

TEXAS ETHICS COMMISSION

IN THE MATTER OF
WANDA ANN SMITH,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-200205

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on March 10, 2000, and voted to accept jurisdiction of Sworn Complaint SC-200205 filed against Wanda Ann Smith, Respondent. The commission met again on June 16, 2000, to consider Sworn Complaint SC-200205. 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 of violations of Sections 252.001, 253.031, and 254.063, 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 made a political expenditure before filing a campaign treasurer appointment, filed a false report, and filed a report late.

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 an unopposed candidate for tax assessor-collector in the March 14, 2000, primary election. The respondent filed her campaign treasurer appointment on December 22, 1999. On February 2, 2000, she filed a January 2000 semiannual report that includes a \$64.80 expenditure for campaign advertisement.
2. The respondent, filed a sworn response making the following statements: "On Monday, December 20, 1999, I requested that an announcement of my candidacy be placed in the newspaper dated Thursday, December 23, 1999. This was done prior to my filing the

Appointment of Campaign Treasurer on December 22, 1999. However, I assumed that I was in compliance with the election laws as long as the Appointment of Campaign Treasurer was filed prior to the newspaper being delivered to the public. Any technical violation by my request to have a political announcement placed in the newspaper two days prior to filing the Appointment of Campaign Treasurer was inadvertent and certainly not intentional.”

3. In her sworn response, the respondent also admits to filing her January 2000 semiannual report on February 4, 2000. She swears that “The reason why I failed to file a Campaign Finance Report by January 15, 2000, was because of my interpretation of Section 254.063 of the Election Code. Subsection (b) provides that “The first report shall be filed no later than July 15.” I understood that provision to mean that my first report was due on July 15. Subsection (c) provides “The second report shall be filed not later than January 15.” Therefore, I thought my second report would be due on January 15. On or about February 4, 2000, I was informed that I should file a Campaign Finance Report by January 15, 2000, because I had filed a campaign treasurer appointment prior to December 31, 1999. As soon as I discovered that a Campaign Finance Report should be filed, I filed one.”
4. In a conversation with staff, the respondent’s attorney said that the respondent knew the amount of the expenditure for the newspaper announcement on the day the request for the announcement was placed.

IV. Findings and Conclusions of Law

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

1. The complainant alleges that the respondent made a political expenditure before filing a campaign treasurer appointment. A candidate is required to file a campaign treasurer appointment. Section 252.001, Election Code. A candidate may not knowingly make or authorize a campaign expenditure at a time when a campaign treasurer appointment is not in effect. Section 253.031(a), Election Code.
2. “Candidate” is defined in relevant part as a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office. An example of affirmative action is the making of a campaign expenditure. Section 251.001(1), Election Code. “Campaign expenditure” is defined as an expenditure made by any person in connection with a campaign for an elective office or on a measure. Section 251.001(7), Election Code. An expenditure is considered to have been made when the amount is readily determinable by the person making the expenditure. Section 254.035, Election Code.
3. The respondent admits that, two days before filing her campaign treasurer appointment, she requested to have a political announcement of her candidacy placed in a newspaper. The political announcement states that it was paid for by the respondent. The respondent’s attorney said that the respondent knew the amount of the expenditure for the political announcement when the request was made.

4. The expenditure made for the political announcement constitutes a campaign expenditure because it was made in connection with a campaign for an elective office. The expenditure is considered to have been made on the day the respondent requested the political announcement. Thus, there is credible evidence that the respondent made a campaign expenditure at a time when a campaign treasurer appointment was not in effect. There is credible evidence that the respondent violated Sections 252.001 and 253.031, Election Code.
5. The complainant alleges that the respondent filed a false political expenditure schedule (Schedule F) on a campaign finance report. The complainant apparently is alleging that the respondent reported the date of the expenditure for the political announcement as January 11, 2000, rather than December 20, 1999. There is insufficient evidence, however, that the expenditure made on January 11 was the one made for the political announcement, and thus there is insufficient evidence that a violation occurred.
6. The complainant alleges that the respondent filed a campaign finance report late. A person who has a campaign treasurer appointment on file is required to file two semiannual campaign finance reports. Section 254.063, Election Code. One report is required to be filed not later than July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under Subchapter C, Chapter 254, Election Code, as applicable, and continuing through June 30. The other report is required to be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under Subchapter C, Chapter 254, Election Code, as applicable, and continuing through December 31. Section 254.063, Election Code.
7. Because the respondent filed her campaign treasurer appointment on December 20, 1999, the first report for which she was responsible was the January 2000 semiannual report due on January 18, 2000 (deadline extended because the regular deadline fell on a Saturday and Monday was a holiday). The respondent filed the January 2000 semiannual report on February 4, 2000, 17 days after the due date. There is credible evidence that the respondent violated Section 254.063, 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 violations described under Section IV, Paragraphs 4 and 7, 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, 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 civil penalty in the amount of \$100 for the violations described under Section IV, Paragraphs 4 and 7.

VIII. Order

The commission hereby ORDERS:

1. that the allegation described under Section IV, Paragraph 5 is dismissed;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-200205;
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 July 14, 2000; and
4. that the executive director shall promptly refer SC-200205 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-200205 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2000.

Wanda Ann Smith, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director