

# TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
BOBBIE J. PATTERSON,	§	TEXAS ETHICS COMMISSION
	§	
RESPONDENT	§	SC-970852
	§	

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on April 17, 1998, to consider sworn complaint SC-970852 filed against Bobbie J. Patterson (the respondent) and received by the commission on August 19, 1997. A quorum of the commission was present. The commission voted to refuse jurisdiction of the alleged violation that occurred before August 19, 1995. The commission voted to accept jurisdiction of the remainder of the allegations. Based on the investigation conducted by the commission staff, the commission determined there was credible evidence of violations of Sections 253.003, 254.064, and 255.003, Election Code, and credible evidence of a technical or *de minimis* violation of Section 254.031, 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. Allegations

The complainant alleges that the respondent, a city council candidate and officeholder, untimely filed a semiannual report, a 30-day before election report, and an 8-day before election report. The complainant also alleges that the respondent failed to report required information relating to two political contributions, failed to have a list of persons making contributions on a 30-day before election report, and unlawfully accepted political contributions from corporations. Finally, the complainant alleges that the respondent spent public funds for political advertising by inserting political advertising in municipal utility bills that were mailed by the city to its utility customers.

### III. Facts Supported by Credible Evidence

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

1. The respondent was elected to a position on a city council in an election held on May 20, 1995. After the election, the respondent did not file a final campaign finance report, and at all times relevant to this complaint remained a candidate for purposes of Title 15, Election Code.

2. The complainant alleges that the respondent did not timely file a semiannual report that was due not later than July 15, 1995.
3. The respondent ran as an opposed candidate for re-election to the city council in an election held on May 3, 1997. The respondent filed the 30-day before election report on April 8, 1997, listing approximately \$2,900 in expenditures and \$3,100 in contributions. This report was due on April 3, 1997. The respondent filed the 8-day before election report on April 29, 1997, listing approximately \$1,800 in expenditures and \$1,200 in contributions. This report was due on April 23, 1997.
4. In an affidavit submitted in response to this allegation, the respondent acknowledged that the reports were filed late and explained that she was overwhelmed with paperwork and was unfamiliar with the laws. The respondent stated that she will be more diligent in the future in complying with the filing deadlines.
5. The complainant alleges that the respondent failed to report the correct addresses of two contributors. The respondent's January 15, 1996, semiannual report included a \$500 contribution from the Golden Triangle Chamber of Commerce, with the address listed as "unknown." The complainant also alleges that the respondent gave the wrong address in connection with a \$500 contribution from the Beaumont Police Officer's Association that was reported on the respondent's 8-day before election report filed on April 29, 1997.
6. In response to this allegation, the treasurer for the Beaumont Police Officer's Association sent the commission a letter stating that the address that was reported by the respondent in connection with the association's contribution was the association's previous address. The treasurer stated that the address reported by the respondent was the address listed on the check that was given to the respondent. The respondent also swore that she had not been informed of the association's new address.
7. The complainant alleges that the respondent wrongfully accepted two political contributions from corporations. The first contribution that is the subject of this complaint is a \$200 contribution from "W.B. Construction, Inc.," which was reported by the respondent on her January 15, 1996, semiannual report. This business is listed as a corporation with the Secretary of State. The second contribution that is the subject of this complaint is a \$500 contribution from the Golden Triangle Chamber of Commerce, which was also reported by the respondent on her January 15, 1996, semiannual report. Information provided to commission staff by the Secretary of State indicates that although this organization was initially incorporated as a non-profit corporation, its corporate status was forfeited in 1990.
8. In an affidavit filed in response to this complaint, the respondent stated that she mailed a check in the amount of \$200 to W.B. Construction, Inc. The respondent also stated that at the time the respondent received the contribution from the Golden Triangle Chamber of Commerce, the respondent was told that the entity was not a corporation. A trustee for the entity also submitted an affidavit to the commission that stated that he did not believe that the entity had ever received a corporate charter and that it became defunct in 1990.

9. The complainant alleges that the respondent “does not have a list of persons making the contributions” in connection with the respondent’s April 8, 1997, 30-day before election report. On this report, the respondent listed a cumulative total of \$2,250 in contributions of less than \$50 each, and did not provide detailed information regarding these contributions.
10. In response to this allegation, the respondent swore that it was her understanding of the law that she was not required to report specific information regarding contributions of less than \$50 that she accepted during the reporting period.
11. The complainant alleges that the respondent used public funds for political advertising by having a newsletter inserted into water bills which were mailed by the city to its utility customers. In the newsletter, the respondent “applauds” those who voted for her and solicits donations from individuals, businesses, and organizations to serve as “sponsors” for the newsletter. The newsletter states that it is political advertising and includes the political advertising disclosure statement.
12. In an affidavit filed in response to this complaint, the respondent stated that she paid for the costs associated with typing, printing, and folding of the newsletter. The respondent also states that “[i]f the city would incur any extra cost such as stuffing and/or postage, I paid for that.” The respondent also submitted an affidavit of the City Attorney in which the attorney states that he “understood that all costs, both hard and soft, associated with the mailing would be paid by Councilwoman Patterson and that the City of Beaumont would bear no costs or personnel time in including the newsletter in the mailing. I advised that there was no legal prohibition to allowing the mailing to occur.”

