

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RICHARD NEWTON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-230523

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 10, 2003, and voted to accept jurisdiction of Sworn Complaint SC-230523 filed against Richard Newton. The commission met again on November 13, 2003, to consider Sworn Complaint SC-230523. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of violations of section 254.063 of the 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 timely campaign finance reports and failed to cover the proper reporting period on campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent has held the office of mayor and city council in Colleyville, Texas. The respondent was an unsuccessful candidate for mayor in a 2003 runoff election.
2. The respondent filed two campaign treasurer appointments and numerous campaign finance reports with the city secretary in connection with his candidacies for city office. The first campaign treasurer appointment was filed in March 1997, and the second was filed in September 2001.
3. In response to this complaint, the respondent submitted a sworn response. Regarding the allegation that he failed to file the July 2001 semiannual report, the respondent swears that he does not “recall not filing any required report. In fact I was not in office from May 1999 until November 2001 and recall filing a final report at some point after my 1997-1999 term as Mayor ended. No reports would have been required after a final report had been filed.”

The respondent told commission staff that he filed the final report sometime in the summer of 1999.

IV. Findings and Conclusions of Law

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

Allegations Outside the Statute of Limitations:

1. The complainant makes the following allegations all of which are outside of the statute of limitations:
 - Sometime in 1997, the respondent accepted a political contribution or made a political expenditure without a campaign treasurer appointment on file.
 - The respondent failed to sign his July 1997 report.
 - The respondent accepted a corporate contribution on April 29, 1997.
 - Respondent failed to file reports due before May 12, 2001.
2. 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).
3. Accepting a political contribution or making a political expenditure without a campaign treasurer appointment on file is a Class A misdemeanor. ELEC. CODE § 253.031. Failing to timely file a report or failing to file an incomplete report is a Class C misdemeanor. *Id.* § 254.041. Knowingly accepting a contribution from a corporation made in violation of section 253.094 of the Election Code is a felony of the third degree. *Id.* 253.003(b).
4. 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. An indictment or information for any felony of the third degree may be presented within three years from the date of the commission of the offense, and not afterward. Article 12.01, Code of Criminal Procedure.
5. The complaint was filed May 12, 2003. Therefore, the commission does not have jurisdiction to consider the four allegations listed above as they are outside the applicable statute of limitations period.

Allegations Within Statute of Limitations:

6. The complainant alleges that the respondent failed to file a report that was due July 2001, that he filed the January 2002 semiannual report late, and that he covered the wrong period on four campaign finance reports.

July 2001 Semiannual Report:

7. A candidate must file semiannual reports in January and July. ELEC. CODE § 254.063. The January report covers the period beginning with July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last required report and continuing through June 30. *Id.* The July report covers the period beginning with January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last required report and continuing through December 31. *Id.*
8. Filing a final report terminates a candidate's campaign treasurer appointment and relieves a candidate of the duty to file reports as a candidate. ELEC. CODE § 254.183.
9. If the respondent filed a final report before the period covered by the July 2001 semiannual report, he would not have been required to file the report. ELEC. CODE § 254.183. The respondent swears that he filed a final report at some point after his 1997-1999 term as mayor and that he was not in office from May 1999 through 2001. The respondent stated that he filed the final report sometime in the summer of 1999.
10. Because the respondent filed a final report in 1999, he did not have a campaign treasurer appointment on file during the period covered by the July 2001 semiannual report. Therefore, the respondent was not required to file that report. There is credible evidence that the respondent did not violate section 254.063 of the Election Code as to the July 2001 semiannual report.

January 2002 Semiannual Report:

11. The January 2002 semiannual report was due by January 15, 2002. The evidence shows that the respondent had a campaign treasurer appointment on file during the period covered by the January 2002 semiannual report and that the report was filed on February 6, 2002. Therefore, there is credible evidence that the respondent failed to file a timely January 2002 semiannual report in violation of section 254.063 of the Election Code.

Period Covered by Reports:

12. The complainant alleges that the respondent's January 2002 semiannual report, April 2002 30-day pre-election report, July 2002 semiannual report, and January 2003 semiannual report covered the wrong period.

13. The periods indicated by the respondent as being covered by the reports are not correct. However, only the 30-day pre-election report included activity (a \$100 political contribution and a \$400 political expenditure) that occurred outside of the required reporting period. That activity was reported *earlier* than required. The remaining three reports did not include activity occurring outside of the required reporting period. Therefore, as to the 30-day pre-election report, there is credible evidence that the respondent violated section 254.063 of the 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. The respondent acknowledges that a candidate must file semiannual reports in January and July. ELEC. CODE § 254.063. The respondent also acknowledges that campaign finance reports must cover the period specified by law. *Id.* §§ 254.063 and 254.064. 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 will consider the respondent to have committed the violations described under Section IV, 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 of the 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 and after considering the sanction necessary to deter future violations, the commission imposes a \$100 civil penalty for the violations described under Section IV.

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-230523;
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 \$100 civil penalty to the Texas Ethics Commission, P. O. Box 12070, Austin, Texas 78711, no later than December 11, 2003; and
4. that the executive director shall promptly set SC-230523 for a preliminary review hearing if the respondent does not agree to the resolution of SC-230523 as proposed in this ORDER and AGREED RESOLUTION.

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

Richard Newton, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director