

TEXAS ETHICS COMMISSION

IN THE MATTER OF

HERSHEL P. MCCULLOUGH,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-250568

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on September 8, 2005, to consider sworn complaint SC-250568. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 254.064 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 respondent, a candidate for city council, failed to properly report a contribution, failed to properly identify his campaign treasurer in political advertising and campaign finance reports, and failed to file a campaign finance report due April 29, 2005.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for city council of Wimberley, Texas in the May 7, 2005, election.
2. A contribution to the respondent was disclosed on the contributor's campaign finance report filed on March 28, 2005.
3. The respondent's 30-day pre-election report did not disclose the contribution at issue. The respondent's 8-day pre-election report did disclose the contribution.
4. The respondent received the contribution at issue on April 20, 2005, and made the decision to accept it on May 3, 2005.

5. The respondent's original campaign treasurer appointment designated Liz Starrett as campaign treasurer. The respondent's 30-day pre-election report showed that the campaign treasurer was Stan Starrett.
6. The respondent filed an amended campaign treasurer appointment on March 22, 2005.
7. The respondent filed his 8-day pre election report on May 4, 2005.
8. The complaint alleges that a different campaign treasurer was listed on the respondent's political advertising than was disclosed on the campaign treasurer appointment form.

IV. Findings and Conclusions of Law

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

1. A candidate's campaign finance report must include contributions accepted during the reporting period. ELEC. CODE § 254.031(a). The decision to accept or reject a contribution must be made during the same reporting period in which the candidate receives the contributions. ELEC. CODE § 254.034.
2. The contribution at issue was received on April 20, 2005. The contribution was received during the 8-day pre-election reporting period. The contribution was reported on the 8-day pre-election report. Thus, there is credible evidence of no violation of section 254.031 of the Election Code.
3. A political advertising disclosure statement must include either the full name of the person who paid for the political advertising, or the name of the candidate or committee who authorized the political advertising. ELEC. CODE § 255.001.
4. There is no requirement that the campaign treasurer be listed on the disclosure statement. Even if the wrong treasurer was listed, this would not constitute a violation of section 255.001 of the Election Code. Thus, there is credible evidence of no violation of section 255.001 of the Election Code.
5. A campaign finance report must include the correct name of the campaign treasurer. ELEC. CODE § 254.061.
6. Before any campaign finance reports were filed, an amended campaign treasurer appointment was filed that removed Liz Starrett as campaign treasurer and designated Stan Starrett as treasurer. Since the campaign finance reports listed the same treasurer that was designated in the amended campaign treasurer appointment there is credible evidence of no violation of section 254.061 of the Election Code.

7. An opposed candidate must file a report not later than the eighth day before election day. ELEC. CODE § 254.064.
8. The respondent's 8-day pre-election report was due April 29, 2005. The report was filed on May 4, 2005. Thus, there is credible evidence that the respondent violated section 254.064 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 an opposed candidate shall file a report not later than the eighth day before election day. The respondent agrees to comply with this requirement of the law.

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, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$200 civil penalty for the violations described under Sections III and 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-250568.

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

Hershel P. McCullough, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director