

TEXAS ETHICS COMMISSION

IN THE MATTER OF

PAUL ENLOW,

RESPONDENT

§
§
§
§
§
§

BEFORE THE

TEXAS ETHICS COMMISSION

SC-96055

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 11, 1997, to consider sworn complaint SC-96055 filed against Paul Enlow (the respondent) on July 22, 1996. A quorum of the commission was present. The commission voted to refuse jurisdiction of the allegations relating to campaign finance reports required to be filed before July 22, 1994, and accept jurisdiction of the allegations relating to Chapter 572, Government Code, and campaign finance reports required to be filed on or after July 22, 1994. Based on the investigation conducted by commission staff, the commission determined that there was credible evidence of violations of Section 254.031, 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 the respondent.

II. Facts Supported by Credible Evidence

1. The complainant alleges that the respondent, the district judge of the 141st District Court, violated Chapter 572, Government Code, concerning personal financial disclosure.

Title 15, Election Code, allegations relating to reports filed before July 22, 1994:

2. The complainant alleges that the respondent failed to report all political expenditures and failed to report outstanding loans on his January 1994 semiannual report and 30-day before election report for the 1994 primary; failed to cover a 17-day period (2-7-94 through 2-24-94) on any of the his campaign finance reports; failed to report all expenditures, failed to report loans, and failed to disclose contributor occupations on his 8-day before election report for the 1994 primary runoff; and failed to report loans on his July 1994 semiannual report and also alleges that the respondent verified that report five days before the end of the reporting period covered by the report.

Title 15, Election Code, allegations relating to reports filed on or after July 22, 1994:

3. Missing Occupation Information: The complainant alleges that the respondent failed to disclose contributor occupations on his 30-day before election report for the 1994 general election, 8-day before election report for the 1994 general election, and January 1995 semiannual report.
4. Missing Addresses: The complainant alleges that the respondent failed to provide complete addresses. The respondent's 30-day before election report for the 1994 general election is missing three contributor addresses. The respondent's January 1995 semiannual report is missing one contributor address for a \$25 contribution and two payee addresses. The respondent's July 1995 semiannual report is missing four payee addresses (two are for expenditures of \$50 or less). There is a total of ten missing or incomplete addresses.

In response to this complaint, the respondent filed corrected reports and good-faith affidavits providing all but two of the missing addresses required to be reported. The respondent swears that he conducted a reasonable search for the two addresses missing from his 30-day before election report for the 1994 general election but has been unable to locate them.

5. Loans: The complainant alleges that the respondent failed to properly report loans on his 30-day before election report for the 1994 general election and 8-day before election report for the 1994 general election. The complainant also alleges that the respondent failed to report campaign expenditures made out of personal funds as loans.

30-day before election report for the 1994 general election: The total principal amount of all outstanding loans as of the last day of the reporting period was reported to be \$24,858.38. The amount of the outstanding loans increased by \$2,658.57 since the last report filed by the respondent, but a loan was not reported on the loan schedule.

8-day before election report for the 1994 general election: The total principal amount of all outstanding loans as of the last day of the reporting period was reported to be \$0. The respondent did not report the repayment of any loans, but did report \$5,201.51 in political expenditures to himself to reimburse political expenditures made from personal funds.

The respondent swears that he became confused partway through his campaign as to whether expenditures from personal funds should be reported as loans to the campaign. He swears that he reported those expenditures as outstanding loans on some of his reports but stopped doing so after he realized that those expenditures were not required to be reported as loans.

In response to this complaint, the respondent filed corrected reports and good-faith affidavits deleting erroneous loan balances. The corrected 8-day before election report for the 1994 general election adds 15 loans totaling \$1,280.79, which were made to the respondent by the respondent's father. The corrected report also adds 15 expenditures totaling \$1,280.79, which disclose how those loans were spent. Most of the \$1,280.79 (\$1,029.26) was originally reported as an in-kind contribution from the respondent's father instead of as a loan. The corrected report deletes that in-kind contribution. The respondent explains that his father purchased sign materials with his father's own money, essentially loaning the money to the campaign. The corrected report also discloses \$251.53 in expenditures not previously reported.

