

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ROBERT C. JENEVEIN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2209101

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 11, 2002, and voted to accept jurisdiction of Sworn Complaint SC-2209101 filed against Robert C. Jenevein. The commission met again on April 10, 2003, to consider Sworn Complaint SC-2209101. A quorum of the commission was present at both meetings. The commission made no final findings of fact, but determined that there was credible evidence of violations of sections 253.155 and 254.031 of the Election Code, laws administered and enforced by the commission. The respondent contends that the complaint was without merit and was politically motivated. To resolve and settle this complaint without evidentiary proceedings, the commission and the respondent enter into this agreed resolution.

II. Allegations

The complainant alleges that the respondent, a former county court-at-law judge, accepted contributions that exceeded the statutory contribution limits, failed to fully disclose political contributions, failed to fully disclose all expenditures and the purpose of those expenditures, and filed the July 2000 semiannual report six months late.

III. Facts Supported by Credible Evidence

Although the commission makes no final findings of fact, there was credible evidence available to the commission that could support the following findings of fact:

1. The respondent was an incumbent candidate for county court-at-law judge who ran unopposed in the March 2002 primary election and was defeated in the November 5, 2002, general election.
2. The judicial district has a population that exceeds one million. Therefore, the applicable limit on contributions from a person is \$5,000 for each election.

3. The complainant alleges that the respondent accepted political contributions in excess of the applicable limits. The complainant submitted copies of the respondent's July 2000, July 2001, January 2002, and July 2002 semiannual reports.
4. The July 2001, January 2002, and July 2002 semiannual reports disclose contributions from law firms that are in excess of the contribution limits "from a person" for a candidate in a judicial district with a population over one million. The commission and respondent do not agree on the definition of "person" as it applies to this complaint.
5. The complainant further alleges that the respondent's campaign finance reports from the periods alleged in the complaint show that there are undisclosed contributions and expenditures. This allegation is based on the fact that the contributions and expenditures as disclosed on the cover sheet totals do not balance perfectly.
6. The complainant further alleges that the respondent did not properly disclose expenditures because the description of the purpose of the payment was insufficient.
7. The complainant alleges that the respondent did not timely file his July 2000 semiannual report. The July 2000 semiannual report is date-stamped January 16, 2001, by the local filing authority.
8. The respondent, through his attorney, provided a response in which he asserts that he did not violate the contributions limits and that he complied or "substantially complied" with all of the code sections cited in the complaint, except section 254.063(b) of the Election Code, which requires a semiannual report. He asserts that he is excused from that violation based on lack of notice.

IV. Supportable Findings and Conclusions of Law

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

Contributions in excess of limits

1. The respondent asserts two legal theories as to why he did not violate the contribution limits. First, he asserts that because the limits are applicable to each election and because the respondent had been involved in multiple elections, he was allowed to accept an amount equal to \$5,000 times the number of past elections in which he had been involved. The commission disagrees.
2. A judicial candidate or officeholder in a judicial district with a population over one million may not knowingly accept political contributions from a person that exceed \$5,000 in connection with each election in which the candidate or officeholder is involved. ELEC. CODE § 253.155.

