

TEXAS ETHICS COMMISSION

IN THE MATTER OF
KEVIN H. CALCOTE,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2604121

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 14, 2006, to consider sworn complaint SC-2604121. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(3) and 254.064 of the Election Code, laws 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 failed to timely file his campaign finance report due 30-days before the election. The complaint also alleges that the respondent failed to correctly complete the report.

III. Facts Supported by Credible Evidence

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

1. The respondent's 30-day pre-election campaign finance report shows that he made a political expenditure for an amount over \$50. The respondent did not indicate the purpose of this expenditure, nor did he include the address of the payee.
2. After the sworn complaint was filed, the respondent attempted to correct the omission. However, instead of filing a correction affidavit, the respondent attached a revised political expenditure schedule (Schedule F) to his 8-day pre-election report. The "purpose" section of the report was complete but the respondent failed to include the address of the payee.
3. The respondent signed and dated the original report on April 17, 2006. The "date-received" section of the report indicates that it was received on April 17, 2006. The report was due on April 13, 2006.

4. The respondent swore that he filed his report late because he severely injured his lower back on April 13, 2006, and was unable to notify his campaign treasurer that she needed to file the report that day. The city offices were closed on April 14, 2006, for Good Friday.

IV. Findings and Conclusions of Law

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

1. A campaign finance report must include the amount of political expenditures made in a reporting period that in the aggregate exceed \$50, in addition to the amount, 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).
2. The respondent made one expenditure over \$50 during the reporting period but did not disclose the address of the payee or the purpose of the expenditure on his campaign finance report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code.
3. An opposed candidate must file a campaign finance report 30 days and 8 days before the election. ELEC. CODE § 254.064.
4. The respondent filed his campaign finance report, due April 13, 2006, on April 17, 2006. Therefore, there is credible evidence that the respondent violated section 254.064 of the Election Code. The respondent swears he filed the report late due to a back injury. Further, the report was filed the next business day after the filing deadline. The commission imposes no penalty for the report.

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 campaign finance report must include the amount of political expenditures made in a reporting period that in the aggregate exceed \$50, in addition to the amount, full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent further acknowledges that an opposed candidate must timely file a campaign finance report on the 30th day before the election. The respondent agrees to comply with these requirements 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 \$100 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-2604121.

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

Kevin H. Calcote, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director