

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ENRIQUE “KIKE” MARTIN,
RESPONDENT

§
§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-220444

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 10, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220444 filed against Enrique “Kiki” Martin, Respondent. The commission met again on December 13, 2002, to consider Sworn Complaint SC-220444. 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 253.032 and 254.031, 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, an incumbent city council member, failed to include with his campaign finance reports certain documentation from out-of-state political committees from which he accepted political contributions.
2. The complainant also alleges that by characterizing a transaction as a contribution to himself, the respondent misreported political expenditures made from personal funds.
3. The complainant also alleges that the respondent failed to include complete payee addresses.

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 a candidate for that office in the May 5, 2001, city election.

Allegation No. 1: Documentation from out-of-state political committee:

3. The Respondent's July 2001 semiannual report discloses that he accepted a \$2,000 political contribution from an out-of-state political committee.
4. The report did not include documentation from the out-of-state political committee.

Allegation No. 2: Misreporting of political expenditure made from personal funds:

5. The respondent's January 2001 semiannual report includes a transaction characterized as a \$1,650 political contribution from the respondent to himself.

Allegation No. 3: Payee addresses:

6. On October 9, 2000, the respondent filed a campaign treasurer appointment for his candidacy for city council.
7. Subsequently, he filed campaign finance reports. The respondent did not provide a full address for any of the payees disclosed on his campaign finance reports.
8. The following chart lists the reports at issue in this complaint, the itemized expenditure totals in each report, and the number of payees, all of which are missing a complete address:

	Date Filed	Report Type	Itemized Expenditure Total	Number of payees
1.	1-16-2001	January 2001 semiannual	\$ 7,491.90	10
2.	4-5-2001	30 day before election	\$17,727.58	39
3.	4-27-2001	8 day before election	\$14,876.86	33
4.	5-21-2001	8 day before runoff	\$17,281.07	54
5.	7-16-2001	July 2001 semiannual	\$12,403.80	34
6.	1-15-2002	January 2002 semiannual	\$21,124.57	46

Respondent's response:

9. In response to this complaint, on August 8, 2002, the respondent submitted corrected reports and good-faith affidavits for each of the reports listed in the chart. The respondent also submitted a sworn statement in which swears to the following:

Any information that was previously omitted was unintentional and inadvertent. The corrections and the statement of organization include all the requested information regarding the complaint filed at the Texas Ethics Commission.

10. Corrected January 2001 semiannual report: This corrected report includes complete addresses for all payees. Additionally, the corrected report deletes a \$1,650 contribution that

the respondent had originally reported as a contribution to himself. The corrected report includes a \$3,550 loan from the respondent to his campaign that had not been reported on the original report.

11. Corrected 30-day before election report: This corrected report includes complete addresses for all but two payees.
12. Corrected 8-day before election report: This corrected report includes complete addresses for all but one payee.
13. Corrected 8-day before runoff election report: This corrected report includes complete addresses for all but five payees.
14. Corrected July 2001 semiannual report: This corrected report includes complete addresses for all but six payees. Additionally, the corrected report includes the documentation from an out-of-state political committee.
15. Corrected January 2002 semiannual report: This corrected report includes complete addresses for all but 13 payees.

IV. Findings and Conclusions of Law

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

Allegation No. 1: Documentation from out-of-state political committee:

1. Before accepting contributions totaling more than \$500 from an out-of-state political committee, a candidate or officeholder must have received certain documentation from the out-of-state committee. Section 253.032, Election Code. If the out-of-state political committee is registered with the Federal Election Commission (FEC), this documentation requirement may be satisfied by receiving a copy of the committee's statement of organization filed with the Federal Election Commission (FEC) and certified by an officer of the committee. *Id.*
2. The candidate or officeholder must include the documentation with the appropriate campaign finance report. Section 253.032, Election Code.
3. The respondent's original July 2001 semiannual report discloses that the respondent accepted a \$2,000 political contribution from an out-of-state political committee. The report was incomplete because it did not include the required documentation from the out-of-state political committee. Therefore, there is credible evidence that the respondent violated Section 253.032, Election Code.
4. In response to this allegation, the respondent filed a corrected July 2001 semiannual report in which he includes the documentation from an out-of-state political committee.

5. A filer may correct a reporting error at any time by filing a corrected report. As a general rule, the late fine for a corrected semiannual report is waived if the original report was timely filed, the corrected report is complete and accurate, and the filer submits an affidavit establishing that the original report was incomplete or incorrect because of a good-faith error. Section 18.9, Ethics Commission Rules. However, the commission is not required to waive the fine for a respondent in a sworn complaint who files a corrected report, but may consider the correction to be a mitigating factor in determining the amount of any fine. Section 18.27, Ethics Commission Rules.

