

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SHERRIE L. MATULA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-961219

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 11, 1997, to consider sworn complaint SC-961219 filed against Sherrie L. Matula (the respondent). A quorum of the commission was present. The commission voted to refuse jurisdiction of the allegation that the respondent submitted a report with false date. The commission voted to accept jurisdiction of the remaining allegations of this complaint. Based on the investigation conducted by commission staff, the commission determined there was credible evidence of violations of Sections 253.031(a), 254.031(a), 254.064(b) and (c), 254.201(b), and 254.202(a), 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. Facts Supported by Credible Evidence

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

1. In November 1994, the respondent filed an appointment of campaign treasurer and became a candidate for school board trustee in an election held on January 21, 1995. The respondent was an opposed candidate in the election.
2. The complainant alleges that the respondent: (1) failed to properly report the disposition of a loan that was made to the respondent's campaign; (2) failed to have the final report notarized; (3) failed to properly report approximately \$6,700 in political expenditures; (4) failed to file an annual report showing the status of unexpended funds; and (5) submitted falsified documents that contained an incorrect date of signature and/or filing.

3. The respondent filed a 30-day before election report on January 2, 1995.
4. The respondent filed an 8-day before election report on January 13, 1995.
5. The respondent submitted an affidavit in response to this complaint in which she stated that she had reviewed her campaign records and had located an additional check register that contained expenditures that had not previously been reported. Included in this additional check register were expenditures totaling \$329.28 that were made on dates covered by the respondent's 8-day before election report. The respondent also stated in her affidavit that she had originally reported a \$250 contribution that was made on January 10, 1995, a date covered by the 8-day before election report, as a part of her final report. In response to this complaint, the respondent has filed a corrected 8-day before election report and good-faith affidavit that includes the previously unreported expenditures and the contribution that had been included in the respondent's final report.
6. The respondent filed a final report on February 24, 1995. The respondent signed the affidavit on the final report, but the affidavit was not notarized.
7. In the affidavit filed in response to this complaint, the respondent stated that during the period covered by her final report, she had made an additional \$1,262.85 in expenditures that had not previously been reported. These additional expenditures were contained in the check register that the respondent discovered after this complaint was filed. In the affidavit, the respondent also stated that she cannot recall why the final report was not notarized, but indicated that it was due to an unintentional mistake. In response to this complaint, the respondent has filed a good-faith affidavit and corrected final report that contains these expenditures and that is notarized.
8. In the affidavit submitted in response to this complaint, the respondent stated that on March 6, 1995 (after the date that her final report was filed), she repaid a \$5000 bank loan that was obtained for use in connection with her candidacy. The respondent reported obtaining the loan on January 1, 1995, in the 8-day before election report. Prior to this complaint, the respondent had not reported the repayment of the loan. In the affidavit, the respondent stated that she had been unaware of the need to report the repayment of the loan and that she thought that reporting the loan's due date of March 6, 1996, on her 8-day before election report would have been the accompanying documentation for repayment. In response to this complaint, the respondent filed a report showing the repayment of the loan.
9. The respondent was unsuccessful in the election for school board trustee.
10. The respondent retained unexpended political contributions after filing her final report.
11. The respondent filed two candidate/officeholder reports dated July 14, 1995, and July 11, 1996, showing \$334.71 "in account." The respondent did not file an unexpended contribution report between January 1 and January 15, 1996. In the affidavit submitted in response to this complaint, the respondent stated that she believed she was required to file a

report showing unexpended campaign funds every July 15th, and was unaware of the requirement to file an unexpended contribution report between January 1 and January 15.

III. Conclusions of Law

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

1. Section 254.064(b), Election Code, requires an opposed candidate to file a report thirty days before an election. The respondent, who was opposed in the election, was required to file a 30-day before election report on December 22, 1994. Because the respondent did not file the 30-day before election report until January 2, 1995, there is credible evidence that the respondent violated Section 254.064(b), Election Code.
2. Section 254.064(c), Election Code, requires an opposed candidate to file a report eight days before an election. Section 254.031(a), Election Code, provides that each report filed under Chapter 254, Election Code, must include information regarding loans and contributions that are accepted and expenditures that are made during the period covered by the report. A report is considered late if the report was timely filed but does not contain all information that is required to be reported. Section 18.61, Ethics Commission Rules. 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. However, 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. Because the respondent failed to timely report the information required in the 8-day before election report, there is credible evidence that the respondent committed a violation of Sections 254.031(a) and 254.064(c), Election Code.
3. Section 254.065(a), Election Code, provides that a candidate may file a final report if the candidate expects no further reportable activity in connection with the candidacy to occur. Section 254.031(a), Election Code, provides that each report filed under Chapter 254, Election Code, must include information regarding loans and contributions that are accepted and expenditures that are made during the period covered by the report. Section 254.036(b), Election Code, requires all campaign finance reports to include an affidavit executed by the person required to file the report. Ethics Commission rules require a report to include an affidavit executed by the filer before a notary or other person authorized by law to administer oaths. Section 20.25, Ethics Commission Rules. 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. Because the respondent filed a corrected final report that was notarized and a good faith affidavit, there is credible evidence that the respondent did not commit a violation of a rule or law administered and enforced by the commission.

4. Section 253.031(a), Election Code, provides that a candidate may not knowingly make or authorize a campaign expenditure at a time when a campaign treasurer appointment is not in effect. By filing a final report, a candidate terminates his or her campaign treasurer appointment. Section 254.065, Election Code. Repayment of a campaign loan constitutes a campaign expenditure, which must be reported. Sections 251.001(6) and (7) and 254.031(a)(2) and (3) Election Code. Because the respondent repaid the campaign loan after filing the final report, the respondent made a campaign expenditure at a time when no campaign treasurer appointment was in effect. Thus there is credible evidence that the respondent violated Section 253.031(a), Election Code.
5. Sections 254.201 and 254.202, Election Code, require an unsuccessful candidate who has filed a final report and who retains unexpended political contributions to file a report between January 1 and January 15 of each year that the candidate retains unexpended contributions. Because the respondent was an unsuccessful candidate, filed a final report in February 1995, and retained unexpended contributions, the respondent was required to file an unexpended contribution report between January 1 and January 15, 1996. Because the respondent did not file an unexpended contribution report between January 1 and January 15, 1996, there is credible evidence that the respondent violated Sections 254.201 and 254.202, Election Code.
6. Sections 571.061 and 571.121(b), Government Code, limit the commission's sworn complaint jurisdiction to Chapters 302, 305, and 572, Government Code, and Title 15, Election Code. The commission does not have jurisdiction over the allegation that the respondent submitted falsified documents that contained an incorrect date of signature and/or filing.

IV. 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 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. 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 Sections II and 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 alleged violations that the commission has determined are 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 violations described under Sections II and III, 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 \$200 civil penalty for the violations described under Sections II and III.

VII. Order

The Texas Ethics Commission hereby ORDERS:

1. that the portions of this sworn complaint that allege violations described by Section III, Paragraphs 3 and 6, are dismissed;
2. that this proposed AGREED RESOLUTION be presented to the respondent;
3. 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 \$200 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than August 8, 1997;
4. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-961219; and
5. that the executive director shall promptly refer SC-961219 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-961219 as proposed in this ORDER and AGREED RESOLUTION.

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

Sherrie L. Matula, Respondent

EXECUTED ORIGINAL received by the commission on: _____.
DATE

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director