

Texas Ethics Commission

IN THE MATTER OF
WAYMON HAMILTON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-200746

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 11, 2000, and voted to accept jurisdiction of Sworn Complaint SC-200746 filed against Waymon Hamilton, Respondent. The commission met again on June 8, 2001, to consider Sworn Complaint SC-200746. 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 254.031, 254.061, 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. Allegation

The complainant alleges that the respondent failed to timely file complete 30-day and 8-day before election campaign finance reports for a May 6, 2000, city election.

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 opposed candidate for city council in the May 6, 2000, Weatherford city election. He was successful in the election.
2. The respondent filed the two reports in question with the city secretary. The 30-day before election report was not stamped with a receipt date by the city secretary. It was notarized on April 14, 2000, which is eight days after the April 6 due date. The only activity disclosed in that report consisted of political contributions of \$50 or less totaling \$400 and a political expenditure of \$98.51. The 8-day before election report was stamped as received on May 2, 2000, which is four days after the April 28, 2000, due date. The report disclosed political contributions totaling \$1,300 and political expenditures totaling \$899.05.
3. The respondent submitted a sworn response admitting that he failed to timely file complete 30-day and 8-day before election reports in connection with that election and responding to

the complainant's allegations. As to each late report, the respondent swears, "Unfortunately this report was filed late. It should be noted that candidate is blind in one eye and has extremely impaired fine line vision in the other eye. The entry for the filing deadline was not seen on the calendar due to visual impairment. Immediately upon discovery, a report was filed." The respondent also filed corrected reports and a good-faith affidavit for each report. He swears, "Any errors in my report(s) were oversights and were not intentional. I apologize for any inconvenience this may have caused the Ethics Commission."

IV. Findings and Conclusions of Law

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

1. An opposed candidate must file pre-election reports by the 30th day and the 8th day before the election. Section 254.064, Election Code.
2. The notarization date and the filing authority's date stamp show that the respondent failed to timely file his 30-day and 8-day before election reports. The respondent's affidavit acknowledges that the reports were filed late. There is credible evidence that the reports were not filed by the due dates, and thus credible evidence that the respondent violated Section 254.064, Election Code.
3. Each report filed under Title 15, Election Code, must include the amount of political contributions accepted during the reporting period from each person that in the aggregate exceed \$50, as well as the name and address of the contributor and the date of the contribution. Section 254.031(a)(1), Election Code. Each report must also include the amount and purpose of political expenditures made during the reporting period that in the aggregate exceed \$50 to any person, as well as that person's name and address and the date of the expenditure. Each report filed by a candidate must include the candidate's full address, the campaign treasurer's residence or business street address, and the campaign treasurer's telephone number.
4. The complainant alleges that the respondent filed incomplete 30-day and 8-day before election reports in connection with the May 6, 2000, city election. The complainant included a list of the specific portions of each report that were allegedly incomplete.
5. As to the 30-day before election report, the complainant alleges that the respondent failed to include the following:
 - (1) the candidate's complete address,
 - (2) the campaign treasurer's complete address and telephone number,
 - (3) the total number of pages of the report (not required by law),
 - (4) the filer's name on the political expenditures schedule (not required by law),
 - (5) the payee's address on Schedule F, and
 - (6) the total number of pages of Schedule F (not required by law).

6. In response to the complaint, the respondent submitted a corrected 30-day before election report accompanied by a good-faith affidavit including all of the missing information. 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. Sections 18.49 and 18.83, Ethics Commission Rules. Therefore, as to the 30-day before election report, the respondent is not subject to a fine for an incomplete report.
7. The complainant also alleges that the 30-day before election report was not properly executed because the handwriting on the report is different from the respondent's handwriting. As to this allegation, the respondent swears that because of his vision impairment, the city secretary assisted him in completing the report.
8. The complainant also alleges that the respondent failed to include a contribution from a political committee whose name was included on the report with a line drawn through it. The respondent swears that a contribution from the political committee in question was not received or accepted during the reporting period covered by the 30-day before election report.
9. As to the 8-day before election report, the complainant alleges that the respondent failed to include the following:
 - (1) the candidate's complete address,
 - (2) the campaign treasurer's complete address and telephone number,
 - (3) the total number of pages of the report (not required by law),
 - (4) the supporting political committee's complete address, committee type, and campaign treasurer's name and address,
 - (5) two contributors' addresses on the political contributions schedule (Schedule A),
 - (6) the total number of pages of Schedule A (not required by law),
 - (7) the filer's name on the political expenditures schedule (Schedule F) (not required by law),
 - (8) six payees' addresses on Schedule F,
 - (9) the purposes of six political expenditures on Schedule F, and
 - (10) the total number of pages of Schedule F (not required by law).
10. The complainant also alleges that the respondent failed to account for a mailer in the 8-day before election report. The respondent swears, "This was an in-kind donation by Charles & Sally Beard. Had not received notification from the donor that the in-kind donation had been made."
11. In response to this complaint, the respondent submitted a corrected 8-day before election report accompanied by a good-faith affidavit including all of the missing information except the mailer. The information relating to the mailer was eventually disclosed by the respondent on his final report, which was filed on December 28, 2000, and which shows that the value of the mailer was \$351.47. Although the respondent filed a corrected report accompanied by a good-faith affidavit, the corrected report is subject to a fine because it is an 8-day before

election report. Section 18.83, Ethics Commission Rules. Therefore, as to the 8-day before election report, there is credible evidence that the respondent violated Sections 254.031 and 254.061, 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, Paragraph 11, 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 of \$200 for the violation described under Section IV, Paragraph 11.

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-200746;
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 July 6, 2001; and
4. that the executive director shall promptly refer SC-200746 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-200746 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2001.

Waymon Hamilton, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director