

TEXAS ETHICS COMMISSION

IN THE MATTER OF

DAVID R. CARPENTER,
RESPONDENT

§
§
§
§

BEFORE THE

TEXAS ETHICS COMMISSION
SC-220452

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-220452 filed against David R. Carpenter, Respondent. The commission met again on August 16, 2002, to consider Sworn Complaint SC-220452. 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 a violation 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

The complainant alleges that the respondent failed to file a 30-day before election report.

III. Facts Supported by Credible Evidence

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

1. The respondent was an opposed candidate for the Barton Springs Edwards Aquifer Conservation District Board in a May 4, 2002, election.
2. The respondent filed a campaign treasurer appointment on March 20, 2002.
3. The respondent did not select modified reporting on the campaign treasurer appointment.
4. In response to the sworn complaint, the respondent submitted to the commission a copy of the 30-day before election report that he filed with the local filing authority on April 12, 2002. The report discloses no contributions, expenditures, or loans.

5. The respondent also submitted a sworn response in which he admits to filing the 30-day before election report late because he was out of state on a business trip.
6. The respondent swears that during the reporting period he did not raise or spend any money.

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 a report not later than the 30th day before the election. Section 254.064(b), Election Code.
2. For the May 4, 2002, uniform election, the 30-day before election report was due by April 4, 2002.
3. The respondent filed his report with the local filing authority on April 12, 2002.
4. In his sworn response, the respondent admits to the violation, and the evidence also shows that the report was late.
5. There is credible evidence that the respondent violated Section 254.064, Election Code.
6. Ethics Commission rules authorize waiver of a fine for a late report if the filer had timely filed all previous reports, had no contributions, expenditures, or loans to report, and filed the report no later than 30 days after the filer was notified that the report appeared to be late. Ethics Commission Rule 18.23(a)(3).

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 an opposed candidate is required to file a campaign finance report not later than the 30th day before the election. 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 violation described under Section IV, Paragraph 5, 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 not technical or *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. No 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 facts that no previous violations by this respondent are known to the commission, that the respondent had no contributions, expenditures, or loans to report, and that the respondent filed the report on April 12, 2002, and after considering the sanction necessary to deter future violations, the commission imposes no civil penalty for the violation described under Section IV, Paragraph 5.

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-220452;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than September 13, 2002; and
4. that the executive director shall promptly refer SC-220452 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-220452 as proposed in this ORDER and AGREED RESOLUTION.

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

David R. Carpenter, Respondent

EXECUTED ORIGINAL received by the commission on: _____.
Texas Ethics Commission

By: _____
Tom Harrison, Executive Director