

TEXAS ETHICS COMMISSION

IN THE MATTER OF
FRANKIE HARRIS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2706149

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 11, 2007, to consider sworn complaint SC-2706149. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.063 and 254.064 of the Election 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 campaign finance reports. The complaint also alleges that the respondent accepted political contributions from a corporation and made political expenditures from corporate funds, and accepted unlawful political contributions from a political committee.

III. Facts Supported by Credible Evidence

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

1. The complaint arises from the May 2007 Balch Springs election, in which the respondent was an opposed candidate for City Councilman of Balch Springs.
2. The complaint alleges that the respondent accepted political contributions from a committee, Concerned Citizens of Balch Springs, with knowledge that the committee had not filed a campaign treasurer appointment and could not legally make political contributions.
3. The evidence indicates that at the time the sworn complaint was filed, Concerned Citizens of Balch Springs had not exceeded \$500 in political contributions or political expenditures, and did not have a campaign treasurer appointment in effect.

4. The complaint also alleges that the respondent knowingly accepted a political contribution from a corporation and made political expenditures from that corporate contribution, in violation of title 15 of the Election Code.
5. The evidence indicates that an individual received several checks written on the account of GLADIUS Protection, Inc., in the amount of \$500 each and that one check was made out to the respondent.
6. The evidence indicates that the individual gave the check (made out to the respondent) to the respondent, who in turn cashed the check and gave the cash to the individual to use for campaign signs.
7. The respondent swears that he did not know at the time that it was illegal to accept a contribution from a corporation or make a political expenditure with the contribution.
8. The complaint also alleges that the respondent failed to file required campaign finance reports related to the May 2007 election. This allegation includes the 30-day and 8-day pre-election campaign finance reports for the May 2007 election and the July 2007 semiannual campaign finance report.
9. The respondent filed a campaign treasurer appointment on March 8, 2007, electing modified reporting.
10. The local filing authority had no record of any campaign finance reports filed by the respondent.
11. On October 8, 2007, in response to the sworn complaint, the respondent filed a final campaign finance report covering the 30-day and 8-day pre-election campaign finance reports for the May 2007 election, and the July 2007 semiannual campaign finance report.
12. The report disclosed a total of \$500 in political contributions and approximately \$800 in political expenditures.
13. The report indicates that the respondent accepted a \$500 political contribution from GLADIUS Protection Inc., on April 16, 2007, and made a political expenditure of approximately \$300, on April 3, 2007, and a \$500 political expenditure on April 20, 2007.

IV. Findings and Conclusions of Law

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

1. A person may not knowingly make a political contribution in violation of chapter 253 of the Election Code nor knowingly accept a political contribution the person knows to have been made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003.
2. A person may not knowingly make or authorize a political expenditure in violation of chapter 253 of the Election Code. ELEC. CODE § 253.004.
3. A person may not knowingly make or authorize a political expenditure wholly or partly from a political contribution the person knows to have been made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.005.
4. The complaint alleges that the respondent accepted unlawful political contributions from a political committee, Concerned Citizens of Balch Springs.
5. A political committee is a group of persons that has as a principal purpose accepting political contributions or making political expenditures. ELEC. CODE § 251.001(12).
6. A political contribution means a campaign contribution or an officeholder contribution. ELEC. CODE § 251.001(5).
7. A campaign contribution means, in pertinent part, a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. ELEC. CODE § 251.001 (3).
8. A contribution means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. ELEC. CODE § 251.001(2).
9. A political expenditure means a campaign expenditure or an officeholder expenditure. ELEC. CODE § 251.001(10).
10. A campaign expenditure means, in pertinent part, an expenditure made by any person in connection with a campaign for an elective office or on a measure. ELEC. CODE § 251.001(7).
11. An expenditure means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. ELEC. CODE § 251.001(6).
12. The evidence indicates that Concerned Citizens of Balch Springs had as a principal purpose accepting political contributions. Therefore, Concerned Citizens of Balch Springs is a political committee.

13. A political committee may not knowingly accept political contributions totaling more than \$500 or make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. ELEC. CODE § 253.031.
14. Section 252.001 of the Election Code requires a political committee to file a campaign treasurer appointment. However, when read in conjunction with section 253.031 of the Election Code, the commission has consistently interpreted the two sections to mean that a political committee does not have to file a campaign treasurer appointment until it exceeds the \$500 limit on political contributions or expenditures. *See* Ethics Advisory Opinion No. 161(1993).
15. The evidence indicates that to date Concerned Citizens of Balch Springs has not filed a campaign treasurer appointment and there is no evidence that it was not required to do so. There is no evidence that the expenditures made by Concerned Citizens of Balch Springs were unlawful and no evidence that receipt of any political contributions from Concerned Citizens of Balch Springs was illegal. Therefore, with respect to Concerned Citizens of Balch Springs, there is credible evidence of no violation by the respondent of sections 253.003, 253.004, and 253.005 of the Election Code.
16. A corporation may not make a political contribution or political expenditure that is not authorized by this subchapter. ELEC. CODE § 253.094.
17. In order to show a violation of section 253.003 of the Election Code, with respect to the acceptance of a corporate contribution, the evidence must show that the contributor was a corporation, that at the time the person accepted the contribution the person knew it was from a corporation, and that the person knew that the contribution was illegal. The evidence indicates that the respondent knew that he was receiving a contribution from a corporation. However, the evidence must show that the respondent had actual knowledge that such a contribution was illegal, and knowledge that an expenditure from such a contribution was illegal. The evidence does not show that the respondent had such knowledge. Therefore, there is insufficient evidence of a violation by the respondent of sections 253.003, 253.004, 253.005, and 253.094 of the Election Code.
18. 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.

19. The respondent filed a campaign treasurer appointment in March 2007. This campaign treasurer appointment triggered the requirement to file semiannual reports as a candidate until the treasurer appointment was terminated. ELEC. CODE § 254.065.
20. The evidence indicates that the respondent terminated his campaign treasurer appointment when he filed a final report in October 2007, thus, the respondent was required to file a semiannual campaign finance report for July 2007.
21. Although the respondent filed the report at issue in October 2007, the respondent did not file the report in a timely manner. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code.
22. 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. 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. 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 continuing through the 10th day before election day. ELEC. CODE § 254.064.
23. The evidence indicates that the respondent filed a campaign treasurer appointment in March 2007, electing modified reporting.
24. A candidate that chooses modified reporting is not required to file pre-election campaign finance reports if he does not accept more than \$500 in political contributions or make more than \$500 in political expenditures. ELEC. CODE §§ 254.181, 254.182, 254.183.
25. The evidence indicates that the respondent had no political contributions or political expenditures during the period covered by the 30-day pre-election campaign finance report.
26. The evidence indicates that the respondent had approximately \$800 in political expenditures and \$500 in political contributions during the period covered by the 8-day pre-election campaign finance report. Thus, although the respondent elected modified reporting and did not exceed the \$500 limit for the 30-day pre-election campaign finance report, he did exceed the \$500 limit during the period covered by the 8-day pre-election campaign finance report. Thus, the respondent was required to file an 8-day pre-election campaign finance report.

27. Although the respondent filed the report at issue in October 2007, the respondent did not file the report in a timely manner. Therefore, there is credible evidence that the respondent violated 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 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. 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. 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. 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 continuing through the 10th 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 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 \$500 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-2706149, as to the respondent.

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

Frankie Harris, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director