

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MICHAEL SMITH,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-31006190

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-31006190. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 254.064 of the Election Code, and credible evidence of a technical or *de minimis* violation of section 254.031 of the Election Code, laws 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: 1) did not properly disclose total political contributions on the 30-day pre-election report for the May 2010 election, 2) did not properly disclose total political contributions maintained on 30-day and 8-day pre-election reports for the May 2010 election, and 3) did not timely file the 8-day pre-election report for the May 2010 election.

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 for The Woodlands Township Board of Directors, Position 1 in the May 8, 2010 election.
2. The respondent's 30-day pre-election report for the May 2010 election disclosed \$58.50 in total political contributions of \$50 or less (unless itemized), \$1,118.50 in total political contributions, and \$969.85 in total political contributions maintained. Schedule A (used for reporting political contributions) disclosed political contributions totaling \$1,108.50.

3. The respondent's 8-day pre-election report for the May 2010 election disclosed \$783.64 in total political contributions maintained. The local filing authority date stamped the report as received on May 3, 2010. The report included two affidavits. The first affidavit was notarized on April 30, 2010, and the second affidavit was notarized on May 3, 2010. Although the first affidavit included a notary stamp, it was not signed by the notary. The second affidavit was properly notarized.
4. In response to the sworn complaint allegations, the respondent, in an unsworn statement, asserted that, due to a calculation error, the total amount of political contributions on his 30-day pre-election report for the May 2010 election should have been disclosed as \$1,108.50 and not \$1,118.50. The respondent also stated that, "a \$1.50 error occurred in calculating the net balance of contributions and expenditures."
5. The respondent denied the allegation that he failed to properly disclose total political contributions maintained on his 8-day pre-election report for the May 2010 election and provided a bank statement disclosing that the account's ending balance on the last day of the reporting period was \$783.64.
6. The respondent provided an affidavit in which he swore that he attempted to deliver the 8-day pre-election report to the office of the local filing authority on Friday, April 30, 2010, but did not arrive at the office until a few minutes after 5 p.m., when the office was closed. The respondent swore that he went to another floor of the building and had the report notarized. The respondent swore that he placed the completed report beneath the local filing authority's entrance door at about 5:15 p.m. on Friday, April 30, 2010, and that no changes or additions were made to the report after it was notarized.

IV. Findings and Conclusions of Law

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

1. Each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
2. Each report must 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. *Id.* § 254.031(a)(8).

3. 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. *Id.* § 254.064(a). 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 and 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 under this chapter, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b). 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 and covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.064(c).
4. The deadline for filing a report with a local filing authority is 5 p.m. on the last day permitted under chapter 254, Election Code, for filing the report. *See Id.* § 254.037(a).
5. The respondent improperly disclosed the total amount of political contributions on his 30-day pre-election report for the May 2010 election. Based on political contribution amounts disclosed on Schedule A and the total amount of unitemized political contributions, the evidence indicates that the total amount of political contributions was \$1,167. However, it is unclear whether the respondent included itemized political contributions totaling \$58.50 in the total amount of unitemized political contributions. The respondent did not file a corrected report. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code.
6. The evidence is inconclusive as to whether the respondent failed to properly disclose total political contributions maintained on his 30-day pre-election report for the May 2010 election. Therefore, as to that report, there is insufficient evidence of a violation of section 254.031(a)(8) of the Election Code.
7. The evidence indicates that the respondent properly disclosed total political contributions maintained on his 8-day pre-election report for the May 2010 election. Therefore, as to that report, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code.
8. The 8-day pre-election report for the May 8, 2010, election was required to be received by the local filing authority no later than 5:00 p.m. on Friday, April 30, 2010. The respondent filed the report after the deadline. Therefore, there is credible evidence of a violation of section 254.064(c) 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 total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The respondent 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 timely file pre-election campaign finance reports, as required by section 254.064 of the Election Code. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes a violation 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 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-31006190.

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

Michael Smith, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director