

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SCOTT R. WATSON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-96012

FINAL ORDER

I. Recitals

The Texas Ethics Commission (the commission) met on April 6, 2001, to consider Sworn Complaint SC-96012 filed against Scott R. Watson (the respondent). A quorum of the commission was present.

After proper notice was given, a formal hearing was held on this complaint on January 25, 2001, before an Administrative Law Judge (ALJ) for the State Office of Administrative Hearings (SOAH). A Proposal for Decision was issued by the ALJ on March 6, 2001. The Proposal for Decision was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record in this complaint.

After review and due consideration of the Proposal for Decision, the commission adopts this final order, including the following Findings of Fact and Conclusions of Law, with modifications to the Proposal For Decision as set forth herein.

II. Allegations

1. The complainant alleges that the respondent, as the campaign treasurer for a specific-purpose committee (the committee) that supported a school bond measure, failed to file the committee's campaign treasurer appointment with the commission.
2. The complainant also alleges that the respondent, as campaign treasurer for the committee, failed to file 30-day and 8-day before election reports, and a final report.
3. The complainant also alleges that the respondent, as campaign treasurer for the committee, failed to file a January 15, 1996, semiannual campaign finance report.

4. The complainant also alleges that the respondent, as campaign treasurer for the committee, failed to maintain a record of all reportable activity.
5. The complainant also alleges that the respondent, as campaign treasurer for the committee, failed to include the required disclosure statement on the committee's political advertising.
6. The respondent alleges that the complaint is frivolous.

III. Findings of Fact

The commission finds that there is clear and convincing evidence to support the following findings of fact:

1. On October 10, 1995, the respondent filed with the Comal Independent School District (CISD or school district) an amendment to an appointment of campaign treasurer by a specific-purpose committee that supported bond measures for the school district. In that form, the respondent named himself as the campaign treasurer of the committee, the "Friends of Education" (the committee).
2. The CISD held a bond election on October 14, 1995.
3. Lois M. Duggan (the complainant) filed a sworn complaint against the respondent on February 21, 1996, at the commission.
4. The complainant submitted no evidence in support of the allegation that the respondent failed to maintain records. The respondent filed an answer to the complaint stating that the committee maintains the required records.
5. The respondent, as the treasurer of the committee, filed campaign finance reports with the CISD.
6. After being appointed as the campaign treasurer of the committee, the next campaign finance document that the respondent filed with CISD was a campaign finance report, marked as a January 15 report, and filed on April 15, 1996. The report disclosed \$1,592.97 in total political contributions and \$1,960.67 in total political expenditures.
7. The complainant submitted as evidence copies of political advertising that appeared in different newspapers and that advocated support of the bond issue. The political advertising contained the committee's name but did not contain a statement that it was political advertising or the committee's address. The respondent entered into an agreement to print or publish the political advertising.

8. In other sworn complaints, the commission has ruled that a respondent who filed a late semiannual report that disclosed political contributions and expenditures committed a violation of the applicable provisions in Chapter 254, Election Code. In those complaints, the commission has determined that the violation for filing a late semiannual report was not technical or *de minimis*. The commission has assessed a civil penalty in those complaints, in accordance with Section 18.95, Ethics Commission Rules, which provides that the commission may consider the fine amount established under commission rules for persons who file late reports with the commission. In accordance with Section 18.85, Ethics Commission Rules, the commission has historically imposed a \$100 fine on unchallenged allegations of persons having filed late semiannual campaign finance reports with the commission.
9. The staff of the commission conducted a preliminary review of this complaint. The commission concluded that there was credible evidence that the respondent committed a violation of Section 254.123, Election Code and committed a technical or *de minimis* violation of Section 255.001, Election Code.
10. A proposed Agreed Resolution was offered to the respondent which the respondent rejected.
11. A preliminary review hearing was scheduled for April 17, 1998, before the commission.
12. The commission determined, after taking evidence and hearing testimony at the preliminary review hearing, that credible evidence existed that the respondent violated Section 254.123, Election Code, and committed a technical or *de minimis* violation of Section 255.001, Election Code.
13. A proposed Agreed Resolution was presented to the respondent that set forth the issues at hand and proposed a \$100 civil penalty. The respondent rejected the Agreed Resolution and requested an informal hearing.
14. An Administrative Law Judge at the State Office of Administrative Hearings (SOAH), Katherine L. Smith, conducted the informal hearing on December 14, 1999. Evidence was presented, and the record closed the same day.
15. After taking evidence and hearing testimony at the informal hearing, Judge Smith issued a Proposal for Decision finding that there was credible evidence that the respondent committed a technical or *de minimis* violation of Section 254.123, Election Code.
16. The commission modified the Proposal for Decision issued following the informal hearing and concluded that the respondent committed a violation of Section 254.123, Election Code, which was more than just technical or *de minimis*. The commission also adopted stipulations agreed to by the respondent and the commission staff, which included a finding

that the respondent committed a technical or *de minimis* violation of Section 255.001, Election Code. The commission proposed an Agreed Resolution to the respondent imposing a \$100 civil penalty for the violation of Section 254.123, Election Code, which the respondent rejected.

