures, zero political contributions maintained as of the last day of the reporting period, and zero loans. The respondent signed the designation of final report page of the report but did not complete the section of that page used to disclose whether the candidate maintains unexpended political contributions or assets purchased with political contributions. Also, the report is not date stamped by the local filing authority. Although a notary public signed the affidavit that accompanies the report on June 4, 2008, the notary public did not affix the notary stamp. The report was postmarked June 11, 2008, and the return address lists the City of Montgomery as the sender.
 7. On July 1, 2008, the commission sent a quarterly status letter to the respondent notifying him that the complaint is still pending.
 8. On August 4, 2008, the commission received an unsworn statement from the respondent postmarked August 1, 2008. The respondent states that he did not receive the registered mail sent in April and that he was in the hospital from May 7 through May 14. The respondent states that after picking up his mail on or about May 19, he found a letter from the city secretary written by the city attorney stating that the mayor and city council did not have the proper documents on file with the city. The respondent states that after his conversation with commission staff, he mailed a report to the city secretary with a note instructing her to make copies for her files and to mail the report to the commission. The respondent states that he ran unopposed twice and resigned his position on or about March 21. The respondent states that he was not aware of the requirements for filing and did not spend any money during his four terms in office.
 9. On September 29, 2008, the local filing authority provided copies of all documents filed with that office since 2006. The respondent filed an application for a place on the ballot for city councilperson on February 28, 2006.

10. The respondent filed a campaign treasurer appointment that indicates the office held and office sought are city councilperson. The treasurer appointment is not date stamped by the local filing authority. Although the respondent signed the declaration of intent to follow modified reporting, the respondent did not indicate the date of the election to which that declaration applied.
11. The respondent filed the aforementioned campaign finance report covering the reporting period from July 2006 through January 2008. The respondent did not file any corrections to this report.

IV. Findings and Conclusions of Law

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

Failure to File Semiannual Reports

1. A candidate shall file two reports for each year, the first report shall be filed not later than July 15, and cover 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, and cover 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.
2. A candidate has the duty to file semiannual reports until the candidate terminates his campaign treasurer appointment. The designation of a report as a final report terminates a candidate's campaign treasurer appointment. ELEC. CODE § 254.065.
3. The evidence indicates the respondent was a candidate in the May 2006 election and filed a campaign treasurer appointment before that election. Therefore, the respondent was required to file semiannual reports as a candidate. The respondent did not file a final report during the period from July 2006 through January 2008. Therefore, the respondent did not terminate his requirement to file semiannual reports during that period. Although the respondent filed a final report after receiving notice of the complaint, the reports at issue were not filed by the respective deadlines. Also, the report the respondent filed does not cover the entire reporting period at issue. The report due July 15, 2006, should cover 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. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code.

Untimely Response

4. The respondent must respond to the notice of a Category One violation not later than the 10th business day after the date the respondent receives the notice and failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. GOV'T CODE § 571.1242. The response must be in writing, admit or deny the allegations set forth in the complaint, and be signed by the respondent. Ethics Commission Rules § 12.52.
5. The respondent received the notice of sworn complaint on June 11, 2008. The notice stated that the respondent was required to respond within 10 business days from the date he received the notice. The commission received the respondent's campaign finance report on June 13, 2008. The report addressed the outstanding semiannual reports at issue, but it was not a complete response to the allegations. Although incomplete, the response was submitted by the deadline and the respondent later submitted a complete written response addressing the allegations. Therefore, there is credible evidence of a technical or *de minimis* violation of section 571.1242 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 a candidate shall file two reports for each year, the first report shall be filed not later than July 15, and the second report shall be filed not later than January 15. The respondent acknowledges that a respondent must respond to a Category One violation within 10 business days from the date the respondent receives notice of the sworn complaint. 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 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.

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-2803131.

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

Joe Shockley, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director