

TEXAS ETHICS COMMISSION

IN THE MATTER OF

WILLIAM H. "BILL" WHITE,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-250213, SC-2507135

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on September 8, 2005, to consider sworn complaint SC-250213 and on November 1, 2005, to consider sworn complaint SC-2507135. A quorum of the commission was present at each meeting. The commission determined that there is credible evidence of a violation of sections 253.032(a), 253.032(d), 254.031(a)(1), and 254.031(a)(3) of the Election Code, laws administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

With respect to SC 250213 the complaint alleges that the respondent improperly reported political contributions and expenditures on a campaign finance report, unlawfully accepted political contributions in excess of \$500 from several out-of-state political committees before receiving required documents, and failed to include the required documents regarding out-of-state political committees in campaign finance reports. With respect to SC-2507135 the complaint alleges that on his July 15, 2003, report the respondent failed to report the full names and addresses of contributors and payees and incorrectly listed expenditures of personal funds as contributions. The complaint further alleges that the respondent reported the reimbursement of staff members for their expenditures made on the respondent's behalf instead of reporting the actual payee of the expenditure.

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 mayor in a general election in November 2003 and a runoff election in December 2003.
2. Complaint SC-250213 was filed on February 14, 2005.

3. All twelve of the political committees at issue in this allegation had filed a statement of organization with the FEC and there is no evidence that any of the committees had filed a campaign treasurer appointment with any filing authority in Texas.
4. The respondent's report due eight days before the November 2003 general election, the report due eight days before the December 2003 runoff election, and the January semiannual report included political contributions in excess of \$500 from the twelve political committees.
5. The respondent provided lists of the out-of-state committees from which the respondent had received either a certified written statement detailing political contributions to the committee or the committee's statement of organization prior to accepting their contribution. The contributions from five committees at issue in this complaint were not included on those lists.
6. With respect to the contributions from twelve of the political committees, the respondent's campaign finance reports did not include either a certified written statement listing the full name and address of each person who contributed more than \$100 to the committee during the 12 months immediately preceding the date of the contribution or a statement of organization filed by the committee with the Federal Election Commission.
7. In response SC-250213, the respondent filed corrections to his reports that include a statement of organization filed by eleven of the political committees at issue.
8. Sworn Complaint SC-2507135 was filed on July 8, 2005.
9. Sworn Complaint SC-2507135 was filed on July 8, 2005.
10. The July 2003 semiannual report disclosed a \$100 contribution but did not include the address of the contributor. Additionally, one contributor's name was not fully disclosed. The amount of that contribution was \$5,000.
11. The July 2003 semiannual report disclosed a \$1,520.42 expenditure but did not include the address of the payee. Two other expenditures described the payee as "cash" without any other payee information. The total amount of the "cash" expenditures was \$400.
12. The respondent listed himself as the contributor of 21 "in-kind contributions" to his own campaign in his July 2003 semiannual report.
13. The respondent failed to report the actual payee and dates of expenditures for 20 different expenditures. All of these expenditures were listed in the July 15, 2003, semiannual report as reimbursement to staff members for their political expenditures from personal funds.

IV. Findings and Conclusions of Law

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

SC-250213

1. A person commits an offense that is a Class C misdemeanor if the person knowingly fails to include required information in a campaign finance report. ELEC. CODE § 254.041. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rules § 12.5(3). The statute of limitations for Class C misdemeanors is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. The allegations relating to the campaign finance report due on January 17, 2003, are based on alleged offenses that occurred more than two years before the complaint was filed (February 14, 2005), and are therefore not within the commission's sworn complaint jurisdiction.
2. A political committee is an out-of-state political committee if it makes political expenditures outside this state and, in the 12 months immediately preceding the making of a political expenditure in this state for a non-federal office, makes 80 percent or more of the committee's total political expenditures in any combination of elections outside this state and federal offices voted on in this state. ELEC. CODE § 251.001(15).
3. There is credible evidence that all twelve of the political committees at issue were out-of-state political committees.
4. In a reporting period, a candidate or officeholder may not knowingly accept political contributions totaling more than \$500 from an out-of-state political committee without first receiving from the out-of-state committee either: (1) a written statement, certified by an officer of the committee, listing the full name and address of each person who contributed more than \$100 to the committee during the 12 months immediately preceding the date of the contribution in excess of \$500; or (2) a copy of the committee's statement of organization filed as required by law with the FEC and certified by an officer of the committee. ELEC. CODE § 253.032(a).
5. The respondent disclosed political contributions in excess of \$500 from twelve out-of-state political committees on reports. The respondent also provided a list to the commission that included political committees from which he had accepted over \$500 after receiving the required documentation. Five committees at issue in this complaint were not included on that list. Therefore, there is credible evidence that the respondent violated section 253.032(a) of the Election Code by knowingly accepting a political contribution in excess of \$500 from five out-of-state political committees before receiving the required documentation.

