

TEXAS ETHICS COMMISSION

IN THE MATTER OF
TOMMY BROCK THOMAS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-980213

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 1999, to consider Sworn Complaint SC-980213 filed against Tommy Brock Thomas, Respondent. A quorum of the commission was present. The commission voted to accept jurisdiction of the allegations of violations of Sections 253.035, 253.041, 254.063, and 254.064, Election Code, and to refuse jurisdiction of the allegations of violations of Sections 253.131 and 253.133, Election Code. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of 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

1. The complainant alleges that the respondent violated the Election Code by filing a late January 1998 semiannual report, by using political funds to pay his wife \$6,500, and by using political funds to reimburse himself without first properly reporting the political expenditures that he had made from personal funds.
2. The complainant also alleges that by committing those violations, the respondent is liable for damages to opposing candidates and liable for damages to the state.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent is currently a sheriff.
2. In support of his allegations, the complainant submitted copies of eight of the respondent's campaign finance reports. The respondent's January 1998 semiannual report was stamped "filed for record 8:00 AM Jan. 20, 1998," by the Harris County Clerk's Office. The report discloses contributions totaling approximately \$92,408 and expenditures totaling approximately \$27,445. One of the expenditures on the respondent's January 1998

- semiannual report is a \$6,500 political expenditure made to the respondent's wife for "services provided as campaign treasurer." The complainant also submitted a copy of a corrected report and good-faith affidavit filed by the respondent on January 29, 1998, in which the respondent swears that the \$6,500 political expenditure was not made. He swears that the check for that expenditure was voided and that the entry on the report was made in error.
3. The eight reports submitted as evidence in this complaint show that the respondent made 16 expenditures from political contributions to reimburse himself approximately \$6,704. The explanations provided by the respondent under the "purpose" sections of the political expenditures schedules indicate that the expenditures made to himself were for meals, expenses, use of personal auto, office supplies, campaign supplies, and postage. None of the reports disclose that the respondent had made any "loans" to his campaign, and only one report discloses that the respondent had made political expenditures from personal funds for which he intended to reimburse himself.
 4. In response to this complaint, the respondent, through his attorney, submitted a sworn response stating that the January 1998 semiannual report was timely filed. As to the \$6,500 expenditure made to his wife, the respondent swears that the expenditure was reported but was never cashed and was subsequently voided. Included with the respondent's reply was a copy of a \$6,500 check issued to the respondent's spouse. The check is drawn on the respondent's campaign account and appears to be signed by the respondent. The check has the word "void" written across it.
 5. As to the allegations of improper reimbursements from political contributions, the respondent swears that he has repeatedly been advised that the manner in which both his expenses and reimbursements have been reported is proper and in compliance with the Election Code. The respondent's response does not indicate who advised him on this matter. He states that as a show of good faith, he filed corrected reports and good-faith affidavits for all of the reports in question.
 6. The corrected reports include 228 itemized expenditures totaling approximately \$8,852. In the good-faith affidavit submitted with the corrected reports, the respondent swears that the expenditures "were originally reported on Schedule F for reporting period. It was later discovered that they should have been reported on Schedule G."

IV. Findings and Conclusions of Law

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

1. A candidate is required to file reports by January 15 and July 15 each year, and by the 30th day and 8th day before each election in which the candidate has an opponent whose name is to appear on the ballot. Sections 254.063 and 254.064, Election Code. A report is considered timely filed if it is properly addressed with postage or handling charges prepaid

- and bears a postmark or receipt mark of a common or contract carrier indicating a time on or before the deadline. Section 251.007, Election Code; Section 20.23, Ethics Commission Rules.
2. The complainant submitted a copy of the respondent's report due on January 15, 1998, stamped "filed for record 8:00 AM Jan. 20, 1998," which was 5 days after the due date. The report shows that it was signed by the respondent and notarized on January 15, 1998. Although the county clerk's file stamp shows that the report was received on January 20, there is no indication of the date it was postmarked. The respondent swears that the report was timely filed.
 3. A person filing reports under Title 15, Election Code, who files an affidavit swearing that a report was filed by the deadline is not subject to a fine for a late report. Section 18.67, Ethics Commission Rules. The respondent filed such an affidavit, and therefore there is credible evidence that no violation occurred concerning the timeliness of the January 15, 1998, semiannual report.
 4. A candidate or an officeholder may not make or authorize a payment from a political contribution if the payment is made for personal services rendered to the candidate or officeholder by the candidate or officeholder's spouse. Section 253.041(a), Election Code.
 5. The respondent's January 1998 semiannual report indicates that the respondent used political funds to pay his wife \$6,500 for "services provided as campaign treasurer." The respondent, however, filed a corrected report and good-faith affidavit approximately two weeks after that report was filed swearing that the \$6,500 expenditure was not made and that it had previously been reported in error. There is credible evidence that the respondent did not violate Section 253.041(a), Election Code.
 6. A person who accepts a political contribution as a candidate or as an officeholder may not convert the contribution to personal use. Section 253.035(a), Election Code. "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 a public office." Section 253.035(d), Election Code.
 7. The respondent's campaign finance reports show that he made payments totaling approximately \$6,704 to himself. The explanations provided by the respondent under the "purpose" section of the political expenditures schedule indicate that the expenditures were payments to himself for expenditures he made from personal funds in connection with his performance of duties or activities as a candidate for or holder of a public office. There is no evidence available to commission staff to show that the expenditures were made for the respondent's personal use.
 8. Section 253.035(h), Election Code, provides specific reporting requirements for a candidate or officeholder who makes political expenditures from personal funds and who intends to

