

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOHN HOWARD CROSS,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-2805236

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2009, to consider sworn complaint SC-2805236. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.064 of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent failed to file pre-election reports.

III. Facts Supported by Credible Evidence

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

1. The respondent was an opposed candidate in the May 10, 2008, Nassau Bay city council election. Pre-election reports for that election were due April 10, 2008, and May 2, 2008.
2. On March 10, 2008, the respondent filed a campaign treasurer appointment and an application to be placed on the ballot. The modified reporting declaration on page two of the campaign treasurer appointment was left blank.
3. In his response to the complaint, the respondent admitted that he did not file the pre-election reports by the due date.
4. The respondent filed the reports at issue in June 2008 and filed corrections to the reports in July 2008.

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. ELEC. CODE § 251.001(1). Examples of affirmative action include the filing of a campaign treasurer appointment, and the filing of an application for a place on the ballot. *Id.* § 251.001(1)(A)(B).
2. In addition to other required reports, an opposed candidate is required to file reports 30-days and 8-days before an election. ELEC. CODE § 254.064. An opposed candidate is not required to file 30-day and 8-day pre-election reports if the opposed candidate selects modified reporting on his campaign treasurer appointment at least 30 days prior to the election and declares that he does not intend to accept political contributions or make political expenditures that in aggregate exceed \$500 in connection with the election. ELEC. CODE §§ 254.181 and 254.182, Ethics Commission Rules § 20.217.
3. The respondent became a candidate not later than March 10, 2008, when he filed a campaign treasurer appointment and an application to be placed on the ballot.
4. The respondent was an opposed candidate in the May 2008 election.
5. An opposed candidate is required to file 30-day and 8-day pre-election reports, unless the opposed candidate meets the requirements for modified reporting.
6. Although the respondent filed a campaign treasurer appointment on March 10, 2008, he did not elect modified reporting. Thus, the respondent was required to file 30-day and 8-day pre-election reports.
7. The evidence indicated that the respondent did not timely file 30-day and 8-day pre-election reports. Therefore, there is credible evidence of violations of section 254.064 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 an opposed candidate is required to file reports 30-days and 8-days before an election. The respondent also acknowledges that an opposed candidate

is not required to file 30-day and 8-day pre-election reports if the opposed candidate selects modified reporting on his campaign treasurer appointment at least 30 days prior to the election and declares that he does not intend to accept political contributions or make political expenditures that in aggregate exceed \$500 in connection with the election. 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-2805236.

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

John Howard Cross, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director