

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SAMMIE SCOTT,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2803136

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 14, 2008, to consider sworn complaint SC-2803136. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.031, 254.031, 254.036, 254.063, and 254.064 of the Election Code. 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 accepted campaign contributions and made campaign expenditures at a time when he did not have a campaign treasurer appointment in effect. The complaint also alleges that the respondent failed to properly disclose political contributions and political expenditures, failed to execute a notary affidavit with a campaign finance report, and failed to file 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 a successful opposed candidate in the May 12, 2007, Magnolia city council election.
2. On February 12, 2007, the respondent filed an application to be placed on the Magnolia May 2007 general election ballot.
3. On April 27, 2007, the respondent filed a campaign treasurer appointment and did not elect modified reporting.

4. On April 27, 2007, the respondent filed a report designated as an exceeded \$500 limit report.
5. The report disclosed \$20 for total contributions of \$50 or less, \$591.90 for total political contributions, \$580.22 for total political expenditures, and \$11.68 for total political contributions maintained as of the last day of the reporting period.
6. The report left blank the total political expenditures of \$50 or less and the total principal amount of all outstanding loans as of the last day of the reporting period. The affidavit section of the report was incomplete. There were no schedules attached to the report.
7. The 30-day pre-election report for the May 2007 election was due on April 12, 2007, covering the period of the date of the campaign treasurer appointment or the date after the last report ended through April 2, 2007.
8. The 8-day pre-election report was due on May 4, 2007, covering the period of the date of the campaign treasurer appointment or the date after the last report ended through May 2, 2007.
9. On April 1, 2008, the respondent filed a report designated as a 30-day and 8-day pre-election campaign finance report, a July 2007 and January 2008 semiannual campaign finance report, and a final report.
10. The report included a Schedule A, itemizing four contributions, each dated April 9, 2007, and a Schedule F, itemizing one expenditure dated March 9, 2007.
11. The report also included a completed Form C/OH-FR (designation of final report).

IV. Findings and Conclusions of Law

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

Accepting Contributions/Making Expenditures without a Campaign Treasurer Appointment in Effect

1. A “candidate” is defined as a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include, in pertinent part, the filing of an application to be placed on the ballot. ELEC. CODE § 254.001(1)(B).
2. Each candidate shall appoint a campaign treasurer and may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE §§ 252.001, 253.031.

3. The respondent was a candidate for purposes of title 15 of the Election Code no later than February 12, 2007, when he filed an application for a place on the ballot. The evidence indicates that the respondent filed a campaign treasurer appointment on April 27, 2007. The evidence indicates that the respondent accepted political contributions and made political expenditures prior to April 27, 2007. Thus, the evidence indicates that the respondent accepted political contributions and made political expenditures at a time when he did not have a campaign treasurer appointment in effect. Therefore, there is credible evidence of a violation of section 253.031 of the Election Code.

Failure to File Reports

4. 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. 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.
5. In addition to other required reports, an opposed candidate is required to file reports 30-days and 8-days before an election. ELEC. CODE § 254.064. An opposed candidate is not required to file 30-day and 8-day pre-election reports if the opposed candidate selects modified reporting on his campaign treasurer appointment at least 30 days prior to the election and declares that he does not intend to accept political contributions or make political expenditures that in aggregate exceed \$500 in connection with the election. ELEC. CODE §§ 254.181, 254.182; Ethics Commission Rules § 20.217.
6. The respondent became a candidate no later than February 12, 2007, when he filed an application to be placed on the ballot. The respondent was an opposed candidate in the 2007 election. An opposed candidate is required to file 30-day and 8-day pre-election reports, unless the opposed candidate meets the requirements for modified reporting. Although the respondent filed a campaign treasurer appointment on April 27, 2007, he did not elect modified reporting. Thus, the respondent was required to file 30-day and 8-day pre-election reports.
7. The 30-day pre-election report was due on April 12, 2007, and the 8-day pre-election report was due on May 4, 2007. On April 27, 2007, the respondent filed a report designated as an exceeded \$500 report. Because the respondent did not elect modified reporting, filing an exceeded \$500 report was not required. The report at issue was filed after the due date for the 30-day pre-election report but before the due date for the 8-day pre-election report. Thus,

the evidence indicates that the respondent did not file a timely 30-day pre-election report, and did not file an 8-day pre-election report. Therefore, there is credible evidence of violations of section 254.064 of the Election Code.

8. The campaign treasurer appointment filed on April 27, 2007, remained in effect until the respondent filed a final report on April 1, 2008. Thus, the respondent was also subject to the requirement to file July 2007 and January 2008 semiannual reports. The evidence indicates that the respondent did not timely file those reports. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code.

Failure to Include Required Information on Report

9. Each report 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 or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions, the aggregate principal amount of all outstanding loans, 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, and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. ELEC. CODE § 254.031 (1), (3) and (5).
10. Each report must be accompanied by an affidavit executed by the person required to file the report. ELEC. CODE § 254.036(h).
11. The report filed on April 27, 2007, did not itemize political contributions and expenditures. The report left blank the total political expenditures of \$50 or less and the total principal amount of all outstanding loans as of the last day of the reporting period. The affidavit section of the report was incomplete. Thus, the evidence indicates that the report did not include the required information. Therefore, there is credible evidence of violations of sections 254.031 and 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 candidate shall appoint a campaign treasurer and may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. The respondent also 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 acknowledges that, in addition to other required reports, an opposed candidate is required to file reports 30-days and 8-days before an election. The respondent further acknowledges that each report 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 or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions, the aggregate principal amount of all outstanding loans, 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, and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. The respondent acknowledges that each report must be accompanied by an affidavit executed by the person required to file the report. 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 \$500 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 \$500 civil penalty no later than November 30, 2008, 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 November 30, 2008, 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-2803136.

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

Sammie Scott, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director