

TEXAS ETHICS COMMISSION

IN THE MATTER OF

GAIL B. TENNANT,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31010355

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 8, 2012, to consider sworn complaint SC-31010355. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.031, 254.031, 254.036(h), 254.061, and 254.064 of the Election Code and section 20.61 of the Ethics Commission Rules, 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 political contributions; 2) did not properly disclose political expenditures; 3) did not properly execute report affidavits; 4) did not properly disclose cover sheet information; 5) accepted campaign contributions and made campaign expenditures when a campaign treasurer appointment was not in effect; and 6) did not timely file a 30-day pre-election report.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for Karnes County Judge in the November 2, 2010, general election.
2. The respondent filed his campaign treasurer appointment with the Karnes County clerk on December 30, 2009. The campaign finance reports at issue are the 30-day and 8-day pre-election reports for the March 2, 2010, primary election, the 30-day pre-election report for the November 2010 general election, and a final report covering from December 30, 2009, through July 1, 2010.

Political Contributions

3. The complaint alleged that the respondent did not properly itemize political contributions in the 30-day pre-election report and the July 2010 final report, and did not disclose total political contributions in the 8-day pre-election report and July 2010 final report.
4. Regarding the 30-day pre-election report, the respondent disclosed \$2,975 in “anonymous donations” on Schedule H (used to disclose payment from political contributions to a business of the candidate or officeholder) of the original 30-day pre-election report. The report left blank the space to disclose political contributions of \$50 or less, unless itemized.
5. On October 25, 2010, in response to the complaint, the respondent filed a corrected 30-day pre-election report and included a handwritten list of the political contributions. The corrected report disclosed 11 political contributions totaling \$2,975 and included the amounts, full names, and addresses of each individual from whom a political contribution was received. However, the respondent did not include any contribution dates. The report also left blank the space for total political contributions of \$50 or less, unless itemized.
6. Regarding the July 2010 final report, the respondent filed the report on July 14, 2010, covering from December 30, 2009, through July 1, 2010. The report was marked only as a final report but did not include the final report affidavit. The report did not disclose any detailed political contributions and left blank the spaces for total political contributions. On December 14, 2010, in response to the complaint, the respondent filed another final report covering from May 6, 2010, through December 10, 2010 (this report was not a subject of this complaint because it was filed after the sworn complaint was filed). The report disclosed \$9,950 in total political contributions and included an attached typed statement listing the names of contributors, amounts, and approximate dates or a date range for 21 political contributions. The list did not include any contributor addresses. The listed contributions total \$5,320. Another attachment appeared to list all deposits made into a campaign checking account going back to January 31, 2010. The total of those deposits is \$9,950, the same as the total amount of political contributions disclosed on the report. The attachment did not make clear whether that amount included only contributions or whether the use of personal funds was also included.
7. The itemized statement included with the report disclosed that the respondent accepted \$3,975 in political contributions between May 6, 2010, and June 15, 2010. These contributions were not disclosed in the original final report filed by the respondent covering from December 30, 2009, through July 1, 2010.
8. The complaint also alleged that the respondent did not properly disclose total political contributions in the 8-day pre-election report and the final report. Regarding the 8-day pre-election report, the box for total political contributions was left blank and the amount of political contributions, if any, accepted during the period covered by the report (January 27, 2010, through February 23, 2010) is not clear. The attachment to the

December 2010 report shows a deposit of \$2,225 into the campaign checking account on January 31, 2010. The respondent did not file a correction to the report.

Total Political Contributions Maintained

9. The complaint alleged that the respondent did not properly disclose total political contributions maintained in the 30-day and 8-day pre-election reports and the July 2010 final report. In all three reports at issue, the respondent left the total political contributions maintained boxes blank.
10. In response to the complaint, the respondent filed an additional final report covering from May 6, 2010, through December 10, 2010, that disclosed \$2,124.20 in total political contributions maintained. No corrections were filed to the 30-day and 8-day pre-election reports.

