

TEXAS ETHICS COMMISSION

IN THE MATTER OF

RICHARD LEVON CAPLAN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-980659

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 1999, and voted to accept jurisdiction of and consider Sworn Complaint SC-980659 filed against Richard Levon Caplan, Respondent. A quorum of the commission was present. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of Sections 254.031(a)(1), 254.064, and 255.006, 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 unsuccessful candidate for city council, failed to report all outstanding loans, failed to report the occupation of contributors, misrepresented the identity of contributors, failed to report certain contributions and expenditures, accepted contributions from corporations, and failed to include the word “for” in his campaign communications.

III. Facts Supported by Credible Evidence

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

1. At all times relevant to this complaint, the respondent was a candidate for city council.
2. The complainant alleged that the respondent failed to report the principal amount of all outstanding loans on two of his reports. On his 30-day before election report, the respondent reported loans made from his personal funds to his campaign on five separate occasions, and reported \$2,387.32 as the aggregate principal amount of outstanding loans. On his 8-day before the runoff election report, the respondent reported \$2,387.32 as the aggregate principal amount of outstanding loans. The respondent swore these were personal loans. On his 8-day before election report and July semiannual report, the respondent reported that he had no outstanding loans as of the last day of the reporting period.

3. The complainant alleged that the respondent failed to list the occupations of several contributors on his campaign finance reports. The respondent did not include the occupations of several contributors.
4. The complainant alleged that the respondent filed the 8-day before runoff election report in the morning of May 20, 1998, and did not include an expenditure made later that day, which was the last day of the reporting period. The complainant submitted no evidence in support of this allegation. The complainant also alleged that the respondent failed to report expenses for a "Meet the Candidate" party at a specified restaurant but submitted no evidence concerning this allegation. The respondent's 8-day before runoff election report and July 15 semiannual report disclose expenditures made to that restaurant for parties and the respondent submitted an affidavit in response to the complaint in which he swore that he accurately reported all expenditures.
5. The complainant alleged that the respondent failed to list occupational information on loans. The complainant appears to allege that these loans were from the respondent's expense account and are therefore prohibited corporate contributions but provides no evidence to support this allegation. The respondent denied this allegation in an affidavit submitted in response to this complaint and swore that this was a personal loan and that he did not accept contributions in violation of the corporate prohibition.
6. The complainant alleged that the respondent received an in-kind corporate contribution by using the computer equipment of his employer, a corporation, for campaign communications while working in his home office. In support of this allegation, the complainant noted that the respondent reported the purchase of computer printer supplies. The respondent denied the allegation in his affidavit and swore that he personally possesses the computer and printing system used in his campaign.
7. The complainant alleged that the respondent accepted in-kind contributions by placing his political advertising signs at several businesses which were purportedly incorporated and by failing to report those contributions. There was no other evidence submitted to support this allegation. The response filed by the respondent does not state if he placed the signs on the corporate property.
8. The complainant alleged that the respondent failed to report the correct name of a contributor in one of his campaign finance reports. On the 8-day before election report, the respondent reported that he accepted \$4,918 in total contributions, including \$2,500 from K. Charles Williams. On the July semiannual report, the respondent reported accepting a \$2,000 contribution from K. Charles Phillips. Both contributors had the same post office box listed as the address. On October 26, 1998, the respondent filed a corrected report and good-faith affidavit correcting the contributor name on the 8-day before election report and explaining that the error was due to a transcription error.
9. The complainant alleged that the respondent failed to include the word "for" in his campaign communications. The complainant submitted copies of several campaign communications which do not contain the word "for" between the respondent's name and the office sought. The respondent

reported making payments to printers and newspapers for the campaign communications. The respondent argued that because of city term limits, the incumbent could not seek re-election and that therefore, the word “for” is not required.

