

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
JOHN SANDERS,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-210646

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on August 10, 2001, and voted to accept jurisdiction of Sworn Complaint SC-210646 filed against John Sanders, Respondent. The commission met again on April 12, 2002, to consider Sworn Complaint SC-210646. 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 Section 254.064, Election Code, a law 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, a city council candidate, failed to file a 30-day and an 8-day before election report and an 8-day before runoff election report.
2. The complainant also alleges that the respondent is liable for damages to opposing candidates for those violations.

### III. Facts Supported by Credible Evidence

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

1. The respondent is a member of the city council in San Antonio, Texas.
2. The respondent was an opposed candidate for that position in a May 5, 2001, election and a May 29, 2001, runoff election.

3. The 30-day and 8-day before the election reports for the May 5 election and the 8-day before the election report for the May 29 runoff election, were due April 5, April 27, and May 21, 2001, respectively.
4. On May 24, 2001, the respondent filed one campaign finance report marked as an 8-day before election report that covered the periods required to be covered by both the 30-day and 8-day before election reports. The report disclosed contributions totaling \$35, 573.98 and expenditures totaling \$18,045.28.
5. On May 25, 2001, the respondent filed a corrected 30-day before election report which disclosed contributions totaling \$22,660 and expenditures totaling \$17,339.98. On that same day the respondent also filed a corrected 8-day before election report disclosing contributions totaling \$16,485 and expenditures totaling \$6,668.13. The good-faith affidavits accompanying each of the reports indicated that the report filed on May 24 should have been filed as two separate reports.
6. On May 25, 2001, the respondent also filed the 8-day before runoff election report. The report disclosed contributions totaling \$13,850 and expenditures totaling \$25,277.56.
7. On December 27, 2001, the respondent filed another set of corrected 30-day and 8-day before election reports which indicated that they superseded the first set of corrected reports, and a corrected 8-day before runoff election report. Each of the corrected reports included a good-faith affidavit.
8. The second corrected 30-day before election report disclosed contributions totaling \$22,660 and expenditures totaling \$16,934.46. The second corrected 8-day before election report disclosed contributions totaling \$16,185 and expenditures totaling \$6,668. The corrected reports included contributions and expenditures that were not previously reported, deleted duplicate expenditures that were previously reported, and corrected the schedule for reporting expenditures.
9. The corrected 8-day before runoff election report disclosed contributions totaling \$14,850 and expenditures totaling \$23,023.63. The corrected report deleted duplicate expenditures reported on the original report and corrected the schedules for reporting contributions and expenditures.
10. In response to this complaint, the respondent submitted a sworn statement in which he swears to the following:

After discovering my reports had not been filed, I along with other members of my campaign staff gathered the information from Mr. Anderson (treasurer), and completed all the due reports. I submitted a letter explaining the fact that Mr. Anderson was hospitalized without my knowledge, which caused the problem. I

was unaware that he had not met the deadlines for filing. I had the information collected and filed as soon as I was made aware of the issue. I accept full responsibly [sic] for the oversight, and as you can discover, I have made all of the filing deadlines since. This will not happen again.

#### IV. Findings and Conclusions of Law

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

1. An opposed candidate is required to file reports not later than the 30th day and the 8th day before the election. Section 254.064, Election Code. Additionally, an opposed candidate in a runoff election is required to file a report not later than the 8th day before the runoff election. *Id.*
2. The respondent was an opposed candidate in an election held on May 5, 2001, and the runoff election held on May 29, 2001. Therefore, he was required to file the 30-day and 8-day before election reports and the 8-day before runoff election report.

##### 30-day before election report

3. The respondent filed the 30-day before election report and two sets of corrected 30-day before election reports with good-faith affidavits, all of which were filed after the April 5, 2001, due date.
4. A corrected 30-day before election report is deemed to be timely filed and no fine is assessed if the filer submits an affidavit establishing that the report was filed because of a good-faith error. Sections 18.49 and 18.83, Ethics Commission Rules (as those rules existed when the corrected report was filed).
5. Although the corrected 30-day before election reports at issue may not be subject to a late fine because of commission rules, the rules do not extend to the original report. There is credible evidence that the original 30-day before election report was filed after the due date. Therefore, there is credible evidence that the respondent committed a violation of Section 254.064, Election Code.

##### 8-day before election report

6. The respondent filed the original 8-day before election report 27 days after the April 27, 2001, due date. The first corrected 8-day before election report was filed 28 days after the due date and the second corrected report was filed 243 days after the due date. The second corrected report included contributions and expenditures not reported on previous reports,

deleted duplicate expenditures that were previously reported, and corrected the schedule for reporting expenditures.

7. Although the respondent filed a corrected report and good-faith affidavit in connection with the corrected reports, a corrected 8-day before election report is treated as a late report for all purposes, including the assessment of a fine. Section 18.83, Ethics Commission Rules (as the rules existed when the reports were filed). There is credible evidence that the respondent filed the 8-day before election report after the due date. Therefore, there is credible evidence that the respondent committed a violation of Section 254.064, Election Code.
8. A person filing with the Ethics Commission would be subject to a fine of \$10,000 for the late 8-day before election report. Sections 18.91 and 18.95(b), Ethics Commission Rules (as the rules existed when the reports were filed).

#### 8-day before runoff election report

9. The respondent file the original 8-day before runoff election report four days after the May 21, 2001, due date. The respondent also filed a corrected report and good-faith affidavit 219 days after the due date. The corrected report deleted duplicate expenditures reported on the original report and corrected the schedules for reporting contributions and expenditures.
10. Although the respondent filed a corrected report and good-faith affidavit in connection with the corrected reports, a corrected 8-day before election report is treated as a late report for all purposes, including the assessment of a fine. Section 18.83, Ethics Commission Rules (as the rules existed when the reports were filed). There is credible evidence that the respondent filed the 8-day before election report after the due date. Therefore, there is credible evidence that the respondent committed a violation of Section 254.064, Election Code.
11. A person filing with the Ethics Commission would be subject to a fine of \$10,000 for the late 8-day before runoff election report. Sections 18.91 and 18.95(b), Ethics Commission Rules (as the rules existed when the reports were filed).

#### Civil Recovery of Statutory Damages

12. A person who knowingly makes or accepts a campaign contribution or makes a campaign expenditure in violation of Chapter 253, Election Code, may be liable for damages to opposing candidates. Section 253.131, Election Code.
13. The Ethics Commission does not have authority to award damages; rather, a candidate would have to file a civil suit. Therefore, the commission refuses jurisdiction of this allegation.

### **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 Section 254.064, Election Code, requires a candidate to timely file pre-election reports for each election in which the candidate has an opponent whose name is to appear on the ballot, unless the candidate selects the modified reporting option and qualifies to file under the modified reporting option. 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 5, 7, and 10, 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 \$2,100 civil penalty for the violations described under Section IV, Paragraphs 5, 7, and 10.

**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-210646;
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 \$2,100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 10, 2002; and
4. that the executive director shall promptly refer SC-210646 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-210646 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
John Sanders, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Tom Harrison, Executive Director