17. On December 5, 2000, the commission requested that SOAH docket this matter for a formal hearing.
18. On January 10, 2001, notice of the formal hearing was sent to the respondent via telecopy and certified mail, return receipt requested, at 2 Watson Way, Spring Branch, Texas 78070-4412. The commission provided notice of the formal hearing to the attorney representing the respondent, Mr. Charles A. Stephens, via telecopy and certified mail, return receipt requested, at 1175 FM 2673, Suite 9, Canyon Lake, Texas 78133-4514. The commission provided notice of the formal hearing to the complainant, Ms. Lois Duggan, via certified mail, return receipt requested, at HC 4, Box 199, Canyon Lake, Texas 78133. The notices stated the date, time, place, and nature of the hearing, and included a statement of the legal authority and jurisdiction under which the hearing was to be held, a reference to the particular sections of the statutes and rules involved, and a short and plain statement of the matters asserted.
19. Administrative Law Judge Bill Zukauckas conducted the formal hearing on January 25, 2001. Evidence was presented, and the record closed on February 23, 2001, after receipt of proposed findings of fact and conclusions of law.
20. On January 25, 2001, the respondent and the commission staff agreed to stipulations containing findings of fact and conclusions of law, which were admitted into evidence at the formal hearing. Those stipulated findings of fact and conclusions of law have been incorporated into this final decision.
21. The respondent filed the semi-annual report on April 15, 1996, after he was informed that the report was due.
22. The respondent's failure to file a timely report was due to a misinterpretation of Section 254.123, Election Code.

IV. Conclusions of Law

The commission finds that there is clear and convincing evidence to support the following conclusions of law:

1. The commission has jurisdiction to address the sworn complaint against the respondent pursuant to the Administrative Procedure Act, Tex. Gov't Code Ann. ch. 2001 (Vernon

- 2000), Tex. Gov't Code Ann. ch. 2003 (Vernon 2000); Tex. Gov't Code Ann. ch. 571 (Vernon Supp. 2000); the Tex. Elec. Code Ann. (the Election Code) chs. 254 and 255 (Vernon Supp. 2000).
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, pursuant to Tex. Gov't Code Ann. ch. 2003, and 1 TAC § 12.31 (Tex. Ethics Comm'n, Administrative Law Judge).
 3. The commission provided proper and timely notice to the respondent and the complainant in accordance with Tex. Gov't Code Ann. ch. 2001, Tex. Gov't Code Ann. § 571.128(c)(2) (Vernon 1994) and 1 TAC §§ 12.21, 12.105, and 155.27 (1999).
 4. The campaign treasurer of a specific-purpose political committee is required to file two reports each year. Section 254.123(a), Election Code. Those reports are due not later than January 15 and July 15. Sections 254.123(b) and (c), Election Code. Because the respondent filed a campaign treasurer appointment on October 10, 1995, naming himself as the campaign treasurer of a specific-purpose political committee, the respondent was required by Section 254.123, Election Code, to file a January 15, 1996, campaign finance report for the committee. The respondent did not file that report until April 15, 1996. Thus, there is clear and convincing evidence that the respondent violated Section 254.123 of the Election Code, a law administered and enforced by the commission, by not filing a semi-annual campaign finance report by January 15, 1996.
 5. The respondent's violation was not technical or *de minimis*.
 6. Section 255.001(a), Election Code, requires a political disclosure statement on all political advertising resulting from a contract or agreement to print or publish the political advertising. The political advertising must indicate that it is political advertising and include the name and address of the individual who entered into the contract or agreement to print the advertising or the name and address of the person that individual represents. The person who enters into the printing contract or agreement is responsible for including the political advertising disclosure statement. Because the respondent entered into an agreement to print or publish the political advertising at issue in this complaint but failed to include in the advertising a statement that they are political advertising and failed to include the committee's address, there is clear and convincing evidence that the respondent committed a technical or *de minimis* violation of Section 255.001, Election Code.
 7. A specific-purpose committee supporting or opposing a measure must file its appointment of campaign treasurer with the governing body of the political subdivision that orders the election on the measure. Section 252.007(3), Election Code. Although the committee, and not the campaign treasurer, is responsible for filing a campaign treasurer appointment, the committee's campaign treasurer appointment was filed with the school district, which is the

proper filing authority. There is clear and convincing evidence that the respondent did not violate Section 252.007(3), Election Code, a law administered and enforced by the commission, by filing the campaign treasurer appointment with the Comal Independent School District.

