

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GLENDA ANNETTE GALIK,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-980552

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 8, 1999, to consider Sworn Complaint SC-980552 filed against Glenda Annette Galik, Respondent, on May 29, 1998. A quorum of the commission was present.

The commission voted to accept jurisdiction of the allegations of violations of:

1. Sections 253.003, 253.035, 253.153, Election Code;
2. Sections 254.031, 254.063, 254.064, and 254.0611, Election Code, but to refuse jurisdiction of the allegations regarding reports required to be filed before May 29, 1996;
3. Section 253.155, Election Code, but refuse jurisdiction of the allegation regarding a contribution accepted on June 1, 1994.

Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of Sections 254.063, 254.064, and 254.0611, 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 violated Title 15, Election Code, by:

1. accepting political contributions outside of the permissible fundraising period;
2. converting political funds to personal use;
3. accepting political contributions from corporations;
4. filing untimely and incomplete reports;
5. filing incomplete reports; and
6. accepting political contributions in amounts that exceeded the contribution limit.

III. Facts Supported by Credible Evidence

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

1. The respondent is currently a district judge and has held that position at all times relevant to this complaint. She sought reelection to that position in the 1998 primary and general elections. The population of the respondent's judicial district is more than one million.
2. The respondent has had a campaign treasurer appointment on file since at least 1993. The respondent filed a Judicial Debt Retirement Form in December 1996, in which she reported approximately \$54,500 in campaign debt existing on June 16, 1995, and a Judicial Declaration of Intent Form in November 1997.
3. In support of her allegations, the complainant submitted copies of 16 of the respondent's campaign finance reports, which were required to be filed January 1994 through March 1998.
4. The respondent's campaign finance reports disclose that the respondent accepted 91 political contributions totaling \$28,540 during January and February 1997.
5. The respondent's reports disclose that she made "loans" exceeding \$18,000 to her campaign. The respondent's July 1997 semiannual report discloses that she used political funds to reimburse herself in the amount of \$18,000 for those loans.
6. The respondent's July 1997 and January 1998 semiannual reports disclose that she accepted eight contributions from business entities. It is apparent from the reports that at least some of the contributions are from corporations.
7. In response to this complaint, the respondent filed corrected July 1997 and January 1998 semiannual reports and good-faith affidavits. The respondent's affidavit for the corrected July 1997 report states that a \$100 contribution originally reported as being from a corporation should have been reported as a contribution from the corporation's general-purpose political committee. The respondent submitted a copy of a check for the \$100 contribution, which was drawn on the committee's account.
8. The corrected January 1998 report discloses four contributions totaling \$1,110 that were originally reported as being from business entities and that were corrected to show that they were from individuals. The corrected report includes affidavits from each of the four contributors in which the contributors swear that the contributions were from them personally. The corrected January 1998 report also indicates that the remaining three contributions totaling \$1,150 were returned and not accepted. Those contributions were originally reported as being from a business. The corrected report includes an affidavit from an individual swearing that he personally made the three contributions in question and that those contributions were returned and not accepted.

9. The respondent's 30-day before election report for the 1998 primary election was filed on February 10, 1998. The respondent's July 1997 semiannual report was filed on August 1, 1997. The respondent's January 1997 semiannual report was filed on January 24, 1997. The respondent's July 1996 semiannual report was filed on August 9, 1996.
10. The respondent's 8-day before election report for the 1998 primary election does not disclose the contributor's job title and the name of the contributor's employer for 30 of the 33 contributions.
11. The respondent's January 1998 semiannual report does not disclose the contributor's job title and the name of the contributor's employer for 83 of the 96 contributions. The report does not disclose the contributor's full address for seven contributions.
12. The respondent's July 1997 semiannual report does not disclose the contributor's job title and the name of the contributor's employer for 63 of the 92 contributions. The report does not disclose the contributor's full address for 10 contributions.
13. In response to this complaint, the respondent submitted corrected reports and good-faith affidavits for the 8-day before election report for the 1998 primary election and the January 1998 and July 1997 semiannual reports. Both the July 1997 and January 1998 corrected semiannual reports do not disclose occupation information for three contributors. The 8-day before election report does not disclose occupation information for one contributor. The corrected reports indicate that numerous efforts were made to get that information from the contributors.
14. The respondent filed an application for a place on the ballot and paid a \$2,000 filing fee. The filing fee was not reported as an expenditure on any of the respondent's original reports.
15. In response to this complaint, the respondent filed a corrected January 1998 semiannual report and good-faith affidavit disclosing the \$2,000 filing fee expenditure.
16. In response to this complaint, the respondent filed a corrected January 1998 semiannual report and good-faith affidavit in which she provides "descriptions" for 19 in-kind contributions for which she had not previously provided descriptions. The 19 contributions were accepted in November 1997.
17. The respondent's reports disclose that she accepted a \$6,000 contribution on November 13, 1997.
18. In response to this complaint, the respondent submitted a corrected January 1998 semiannual report and good-faith affidavit in which she swears that the \$6,000 contribution was a small oriental rug and should have been reported as a \$600 in-kind contribution for a silent auction. She also submitted an affidavit from the contributor confirming that the value of the rug was \$600.

