

TEXAS ETHICS COMMISSION

IN THE MATTER OF
THELMA MARIE MCCALL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2807294

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 2009, to consider sworn complaint SC-2807294. 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, 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 a report following the appointment of a campaign treasurer by an officeholder, and failed to timely file pre-election and semiannual campaign finance reports. The complaint also alleges that the respondent failed to keep campaign and officeholder contributions in one or more accounts that are separate from any other account.

III. Facts Supported by Credible Evidence

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

1. The respondent was an opposed candidate in the May 2005 North Forest Independent School District board of trustees general election.
2. The allegations relate to campaign finance reports filed from February 2005 through January 2008.
3. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rules § 12.5(a). The criminal offense for the allegations in this sworn complaint is a Class C misdemeanor. ELEC. CODE § 254.041. The statute of limitations for a

Class C misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Thus, any allegation connected to conduct that occurred more than two years before the postmark date of the sworn complaint (July 15, 2008) is not within the commission's sworn complaint jurisdiction. The reporting allegations related to the July 2006, January 2007, July 2007, and January 2008 semiannual reports are within the commission's sworn complaint jurisdiction.

4. The respondent filed a campaign treasurer appointment, dated February 10, 2005. The treasurer appointment was not date stamped to indicate the actual date it was filed.
5. The July 2006 semiannual report was due on July 17, 2006. The January 2007 semiannual report was due on January 16, 2007. The July 2007 semiannual report was due on July 16, 2007, and the January 2008 semiannual report was due on January 15, 2008.
6. Local filing authority records indicate that all of the semiannual reports at issue were filed on April 9, 2008, after the filing deadlines. All of the semiannual reports at issue disclosed no activity.
7. The local filing authority indicated that the respondent also ran for office in November 2008, and filed October 2008 30-day and 8-day pre-election reports for the November 2008 election. The respondent filed a final report, on October 17, 2008. The respondent was not on the ballot between the May 2005 election and the November 2008 election.
8. In response to the reporting allegations, the respondent swore that when she ran for a position on the North Forest Independent School District board of trustees, she was an inexperienced candidate and did not know that she had not properly filed her campaign finance reports until the Harris County District Attorney's Office informed her of that fact. The respondent swore, "Once I learned of the errors, I took every step I was aware of to correct the problem." The respondent swore that she did not "intentionally or knowingly fail to file documents or file late or inaccurate documents. Any error that occurred was from lack of experience and lack of clearly understanding the procedures."
9. The evidence indicates that the respondent used personal funds to make political expenditures in the May 2005 election and that she did not deposit political contributions into her personal account. The evidence also indicates that the respondent received no political contributions during the period at issue in the sworn complaint.

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 of which shall be filed not later than July 15, covering 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, and continuing through June 30; and the second report shall be filed not later than January 15, covering 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, and continuing through December 31. ELEC. CODE § 254.063.
2. In addition to other required reports, 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 of which must be received by the authority with whom the report is required to be filed not later than the 30th day before election day, covering the period beginning 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, and continuing through the 40th day before election day; and the second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day, covering the period beginning the 39th day before election day and continuing through the 10th day before election day. ELEC. CODE § 254.064.
3. The evidence indicates that the respondent was not required to file pre-election campaign finance reports during the period at issue. Therefore, there is credible evidence of no violation of section 254.064 of the Election Code.
4. The evidence indicates that the respondent filed a campaign treasurer appointment on or about February 10, 2005, and did not terminate the campaign treasurer appointment until October 17, 2008. Thus, the respondent was required to file semiannual reports from July 2005 through July 2008. The evidence indicates that the respondent filed the reports at issue on April 9, 2008. Thus, the evidence indicates that the respondent failed to timely file four semiannual reports (the July 2005 and January 2006 reports are outside of the statute of limitations). Therefore, there is credible evidence of violations of sections 254.063 of the Election Code.
5. Each candidate or officeholder shall keep the person's campaign and officeholder contributions in one or more accounts that are separate from any other account maintained by the person. ELEC. CODE § 253.040.
6. The complaint alleges that the respondent failed to keep campaign and officeholder contributions in one account separate from any other account maintained and made campaign expenditures out of her personal checking account. Title 15 of the Election Code does not prohibit a candidate or officeholder from making campaign expenditures from personal funds. However, such political expenditures must be properly reported. ELEC. CODE §§ 253.031, 253.035. The evidence indicates that the respondent did not deposit political contributions into her personal account and used her own funds to make campaign

expenditures. Thus, the evidence indicates that the respondent was not required to keep a separate account for political contributions. Therefore, there is credible evidence of no violation of section 253.040 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 a candidate shall file two reports for each year, the first of which shall be filed not later than July 15, covering 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, and continuing through June 30. The second report shall be filed not later than January 15, covering 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, and continuing through December 31. 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-2807294.

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

Thelma Marie McCall, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director