

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ROBERT T. CLIFTON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2805232

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) held a preliminary review hearing on February 12, 2009, to consider sworn complaint SC-2805232. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 253.062 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 knowingly accepted political contributions totaling more than \$500 and made or authorized political expenditures totaling more than \$500 for a political committee at a time when a campaign treasurer appointment for the committee was not in effect. The complaint also alleges that the respondent failed to file required campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The complaint relates to the May 2008 mayoral election for the city of Denton. Prior to the election, the respondent printed and mailed literature opposing a candidate for that office. The complaint included a copy of two mailers sent by the respondent. The mailers indicate they are political advertising paid for by the "Watchdog Society of Denton."
2. On June 16, 2008, after receiving notice of the sworn complaint, the respondent told the commission that he individually made the expenditures for all of the campaign communications at issue and did not act in concert with any other persons to make political expenditures relating to the mayoral election. The respondent stated that he did not act as part of a political committee and that he operated under the assumed name "Watchdog Society of Denton."
3. The respondent submitted an affidavit in response to the complaint. The respondent submitted with the affidavit copies of two campaign finance reports that the respondent

swears were filed with the local filing authority on June 20, 2008. The respondent also submitted an assumed name certificate on file with Denton County for "Watchdog Society of Denton." The certification names the respondent as the owner of the business. Certification for the assumed name was sworn to by the respondent and recorded with the Denton County Clerk on October 23, 2006. The respondent did not address in his affidavit whether he acted in concert with any other persons to make political expenditures relating to the election.

4. The local filing authority provided copies of all documents filed by the respondent since January 1, 2008.
5. The respondent filed an 8-day pre-election report for the May 10, 2008, general election that covers the period from April 1, 2008, through April 30, 2008. Although the report is not date stamped by the local filing authority, the local filing authority notarized the report on June 20, 2008. The respondent used "Form SPAC" for the report. On the section of the report's cover page used for disclosing "Committee Name," the respondent crossed out the word "Committee" and listed "Robert T. Clifton and/or Watchdog Society of Denton." On the section of the report's cover page used for disclosing treasurer name, the respondent wrote "N/A." Cover page two of the report indicates the respondent's purpose is opposing a candidate for mayor. The report discloses zero total political contributions, \$1,469.83 in total political expenditures, zero political contributions maintained as of the last day of the reporting period, and zero loans. Schedule F (used for disclosing political expenditures) discloses two political expenditures totaling approximately \$1,470 for "mailer" printing, addressing, and postage. The report discloses that the respondent made the political expenditures on April 29, 2008 and April 30, 2008.
6. The respondent filed an 8-day pre-election report for the June 14, 2008, runoff election that was signed and notarized on June 20, 2008, six days after the run-off election. The report lists "Robert T. Clifton and/or Watchdog Society of Denton" as the filer name and discloses opposing a candidate for mayor as the purpose. The report discloses zero total political contributions, \$3,046.19 in total political expenditures, zero political contributions maintained as of the last day of the reporting period, and zero loans. The report discloses that the purpose of the expenditures was for "mailer" printing, addressing, and postage. The report was due June 6, 2008. The respondent received notice of sworn complaint SC-2805232, which alleged similar reporting violations, on May 29, 2008.
7. The respondent's July 2008 semiannual report discloses zero total political contributions, \$1,545.50 in total political expenditures, zero political contributions maintained as of the last day of the reporting period, and zero loans. The report discloses that the purpose of the expenditures was for "mailer" printing, addressing, and postage. The report lists "Robert T. Clifton and/or Watchdog Society of Denton" as the filer name and discloses opposing a candidate for mayor as the purpose.
8. The 8-day runoff report and July 2008 semiannual report were not required to be filed until dates after the sworn complaint allegations were made. However, by virtue of the allegations in the sworn complaint, the respondent was aware that some types of reports were

required. As noted, the 8-day pre-election report and 8-day runoff report were filed after the elections. The July 2008 semiannual report was timely filed.

IV. Findings and Conclusions of Law

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

1. Each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. ELEC. CODE § 252.001.
2. A political committee may not knowingly accept political contributions totaling more than \$500 or make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect. *Id.* § 253.031(b).
3. The campaign treasurer of a specific-purpose committee shall file two reports for each year. The first report shall be filed not later than July 15 and covers the period beginning January 1, the day the committee's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30. The second report shall be filed not later than January 15 and covers the period beginning July 1, the day the committee's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31. *Id.* § 254.123.
4. For each election in which a specific-purpose political committee supports or opposes a candidate or measure, the committee's campaign treasurer shall file two reports. *Id.* § 254.124(a). The first report shall be filed not later than the 30th day before election day. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day. *Id.* § 254.124(b). The second report shall be filed not later than the eighth day before election day. The report covers the period beginning on the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.124(c).
5. In addition to other required reports, the campaign treasurer of a specific-purpose committee that supports or opposes a candidate in an election and an ensuing runoff election shall file one report for the runoff election. The runoff election report must be received by the authority with whom the report is required to be filed not later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day. *Id.* § 254.124(e).

6. An individual not acting in concert with another person may make one or more direct campaign expenditures that exceed \$100 on any one or more candidates only if the individual complies with the reporting requirements under chapter 254 of the Election Code, as if the individual were the campaign treasurer of a political committee, and the individual receives no reimbursement. *Id.* § 253.062(a). An individual making expenditures under this section is not required to file a campaign treasurer appointment. *Id.* § 253.062(b).
7. “Direct campaign expenditure” means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. *Id.* § 251.001(8).
8. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. *Id.* § 251.001(7).
9. “Campaign contribution” means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(3).
10. The evidence indicates that the respondent acted alone in making direct campaign expenditures to oppose a candidate. Therefore, the respondent was not required to file a campaign treasurer appointment. However, the respondent was required to file campaign finance reports as if he were the treasurer of a specific-purpose committee.
11. The respondent’s 8-day pre-election report for the May 10, 2008, general election discloses two political expenditures for mailers totaling approximately \$1,470. The report discloses that the respondent made the expenditures on April 29, 2008, and April 30, 2008, which was within the reporting period for the 8-day pre-election report. Although the evidence indicates the respondent filed an 8-day pre-election report on June 20, 2008, the respondent was required to file the report by the May 2, 2008, deadline. The respondent also failed to timely file the 8-day runoff report that discloses approximately \$3,050 in political expenditures. As noted, that report was not due until after the sworn complaint was filed. However, the respondent received the notice of complaint before the due date for the report. The evidence does not indicate that the respondent made any political expenditures during the reporting periods for the January 2008 semiannual report or the 30-day pre-election report for the May 10, 2008, general election. Therefore, there is credible evidence that the respondent violated section 253.062 of the Election Code by failing to timely file the report required by section 254.124(c) of the Election Code. There is credible evidence of no violation of sections 252.001, 253.031(b), 254.123, and 254.124 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 an individual not acting in concert with another person may make one or more direct campaign expenditures that exceed \$100 on any one or more candidates only if the individual complies with the reporting requirements under chapter 254 of the Election Code, as if the individual were the campaign treasurer of a political committee, and the individual receives no reimbursement. 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 \$200 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-2805232.

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

Robert T. Clifton, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director