Allegation No. 2: Misreporting of political expenditure made from personal funds:

6. If a candidate or officeholder transfers money from a personal account to an account used for candidate or officeholder purposes, no reportable transaction has occurred. *See* Ethics Advisory Op. 258 (1995). If a candidate or officeholder makes political expenditures from personal funds, however, the candidate must report the expenditures either on Schedule G, for reporting contributions, or Schedule E, for reporting loans.
7. In his January 2001 semiannual report, the respondent included on the schedule for reporting contributions (Schedule A of Form C/OH) a transaction characterized as a \$1,650 political contribution to himself. The respondent should have reported the \$1,650 as an expenditure made from his personal funds on Schedule G or as a loan to his campaign on Schedule E.
8. In response to this allegation, the respondent filed a corrected January 2001 semiannual report deleting the \$1,650 contribution from Schedule A. In the same corrected report, the respondent disclosed that he made loans to his campaign totaling \$3,550. The original report did not disclose any loans. It appears that the \$1,650 originally reported was included as part of the \$3,550 that the respondent later reported on the schedule for loans.
9. The respondent's original July 2001 semiannual report was incorrect because it did not properly disclose the use of the respondent's personal funds for political expenditures. Although a portion of the personal expenditures made from personal funds was disclosed on the wrong schedule, \$1,900 was not disclosed at all. Therefore, there is credible evidence that the respondent violated Section 254.031, Election Code.
10. A filer may correct a reporting error at any time by filing a corrected report. As a general rule, the late fine for a corrected semiannual report is waived if the original report was timely filed, the corrected report is complete and accurate, and the filer submits an affidavit establishing that the original report was incomplete or incorrect because of a good-faith error. Section 18.9, Ethics Commission Rules. However, the commission is not required to waive the fine for a respondent in a sworn complaint who files a corrected report, but may consider the correction to be a mitigating factor in determining the amount of any fine. Section 18.27, Ethics Commission Rules.

Allegation No. 3: Payee addresses:

11. Each report filed under Title 15, Election Code, must contain an itemization of expenditures accepted during the reporting period that in the aggregate exceed \$50, including the full name and address of the persons to whom the payment is made. Section 254.031, Election Code.
12. In response to this allegation, the respondent filed corrected reports and good-faith affidavits for each of the reports at issue disclosing most of the missing address information. In his sworn statement to the commission, the respondent swears, "Any information that was previously omitted was unintentional and inadvertent."
13. 8-day before election reports: The respondent's original 8-day pre-election report and original 8-day pre-runoff election report are incomplete because they do not disclose the full address of any of the payees.
14. A filer may correct a reporting error at any time by filing a corrected report. Although the respondent filed corrected reports and good-faith affidavits providing most of the missing information, a corrected 8-day before election report is treated as a late report for all purposes, including the assessment of a fine. Section 18.9, Ethics Commission Rules.
15. Because the respondent failed to include the full addresses of payees, there is credible evidence that he violated Section 254.031, Election Code.
16. Semiannual Reports: The respondent's original January and July 2001 semiannual reports and original January 2002 semiannual report are incomplete because they do not disclose the full address for any of the payees. Therefore, there is credible evidence that the respondent violated Section 254.031, Election Code.
17. As a general rule, the late fine for a corrected semiannual report is waived if the original report was timely filed, the corrected report is complete and accurate, and the filer submits an affidavit establishing that the original report was incomplete or incorrect because of a good-faith error. Section 18.9, Ethics Commission Rules. However, the commission is not required to waive the fine for a respondent in a sworn complaint who files a corrected report, but may consider the correction to be a mitigating factor in determining the amount of any fine. Section 18.27, Ethics Commission Rules.

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 Title 15, Election Code, requires filers to file complete campaign finance reports. The respondent agrees to fully and strictly comply with this requirement of the law.
4. The respondent further acknowledges that Title 15, Election Code, requires a candidate or officeholder who makes political expenditures from personal funds to report the expenditures on either Schedule G, for reporting political expenditures made from personal funds, or Schedule E, for reporting loans.
5. 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 3, 9, 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 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 \$2,800 civil penalty for the violations described herein.

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-220444;

- 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 \$2,800 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than January 10, 2003; and
- 4. that the executive director shall promptly refer SC-220444 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-220444 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 20____.

Enrique "Kiki" Martin, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director