

TEXAS ETHICS COMMISSION

IN THE MATTER OF

TIMOTHY MCWASHINGTON, JR.,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2803129

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 13, 2008, to consider sworn complaint SC-2803129. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 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 semiannual campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent is a current Montgomery city councilperson. The respondent was unopposed in the May 2006 and May 2008 elections. The complaint alleges that the respondent failed to file semiannual campaign finance reports from July 2006 through January 2008.
2. On March 17, 2008, the commission sent a notice by certified mail to the respondent that a sworn complaint had been filed against him. The notice stated that the sworn complaint would be processed as a Category One violation and that the respondent was required to respond to an allegation of a Category One violation within 10 business days of receipt of the notice.
3. On March 20, 2008, the United States Postal Service (USPS) attempted delivery of the notice of sworn complaint and left notice for the respondent that he could pick up the item at the post office. USPS records show the respondent signed for the notice of sworn complaint on

- April 19, 2008. The respondent submitted a response to the sworn complaint that was postmarked May 19, 2008.
4. The respondent swears that during the period at issue he was unopposed. The respondent also swears that he did not receive any funds or expend any funds towards his reelection to office. The respondent swears that he was not aware that he needed to file reports when no funds were received or expended.
 5. The commission attempted to contact the respondent by telephone on multiple occasions after receiving his response to the sworn complaint but was unable to contact him.
 6. At the request of the commission, the local filing authority provided copies of all documents filed with that office by the respondent.
 7. The respondent filed a campaign treasurer appointment dated May 13, 2006, in which he elected modified reporting for the May 2006 election. The treasurer appointment is not date stamped by the local filing authority. The treasurer appointment indicates the office held and office sought are city councilperson, and that the term of the office sought is May 2006 to May 2008. The respondent filed an application for a place on the ballot on February 24, 2006.
 8. The respondent filed another undated campaign treasurer appointment that indicates the office held and office sought are city councilperson, and that the term of the office sought is May 2008 to May 2010. The treasurer appointment is not date stamped by the local filing authority. The respondent signed the declaration of intent to follow modified reporting but did not indicate the date of the election. The respondent filed an application for a place on the ballot on February 26, 2008.
 9. The respondent filed a campaign finance report that covers the period from July 15, 2006, through January 15, 2007. Although the local filing authority notarized the report on May 19, 2008, the report is not date stamped by the local filing authority. The report indicates the office held is city councilperson and does not indicate an office sought. The report discloses zero total political contributions, zero total political expenditures, zero political contributions maintained as of the last day of the reporting period, and zero loans.
 10. The respondent filed a campaign finance report that covers the period from January 15, 2007, through July 15, 2007. Although the local filing authority notarized the report on May 19, 2008, the report is not date stamped by the local filing authority. The report indicates the office held is city councilperson and does not indicate an office sought. The report discloses zero total political contributions, zero total political expenditures, zero political contributions maintained as of the last day of the reporting period, and zero loans.

11. The respondent filed a campaign finance report that covers the period from July 15, 2007, through January 15, 2008. Although the local filing authority notarized the report on May 19, 2008, the report is not date stamped by the local filing authority. The report indicates the office held and office sought are city councilperson. The report discloses zero total political contributions, zero total political expenditures, zero political contributions maintained as of the last day of the reporting period, and zero loans.
12. The respondent filed a campaign finance report that covers the period from January 15, 2008, through July 15, 2008. Although the local filing authority notarized the report on May 19, 2008, the report is not date stamped by the local filing authority. The report indicates the office held and office sought are city councilperson. The report discloses zero total political contributions, zero total political expenditures, zero political contributions maintained as of the last day of the reporting period, and zero loans.
13. The respondent filed a second campaign finance report that covers the period from January 15, 2008, through July 15, 2008. Although the local filing authority notarized the report on July 15, 2008, the report is not date stamped by the local filing authority. The report indicates the office held is city councilperson and does not indicate an office sought. The report discloses zero total political contributions, zero total political expenditures, zero political contributions maintained as of the last day of the reporting period, and zero loans.

IV. Findings and Conclusions of Law

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

Failure to File Semiannual Reports

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. A candidate has the duty to file semiannual reports until the candidate terminates his campaign treasurer appointment. The designation of a report as a final report terminates a candidate's campaign treasurer appointment. ELEC. CODE § 254.065.
3. If a local candidate is elected to office and terminates his campaign treasurer appointment, he must file semiannual campaign finance reports as an officeholder unless he does not exceed \$500 in officeholder contributions or officeholder expenditures. ELEC. CODE § 254.095.

4. The evidence indicates the respondent filed a campaign treasurer appointment before the May 2006 election. Therefore, the respondent was required to file semiannual reports as a candidate. The respondent has not filed a final report. Therefore, the respondent has not terminated his requirement to file semiannual reports. Although the respondent filed reports after receiving notice of the complaint, the reports were not filed by the respective deadlines. Also, the reports do not cover the proper reporting periods. The respondent has not filed a report that covers the reporting period for the July 2006 semiannual report, and has not filed a report that covers the entire reporting period for the January 2007 semiannual report. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code.

Untimely Response

5. 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 failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. GOV'T CODE § 571.1242(a)(c).
6. The evidence indicates that the respondent received the notice of sworn complaint on April 19, 2008. The notice stated that the respondent was required to respond within 10 business days from the date he received the notice. The respondent failed to respond within the allowed time. 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 the second report shall be filed not later than January 15. The respondent acknowledges that a respondent must respond to a notice of a Category One violation within 10 business days from the date the respondent receives the notice. 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 \$300 civil penalty.

The respondent agrees that the Texas Ethics Commission, P. O. Box 12070, Austin, Texas 78711, must receive from the respondent full payment of the \$300 civil penalty no later than February 4, 2009, and agrees to waive any right to a hearing related to this sworn complaint. The respondent agrees that if the full amount is not received by February 4, 2009, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

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-2803129.

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

Timothy McWashington, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director