

TEXAS ETHICS COMMISSION

IN THE MATTER OF

ALAN E. BAXTER,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-3140262

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on February 12, 2015, to consider sworn complaint SC-3140262. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 252.001, 254.063, and 254.064 of the Election Code and 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 proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent: 1) did not timely file a campaign treasurer appointment; and 2) did not timely file two campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent is the Mayor for the City of Windcrest and was a candidate for Bexar County Commissioner, Precinct 4, in the March 4, 2014, primary election. The respondent was ultimately unsuccessful in the May 27, 2014, primary runoff election.

Campaign Treasurer Appointment

2. The complaint alleged that the respondent, as a candidate for Bexar County Commissioner, Precinct 4, in the March 4, 2014, primary election, did not timely file a campaign treasurer appointment with Bexar County.

3. According to records on file with Bexar County, the respondent filed a campaign treasurer appointment with the Bexar County Elections Administrator on February 24, 2014. The form was signed by the respondent on December 3, 2013, and contained a notation from the Windcrest City Secretary indicating that it was filed with the City of Windcrest on December 3, 2013. The respondent indicated on the form that he was seeking the office of "Republican Nomination Bexar County Commissioner Precinct 4." Accordingly, it appears that the respondent initially filed the campaign treasurer appointment with the City of Windcrest on December 3, 2013, and then filed a copy of the treasurer appointment with the appropriate filing authority, Bexar County, on February 24, 2014.

Timely Filing of Campaign Finance Reports

4. The complaint alleged that the respondent did not timely file a January 2014 semiannual report and a 30-day pre-election report for the March 4, 2014, primary election in which the respondent was an opposed candidate for Bexar County Commissioner, Precinct 4.
5. The respondent became a candidate for Bexar County Commissioner, Precinct 4, on or around December 3, 2013, when he filed his campaign treasurer appointment for the office with the Windcrest City Secretary. The respondent did not elect to file on the modified reporting schedule. The respondent subsequently filed a copy of the campaign treasurer appointment with the Bexar County Elections Administrator on February 24, 2014.
6. The respondent filed the January 2014 semiannual report with Bexar County on February 18, 2014, which was 34 days after the filing deadline. Since the respondent was a candidate for Bexar County Commissioner, Precinct 4, on December 3, 2013, the respondent was required to file the January 2014 semiannual report with Bexar County by January 15, 2014. The report disclosed the following totals:
 - \$ (blank) in total political contributions of \$50 or less, unless itemized;
 - \$2,000 in total political contributions;
 - \$ (blank) in total political expenditures of \$100 or less, unless itemized;
 - \$1,250 in total political expenditures;
 - \$750 in total political contributions maintained; and
 - \$2,000 in total principal amount of all outstanding loans.
7. Regarding the 30-day pre-election report for the March 4, 2014, primary election, the respondent was required to file the report with Bexar County by February 3, 2014. The respondent filed the 30-day pre-election report with Bexar County on February 18, 2014, which was 15 days after the filing deadline. The report disclosed the following totals:
 - \$ (blank) in total political contributions of \$50 or less, unless itemized;

- \$ (blank) in total political contributions;
- \$ (blank) in total political expenditures of \$100 or less, unless itemized;
- \$0 in total political expenditures;
- \$0 in total political contributions maintained; and
- \$2,000 in total principal amount of all outstanding loans.

Response to Notice of a Sworn Complaint

8. Sworn complaint SC-3140262 was filed on February 21, 2014. The Commission sent a notice of the sworn complaint to the respondent by certified mail, return receipt requested, on February 28, 2014. The notice was returned to the Commission as unclaimed. On April 1, 2014, the Commission sent another notice of the sworn complaint to the respondent by certified mail, return receipt requested, and delivery confirmation. According to the United States Postal Service's record of the delivery, the notice of this complaint was delivered to the respondent on April 2, 2014. The notice informed the respondent that the alleged violations in the sworn complaint were Category One violations, and that a response was required not later than 10 business days from the date the notice was received and that failure to respond constituted a separate violation for which a separate civil penalty may be assessed. Based on the delivery date of the notice, the respondent was required to respond to the sworn complaint by April 16, 2014. The Commission did not receive a written response to the sworn complaint.

IV. Findings and Conclusions of Law

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

Campaign Treasurer Appointment

1. "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. ELEC. CODE § 251.001(1).
2. Examples of affirmative action include the filing of a campaign treasurer appointment. *Id.* § 251.001(1)(A).
3. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. *Id.* § 252.001.
4. The respondent became a candidate for Bexar County Commissioner, Precinct 4, on or around December 3, 2013, when he filed his campaign treasurer appointment for the office

with the Windcrest City Secretary. The respondent did not properly file a campaign treasurer appointment with the Bexar County Elections Administrator until February 24, 2014. Therefore, there is credible evidence of a violation of section 252.001 of the Election Code.

Timely Filing of Campaign Finance Reports

5. A candidate shall file two reports for each year as provided by this section. ELEC. CODE § 254.063(a). The second report shall be filed not later than January 15 and 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 under this subchapter, as applicable, and continuing through December 31. *Id.* § 254.063(c).
6. 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).
7. Regarding the January 2014 semiannual report, the respondent was a candidate for Bexar County Commissioner, Precinct 4, during the period covered by the report and was required to file the report with Bexar County by January 15, 2014. The respondent filed the report with Bexar County on February 18, 2014, which was 34 days after the filing deadline. Therefore, there is credible evidence of a violation of section 254.063(c) of the Election Code.
8. Regarding the 30-day pre-election report for the March 4, 2014, primary election, the respondent was an opposed candidate for Bexar County Commissioner, Precinct 4, and was required to file the report with Bexar County by February 3, 2014. The respondent filed the report with Bexar County on February 18, 2014, which was 15 days after the filing deadline. Therefore, there is credible evidence of a violation of section 254.064(b) of the Election Code.

Response to Notice of a Sworn Complaint

9. If the alleged violation in a sworn complaint is a Category One violation, the respondent must respond to the notice required by section 571.123(b) of the Government Code not later than the 10th business day after the date the respondent receives the notice. GOV'T CODE § 571.1242(a)(1). A respondent's failure to timely respond to a sworn complaint as required by subsection (a)(1) or (b)(1) is a Category One violation. *Id.* § 571.1242(c).

10. The response required by section 571.1242 of the Government Code 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(a). If a respondent does not submit a response within the time period prescribed by section 571.1242 of the Government Code, the Commission may issue an order imposing a civil penalty for failure to file a response. *Id.* § 12.52(b).
11. The respondent was required to submit a written response to the Commission by April 16, 2014. The Commission did not receive a written response to the complaint. Therefore, there is credible evidence of a violation of section 571.1242(c) 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: 1) each candidate shall appoint a campaign treasurer as provided by chapter 252 of the Election Code; 2) a candidate shall file two reports for each year. The second report shall be filed not later than January 15 and 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 under this subchapter, as applicable, and continuing through December 31; and 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. 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 also acknowledges that a respondent must respond to a notice of a sworn complaint that contains a Category One violation within 10 business days of receiving the notice of the sworn complaint, and failure to respond to a notice of a sworn complaint within the time required is a separate Category One violation.

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 nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$1,000 civil penalty.

The respondent agrees that the Texas Ethics Commission, P. O. Box 12070, Austin, Texas 78711, must receive from the respondent full payment of the \$1,000 civil penalty no later than July 15, 2015, and agrees to waive any right to a hearing related to this sworn complaint. The respondent agrees that if the full amount is not received by July 15, 2015, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

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-3140262.

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

Alan E. Baxter, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director