6. A candidate or officeholder shall include the statement or copy required by section 253.032(a) of the Election Code as a part of a campaign finance report that covers the reporting period to which section 253.032(a) of the Election Code applies. ELEC. CODE § 253.032(d).
7. The twelve political committees at issue in this allegation were out-of-state political committees at the time the respondent accepted the contributions at issue and the respondent's campaign finance reports did not include the required documentation. Therefore, there is credible evidence that the respondent violated section 253.032(d) of the Election Code.

SC-2507135

8. A candidate must report the full names and addresses of contributors and payees that in the aggregate exceed \$50 during the reporting period. ELEC. CODE §§ 254.031(a)(1) and (3).
9. The July 15, 2003, report contains four instances where either a full name or address is not reported. Additionally, disclosing "cash" as an expenditure is insufficient. There is credible evidence of violations of sections 254.031(a)(1) and (3) of the Election Code.
10. A candidate must report political expenditures. ELEC. CODE § 254.031. Political expenditures are either campaign expenditures or officeholder expenditures. ELEC. CODE § 251.001. A campaign expenditure is an expenditure made by any person in connection with a campaign for an elective office or on a measure. ELEC. CODE § 251.001.
11. The respondent made campaign expenditures when he used his own funds in connection with his campaign for elective office. The respondent did not report these expenditures as political expenditures, but instead reported them as contributions. A candidate or officeholder must report a political expenditure from personal funds as a political expenditure, not as a political contribution. Ethics Commission Rules § 20.63.
12. The expenditure from personal funds should have been reported as a political expenditure with payee information, date, and purpose. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.
13. A candidate must report 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. ELEC. CODE § 254.031(a)(3).
14. When an expenditure is made by a staff member, and then the staff member is reimbursed by a candidate during the same reporting period, the proper way to report the expenditure is for

the candidate to report the actual payee of the expenditure made by the staff member, not the reimbursement.

15. Because the dates and payees of the expenditures made by the campaign workers were not disclosed on the report, there is evidence of a violation of section 254.031(a)(3) 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 candidate or officeholder may not knowingly accept political contributions totaling more than \$500 in a reporting period from an out-of-state political committee without first receiving from the out-of-state committee either: (1) a written statement, certified by an officer of the committee, listing the full name and address of each person who contributed more than \$100 to the committee during the 12 months immediately preceding the date of the contribution in excess of \$500; or (2) a copy of the committee's statement of organization filed as required by law with the FEC and certified by an officer of the committee. The respondent also acknowledges that a candidate or officeholder shall include the statement or copy required by section 253.032(a) of the Election Code as a part of a campaign finance report that covers the reporting period to which section 253.032(a) of the Election Code applies. The respondent further acknowledges that full names and addresses of contributors and payees must be disclosed on campaign finance reports. Additionally, the respondent acknowledges that political expenditures from personal funds must be reported as expenditures, and not as contributions. Finally, the respondent acknowledges that if the respondent reimburses staff members for their expenditures in the same reporting period that the staff member expenditure was made, then the expenditure reported should reflect the actual expenditure made by staff, and not the reimbursement. The respondent agrees to comply with these requirements 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. 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 \$1,500 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 sworn complaints SC-250213 and SC-2507135.

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

William H. "Bill" White, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director