

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JAY MILLIKIN,

RESPONDENT

§
§
§
§
§
§

BEFORE THE

TEXAS ETHICS COMMISSION

SC-980107

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 8, 1998, to consider sworn complaint SC-980107 filed against Jay Millikin (the respondent). A quorum of the commission was present. The commission voted to accept jurisdiction of this complaint. Based on the investigation conducted by commission staff, the commission determined there was credible evidence of a violation of Sections 253.031 and 254.064, 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, an opposed candidate for county commissioner, violated the Election Code by making a campaign expenditure at a time when a campaign treasurer appointment was not in effect. The complainant also alleges that the respondent violated the Election Code by failing to timely file the 30-day before the election report due February 9, 1998.

III. 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 county commissioner who was opposed in the primary election held on March 10, 1998.
2. The respondent paid the \$600 filing fee for a place on the ballot on January 2, 1998. The respondent filed his campaign treasurer appointment with the county clerk on January 5, 1998.

3. The respondent filed his 30-day before the election report on February 18, 1998. This report disclosed campaign contributions totaling \$4,045 and campaign expenditures totaling \$3,869. The respondent swears that he overlooked the filing deadline, that his failure to timely file was not intentional, and that all future reports will be timely filed.

IV. Conclusions of Law

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

Failure to appoint a campaign treasurer:

1. A candidate may not knowingly make a campaign expenditure at a time when a campaign treasurer appointment is not in effect. Section 253.031(a), Election Code.
2. A "campaign expenditure" is an expenditure made in connection with an election. Section 251.001(7), Election Code.
3. Payment of a filing fee for a place on the ballot is a campaign expenditure because it is made in connection with an election. The respondent admits in a sworn statement that he paid the filing fee before filing his campaign treasurer appointment with the county clerk. Thus, there is credible evidence that the respondent violated Section 253.031(a), Election Code.

Failure to timely file reports:

4. A candidate who has an opponent whose name will appear on the ballot is required to file a campaign finance report by the 30th day before an election. Section 254.064, Election Code.
5. The primary election was held on March 10, 1998, and the 30-day before the election report was due on February 9, 1998. The respondent filed the report on February 18, 1998, and thus there is credible evidence that the respondent violated Section 254.064, 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 and AGREED RESOLUTION 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 3 and 5, 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 an alleged 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.

VII. Sanction

After considering the seriousness of the violations described under Section IV, Paragraphs 3 and 5, 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 Section IV, Paragraphs 3 and 5.

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-980107;
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 June 5, 1998; and

4. that the executive director shall promptly refer SC-980107 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-980107 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on: _____
DATE

Jay Millikin

EXECUTED ORIGINAL received by the commission on: _____
DATE

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director