6. The complainant alleges that the respondent converted political contributions to personal use.
7. The complainant alleges that the respondent made political expenditures without first appointing a campaign treasurer. The respondent filed a campaign treasurer appointment with the proper filing authority on August 18, 1993.

III. Conclusions of Law

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

1. Chapter 572, Government Code, governs personal financial disclosure of state officers. There was no evidence submitted supporting this allegation, nor does the commission have any record indicating that the respondent violated this law. There is no credible evidence that a violation of Chapter 572, Government Code, occurred.

Title 15, Election Code, allegations relating to reports filed before July 22, 1994:

2. Section 254.041, Election Code, provides that a person commits an offense that is a Class C misdemeanor if the person knowingly fails to include required information in a campaign finance report. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Section 12.5(3), Ethics Commission Rules. The statute of limitations for Class C misdemeanors is two years from the date of the commission of the offense. Article 12.02, Code of Criminal Procedure.
3. The allegations relating to the January 1994 semiannual report, the 30-day before election report for the 1994 primary, the 8-day before election report for the 1994 primary, the 8-day before runoff election report for the 1994 primary runoff, and the July 1994 semiannual report are based on alleged offenses that occurred more than two years before the complaint was filed and are therefore not within the commission's sworn complaint jurisdiction.

Title 15, Election Code, allegations relating to reports filed on or after July 22, 1994:

4. Section 254.031, Election Code, provides that a person filing a campaign finance report must itemize contributions, expenditures, and loans exceeding \$50 during a reporting period, including the name and the address of the contributor, payee, or lender, as applicable, and the date and the amount of the contribution, expenditure, or loan.
5. Missing Occupation Information: The respondent did not disclose contributor occupations on his 30-day before election report for the 1994 general election, 8-day before election report for the 1994 general election, and January 1995 semiannual report. The law in effect at that time did not require occupation information. (Section 254.0611, Election Code, which became effective on July 1, 1995, requires judicial candidates to provide a contributor's occupation only for contributions accepted on or after that date.) There is credible evidence that the respondent did not violate Section 254.031, Election Code, for failing to include contributor occupations.
6. Missing Addresses: The respondent failed to provide complete addresses on his 30-day before election report for the 1994 general election, January 1995 semiannual report, and July 1995 semiannual report. There is a total of ten missing or incomplete addresses. Three of the missing addresses are not required because they are for contributions or expenditures of \$50 or less. The respondent filed corrected reports and good-faith affidavits providing all of the missing addresses except for two addresses required to be reported on his 30-day before election report for the 1994 general election.
7. A person filing reports under Title 15, Election Code, who files an affidavit swearing that a corrected report, other than one correcting a report due eight days before an election, was filed in good faith is not subject to a fine for a late report. Sections 18.49 and 18.83, Ethics Commission Rules. None of the corrected reports regarding this allegation involved an 8-day before election report.

As to the January 1995 and July 1995 semiannual reports, there is credible evidence that the respondent did not violate Section 254.031, Election Code, for failing to provide addresses.

8. As to the 30-day before election report for the 1994 general election, there is credible evidence that the respondent committed technical or *de minimis* violations of Section 254.031, Election Code, for failing to provide two addresses.
9. Loans: The respondent failed to properly report loans on his 30-day before election report for the 1994 general election and 8-day before election report for the 1994 general election.

The respondent swears that he became confused partway through his campaign as to whether expenditures from personal funds should be reported as loans to the campaign. He reported those expenditures as outstanding loans on some of his reports but stopped doing so after he realized that those expenditures were not required to be reported as loans. The law does not require campaign expenditures made out of personal funds to be reported as loans. The respondent reported those expenditures in a manner permitted by law. Sections 253.035(h) and 253.0351, Election Code. There is credible evidence that the respondent did not violate Section 254.031, Election Code, for failing to report campaign expenditures made out of personal funds as loans.