3. The term "election" refers to each separate election in which a candidate is involved and not to an election cycle. Ethics Advisory Opinion No. 302 (1996).
4. A contribution made "in connection with an election" is one that is designated in writing for a particular election, or if no written designation is made or if designated as an officeholder contribution, it is considered to be in connection with the next election after the contribution is made. ELEC. CODE § 253.152(2).
5. If a judicial candidate accepts contributions in connection with an election that exceeds the contribution limit, that violation is not offset by the fact that the same contributor may not have contributed the maximum amount allowed in connection with some other election.
6. By virtue of this Order and Agreed Resolution, no evidentiary hearing was held. The respondent did not present any evidence that at the time the contributions were made the contributions were designated for any particular election or were designated as officeholder contributions. Therefore, pursuant to section 253.152 (B) of the Election Code the contributions at issue are presumed to be in connection with the next election for the office occurring after which the contributions were made.
7. If a candidate accepts a contribution that exceeds the limit for that contributor, a violation occurs. The statute does not support the respondent's theory that no violation occurred because the respondent had been involved in multiple elections.
8. The respondent's other legal theory is based on the rule that the members of a law firm's restricted class may give aggregate contributions of \$30,000. The respondent argues that the firm itself could contribute up to that amount as long as the aggregate contributions from the firm and its members did not exceed that amount.
9. The commission addressed that issue in Ethics Advisory Opinion No. 342 (1996), and concluded that for purposes of the limits on contributions set forth in section 255.153 of the Election Code, a law firm was a "person" and thus subject to the contribution limits applicable to a person. There is no evidence of whether or not the respondent was aware of Ethics Advisory Opinion No. 342 at the times in question.
10. The Texas Ethics Commission's Campaign Finance Guide for Judicial Candidates and Officeholders identifies the law firm itself as a member of the firm's restricted class and states, "No person that is a member of the law firm's restricted class may exceed the limit on contributions from a single person." Again, there is no evidence of whether or not the respondent was aware of this provision at the times the contributions were accepted.
11. The respondent's July 2001 semiannual report discloses that he accepted \$10,000 contributions on June 22, 2001, and on July 5, 2001.

12. The respondent's January 2002 semiannual report discloses that he accepted two \$5,000 contributions from another firm on July 24, 2001, and a \$10,000 contribution from the fourth firm in December 2001.
13. There is no evidence that any portion of those contributions was designated in writing for an election other than the March 2002 primary, the next election in which the respondent was involved.
14. If the contributions in question were in connection with the March 2002 primary election, then, because the respondent accepted contributions from each of the four contributors that were in excess of the allowable limits, there is credible evidence that could support a finding that the respondent violated section 253.155 of the Election Code.
15. The complainant alleged that the respondent accepted two \$5,000 contributions from a fifth firm on October 11, 2001. The July 2001 and January 2002 semiannual reports submitted with the complaint disclose that the respondent accepted one \$5,000 contribution from the firm on June 28, 2001, and one on October 11, 2001.
16. The respondent's response included an affidavit dated November 7, 2002, from a person identified as this firm's business manager. In that affidavit, the business manager states that the firm made only one \$5,000 contribution to the respondent in 2001, has made no further contributions, and that any report to the contrary is inaccurate.
17. Further, the respondent's response suggests that the \$5,000 contribution was reported twice – once when a pledge was made and again when the check was accepted. Therefore, the evidence is insufficient to find that the respondent violated section 255.155 of the Election Code with respect to this contribution.

Insufficient Description of Expenditures

18. A candidate must disclose the purpose of expenditures that in the aggregate exceed \$50. ELEC. CODE § 254.041.
19. The respondent's January 2002 semiannual report discloses two expenditures totaling \$40,000 to Mathis & Donheiser, and an expenditure of \$5,000 to Blume & Stoddard. In each case, the report describes the purpose of the expenditure to be "legal services." The complainant asserts that such disclosure is insufficient.
20. The amount of detail required when disclosing the purpose of an expenditure is not specified in title 15 of the Election Code.
21. Section 20.61 of the Ethics Commission Rules states that the report "must describe the categories of goods or services received in exchange for the expenditure." The instruction guide for the reporting form states that if an expenditure was made for goods

or services, the description should provide enough information that a person reviewing the report would know what goods or services were purchased or leased.

22. Here the description is sufficient to allow someone reading the report to know the service that was purchased. Therefore, there is credible evidence that the respondent did not violate section 254.041 of the Election Code.

