

TEXAS ETHICS COMMISSION

IN THE MATTER OF

DAVID A. JONES,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-96013

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (commission) met on September 13, 1996, to consider sworn complaint SC-96013 filed against David A. Jones (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 violations of Section 20.219(11), Ethics Commission Rules (1 T.A.C. Section 20.219), and Section 254.031, Election Code, a law and rule 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. 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 state representative in the primary election held on March 12, 1996.
2. The complainant alleges that the respondent failed to state the office he was seeking when he filed his campaign treasurer appointment.
3. The respondent swears that he did not know the office he was seeking when he filed his campaign treasurer appointment.
4. The complainant alleges that the respondent failed to report either an expenditure for work done on a piece of campaign literature, or failed to report that the work was an in-kind contribution.

5. The respondent admits that the work done by the business entity constituted an in-kind contribution. The respondent's campaign finance reports do not report an in-kind contribution from the business entity.
6. The complainant alleges that the respondent failed to give the date, interest rate, and maturity date of a reported loan.
7. The respondent filed an affidavit with the commission stating that the omissions were inadvertent and also filed a corrected report disclosing that information.
8. The complainant alleges that the respondent accepted a contribution in the form of a loan at a time when a campaign treasurer appointment for the candidate was not in effect.
9. The respondent's corrected report shows that the \$5000 loan from an individual was accepted December 4, 1995, after his campaign treasurer appointment was filed, which was November 8, 1995.
10. The respondent has alleged that the complaint is a frivolous complaint.

III. Conclusions of Law

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

1. Section 20.205(3), Ethics Commission Rules, requires a candidate's campaign treasurer appointment to specify the office sought by the candidate, if known.
2. There is credible evidence that the respondent did not know the office he was seeking when he filed his campaign treasurer appointment, and thus did not violate Section 20.205(3), Ethics Commission Rules.
3. Section 20.219(11), Ethics Commission Rules, requires a filer to itemize any in-kind contributions of more than \$50 in value. Section 20.219(15), Ethics Commission Rules, requires a filer to itemize expenditures that total more than \$50 to a single payee during the reporting period. Section 254.031, Election Code, also requires those contributions and expenditures to be itemized.
4. There is credible evidence that the respondent failed to report an in-kind contribution consisting of work done on a piece of campaign literature by a business entity.

5. Section 20.219(13), Ethics Commission Rules, requires a filer to report the date, interest rate, and maturity date of a loan. Section 254.031, Election Code, also requires that information to be reported.
6. There is credible evidence that the respondent failed to report the date, interest rate, and maturity date of a loan on his January 15 semiannual report.
7. Section 18.41, Ethics Commission Rules, states that a report may be corrected. Section 18.83, Ethics Commission Rules, states that an error in an original report may be corrected by filing a corrected report and a good-faith affidavit establishing that the reason a corrected report was filed was good faith error or lack of actual knowledge concerning information included or omitted from a report. The original report is then deemed to be timely filed and is not subject to a fine.
8. The respondent filed a corrected January 15 semiannual report and a good-faith affidavit regarding the correction. Thus, the respondent is not subject to a fine for the original January 15 semiannual report.
9. Section 253.031(a), Election Code, prohibits a candidate from accepting a campaign contribution, including a loan from an individual, at a time when a campaign treasurer appointment for the candidate is not in effect.
10. There is credible evidence that the respondent accepted the loan after filing his campaign treasurer appointment, and thus did not violate Section 253.031(a), Election Code.
11. A frivolous complaint by definition must be groundless and brought in bad faith or be groundless and brought for purposes of harassment. The complaint is not groundless, and thus by definition it is not frivolous.

IV. 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 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. 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. 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. The respondent acknowledges that Section 20.219, Ethics Commission Rules, and Section 254.031, Election Code, require a filer to itemize an in-kind contribution of more than \$50 in value. Respondent agrees to fully and strictly comply with these requirements.
4. 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 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

A portion of this ORDER and AGREED RESOLUTION (Section III, Paragraphs 3 and 4), describes a 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, 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; and after considering the sanction deemed necessary to deter future violations, the commission imposes a penalty of \$100 for the violation of Section 20.219, Ethics Commission Rules, and Section 254.031, Election Code, described under Section III, Paragraph 4.

VII. Order

The Texas Ethics Commission hereby ORDERS:

1. that the portions of this sworn complaint that allege violations described by Section III, Paragraphs 1, 2, 5, 6, 7, 8, 9, and 10, are dismissed;
2. that the respondent's frivolous complaint allegations are dismissed;
3. that this proposed AGREED RESOLUTION be presented to the respondent;

4. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-96013;
5. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than October 15, 1996; and
6. that the executive director shall promptly refer SC-96013 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-96013 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by David A. Jones on _____, 1996.

Respondent

EXECUTED ORIGINAL received by the commission on _____, 1996.

Tom Harrison, Executive Director
Texas Ethics Commission