

TEXAS ETHICS COMMISSION

IN THE MATTER OF
TONY TOBIAS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2708198

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2008, to consider sworn complaint SC-2708198. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.063 of the Election Code and section 571.1242 of the Government 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 the January 2006, July 2006, January 2007, and July 2007 semiannual campaign finance reports. The complaint also alleges that the respondent failed to include required information on campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent was an incumbent candidate for a position on the board of trustees of the New Caney Independent School District during the May 7, 2005, election.
2. The respondent's campaign treasurer appointment indicates that it was signed by the respondent on February 7, 2005, and that the respondent elected modified reporting for the May 2005 election cycle. The document was not date stamped to indicate when it was filed with the local filing authority.
3. The respondent's July 2007 report indicates that it was signed on July 24, 2007, but was not date stamped to indicate the date that it was filed with the local filing authority. The report covers the period of February 7, 2005, through July 24, 2007, is marked as a final report, and

- includes a C/OH-FR page designating the report as a final report. The report also disclosed May 7, 2007, as the election date.
4. The report does not disclose the amounts for total political contributions of \$50 or less, total political contributions, total political expenditures of \$50 or less, total political contributions maintained, or the total principal amount of all outstanding loans as of the last day of the reporting period.
 5. The report discloses total political expenditures of \$250 but does not include the schedule to itemize the expenditures.
 6. On September 4, 2007, the commission sent a notice by certified mail to the respondent that a sworn complaint had been filed against him. The notice requested that the respondent send a response within 10 business days of receipt of the notice or face an additional violation for failure to respond to the sworn complaint notice.
 7. On September 7, 2007, the United States Postal Service (USPS) attempted delivery of the notice.
 8. On September 22, 2007, the USPS returned the notice as unclaimed.
 9. On October 2, 2007, at the request of the respondent, the commission sent the notice by certified mail to the respondent for the second time.
 10. On October 4, 2007, the USPS records indicate that the notice was delivered. The deadline for response was October 18, 2007.
 11. On December 19, 2007, the respondent confirmed that he had received the notice and had not responded.
 12. On January 22, 2008, the commission received the respondent's response and a copy of a corrected report that was filed on January 7, 2008.
 13. The corrected report is marked as a July 2005, January 2006, July 2006, January 2007, and July 2007 semiannual report.
 14. The election date was corrected to May 7, 2005.
 15. The corrected report discloses political contributions totals, political expenditures totals, and loan totals as zero.

16. In the report's correction affidavit, the respondent swears that he did not know that he owed semiannual reports and that his total expenditure amount should have been zero because the \$250 expenditure on the original report was actually an expenditure from 2002.
17. On March 5, 2008, the respondent submitted an affidavit providing additional information regarding why the reports at issue and his response to the sworn complaint were filed late.

IV. Findings and Conclusions of Law

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

1. A candidate shall file two reports for each year, the first report shall 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 designation of a report as a final report relieves a candidate of the duty to file semiannual reports as a candidate, unless the candidate has reportable activity after filing a final report. ELEC. CODE § 254.065.
3. The evidence indicates that the respondent filed a campaign treasurer appointment in February 2005.
4. This appointment triggered the requirement to file semiannual reports as a candidate.
5. The evidence indicates that the respondent did not terminate his campaign treasurer appointment until he filed a final report on or about July 24, 2007.
6. Thus, the respondent was required to file semiannual reports as a candidate for July 2005, January 2006, July 2006, January 2007, and July 2007.
7. Although the evidence indicates that the respondent filed a final campaign finance report on or about July 24, 2007, covering the period for the semiannual reports at issue, the evidence indicates that the respondent did not file the semiannual reports at issue in a timely manner. Therefore, there is credible evidence of violations of section 254.063 of the Election Code.
8. Each campaign finance report filed by a candidate must include 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.

9. Although the respondent was required to provide the full name and address of a person to whom expenditures were made that in aggregate exceed \$50, the evidence indicates that the expenditure in question was an expenditure made in 2002 and, thus, should not have been disclosed in the reports at issue.
10. Each campaign finance report filed by a candidate must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person required to file a report, the full name and address of the person making the contributions, and the dates of the contributions; the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period; the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period; the total amount of all political contributions accepted during the reporting period; and, as of the last day of a reporting period for which the person is required to file a report, 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 (1)(2)(5)(6)(8).
11. The evidence indicates that the respondent failed to enter an amount for the political contributions of \$50 or less, total political contributions, total political expenditures of \$50 or less, total political contributions maintained as of the last day of the reporting period, and the total principal amount of all outstanding loans as of the last day of the reporting period.
12. Although the respondent filed a corrected report disclosing each of the amounts at issue to be zero, the respondent failed to disclose this information in a timely manner. Therefore, there is credible evidence of violations of section 254.031 of the Election Code.
13. A respondent must respond to the notice of a Category One violation not later than the 10th business day after the date the respondent receives the notice. A failure to timely respond to a notice of sworn complaint is a separate Category One violation. GOV'T CODE § 571.1242(a)(c).
14. The evidence shows that the respondent received the notice of sworn complaint on October 4, 2007. The respondent's response was due by October 18, 2007. The respondent did not

respond until January 22, 2008. Therefore, there is credible evidence of a violation of section 571.1242 of the Government 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 shall file two reports for each year, the first report shall 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. The respondent also acknowledges that each campaign finance report filed by a candidate must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person required to file a report, the full name and address of the person making the contributions, and the dates of the contributions; the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period; the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period; the total amount of all political contributions accepted during the reporting period; and, as of the last day of a reporting period for which the person is required to file a report, 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. The respondent further acknowledges that the respondent must respond to the notice of a Category One violation not later than the 10th business day after the date the respondent receives the notice and that failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. 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.

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-2708198.

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

Tony Tobias, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director