#### **IV. Conclusions of Law**

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

1. 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. A person commits an offense that is a Class C misdemeanor if the person knowingly fails to file a campaign finance report on time or fails to include required information in a campaign finance report. Section 254.041, Election Code. 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.
2. The complaint was filed August 19, 1997; any alleged offense that occurred before August 19, 1995, is therefore not within the commission’s sworn complaint jurisdiction. The allegation

that the respondent failed to timely file the July 15, 1995, semiannual report may not be considered by the commission.

3. An opposed candidate is required to file campaign finance reports by the 30th day and 8th day before an election. Section 254.064, Election Code.
4. The respondent ran for re-election to the city council as an opposed candidate in an election held on May 3, 1997. The 30-day before election report was due on April 3, 1997, but was not filed by the respondent until April 8, 1997. The 8-day before election report was due on April 23, 1997, but was not filed by the respondent until April 29, 1997. Because the respondent did not timely file the 30-day before election report and the 8-day before election report, there is credible evidence that the respondent violated Section 254.064, Election Code.
5. A campaign finance report must include the full name and address of a person making political contributions that in the aggregate exceed \$50 in a reporting period. Section 254.031(a)(1), Election Code.
6. Because the respondent did not provide the address of the "Golden Triangle Chamber of Commerce" on the respondent's January 15, 1996, semiannual report, there is credible evidence that the respondent committed a technical or *de minimis* violation of Section 254.031, Election Code.
7. Because the respondent reasonably relied upon information provided by the Beaumont Police Association when reporting the contribution on the 30-day before election report filed on April 29, 1997, there is credible evidence that there was no violation of Section 254.031, Election Code, relating to this allegation.
8. A corporation, including a non-profit corporation, may not make a political contribution or expenditure unless it is authorized by Subchapter D, Chapter 253, Election Code. Section 253.094, Election Code. Corporations are not authorized to make political contributions to a candidate. A person may not knowingly accept a political contribution that the person knows to have been made in violation of Chapter 253, Election Code. Section 253.003, Election Code.
9. Because the respondent accepted a \$200 corporate contribution from W.B. Construction, Inc. that was made in violation of Chapter 253, Election Code, there is credible evidence that the respondent violated Section 253.003, Election Code.
10. Because it is unclear whether the contribution from the Golden Triangle Chamber of Commerce was made from corporate funds, there is insufficient credible evidence to determine whether the respondent violated Section 253.003, Election Code, as to this allegation.

11. Each campaign finance report is required to include either the total amount or a specific listing of the political contributions of \$50 or less that are accepted by the filer during the reporting period. Section 254.031(a)(5), Election Code.
12. Because the respondent provided a cumulative total of the contributions of \$50 or less that the respondent accepted during the reporting period covered in the April 8, 1997, 30-day before election report, the respondent was not required to report specific information regarding these contributions. Thus, there is credible evidence that the respondent did not violate Section 254.031(a)(5), Election Code.
13. An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. Section 255.003(a), Election Code. Political advertising includes a communication that supports a public officer and that appears in a pamphlet, circular, or flier. Section 251.001(16), Election Code.
14. The respondent's newsletter that is the subject of this complaint is political advertising because it supports a public officer. The respondent's affidavit does not clearly establish whether any additional expenses were incurred by the city in connection with mailing the newsletter. Even if no additional funds were expended by the city, however, public funds were used to distribute the newsletter because the newsletter was included in the city's water bill and was mailed by the city. Because the newsletter is political advertising and the respondent spent or authorized the spending of public funds to distribute this advertising, there is credible evidence that the respondent violated Section 255.003, Election Code.

#### **V. 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 III and the commission's findings and conclusions of law detailed under Section IV, 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 Section IV, Paragraphs 4, 6, 9, and 14, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

## **VI. Confidentiality**

This ORDER and AGREED RESOLUTION describes alleged violations 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.

## **VII. Sanction**

After considering the seriousness of the violations described under Sections III and IV, 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 \$100 civil penalty for each one of the three violations described in Section IV, Paragraphs 4 and 9, for a total civil penalty of \$300. The commission imposes no fine for the violation described in Section IV, Paragraph 6, because it is a technical or *de minimis* violation, or for the violation described in Section IV, Paragraph 14, because there is credible evidence that the respondent reasonably relied upon the advice of the city attorney.

## **VIII. Order**

The Texas Ethics Commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-970852;
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 payment of the sum of \$300 to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 15, 1998; and
4. that the executive director shall promptly refer SC-970852 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-970852 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Bobbie J. Patterson, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_  
DATE

Texas Ethics Commission

\_\_\_\_\_  
Tom Harrison, Executive Director