

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CHARLES KAUFMANN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2605145

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on September 21, 2006, to consider sworn complaint SC-2605145. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.164, 254.063, 253.0351, and 254.031 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 file a judicial declaration of intent, made unlawful political expenditures, unlawfully accepted political contributions, failed to file a campaign finance report, failed to properly complete a campaign finance report, and failed to properly report political expenditures from personal funds.

III. Facts Supported by Credible Evidence

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

1. The respondent is a candidate for judge of a Galveston County statutory probate court.
2. On May 20, 2005, the respondent filed a campaign treasurer appointment on a Form CTA (used by candidates seeking a non-judicial office). At that time he did not specify his intent to run for a judicial office.
3. The respondent mailed a letter requesting financial support for his candidacy for probate judge on July 15, 2005.
4. The respondent made expenditures totaling \$5,455 and accepted contributions totaling \$1,050 from July 14, 2005, through December 2005.

5. The respondent did not file his Form JCTA (used by judicial candidates to appoint a campaign treasurer appointment) or a judicial declaration of intent to comply with expenditure limits until June 2, 2006.
6. At the time the complaint was filed, the respondent had not filed a July 2005 semiannual campaign finance report even though he had filed a campaign treasurer appointment on May 20, 2005.
7. The respondent filed his January 2006 semiannual report using a form for a non-judicial candidate rather than a judicial candidate form, and the report covered the time period beginning May 20, 2005, through January 15, 2006. The respondent did not omit any information that would have been required on the judicial candidate form.
8. The respondent failed to disclose \$684.50 in political expenditures made to reimburse himself for loans to his campaign on his original January 2006 semiannual report.
9. On his original January 2006 semiannual report, the respondent reported making \$6,871.43 in loans from personal funds to his campaign and \$5,455.93 in political expenditures. He did not disclose any loans from third parties or any political expenditures made to reimburse himself for loans to his campaign. The total amount of outstanding loans listed on the cover sheet was \$2,871.43. The respondent's first report—his July 2005 semiannual report—disclosed no political activity.

IV. Findings and Conclusions of Law

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

1. When a person becomes a candidate for a judicial office, the person shall file a sworn declaration of compliance stating that the person voluntarily agrees to comply with the limits on expenditures, or a written declaration of the person's intent to make expenditures that exceed the limits. ELEC. CODE § 253.164(a).
2. A candidate is defined as a person who knowingly and willingly takes affirmative action for the purpose of gaining election or nomination to public office. ELEC. CODE § 251.001(1). Examples of such action include the filing of a campaign treasurer appointment or the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication. ELEC. CODE §§ 251.001(1)(A), 251.001(1)(F).
3. The respondent became a candidate for judicial office at the time he mailed a letter requesting financial support for his candidacy for probate judge on July 15, 2005. The respondent did not file a judicial declaration of intent until June 2, 2006. Therefore, there is credible evidence that the respondent violated section 253.164(a) of the Election Code.

4. A judicial candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure before the candidate files a sworn declaration to comply with or exceed expenditure limits. ELEC. CODE § 253.164(c).
5. The respondent did not file a judicial declaration of intent until June 2, 2006, but made political expenditures and accepted political contributions beginning on July 14, 2005. Therefore, there is credible evidence that the respondent violated section 253.164(c) of the Election Code.
6. A candidate is required to file two reports each year. The first report must be filed by July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30. ELEC. CODE §§ 254.063(a), 254.063(b).
7. The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31. ELEC. CODE §§ 254.063(a), 254.063(c). Candidates must file a report regardless of whether there is reportable activity. *Id* § 254.031(b).
8. The respondent failed to file a July semiannual report until after the complaint was filed. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code.
9. The respondent's January 2006 semiannual report covered the wrong period. Therefore, there is credible evidence that the respondent violated section 253.063(a) of the Election Code.
10. A judicial candidate's campaign finance report is required to provide information in addition to that required of non-judicial candidates. ELEC. CODE § 254.0611. The respondent filed his January 2006 semiannual report using a form for non-judicial filers. However, the respondent did not omit information required by this section. Therefore, there is credible evidence of no violation of section 254.0611 of the Election Code.
11. A candidate who makes political expenditures from the candidate's personal funds may report the amount expended as a loan and may reimburse personal funds from political contributions in the amount of the reported loan. ELEC. CODE § 253.0351(a).
12. When a candidate chooses to report expenditures from the candidate's personal funds as a loan, the candidate may, but is not required to report such expenditures on the cover page of the report under "aggregate principal amount of all outstanding loans as of the last day of the

reporting period." Ethics Advisory Opinion No. 349 (1996). Because the Election Code does not require this information to be reported, the respondent's failure to report it correctly does not constitute a violation of the Election Code.

13. A campaign finance report is required to include the amount of political expenditures made in a reporting period that in the aggregate exceed \$50, the full name and address of persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031.
14. The respondent originally failed to disclose political expenditures made to reimburse himself for campaign expenses paid from his personal funds. Therefore, there is credible evidence of a violation of section 254.031 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 for a judicial office must file a sworn declaration of compliance stating that the person voluntarily agrees to comply with the limits on expenditures, or a written declaration of the person's intent to make expenditures that exceed the limits. The respondent acknowledges that a judicial candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure before the candidate files a sworn declaration to comply with or exceed expenditure limits. The respondent acknowledges that a candidate is required to file two reports each year, regardless of whether there is reportable activity, and each report must cover the proper time period. The respondent acknowledges that a candidate who makes political expenditures from the candidate's personal funds may report only the amount expended as a loan and may reimburse personal funds from political contributions in the amount of the reported loan. The respondent also acknowledges that a campaign finance report is required to include the amount of political expenditures made in a reporting period that in the aggregate exceed \$50, the full name and address of persons to whom the expenditures are made, and the dates and purposes of the expenditures. 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 \$600 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-2605145.

AGREED to by the respondent on this _____ day of _____, 2006.

Charles Kaufmann, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director