IV. Findings and Conclusions of Law

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

Allegation No.1 (Acceptance of Contributions Outside of Permissible Period):

1. The Judicial Campaign Fairness Act prescribes specific time periods during which judicial candidates and officeholders may accept political contributions. Section 253.153, Election Code. Under that section, June 6, 1997, was the first day on which judicial candidates running in the 1998 primary election were permitted to accept political contributions.
2. An Ethics Commission rule provided a different fundraising period, however, for judicial candidates and officeholders who had existing campaign debts on June 16, 1995. Section 22.32, Ethics Commission Rules. That rule allowed a judicial candidate or officeholder who had a campaign debt existing on June 16, 1995, and who was not running for election in 1996 to accept contributions during the period beginning on June 16, 1995, and continuing through March 5, 1997, if the judicial candidate or officeholder first filed a Judicial Debt Retirement Form.
3. The respondent did not run for election in 1996. In December 1996, the respondent filed a Judicial Debt Retirement Form pursuant to Section 22.32, Ethics Commission Rules, in which she reported approximately \$54,500 in campaign debt existing on June 16, 1995. The respondent's reports disclose that the respondent accepted 91 contributions totaling \$28,540 during January and February 1997. These are the contributions the complainant alleges were accepted outside of a permissible fundraising period. According to the respondent's reports, the contributions in question were accepted during the period prescribed by Section 22.32, Ethics Commission Rules. There is therefore credible evidence that the respondent did not accept political contributions outside of a permissible fundraising period.

Allegation No. 2 (Personal Use of Contributions):

4. 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, 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 public office. *Id.* A candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may reimburse those personal funds from political contributions if the expenditures were properly reported. *Id.*
5. As discussed previously, the respondent did not accept political contributions outside of a permissible fundraising period. The respondent's reports disclose that she made "loans" exceeding \$18,000 to her campaign and that the "loans" were properly reported. Thus, the respondent was allowed to use political funds to reimburse herself for those "loans." The respondent reported an \$18,000 reimbursement to herself on her July 1997 semiannual report. There is credible evidence that the

respondent did not convert political funds to personal use in violation of Section 253.035, Election Code.

Allegation No. 3 (Corporate Contributions):

6. A corporation is prohibited from making a political contribution or expenditure unless it is authorized by Subchapter D, Chapter 253, Election Code. Section 253.094, Election Code. Subchapter D does not authorize a corporation to make political contributions to a candidate. *See* Subchapter D, Chapter 253, Election Code. A person may not knowingly accept a political contribution that the person knows to have been made in violation of Chapter 253. Section 253.003(b), Election Code.
7. Allegedly, the respondent accepted eight contributions totaling \$2,260 from corporations, which were reported on her July 1997 and January 1998 semiannual reports. Those reports disclose the eight contributions in question.
8. In response to this complaint, the respondent filed corrected July 1997 and January 1998 semiannual reports and good-faith affidavits in which she swears that one contribution was from a general-purpose committee rather than a corporation, four contributions were from individuals rather than business entities, and three contributions were returned and not accepted. The respondent also submitted a copy of the general-purpose committee's check as well as corroborating affidavits from the other contributors.
9. The respondent's corrected reports and good-faith affidavits, as well as the affidavits from individuals contributing or attempting to contribute to the respondent, provide credible evidence that the respondent did not accept political contributions from corporations. Therefore, there is credible evidence that the respondent did not violate Section 253.003(b), Election Code.