8. The campaign treasurer of a specific-purpose committee must file contribution and expenditure reports with the authority with whom the committee's campaign treasurer appointment is required to be filed. Section 254.130, Election Code. The respondent filed contribution and expenditure reports with the school district, which is the proper filing authority. There is clear and convincing evidence that the respondent did not violate Section 254.130, Election Code, a law administered and enforced by the commission, by filing the committee's contribution and expenditure reports with the school district.
9. For each election in which a specific-purpose committee supports or opposes a measure, the committee's campaign treasurer shall file a report not later than the 30th day before the election and not later than the eighth day before the election. Section 254.124, Election Code. Because the respondent filed his appointment of campaign treasurer four days before the school bond election, the respondent was not required to file the 30-day before election report or the 8-day before election report. There is clear and convincing evidence that the respondent did not violate Section 254.124, Election Code, a law administered and enforced by the commission, by not filing a 30-day before election report or an 8-day before election report.
10. If a specific-purpose committee for supporting or opposing a measure expects no reportable activity in connection with the election to occur after the period covered by a report previously filed, the committee's campaign treasurer may designate a report as the "final" report. Section 254.125(a), Election Code. This provision is permissive, not mandatory. There is clear and convincing evidence that the respondent did not violate Section 254.125(a), a law administered and enforced by the commission, by not filing a final report.
11. A campaign treasurer of a political committee must maintain a record of all reportable activity. The record must contain the information necessary to file the required reports. The record maintained must be preserved for at least two years beginning on the filing deadline for the report containing the information in the record. Section 254.001, Election Code. Because the complainant submitted no evidence in support of her allegation, and because the respondent stated in his answer that the committee maintains the required record, there is clear and convincing evidence that the respondent did not violate Section 254.001, Election Code, a law administered and enforced by the commission.
12. Section 571.176, Government Code, and Section 12.35, Ethics Commission Rules, provide that a frivolous complaint is a complaint that is groundless and brought in bad faith or is groundless and brought for purposes of harassment. Because there is clear and convincing

evidence that the respondent violated a law administered and enforced by the commission, the complaint is not groundless and by definition it is not frivolous.

V. Modifications To The Proposal For Decision

1. Minor, non-substantive modifications have been made to the proposed Findings of Fact and Conclusions of Law submitted by the Administrative Law Judge (ALJ) in the Proposal for Decision, including changes for consistency in party references and conforming citations to the format used by the commission.
2. As submitted by the ALJ in the Proposal for Decision, Finding of Fact No. 22 read as follows:

Respondent's failure to file a timely report was due to a misinterpretation of Section 254.123, but was understandable because of the unclear language of the statute and did not cause harm.

The determination that the failure to file a timely semiannual report was "understandable because of the unclear language of the statute" and that the respondent's late filing "did not cause harm" has been deleted in this order pursuant to Section 2001.058(e)(1), Government Code, which allows an agency to modify an order issued by an ALJ if the agency determines that the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. These statements involve the application and interpretation of applicable law, and constitute the ALJ's opinions and conclusions as to the reasonableness of the respondent's actions and the seriousness of the respondent's violation of Section 254.123, Election Code. Under Sections 571.061, 571.132, and 571.173, Government Code, the commission has the authority and obligation to determine the proper enforcement of laws within its jurisdiction. As discussed in connection with Conclusion of Law No. 5, the commission has determined that the respondent's violation was not technical or *de minimis*. Therefore, it is an improper application of the law to characterize the respondent's failure to comply as "understandable" or to state that "no harm occurred."

3. As submitted by the ALJ in the Proposal for Decision, Conclusion of Law No. 5 read as follows:

Based on the facts in this case, Respondent's violation, discussed in Conclusion of Law No. 4, was technical or *de minimis* and no civil penalty should be imposed.

The commission modified Conclusion of Law Number 5 to state that the respondent's violation was not technical or *de minimis*. Additionally, the commission imposes a \$100 civil penalty in this final order. These modifications are made pursuant to Section 2001.058(e)(1), Government Code, which allows an agency to modify an order issued by an ALJ if the agency determines that

the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions.

The term “technical or *de minimis*” is found in Sections 571.128(a) and 571.140(b), Government Code. Section 571.128(a) provides that after an *informal hearing*, the commission is to issue a decision stating whether there is credible evidence for the commission to determine that a violation has occurred and whether the violation is technical or *de minimis*. Section 571.140(b), Government Code, provides that an order issued by the commission after the completion of a preliminary review or an informal hearing determining that a violation other than a technical or *de minimis* violation has occurred is not confidential. The term “technical or *de minimis*” is not defined in Chapter 571 of the Government Code or in the Ethics Commission Rules.

