

TEXAS ETHICS COMMISSION

IN THE MATTER OF

WILLIAM "RANDY" BATES,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-270328

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 10, 2008, to consider sworn complaint SC-270328. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 254.031(a)(3) 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 failed to timely file his 30-day and 8-day pre-election campaign finance reports for the November 2006 election, and his January 2007 semiannual campaign finance report. The complaint alleges that the respondent's 30-day pre-election report for the November 2006 election does not include page two of the cover sheet, which contains the report totals and affidavit. The complaint alleges that the respondent failed to include the complete information for payees on his campaign finance reports and failed to correctly disclose the total political expenditures and total political contributions maintained on his January 2007 semiannual report. The complaint alleges that the respondent's 8-day pre-election report for an election that was originally scheduled for May 2006 was not properly notarized.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful opposed incumbent candidate for school board trustee with the North Harris Montgomery Community College District (NHMCCD) in the November 7, 2006, election.
2. The respondent had a campaign treasurer appointment in effect during the period at issue.

Failure to Timely File Campaign Finance Reports

3. The respondent's 30-day pre-election report for the November 2006 election was filed on October 10, 2006.
4. Evidence from the local filing authority indicates that the 8-day pre-election report for the November 2006 election was transmitted by facsimile (fax) to the local filing authority on October 27, 2006.
5. A copy of the respondent's January 2007 semiannual report indicates that the report was filed on January 25, 2007. The due date was January 16, 2007. The report was notarized on January 16, 2007, and the respondent swears that he filed the report on January 16, 2007. The person who was responsible for receiving the report when it was filed has retired. The current person in this position told staff that she does not know if the filed date was different than the date stamped on the report.

Failure to File Cover Sheet Page Two

6. The copy of the respondent's 30-day pre-election report for the November 2006 election submitted with the sworn complaint does not include cover sheet page two, which contains the report totals and affidavit. The respondent swears that he filed the page at issue. The filing authority provided a copy of the respondent's 30-day pre-election report and it includes a completed cover sheet page two.

Failure to Properly Disclose Political Expenditures

7. The respondent's reports disclose 16 political expenditures that do not include the complete address of the payee. Fourteen of these expenditures are for amounts less than \$50 to any one payee during the reporting period. The respondent's July 2006 semiannual report discloses two expenditures in the amount of \$97.30 each to Wal-Mart for "Public Relations" without disclosing a complete address.
8. The respondent's January 2007 semiannual report discloses \$917.88 for total political expenditures. The report discloses zero for total political expenditures of \$50 or less, unless itemized. The copy of the report submitted with the complaint is missing the first of two pages of expenditures. Only one expenditure is listed on the second page in the amount of \$42.14. The copy of the report provided to staff by the filing authority includes both pages of expenditures. The itemized expenditures total \$917.88.

Failure to Properly Disclose Total Political Contributions Maintained

9. The respondent's January 2007 semiannual report discloses \$12,839.45 for total political contributions maintained as of the last day of the reporting period.
10. The respondent swears he properly disclosed all political contributions and political expenditures.

Failure To Properly Notarize Report

11. The respondent's 8-day pre-election report for the May 2006 election is file stamped May 4, 2006. The notarization is dated May 5, 2006. (Note that the respondent was unopposed in this election when it was originally called, and the report was not required.)
12. The evidence does not clearly establish the date that the report was filed.

IV. Findings and Conclusions of Law

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

Failure to Timely File Campaign Finance Reports

1. A candidate is required to file two reports for each year, the first report is required to be filed not later than July 15, and cover 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, as applicable, and continuing through June 30; the second report shall be filed not later than January 15, and cover 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, as applicable, and continuing through December 31. ELEC. CODE § 254.063.
2. The respondent had a campaign treasurer appointment in effect during the period at issue which triggered the requirement to file semiannual reports as a candidate. A candidate has the duty to file semiannual reports until the candidate terminates his campaign treasurer appointment. ELEC. CODE § 254.065. The respondent never terminated his campaign treasurer appointment, thus, he never terminated the requirement to file semiannual reports as a candidate. (Section 254.093 of the Election Code requires an officeholder to file semiannual campaign finance reports. That section is not at issue because the respondent was required to file as a candidate.)
3. There is conflicting evidence as to when the respondent's January 2007 semiannual report was filed. There is insufficient evidence that the respondent failed to timely file his January 2007 semiannual report. Therefore, there is insufficient evidence that the respondent

violated section 254.063 of the Election Code. There is credible evidence that the respondent did not violate section 254.093 of the Election Code.

4. For each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report must be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last required report, as applicable, and continuing through the 40th day before election day. The second report must be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. ELEC. CODE § 254.064.
5. The evidence indicates that the respondent timely filed his 30-day and 8-day pre-election reports for the November 2006 election. Therefore, there is credible evidence that the respondent did not violate section 254.064 of the Election Code.

Failure to File Cover Sheet Page Two

6. Each campaign finance report is required to include the cover sheet page two which includes the report totals and the affidavit. ELEC. CODE §§ 254.031, 254.036(h).
7. The filing authority provided a copy of the respondent's 30-day pre-election report and it includes a completed cover sheet page two. Therefore, there is credible evidence that the respondent did not violate sections 254.031 and 254.036(h) of the Election Code.

Failure to Properly Disclose Political Expenditures

8. Each report must include the amount of political expenditures that in the aggregate exceed \$50 that are made during the reporting period, the full name and address of the person to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
9. The respondent's July 2006 semiannual report discloses two expenditures that exceed \$50 without disclosing a complete address. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code with regard to those expenditures.
10. The copy of the respondent's January 2007 semiannual report provided to staff by the filing authority includes both pages of expenditures. The itemized expenditures total \$917.88. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code as to the expenditures on his January 2007 semiannual report.

Failure to Properly Disclose Total Political Contributions Maintained

11. Each report must include as of the last day of a reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
12. Due to the statutory reporting requirements the amount of political contributions maintained cannot necessarily be computed by using the totals on a report's cover sheet. There is no additional evidence to show that the amount disclosed was incorrect.
13. There is insufficient evidence that the respondent failed to properly report "contributions maintained" on his January 2007 semiannual report, therefore, there is insufficient evidence that the respondent violated section 254.031(a)(8) of the Election Code.

Failure to Properly Notarize Report

14. Each report must be accompanied by an affidavit executed by the person required to file the report. ELEC. CODE § 254.036(h).
15. There is insufficient evidence that the respondent's report was not properly notarized. Therefore, there is insufficient evidence that the respondent violated section 254.036(h) 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 must include the amount of political expenditures that in the aggregate exceed \$50 that are made during the reporting period, the full name and address of the person to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent agrees to comply with this requirement 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 violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 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-270328.

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

William "Randy" Bates, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director