Failure to report political contributions and expenditures

23. A campaign finance report must disclose the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period as well as the full name and address of the person making the contributions and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
24. A report must also disclose the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. *Id.* § 254.031(a)(3).
25. Judicial candidates must disclose the total amount of political contributions, including interest or other income, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. *Id.* § 254.0611.
26. The complainant asserts that he reviewed the respondent's July 2001, January 2002, and July 2002 semiannual reports. The complainant alleges that the January 2002 semiannual report did not disclose \$7,949.33 in contributions, and that the July 2002 semiannual report did not disclose \$70,234.51 in expenditures.
27. The complainant arrived at that conclusion by beginning with the amount reported as contributions maintained as of the end of the July 2001 semiannual reporting period and adding that amount to the contributions reported as accepted during the January 2002 semiannual reporting period. He then subtracted the expenditures that were reported for that reporting period. Because the difference did not equal the contributions maintained as reported at the end of the January 2001 reporting period, the complainant concluded that contributions were not reported during that period. The complainant used the same method, beginning with the January 2002 report, to conclude that expenditures were not reported on the July 2002 semiannual report.
28. Political expenditures are reported during the reporting period in which the expense is incurred, which is not necessarily the same reporting period in which payment is made. Political contributions are reported during the reporting period in which they are accepted, which is not necessarily the same reporting period in which the contribution is made. In-kind contributions are included in contribution totals but not in totals of contributions on hand.

29. For this and other reasons, simply adding the contributions reported as accepted during a given reporting period to the contributions maintained as of the end of the previous reporting period and subtracting the expenditures made during the current reporting period will not necessarily show the correct amount of contributions on hand.
30. The respondent's response avers that there were no unreported contributions. The complainant did not provide evidence to show that any specific contributions were not reported. Therefore, there is insufficient evidence to show that the respondent violated section 254.031(a)(1) or 254.0611 of the Election Code with respect to political contributions accepted by the respondent.
31. The response submitted by the respondent's attorney admits that the respondent failed to report \$55,000 in expenditures made for legal services and \$1,619.63 for "miscellaneous political expenditures." Therefore, there is credible evidence to support a finding that the respondent violated section 254.031(a)(3) of the Election Code with respect to those political expenditures.

Late report

32. Candidates must file two semiannual reports, one of which is due by July 15 of each year. ELEC. CODE § 254.063. If the 15th falls on a weekend or holiday, the report is due the next regular business day. July 15, 2000, was on a Saturday. Therefore, the respondent's first semiannual report for 2000 was due July 17, 2000. The complainant submitted a copy of the respondent's July 2000 semiannual report that was date-stamped January 16, 2001.
33. The commission may not consider a complaint if the alleged violation is also a criminal offense and is barred from criminal prosecution by the operation of the applicable statute of limitations. Ethics Commission Rules § 12.5(3). Failing to timely file a report is a Class C misdemeanor. ELEC. CODE § 254.041. An indictment or information for any misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward. Article 12.02, Code of Criminal Procedure. The complaint was filed September 4, 2002. The report at issue was due July 17, 2000. Therefore, the commission does not have jurisdiction to consider the allegations related to the July 2000 semiannual report as it is outside the applicable statute of limitations period.

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 a judicial candidate or officeholder in a judicial district with a population over one million may not knowingly accept political contributions from a person that exceed \$5,000 in connection with each election in which the candidate or officeholder is involved. The respondent further acknowledges that a campaign finance report must disclose the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent agrees to fully and strictly comply with these requirements of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission may consider the respondent to have committed the violations described under Section IV, Paragraphs 14 and 31, 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 potential 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 of the Government Code, and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the potential 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 generally deter future violations, the parties agree to a \$4,000 settlement for the potential violations described under Section IV, Paragraphs 14 and 31.

The parties further agree that full payment of the \$4,000 settlement must be tendered to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 1, 2004.

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-2209101;
- 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 October 22, 2003; and
- 4. that the executive director shall promptly refer SC-2209101 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-2209101 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2003.

James Blume, Counsel for Respondent

Shelly Skeen, Counsel for Respondent

Robert C. Jenevein, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director