Political Expenditures

11. The complaint alleged that the respondent did not properly itemize political expenditures in the 30-day and 8-day pre-election reports and the July 2010 final report. In all reports at issue, the respondent did not disclose the payee's address, dates, and purposes pertaining to the political expenditures. Political expenditures were disclosed in the three reports as follows:
 - \$750 to the Karnes County Republican Party (30-day pre-election report)
 - \$252 to the Karnes County Publishing Co. for "ad" (30-day pre-election report)
 - \$147 to County Wide (8-day pre-election report)
 - \$240 to Karnes County Times (8-day pre-election report)
 - \$669.07 to Clover Leaf (8-day pre-election report)
 - \$272.50 to Runge Catholic Church; St. Anthony (July 2010 final report)
 - \$225 to St. Helena Catholic Church (July 2010 final report)
 - \$161.76 to Pollok's Market (July 2010 final report)
12. On December 14, 2010, in response to the complaint, the respondent filed a report covering from May 6, 2010, through December 10, 2010, that was marked as a final report. The report contained an attached typed schedule that disclosed the dates for the political expenditures at issue. The report did not include the payee's addresses and the purposes of the political expenditures. In addition to these expenditures, the report also disclosed 25 political expenditures totaling approximately \$3,420.
13. The complaint alleged that the respondent did not properly report total political expenditures in the 30-day and 8-day pre-election reports and the July 2010 final report.
14. The 30-day pre-election report covered from December 30, 2009, through January 27, 2010, and disclosed \$1,002 in total political expenditures; Schedule F (used to itemize political expenditures) of the report disclosed the following:

- \$750 to the Karnes County Republican Party
 - \$252 to the Karnes County Publishing Co. for “ad”
15. The 8-day pre-election report covered from January 27, 2010, through February 23, 2010, and disclosed \$1,056.07 in total political expenditures; Schedule F of the report disclosed the following:
- \$147 to County Wide
 - \$240 to Karnes County Times
 - \$669.07 to Clover Leaf
16. The final report covered from December 30, 2009, through July 1, 2010, and disclosed \$659.26 in total political expenditures; Schedule F of the report disclosed the following:
- \$272.50 to Runge Catholic Church; St. Anthony
 - \$225 to St. Helena Catholic Church
 - \$161.76 to Pollok’s Market
17. In response to the complaint, the respondent filed another final report covering from May 6, 2010, through December 10, 2010. The report disclosed \$7,825.80 in total political expenditures. The report contained an attached typed schedule of political expenditures made throughout calendar year 2010 and disclosed multiple expenditures that were not reported during the respective reporting periods. In addition to the expenditures that were disclosed in the original reports, the corrected report disclosed an additional 25 political expenditures totaling approximately \$3,420.

Campaign Finance Report Affidavit

18. The complaint alleged that the respondent did not include a properly notarized affidavit with his 30-day pre-election report, 8-day pre-election report, and July 2010 final report. The reports at issue did not contain a notary stamp or seal and were signed by the respondent’s campaign treasurer, instead of the respondent.

Cover Sheet Information

19. The complaint alleged that the respondent did not properly disclose cover sheet information in two campaign finance reports. The complaint included allegations that the respondent did not list the number of pages for each report, did not identify himself as the candidate on page 2 of the cover sheets, and did not include the name of his co-campaign treasurer. The respondent was not required to list the number of pages and the name of his co-campaign treasurer (the statutes do not provide for the appointment of a “co-campaign” treasurer). Moreover, page 1 of the cover sheets of the reports at issue included the respondent’s full name, along with the name of the campaign treasurer that was listed in the respondent’s campaign treasurer appointment that was filed on December 30, 2009.

20. Regarding the 8-day pre-election report, the complaint alleged that the report did not cover the proper period. The 8-day pre-election report was filed in connection with the March 2, 2010, primary election and covered from January 27, 2010, through February 23, 2010. The 30-day pre-election report covered from December 30, 2009, through January 27, 2010.
21. Regarding the July 2010 report marked as a final report, the complaint alleged that the respondent did not properly list the campaign treasurer's name, address, and telephone number, and did not properly identify the report type, reporting period, election date, and election type. The report at issue listed the respondent's name, address, and telephone number under the campaign treasurer information boxes. The report covered from December 30, 2009, through July 1, 2010, and was marked only as a final report. The report was filed on July 14, 2010, and indicated that it was filed in connection with the March 2, 2010, primary election.

