

TEXAS ETHICS COMMISSION

IN THE MATTER OF
HAROLD W. CHANEY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-981192

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 1999, and voted to accept jurisdiction of Sworn Complaint SC-981192 filed against Harold W. Chaney (the respondent). The commission met again on August 13, 1999, to consider this complaint. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence that the respondent violated Sections 254.031 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

1. The complainant alleges that the respondent failed to file a campaign treasurer appointment.
2. The complainant alleges that the respondent accepted unlawful political contributions.
3. The complainant alleges that the respondent made political expenditures from unlawful political contributions.
4. The complainant alleges that the respondent filed incomplete or untimely campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent filed a campaign treasurer appointment with the county clerk on January 2, 1998, as a candidate for justice of the peace.
2. The respondent was unopposed in the March 10, 1998, primary election. The respondent was opposed and unsuccessful in the November 3, 1998, general election.

3. The respondent's campaign finance reports disclose that after filing a campaign treasurer appointment, the respondent accepted a total of \$1,000 in political contributions and made a total of \$3,921 in political expenditures in connection with the primary and general elections. There is no evidence that the respondent accepted any campaign contributions or made or authorized any political expenditures at a time when a campaign treasurer appointment was not in effect.
4. The respondent's campaign finance reports disclose that the respondent accepted two political contributions totaling \$700 from the Cooke County Democratic Club.
5. In response to this complaint, the respondent stated in a letter to the commission that he did not know that the club should have filed campaign finance paperwork but had failed to do so when he accepted the contributions or when he used the funds as expenditures in his campaign.
6. The respondent filed a report on January 12, 1998, covering the period from January 1, 1998, through January 15, 1998. In the report, the respondent disclosed \$300 in political expenditures and indicated that the expenditure was for a filing fee, but the respondent did not disclose the date the expenditure was made or the name and address of the person to whom the expenditure was made. In response to this complaint, the respondent filed a good-faith affidavit and a corrected report that disclosed this information.
7. The respondent filed a report on February 3, 1998, covering the period from January 16, 1998, through January 29, 1998. In the report, the respondent disclosed \$146 in political expenditures but did not provide detailed information regarding the expenditures or indicate that the expenditures were for amounts less than \$50. In response to this complaint, the respondent filed a good-faith affidavit and a corrected report that disclosed that the expenditures were for amounts less than \$50.
8. The respondent filed a report on March 2, 1998, covering the period from January 30, 1998, through February 28, 1998. In the report, the respondent failed to disclose the dates, the complete addresses of the payees, and the purposes of two expenditures. In response to this complaint, the respondent filed a good-faith affidavit and a corrected report that disclosed this information.
9. The respondent filed a semiannual report on June 29, 1998, which lists the period covered as January 1, 1998, through June 30, 1998. In the report, the respondent failed to disclose the dates of political expenditures and the complete addresses of the payees. The respondent also did not indicate the total amount of political expenditures that were for \$50 or less. In response to this complaint, the respondent filed a good-faith affidavit and a corrected report that disclosed this information. The report also corrected the beginning date of the period covered.

10. The respondent filed a 30-day before election report on October 5, 1998. In the report, the respondent did not list the period covered. The respondent disclosed that he had made \$680 in political expenditures that were for amounts exceeding \$50, but did not provide any detailed information regarding the expenditures. In response to this complaint, the respondent filed a good-faith affidavit and a corrected report that disclosed detailed information regarding these expenditures. The corrected report also provided dates for the period covered.
11. The respondent filed an 8-day before election report on October 23, 1998. In the report, the respondent did not list the period covered. The respondent disclosed that he had accepted a \$100 contribution but did not provide the address of the contributor. The respondent also disclosed \$1,095 as the total amount of political expenditures for that reporting period, but did not itemize any political expenditures that exceeded \$50, nor did the respondent indicate that any of the expenditures were for amounts of \$50 or less. In response to this complaint, the respondent filed a good-faith affidavit and a corrected report that indicated that this report was intended to be his final report, but the respondent did not provide the contributor address or any other information concerning the political expenditures.

IV. Findings and Conclusions of Law

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

1. A candidate for a county office is required to file a campaign treasurer appointment with the county clerk. Sections 252.001 and 252.005(2), Election Code.
2. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment is not in effect. Section 253.031(a), Election Code.
3. Because the respondent's campaign finance reports indicate that the respondent accepted political contributions and made political expenditures after he had filed a campaign treasurer appointment, there is credible evidence that the respondent did not violate Sections 252.001 and 253.031(a), Election Code.
4. 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.
5. A person may not knowingly make or authorize a political expenditure wholly or partly from a political contribution the person knows to have been made in violation of Chapter 253, Election Code. Section 253.005(a), Election Code.
6. The complainant submitted no evidence that the respondent knew that the \$700 contribution from the Cooke County Democratic Club was made in violation of Chapter 253, Election

- Code, and thus there is no credible evidence that the respondent violated Sections 253.003(b) and 253.005(a), Election Code.
7. A person who has filed a campaign treasurer appointment is required to file two semiannual campaign finance reports, one on January 15 and one on July 15 of each year. Section 254.063, Election Code.
 8. Under the normal reporting schedule, a person who has filed a campaign treasurer appointment is also required to file campaign finance reports due 30 days and eight days before each election in which the person is a candidate and has an opponent whose name appears on the ballot. Section 254.064, Election Code.
 9. The respondent filed all required campaign finance reports by the dates on which the reports were due. Thus, there is credible evidence that the respondent did not violate Sections 254.063 and 254.064, Election Code.
 10. A person filing a campaign finance report is required to provide the total amount of all political contributions accepted and political expenditures made during a reporting period. Section 254.031(a)(6), Election Code.
 11. A person filing a campaign finance report is also required to itemize political contributions and expenditures that exceed \$50 during a reporting period. For contributions exceeding \$50, the report must include the amount and date of each contribution and the contributor's name and address. Section 254.031(a)(1), Election Code. For expenditures exceeding \$50, the report must include the name and address of each payee and the date, amount, and purpose of the expenditure. Section 254.031(a)(3), Election Code.
 12. A person filing a campaign finance report may either itemize political contributions and expenditures of \$50 or less accepted or made during a reporting period or may disclose the total amounts of these contributions and expenditures. Section 254.031(a)(5), Election Code.
 13. 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. Sections 18.49 and 18.83, Ethics Commission Rules.
 14. For all reports other than the respondent's 8-day before the general election report, the respondent is not subject to late fines for improperly reporting political expenditures because the respondent filed good-faith affidavits and corrected reports. Thus, there is credible evidence that the respondent did not violate Sections 254.031 and 254.064, Election Code, with respect to all reports other than the 8-day before the general election report.

15. Although the respondent filed a corrected report and good-faith affidavit in an attempt to correct errors on his 8-day before election report, the corrected report did not itemize the \$1,095 in political expenditures or otherwise properly report these expenditures, and also did not provide the address of the contributor in connection with the \$100 contribution. Additionally, 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.
16. Because the respondent failed to provide a contributor address and failed to properly report political expenditures on his 8-day before the general election report, there is credible evidence that the respondent violated Sections 254.031 and 254.064, 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. 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 violation described under Section IV, Paragraphs 15 and 16, 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, Government Code, and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, 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 \$200 civil penalty for the violation described under Section IV, Paragraphs 15 and 16.

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-981192;
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 September 10, 1999; and
4. that the executive director shall promptly refer SC-981192 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 this complaint as proposed in this ORDER and AGREED RESOLUTION.

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

Harold W. Chaney

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director