Allegation No. 4 (Untimely Reports):

10. A candidate is required to file semiannual reports by January 15 and July 15 of each year. Section 254.063, Election Code. Additionally, an opposed candidate is required to file reports by the 30th day and 8th day before an election. Section 254.064, Election Code.
11. A person who knowingly fails to file a timely report commits an offense that is a Class C misdemeanor. Section 254.041, Election Code. 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. Allegations relating to the timeliness of reports filed before May 29, 1996, are based on alleged offenses that occurred more than two years

before the complaint was filed (May 29, 1998), and are therefore not within the commission's sworn complaint jurisdiction.

12. The respondent's 30-day before election report for the 1998 primary election was due February 9, 1998, and was filed February 10, 1998. The July 1997 semiannual report was due July 15, 1997, and was filed August 1, 1997. The January 1997 semiannual report was due January 15, 1997, and was filed January 24, 1997. The July 1996 semiannual report was due July 15, 1996, and was filed August 9, 1996. These are the reports within the commission's sworn complaint jurisdiction.
13. There is credible evidence that the respondent violated Sections 254.063 and 254.064, Election Code, by failing to file four reports timely.
14. All other reports submitted as evidence in this complaint that are within the commission's sworn complaint jurisdiction were filed timely.

Allegation No. 5 (Incomplete Reports):

15. A person filing a campaign finance report is required to itemize contributions accepted during a reporting period that in the aggregate exceed \$50, including the name and address of the contributor, the date of the contribution, and a description of any in-kind contribution. Section 254.031, Election Code; Section 20.219, Ethics Commission Rules. A report filed by a judicial candidate or officeholder is also required to include the principal occupation and job title of the contributor, and the full name of the contributor's employer or of the law firm of which the contributor or the contributor's spouse is a member, if any. Sections 254.0611 and 254.0911, Election Code.
16. Additionally, a person filing a campaign finance report is required to itemize political expenditures made during a reporting period that in the aggregate exceed \$50, including the name and address of the payee, and the date and purpose of the expenditure. Section 254.031, Election Code.
17. 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. Section 254.041, Election Code. 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. Allegations relating to incomplete reports filed before May 29, 1996, are based on alleged offenses that occurred more than two years before the complaint was filed (May 29, 1998), and are therefore not within the commission's sworn complaint jurisdiction.

Contributor Information:

18. The respondent's 8-day before election report for the 1998 primary election, January 1998 semiannual report, and July 1997 semiannual report, are within the commission's sworn complaint jurisdiction and are missing contributor information.
19. In response to this complaint, the respondent filed corrected reports and good-faith affidavits for the 8-day before election report for the 1998 primary election, January 1998 semiannual report, and July 1997 semiannual report. Both the July 1997 and January 1998 corrected semiannual reports are still missing information for three contributors. The 8-day before election report is still missing information for one contributor. The corrected reports indicate that numerous efforts were made to get the missing information from the contributors.
20. A filer may correct a reporting error at any time by filing a corrected report. Section 18.43, Ethics Commission Rules. A corrected report, other than one correcting a report due eight days before an election, is deemed to be timely filed and no fine is assessed for the incomplete report if the filer submits an affidavit establishing that the corrected report was filed because of a good-faith error. Sections 18.49 and 18.83, Ethics Commission Rules. The respondent filed corrected reports and good-faith affidavits providing all the missing information for most of her contributors. For the items that are still missing, the respondent notes that she did make numerous attempts to obtain that information from those contributors.
21. As to the July 1997 and January 1998 corrected reports, because they are not 8-day before election reports, they are not subject to a fine for failure to include the required contributor information. As to the 8-day before election report for the 1998 primary election, although the respondent filed a corrected report and good-faith affidavit in connection with this report, a corrected 8-day before election report is treated as a late report for all purposes, including the assessment of a fine. Section 18.81, Ethics Commission Rules. Because the respondent failed to include the information required by Section 254.0611, Election Code, in her 8-day before election report, there is credible evidence that the respondent violated Section 254.0611, Election Code. A person filing with the commission would be subject to a fine of \$10,000 for filing the incomplete 8-day before election report. Sections 18.91, and 18.95(b), Ethics Commission Rules.