The commission disagrees with the ALJ’s determination that the respondent’s failure to file the January 15, 1996, semiannual report until April 15, 1996, is a technical or *de minimis* violation. The report was filed approximately three months after the deadline prescribed by the statute and two months after this complaint was filed. The report disclosed \$1,592.97 in political contributions and \$1,960.67 in political expenditures.

Chapter 571, Election Code, sets forth the duties of the commission, gives the commission the authority to administer and enforce Title 15, Election Code, and includes the statutes that govern the sworn complaint process. Section 571.001, Government Code, provides that the purpose of Chapter 571 shall be construed to achieve the following objectives:

- to disclose fully information related to expenditures and contributions for elections;
- to enhance the potential for individual participation in electoral and governmental processes; and
- to ensure the public’s confidence and trust in its government.

The campaign finance laws in Title 15, Election Code, are intended to help ensure public confidence and safeguard the integrity of public elections. The primary mechanism by which these laws work to achieve these purposes is the requirement of disclosure. Disclosure of political contributions and expenditures allows the public to evaluate the source of political money and the various persons and entities that may have an interest in a given election. The reporting requirement in Section 254.123, Election Code, is a part of the disclosure system established by Title 15, Election Code. Compliance with this provision serves one of the intended purposes of the Texas campaign finance laws.

The commission does not consider a three-month delay in disclosure to be a technical or *de minimis* matter. Additionally, the respondent’s reports disclosed political contributions and expenditures that were not insignificant. Therefore, the commission determines that Conclusion

of Law Number 5 should be changed to find that the respondent's violation of Section 254.123, Election Code, was not technical or *de minimis*.

Additionally, in prior similar sworn complaints, the commission has determined that filing a late campaign finance report is not a "technical or *de minimis*" violation. Therefore, changing Conclusion of Law Number 5 to find that the violation was not "technical or *de minimis*" is consistent with other prior decisions of the commission. Also, if Conclusion of Law Number 5 were not changed, it would suggest to other filers that it is not important to comply with the statutory deadlines for filing reports and that failure to file a campaign finance report in a timely manner is simply a technical or *de minimis* violation. The ALJ's recommendation would therefore undermine enforcement and compliance with Title 15, Election Code, and would be ineffective to deter future violations.

Finally, an ALJ is authorized to issue a Proposal for Decision that includes Findings of Fact and Conclusions of Law. A sanction or penalty is not a Finding of Fact or Conclusion of Law. An ALJ is not specifically authorized to impose a sanction or recommend a sanction to the commission, and the commission is not limited in its authority to modify a sanction recommendation. *See* Section 2001.058(e), Government Code. The commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue for violation of a law administered and enforced by the commission. Section 571.173, Government Code. The commission shall consider the following factors in assessing a sanction:

- (1) the seriousness of the violation, including the nature, circumstances, consequences, extent and gravity of the violation;
- (2) the history and extent of any previous violations;
- (3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation;
- (4) the penalty necessary to deter future violations; and
- (5) any other matters that justice may require.

Section 571.177, Government Code. Ethics Commission Rules provide that the base fine for a late report is \$100. Section 18.85, Ethics Commission Rules. The commission administratively imposes this amount on persons in similar circumstances who file late campaign finance reports. Commission rules provide that the commission may consider the fine amounts established by commission rules for determining the amount of a fine to be assessed in a sworn complaint. Section 18.95, Ethics Commission Rules. In prior similar sworn complaints, the commission has imposed a \$100 civil penalty for a late report. A \$100 civil penalty is therefore consistent with fines that are administratively imposed and with other prior decisions in sworn complaints.

VI. Not Confidential

This Final Order, entered by the commission after the completion of a formal hearing on this complaint, is not confidential pursuant to Section 571.140, Government Code, and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violation described under Section IV, Paragraphs 4 and 5, 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 IV, Paragraphs 4 and 5.

VIII. Order

The Texas Ethics Commission hereby ORDERS:

1. that the allegations set forth in Section II, Paragraphs 1, 2, 4, and 6, of this order are dismissed;
2. that there is clear and convincing evidence that the respondent committed a violation of Section 254.123, Election Code, and that the respondent committed a technical or *de minimis* violation of Section 255.001, Election Code; and
3. that the respondent shall pay a civil penalty of \$100 in connection with the violation of Section 254.123, Election Code.

EXECUTED ON BEHALF OF THE TEXAS ETHICS COMMISSION:

TEXAS ETHICS COMMISSION
TOM HARRISON, EXECUTIVE DIRECTOR