Accepting Campaign Contributions and Making Campaign Expenditures without Campaign Treasurer Appointment

22. The complaint alleged that the respondent made political expenditures and accepted political contributions at a time when a campaign treasurer appointment was not in effect. The respondent did not address this allegation in his response to the complaint. The respondent filed a campaign treasurer appointment with the Karnes County clerk on December 30, 2009.
23. The respondent filed a report on July 14, 2010, that was marked as a final report but did not include the final report affidavit. The respondent did not file another appointment of a campaign treasurer after he filed the report on July 14, 2010. Moreover, the respondent filed no other campaign finance report until the December 14, 2010, report that was also marked as a final report and that was filed in response to the sworn complaint.
24. Although the final report affidavit was not included with the July 14, 2010, report, the fact that the report was marked as a final report, coupled with the fact that the respondent did not file any of the required pre-election reports in connection with the November 2010 general election, indicated that the respondent intended the report to serve as a final report.
25. The respondent accepted 11 political contributions totaling approximately \$1,350 and made six political expenditures totaling of approximately \$540 after he filed a final report on July 14, 2010. The expenditures included a payment for a political advertisement that appeared in the Karnes Countywide newspaper on October 13, 2010. The advertisement indicated that the respondent was running for Karnes County Judge in the November 2, 2010, general election, and that the advertisement was paid for by the Gail Tennant Campaign.

Timely Filing of Pre-election Report

26. The complaint alleged that the respondent did not timely file a 30-day pre-election report in connection with the November 2, 2010, general election. Note that the complaint did not allege a violation regarding the 8-day pre-election report because the complaint was filed before that report was due.
27. The respondent filed his campaign treasurer appointment with the Karnes County clerk on December 30, 2009. The appointment indicated that the respondent sought the office of county judge and did not indicate that he chose to follow the modified reporting schedule. The evidence indicated that the respondent was an opposed candidate in the November 2, 2010, general election and was required to file a 30-day pre-election report no later than October 3, 2010, covering the period beginning the day after the period covered in the last report through September 23, 2010.

IV. Findings and Conclusions of Law

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

Political Contributions

1. Each 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 or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
2. 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. ELEC. CODE § 254.031(a)(6).
3. Regarding the 30-day pre-election report for the March 2, 2010, primary election, because the respondent left blank the space to disclose total political contributions of \$50 or less, unless itemized, the respondent was required to list or provide detailed information for the contributions at issue. The respondent did not properly disclose political contributions totaling \$2,975 in the original 30-day pre-election report. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code with respect to that report.
4. Regarding the July 2010 final report, the original report disclosed no contributions; the December 2010 final report disclosed 21 political contributions totaling \$5,320, \$3,975 of which should have been disclosed on the July 2010 final report. The additional contributions were not disclosed on that report. Therefore, there is credible evidence of violations of sections 254.031(a)(1) and 254.031(a)(6) of the Election Code.

5. Regarding the 8-day pre-election report, the respondent did not disclose an amount for total political contributions. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code with respect to that report.

Total Political Contributions Maintained

6. Each report must include as of the last day of the reporting period, 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(a)(8).
7. The respondent did not disclose an amount for total political contributions maintained in the 30-day and 8-day pre-election reports and the July 2010 report. Therefore, there is credible evidence of violations of section 254.031(a)(8) of the Election Code.

Political Expenditures

8. 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 political expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
9. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61.
10. The respondent was required to itemize each political expenditure at issue because they all exceeded \$50. The respondent did not provide the date, purpose, and the required payee information for the eight political expenditures at issue, and did not disclose on the original reports all expenditures that were made during the reporting periods at issue. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.
11. 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. ELEC. CODE § 254.031(a)(6).
12. Regarding the 30-day pre-election report for the March 2, 2010, primary election, the report should have covered from January 1, 2010, through January 21, 2010. The corrected report submitted in response to the complaint did not indicate whether additional expenditures were made during the period covered by the 30-day pre-election report (although the attachment to the December 2010 final report appears to show at least one additional \$252 expenditure on January 15, 2010, that should have been included on this report). Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code with respect to that report.

13. Regarding the 8-day pre-election report for the March 2, 2010, primary election, the report should have covered from January 22, 2010, through February 20, 2010. The corrected report submitted in response to the complaint disclosed an additional \$129.90 political expenditure made on January 28, 2010, to Karnes CountyWide, and another \$211 political expenditure made on February 15, 2010, to the same company. These expenditures were not disclosed or included in the total when the original report was filed. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code with respect to that report.
14. Regarding the July 2010 final report, the December 14, 2010, report submitted in response to the complaint disclosed six additional political expenditures totaling approximately \$690. These expenditures were not disclosed or included in the total when the original report was filed. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code with respect to that report.