Filing Fee Expenditure:

22. The \$2,000 filing fee that the respondent paid for filing an application for a place on the ballot is an expenditure made in connection with a campaign for an elective office and therefore constitutes a reportable political expenditure. Sections 251.001(7) and (10), Election Code. That expenditure, however, was not reported on any of the respondent's original reports.

23. In response to this complaint, the respondent filed a corrected January 1998 semiannual report and good-faith affidavit disclosing the \$2,000 expenditure. A filer may correct a reporting error at any time by filing a corrected report. Section 18.43, Ethics Commission Rules. A corrected report, other than one correcting a report due eight days before an election, is deemed to be timely filed and no fine is assessed if the filer submits an affidavit establishing that the corrected report was filed because of a good-faith error. Sections 18.49 and 18.83, Ethics Commission Rules. Thus, the respondent is not subject to a late fine for omitting a political expenditure, and there is credible evidence that the respondent did not violate Section 254.031, Election Code.

Contributions and Expenditures Related to a Fundraiser:

24. In response to this complaint, the respondent filed a corrected January 1998 semiannual report and good-faith affidavit in which she provides “descriptions” for 19 in-kind contributions accepted in November 1997 for which she had not previously provided descriptions and which appear to have been made in connection with the fundraising event referred to by the complainant.
25. A filer may correct a reporting error at any time by filing a corrected report. Section 18.43, Ethics Commission Rules. A corrected report, other than one correcting a report due eight days before an election, is deemed to be timely filed and no fine is assessed if the filer submits an affidavit establishing that the corrected report was filed because of a good-faith error. Sections 18.49 and 18.83, Ethics Commission Rules. The corrected report filed by the respondent is not an 8-day before election report. Thus, the respondent is not subject to a late fine for failing to provide a description of in-kind contributions.

Allegation No. 6 (Exceeding Contribution Limit):

26. The Judicial Campaign Fairness Act limits the aggregate amount of political contributions a judicial candidate may accept from a person in connection with each election in which the judicial candidate is involved. Section 253.155, Election Code. The contribution limit for the office sought by the respondent is \$5,000.
27. A violation of Section 253.155, Election Code, does not constitute a criminal offense, but is subject to civil enforcement by the commission. For this type of violation, Ethics Commission rules prohibit the commission from considering an allegation based on facts that occurred more than three years before the date the complaint is filed. Section 12.5, Ethics Commission Rules. Allegations relating to violations of the contribution limits that are based on facts occurring before May 29, 1995, may not be considered. The allegation relating to the \$10,000 contribution accepted on June 1, 1994, is therefore not within the commission’s sworn complaint jurisdiction.¹

¹The effective date of the Judicial Campaign Fairness Act was June 17, 1995. Contributions accepted before that date were not subject to contribution limits.

28. In response to this complaint, the respondent filed a corrected January 1998 semiannual report and good-faith affidavit in which she swears that the \$6,000 contribution was a small oriental rug and should have been reported as a \$600 in-kind contribution for a silent auction. She also submitted an affidavit from the contributor confirming that the value of the rug was \$600.
29. The respondent's corrected reports and good-faith affidavits, as well as the affidavit from the contributor, provide credible evidence that the respondent did not accept a contribution exceeding the contribution limit. Thus, there is credible evidence that the respondent did not accept a contribution exceeding the contribution limit in violation of Section 253.155, Election Code.

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 Title 15, Election Code, requires complete and timely reports. 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 12, 13, 18, and 21, 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. 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 \$800 civil penalty for the violations described under Section IV, Paragraphs 12, 13, 18, and 21.

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-980552;
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 \$800 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than November 5, 1999; and
4. that the executive director shall promptly refer SC-980552 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-980552 proposed in this ORDER and AGREED RESOLUTION.

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

Glenda Annette Galik, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director