

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SIDNEY MILLER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2608176

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 28, 2007, to consider sworn complaint SC-2608176. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(8) and 254.0612 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 properly report employer and occupation information on his January 2006 semiannual campaign finance report. The complaint also alleges that the respondent failed to report total political contributions maintained on three campaign finance reports. The complaint further alleges that the respondent failed to timely file his July 2006 semiannual campaign finance report.

III. Facts Supported by Credible Evidence

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

1. During the time in question the respondent was an incumbent state representative.
2. The complaint alleges that the respondent failed to report the employer and occupation for two contributions that were disclosed on the respondent's January 2006 semiannual campaign finance report. Both contributions were accepted on November 18, 2005. The amounts of the contributions were \$500 and \$1,000. Commission records show that the report did not disclose the occupation or employer of the contributors.
3. The respondent subsequently filed corrected reports to disclose the information.
4. The complaint alleges that the respondent failed to disclose political contributions maintained on his July 2004, January 2005, and January 2006, semiannual campaign finance

- reports. Commission records disclose that the respondent did not report political contributions maintained on those reports.
5. The respondent filed corrected reports to disclose the missing information. The corrected July 2004 report discloses political contributions maintained of \$117,447.33. The corrected January 2005 report discloses political contributions maintained of \$58,975. The corrected January 2006 report discloses political contributions maintained of \$73,550.96.
 6. The complaint alleges that the respondent failed to timely file his July 2006 semiannual campaign finance report that was due on July 17, 2006. The respondent contacted the commission by the deadline but he was unable to file electronically.
 7. The respondent mailed a paper copy of the campaign finance report and included a disk with a postmark of July 17, 2006. Commission staff was unable to upload the disk. Commission staff notified the respondent of the disk error. The respondent subsequently electronically filed the report on July 24, 2006.

IV. Findings and Conclusions of Law

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

1. Each report by a candidate for a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period the individual's principal occupation or job title, and the full name of the individual's employer. ELEC. CODE § 254.0612.
2. The respondent was an incumbent candidate for state representative. Commission records disclose that the respondent failed to include employer and occupation information for two contributions of \$500 or more on his January 2006 semiannual campaign finance report. Therefore, there is credible evidence of a violation of section 254.0612 of the Election Code.
3. 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 criminal offense for filing an incomplete or untimely campaign finance report is a Class C misdemeanor. ELEC. CODE § 254.041. The statute of limitations for a Class C misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Therefore, allegations relating to the respondent's failure to report political contributions maintained on the July 2004 semiannual campaign finance report are based on alleged conduct that occurred more than two years before the complaint was filed (August 11, 2006) and are not within the commission's sworn complaint jurisdiction.

4. Each campaign finance report must include the total amount of political contributions maintained as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
5. Commission records disclose that the respondent failed to report political contributions maintained on the January 2005 and January 2006 campaign finance reports. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.
6. A candidate or officeholder must file a semiannual campaign finance report not later than July 15 of each year. ELEC. CODE § 254.063.
7. If the deadline for a semiannual campaign finance report falls on a Saturday, Sunday, or a legal state or national holiday, the report is due on the next regular business day. Ethics Commission Rules § 20.21.
8. Although the report at issue was submitted on a faulty disk the respondent mailed the disk to the commission by the filing deadline. Additionally, prior to the filing deadline the respondent attempted to file electronically by contacting commission staff. Therefore, there is credible evidence of no violation of section 254.063 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 each report by a candidate for a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period the individual's principal occupation or job title, and the full name of the individual's employer. The respondent acknowledges that each campaign finance report must include the total amount of political contributions maintained as of the last day of the reporting period.

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 \$1,700 civil penalty.

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-2608176.

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

Sidney Miller, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director