- seek reimbursement from political contributions. That section requires the candidate or officeholder to fully report those expenditures on the report covering the period in which the expenditures were made, including payees, dates, purposes, and amounts, and to indicate the expenditures were made from personal funds and that reimbursement from political contributions is intended. Alternatively, the law authorizes a candidate or officeholder to report those expenditures as a loan to himself or herself. Section 253.0351, Election Code.
9. The respondent failed to do either. Instead, the expenditures at issue are reported as “political expenditures” but are not expressly identified as having been made from personal funds. Rather, the respondent is listed as the payee. Under the “purpose” section of the political expenditures schedule, the respondent lists the general purpose of the expenditures, such as supplies, meals, or postage. The respondent did not fully identify the actual payees for the expenditures at issue and the precise amount for each item as required by Section 253.035(h), Election Code. In response to this complaint, the respondent filed corrected reports and good-faith affidavits itemizing the expenditures in question.
 10. *Corrected semiannual and 30-day before election reports:* In response to this complaint, the respondent filed five corrected semiannual reports and good-faith affidavits and two corrected 30-day before election reports and good-faith affidavits. 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. *See* Sections 18.49 and 18.83, Ethics Commission Rules. The law, however, requires proper reporting before a reimbursement from political contributions may be made. There is credible evidence that the respondent violated Section 253.035(h), Election Code, by reimbursing himself without complying with the requisite reporting requirements on the following reports: January 1998 semiannual report, July 1997 semiannual report, January 1997 semiannual report, 30-day before election report for the 1996 general election, July 1996 semiannual report, 30-day before election report for the 1996 primary election, and January 1996 semiannual report.
 11. *8-day before election reports:* 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. In response to this complaint, the respondent filed two corrected 8-day before election reports, one for the 1996 primary election and the other for the 1996 general election. The 8-day before election report for the 1996 general election was due on October 28, 1996. The respondent filed a corrected report 616 days later (July 6, 1998) in response to this complaint. The corrected report discloses 19 political expenditures from personal funds totaling approximately \$756 which were not previously reported properly. The 8-day before election report for the 1996 primary election was due on March 4, 1996. The respondent filed a corrected report 854 days later (July 6, 1998) in response to this complaint. The corrected report discloses 19 political expenditures from personal funds totaling approximately \$714 which were not previously reported properly.

12. Section 18.95(b), Ethics Commission Rules, authorizes the commission to consider fine amounts established by rule for a late report in determining the amount of a fine to be assessed in a sworn complaint. A person filing with the Ethics Commission would have accrued a fine of \$10,000 for each of the corrected 8-day before election reports. *See* Section 254.042(b), Election Code.
13. There is credible evidence that the respondent committed a violation by filing a late 8-day before election report for the 1996 primary election and a late 8-day before election report for the 1996 general election in violation of Section 254.064, Election Code, and by reimbursing himself without complying with the requisite reporting requirements on those reports in violation of Section 253.035(h), Election Code.
14. A person who knowingly makes or accepts a campaign contribution or makes a campaign expenditure in violation of Chapter 253, Election Code, may be liable for damages to opposing candidates. Section 253.131, Election Code. The Ethics Commission does not have authority to award damages; rather, a candidate would have to file a civil suit.
15. A person who knowingly makes or accepts a political contribution or makes a political expenditure in violation of Chapter 253, Election Code, is liable in damages to the state in the amount of triple the amount of the value of the unlawful contribution or expenditure. Section 253.133, Election Code. The Attorney General's Office is the appropriate entity to file suit to recover damages under this section.

V. 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 described under Section III and the commission's findings and conclusions of law described 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, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that Section 253.035(h), Election Code, requires a candidate or officeholder who makes political expenditures from personal funds and who intends to seek reimbursement from political contributions to fully report those expenditures on the report covering the period in which the expenditures were made, including payees, dates, purposes, and amounts, and to indicate the expenditures were made from personal funds and that reimbursement from political contributions is intended, or to report those expenditures as

a loan to himself. The respondent agrees to fully and strictly comply with this requirement of the 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 described under Section IV, Paragraphs 8 through 13, 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 a violation that the commission has determined is neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under section 571.140 of the Government Code, and may be disclosed by members and staff of the commission.

VII. No 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, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$900 civil penalty for the violations described under Section IV, Paragraphs 8 through 13.

VIII. Order

The 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-980213;
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 \$900 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than March 12, 1999; and
4. that the executive director shall promptly refer SC-980213 either to 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-980213 proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 1999.

Tommy Brock Thomas, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director