Campaign Finance Report Affidavit

15. Each campaign finance report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code." ELEC. CODE § 254.036(h).
16. During the time relevant to the complaint, the respondent was a candidate for Karnes County Judge. As a candidate, the respondent was the person required to file the reports and execute the report affidavits. The respondent did not sign any of the reports at issue. Moreover, the reports did not contain a notary stamp or seal. In response to the complaint, the respondent filed a final report covering from May 6, 2010, through December 10, 2010. The report contained the respondent's signature along with a notary stamp. The respondent did not sign any of the original reports at issue. Therefore, there is credible evidence of violations of section 254.036(h) of the Election Code.

Cover Sheet Information

17. Each report by a candidate must include the candidate's full name and address, the office sought, the identity and date of the election for which the report is filed, the campaign treasurer's name, residence or business street address, and telephone number. ELEC. CODE §§ 254.061(1), (2).
18. 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 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 continues through the 10th day before election day. *Id.* § 254.064(c).

19. 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. If, after a candidate's final report is filed, reportable activity with respect to the candidacy occurs, the candidate shall file the appropriate reports under this subchapter and is otherwise subject to the provisions of this title applicable to candidates. *Id.* § 254.065.
20. The respondent's 8-day pre-election report should have covered from January 22, 2010, through February 20, 2010. Although the respondent did not cover the exact dates required by the 8-day pre-election report, the pre-election reports filed by the respondent covered all of the requisite periods. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.064(c) of the Election Code with respect to the period covered by the 8-day pre-election report.
21. The report filed on July 14, 2010, that was marked as a final report did not include the campaign treasurer's name, address, and telephone number. The report should have covered from February 21, 2010, through July 14, 2010. A final report should only have been filed if the respondent did not expect any further political contributions or political expenditures in connection with his candidacy. Moreover, if the report included activity related to the November 2010 election, the date of the election should have been included. However, there is insufficient evidence to show to which election the disclosed activity was related. Therefore, there is insufficient evidence of a violation of section 254.061(1) of the Election Code. Regarding the campaign treasurer information, the respondent did not include his campaign treasurer's name, address, and telephone number in the report. Therefore, there is credible evidence of a violation of section 254.061(2) of the Election Code.

Accepting Campaign Contributions and Making Campaign Expenditures without Campaign Treasurer Appointment

22. Each candidate and each political committee shall appoint a campaign treasurer as provided by this chapter. ELEC. CODE § 252.001. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. *Id.* § 253.031(a).
23. The designation of a report as a final report terminates a candidate's campaign treasurer appointment. *Id.* § 254.065(b)(2).
24. The respondent filed a final report on July 14, 2010, and thereby terminated his campaign treasurer appointment. The evidence indicated that the respondent was still a candidate after that date. Credible evidence shows that the respondent made or authorized six political expenditures totaling approximately \$540 and accepted 11 political contributions totaling approximately \$1,350 after he filed the final report on July 14, 2010. The respondent did not file another campaign treasurer appointment prior to making the expenditures and accepting the political contributions. Thus, the respondent made or authorized campaign expenditures and accepted campaign contributions at a time when a

campaign treasurer appointment was not in effect. There is credible evidence of violations of section 253.031(a) of the Election Code.

Timely Filing of Pre-election Report

25. 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. ELEC. CODE § 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. 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 under this chapter, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b).
26. The respondent filed a campaign treasurer appointment as a candidate for county judge of Karnes County on December 30, 2009. The respondent was opposed by a candidate whose name appeared on the ballot in the general election. Although on July 14, 2010, the respondent filed a report designated as a final report, the respondent was required to file a 30-day pre-election report no later than October 3, 2010. The respondent did not file a report covering the relevant period until December 14, 2010. Therefore, there is credible evidence that the respondent violated section 254.064(b) 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 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, the full name and address of the person making the contributions, and the dates of the contributions; 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 political expenditures are made, and the dates and purposes of the expenditures; a 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; a campaign finance report must include as of the last day of the reporting period, 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; each campaign finance report not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report; each report by a candidate must include the campaign treasurer's name, residence or business street address, and telephone number; the designation of a report as a final report terminates a candidate's campaign treasurer appointment, and a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect; and 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, 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.

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 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 \$750 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-31010355.

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

Gail B. Tennant, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director