IV. Findings and Conclusions of Law

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

1. *Loan reporting*: A candidate is required to report all political expenditures, including campaign expenditures from personal funds. A candidate is also required to report the aggregate principal amount of all outstanding loans as of the last day of each reporting period. Section 254.031(a), Election Code. A candidate who makes political expenditures from personal funds may report the amount expended as a loan. Section 253.0351, Election Code. In Ethics Advisory Opinion No. 349 (1996), the commission concluded that a candidate is not required to include political expenditures from personal funds under “aggregate principal amount of all outstanding loans as of the last day of the reporting period” because the statute does not identify those expenditures as loans, and those expenditures are not loans in the sense that the candidate is obligated to repay another person. Additionally, in a footnote, the commission noted that a filer who reported political expenditures from personal funds as loans may have understandably included those expenditures under “aggregate principal amount of all outstanding loans” in a campaign finance report, and the commission would not consider such a report to be incorrect or false. As the respondent swore that all reported loans were from his personal funds, he was not required to list the “aggregate principal amount” of these outstanding loan totals on his campaign finance reports. Therefore, there is credible evidence of no violation of Sections 254.031(a)(2), 254.063, 254.064, Election Code.

2. *Contributor occupation reporting*: A candidate filing campaign finance reports must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the applicable reporting period, the full name and address of each person making the contributions, and the dates of the contributions. Sections 254.031(a)(1) and 254.064, Election Code. The law does not require candidates to disclose the contributor’s occupation, and therefore the allegation relating to the failure to disclose contributor information does not on its face allege a violation of law or rule administered and enforced by the commission.

3. *Expenditure reporting*: A candidate filing campaign finance reports must include the amount of political expenditures to each person that in the aggregate exceed \$50 and that are made during the applicable reporting period. Sections 254.031(a)(3), 254.063, and 254.064, Election Code. The respondent swore that he accurately reported all expenditures and there is no evidence to indicate otherwise. There is credible evidence of no violation of Sections 254.031, 254.063, and 254.064, Election Code.

4. *Corporate contribution and reporting*: A corporation is prohibited from making a political contribution 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 the person knows to have been made in violation of Chapter 253, Election Code. Section 253.003(b), Election Code. The respondent swore that the loan reported in his campaign finance reports was a personal loan and not from corporate funds. The respondent also swore that he personally possesses the computer and printing system used in his campaign. The respondent swore that he did not accept contributions in violation of the corporate contribution prohibition. There is credible evidence of no violation of Section 253.003(b), Election Code. As to the allegation relating to placing political advertising signs on corporate property, the complainant submitted no pictures or other evidence to support this allegation. There is no credible evidence of violations of Sections 253.003(b), 254.031, 254.063, or 254.064, Election Code.

5. *Contributor name:* A candidate filing campaign finance reports must include the full name and address of each person making contributions that in the aggregate exceed \$50 during the reporting period. Sections 254.031(a)(1) and 254.064, Election Code. 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. Section 18.83, Ethics Commission Rules. 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 corrected the name of a contributor by filing a corrected report and the corrected report was for a report due eight days before the election, the report is late and is subject to a fine. There is credible evidence that the respondent violated Sections 254.031(a)(1) and 254.064, Election Code.

6. *Misleading use of office title:* A person may not knowingly represent in a campaign communication that a candidate holds a public office the candidate does not hold at the time the representation is made. A person represents that a candidate holds a public office the candidate does not hold if the candidate does not hold the office that the candidate seeks and the campaign communication states the public office sought but does not use the word “for” to clarify that the candidate does not hold that office. Section 255.006, Election Code. Because the respondent did not hold the public office that he was seeking and because the campaign communications at issue stated the office sought but did not include the word “for” preceding that office, there is credible evidence that the respondent violated Section 255.006, 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 a candidate is required to accurately disclose contributor information on campaign finance reports and that a candidate is required to use the word “for” in campaign communications to clarify that the candidate does not hold the office sought. The respondent agrees to fully and strictly comply with these requirements 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 5 & 6, 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 violations that the commission has determined are 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 \$100 civil penalty for the violation described under Section IV, Paragraph 5.

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-980659;
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 \$100 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-980659 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-980659 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 199__.

Richard Levon Caplan, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director