

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MARK MERRILL,
RESPONDENT

BEFORE THE
TEXAS ETHICS COMMISSION
SC-240573

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on January 13, 2005, to consider sworn complaint SC-240573. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 254.124 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 resolution to the respondent.

II. Allegations

The complaint alleges that the campaign treasurer appointment that the respondent filed for a political committee contained false information. The complaint also alleges that the respondent failed to timely file campaign finance reports for the committee.

III. Facts Supported by Credible Evidence

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

1. The allegations in this complaint arise from a May 15, 2004, municipal election in Marshall, Texas.
2. The complainant was an incumbent candidate for city commissioner, and the respondent was the campaign treasurer of a committee opposing the complainant.
3. On April 15, 2004, the respondent filed a campaign treasurer appointment for a specific-purpose committee naming himself as treasurer. On that form he listed the same address for the committee and the campaign treasurer.
4. The complaint alleges that the address was not the respondent's.

5. An advertisement that purportedly was published by the person who lives at the address stated that the respondent does not live at the address and that the political committee at issue did not have offices at that address.
6. The person who lives at the address in question is the respondent's aunt.
7. The respondent swears that when he is in Marshall several times a year on business he lives with his aunt and that he received her permission to use her address as the address for the group.
8. The respondent submitted a statement that he swears was written by his aunt in which she states she gave him permission to use her address as his address while he is in Marshall and that the respondent does stay with her while he is in town.
9. The complaint also alleges that the respondent did not file the 8-day pre-election report that was due May 7, 2004.
10. The respondent filed an 8-day pre-election report on May 10, 2004.
11. Evidence shows that candidates in the May 15, 2004, election were told by city staff, based on information that the staff had received from a third party, to file the 8-day pre-election reports on May 10, 2004.

IV. Findings and Conclusions of Law

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

1. A campaign treasurer appointment must be in writing and include the campaign treasurer's name, the campaign treasurer's residence or business street address, the campaign treasurer's telephone number, and the name of the person making the appointment. ELEC. CODE § 252.002.
2. The evidence with respect to whether the respondent improperly listed the address on the original treasurer appointment is conflicting. Therefore, the evidence is insufficient to find that the respondent violated section 252.002 of the Election Code.
3. A committee that opposes a candidate must file a report not later than the eighth day before election day. ELEC. CODE § 254.124.

4. The 8-day pre-election report was due May 7, 2004. Although the respondent relied on misinformation from the filing authority, he was responsible for knowing when to file the reports. Therefore, there is credible evidence that the respondent violated section 254.124 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 or 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 this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a committee that opposes a candidate must file a report not later than the eighth day before the election. The respondent agrees to fully comply with this requirement of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the commission has determined is 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. No Sanction

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes no civil penalty for the violation described under Section IV.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-240573.

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

Mark Merrill, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director