

TEXAS ETHICS COMMISSION

IN THE MATTER OF
LYNDA MCDOW,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSIO
SC-94063

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 8, 1998, to consider sworn complaint SC-94063 filed against Lynda McDow (the respondent). A quorum of the commission was present. The complainant filed this complaint on September 26, 1994. Before filing this complaint, the complainant filed a civil lawsuit for damages under Section 254.231, Election Code, for failure to report campaign contributions and expenditures. On May 12, 1995, the commission voted to decline jurisdiction of this sworn complaint until the pending civil lawsuit was resolved. As of May 8, 1998, that lawsuit has not been resolved. On May 8, 1998, the commission voted to accept jurisdiction of this complaint and to proceed with its disposition. Based on the investigation conducted by commission staff, the commission determined there was credible evidence of a violation of Sections 254.031 and 254.064, Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

1. The complainant alleges that the respondent failed to timely or accurately report contributions accepted and expenditures made during her campaign for school board trustee in 1994 in violation of Section 254.031, Election Code.
2. The respondent alleges that the complainant filed a frivolous complaint.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission would support the following findings of fact:

1. At all times relevant to this complaint, the respondent was a candidate for school board trustee.
2. The respondent was involved in a June 6, 1994, runoff election.

3. The respondent timely filed the 8-day before runoff election report and the July 15, 1994, semiannual report.
4. The respondent reported a contribution and six expenditures on her July 15, 1994, semiannual report that were accepted or made during the period beginning April 28, 1994, and ending May 25, 1994.
5. The respondent's July 15, 1994, report attempted to correct the amount of an expenditure reported on her 8-day before runoff election report.
6. An invoice submitted with the complaint shows that the respondent incurred a political expenditure on May 5, 1994. That expenditure was not reported on her 8-day before runoff election report.

IV. Conclusions of Law

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

1. An opposed candidate in a runoff election is required to file a report not later than the eighth day before runoff election day. The report covers the period beginning the 9th day before the date of the main election and continuing through the 10th day before runoff election day. Section 254.064(e), Election Code.
2. A campaign finance report is required to include the political contributions accepted and the political expenditures made during the reporting period. Sections 254.031, Election Code.
3. The respondent was required to file an 8-day before runoff election report by May 27, 1994, covering the period from April 28, 1994, through May 25, 1994. The respondent timely filed that report.
4. The July 15, 1994, semiannual report filed by the respondent discloses a contribution accepted and six expenditures made during the reporting period covered by the 8-day before runoff election report. The contribution and expenditures were not reported on the respondent's 8-day before runoff election report. Additionally, one expenditure was not correctly reported on her 8-day before runoff election report. Finally, the expenditure incurred on May 5, 1994, as evidenced by the invoice, was not reported on her 8-day before runoff election report. Therefore, there is credible evidence that the respondent violated Sections 254.031 and 254.064, Election Code, by failing to timely or accurately report a contribution and eight expenditures on her 8-day before runoff election report.
5. A frivolous complaint by definition must be groundless and brought in bad faith or be groundless and brought for purposes of harassment. Section 571.176, Government Code. The complaint is not groundless, and thus by definition it is not frivolous.

V. Representations and Agreement by the Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits nor denies the facts detailed under Section III and the commission's findings and conclusions of law detailed under Section IV, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge appointed by the commission, and further waives any right to a post-hearing procedure established or provided by law.
3. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations detailed in Section IV, Paragraph 4, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

VI. Confidentiality

The respondent agrees that this ORDER and AGREED RESOLUTION may be disclosed by members and staff of the Texas Ethics Commission.

VII. Sanction

After considering the seriousness of the violations described under Section IV, Paragraph 4, including the nature, circumstances, consequences, extent, and gravity of the violations; that no previous violations by this respondent are known to the commission; and after considering the sanction deemed necessary to deter future violations, the commission imposes a civil penalty of \$200 for the violations described under Section IV, Paragraph 4.

VIII. Order

The Texas Ethics Commission hereby ORDERS:

1. that the respondent's frivolous complaint allegation is dismissed;
2. that this proposed AGREED RESOLUTION be presented to the respondent;
3. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-94063;

- 4. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and payment of the civil penalty of \$200 to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than June 5, 1998; and
- 5. that the executive director shall promptly refer SC-94063 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-94063 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 1998.

Lynda McDow, Respondent

EXECUTED ORIGINAL received by the commission on: _____
DATE

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director