10. The respondent filed corrected reports and good-faith affidavits deleting erroneous loan balances. He also corrected his 8-day before election report for the 1994 general election by adding loans made to the respondent by the respondent's father and deleting an in-kind contribution from his father. Most of the activity in the corrected 8-day before election report for the 1994 general election was previously reported as an in-kind contribution instead of as a loan. The corrected 8-day before election report for the 1994 general election discloses \$251.53 in expenditures not previously reported.
11. A person filing reports under Title 15, Election Code, who files an affidavit swearing that a corrected report, other than one correcting a report due eight days before an election, was filed in good faith is not subject to a fine for a late report. Sections 18.49 and 18.83, Ethics Commission Rules.

As to the 30-day before election report for the 1994 general election, there is credible evidence that the respondent did not violate Section 254.031, Election Code, for failing to properly report loans.

12. A corrected 8-day before election report is subject to a fine for a late report regardless of whether a good-faith affidavit has been filed. As to the 8-day before election report for the 1994 general election, there is credible evidence that the respondent violated Section 254.031, Election Code, for failing to properly report loans, expenditures, and contributions.
13. Personal use of contributions: Section 253.035(a), Election Code, provides that a person who accepts a political contribution as a candidate or as an officeholder may not convert the contribution to personal use. "Personal use" means "a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of public office." Section 253.035(d), Election Code.
14. The respondent's reports indicate that he financed the bulk of his campaign from personal funds and that he itemized those expenditures indicating that he intended to reimburse himself from political contributions, as he is allowed to do by law. The respondent swears that he was confused as to whether political expenditures from personal funds should be reported as loans, which caused him to make reporting errors. Additionally, the respondent failed to report loans

made to the campaign. In response to this complaint, the respondent filed corrected reports. The respondent's reports show that the reimbursements the respondent made to himself from political funds do not exceed the political expenditures he made from personal funds. The respondent's reports do not prove that he converted political contributions to personal use. There is credible evidence that the respondent did not violate Section 253.035(a), Election Code.

15. Appointment of campaign treasurer: A candidate may not make a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. Section 253.031, Election Code. The complainant alleges that the respondent made political expenditures without first appointing a campaign treasurer. Under Ethics Commission rules, the commission may not consider allegations that are based on alleged offenses that occurred more than two years before the complaint was filed. Therefore, the commission may only consider allegations relating to making campaign expenditures on or after July 22, 1994, without first appointing a campaign treasurer.
16. The respondent filed a campaign treasurer appointment with the proper filing authority on August 18, 1993. There is credible evidence that the respondent did not violate Section 253.031, Election Code.

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. 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. The respondent acknowledges that he is required to comply with the mandates of Section 254.031, Election Code. The respondent agrees to fully and strictly comply with that law.
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 violations detailed in Section III, Paragraphs 8 and 12, 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 is neither technical or *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 Section 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 the sanction deemed necessary to deter future violations, the commission imposes a \$100 civil penalty for the violation described under Section III, Paragraph 12.

VII. Order

The Texas Ethics Commission hereby ORDERS:

1. that the portions of this sworn complaint that allege violations under Section III, Paragraphs 1, 3, 5, 7, 9, 11, 14, and 16, are 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-96055;
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 the \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than August 8, 1997; and
5. that the executive director shall promptly refer SC-96055 to the commission or an administrative law judge to conduct hearings and to propose findings of fact and conclusions of

law in accordance with law if the respondent does not agree to the resolution of SC-96055 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by Paul Enlow on this the _____ day of _____, 1997.

Paul Enlow, Respondent

EXECUTED ORIGINAL received by the commission on _____, 1997.

Tom Harrison, Executive Director