

TEXAS ETHICS COMMISSION

IN THE MATTER OF
THOMAS V. KELLY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-96005

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (“commission”) met on April 19, 1996, to consider sworn complaint SC-96005 filed against Thomas V. Kelly (the “Respondent”). A quorum of the commission was present. Based on the investigation conducted by commission staff to date, the commission determined there was credible evidence of a violation of section 253.031 of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to Respondent.

II. 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, Respondent was a candidate for state senate in the primary election held on March 12, 1996.
2. Respondent filed a contribution and expenditure report on February 9, 1996, which discloses the payment of a filing fee of \$1,000 on January 1, 1996, and an expenditure of \$286 on January 10, 1996, for a list of voter’s names. The Respondent did not file a campaign treasurer appointment until February 8, 1996.

III. Conclusions of Law

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

1. Section 253.031 of the Election Code prohibits a candidate from making a campaign expenditure at a time when a campaign treasurer appointment is not in effect.
2. Respondent made campaign expenditures at a time when a campaign treasurer appointment for the candidate was not in effect in violation of section 253.031. Payment of a filing fee and payment for a list of voter's names are campaign expenditures.

IV. Representations and Agreement by Respondent

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

1. Respondent neither admits nor denies the facts detailed under Section II and the commission's findings and conclusions of law detailed under Section III, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. 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. 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. Respondent acknowledges that section 253.031 of the Election Code prohibits a candidate from making a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. Respondent agrees to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, Respondent understands and agrees that the commission will consider the Respondent to have committed the violation detailed in Section III if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the Respondent.

V. Confidentiality

This ORDER and AGREED RESOLUTION describes an alleged violation that the commission has determined would be neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under section 571.140 of the Texas Government Code and may be disclosed by members and staff of the Texas Ethics Commission.

VI. Sanction

After considering the seriousness of the violation described under Sections II and III, including the nature, circumstances, consequences, extent, and gravity of the violation; 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 \$100 civil penalty for the violation described under Section III.

VII. Order

The Texas Ethics Commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to Respondent;
2. that the executive director shall promptly refer SC-96005 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 Respondent does not agree to the resolution of SC-96005 as proposed in this ORDER and AGREED RESOLUTION;
3. that if Respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-96005;
4. that Respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original together with payment for the \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 17, 1996.

AGREED to by Thomas V. Kelly on _____, 1996.

Respondent

EXECUTED ORIGINAL received by the commission on _____, 1996.

Texas Ethics Commission

Tom Harrison, Executive Director
Texas Ethics Commission