

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BARBARA ANN GASTON,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-2807296

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 2009, to consider sworn complaint SC-2807296. 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 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 pre-election and 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 was an incumbent candidate for trustee of the North Forest Independent School District (NFISD) in the May 2006 election. The respondent has been in office for eight years.
2. The complaint alleges that based on a March 11, 2008, review of the local filing authority's records, the respondent failed to file any campaign finance reports since filing the 30-day pre-election report for the May 2006 election.
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. Failure to file a campaign finance report is a Class C

misdemeanor. 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, the commission does not have jurisdiction to consider allegations of reporting violations that occurred before July 15, 2006 (more than two years before the complaint's postmark date). Therefore, allegations relating to the failure to file a 15th day after treasurer appointment report and the 8-day pre-election report for the May 2006 general election are not within the commission's sworn complaint jurisdiction.

4. In response to the allegations, the respondent swears:

I did not know that I had not filed required reports and that documents filed were either incorrect or untimely until I was informed by the Harris County District Attorney's Office. Once I learned of the errors, I took every step I was aware of to correct the problem. . . . I did not intentionally or knowingly fail to file documents or file late or inaccurate documents. Any error that occurred was from lack of clearly understanding the procedures.

5. At the request of the commission, the NFISD provided copies of all documents filed by the respondent.
6. The respondent filed an application for a place on the ballot with the secretary of the school board on February 27, 2006.
7. The respondent filed a campaign treasurer appointment which she signed and dated February 14, 2006. However, the treasurer appointment was not date stamped to reflect the date that it was filed with the school board. The respondent did not elect modified reporting on that campaign treasurer appointment.
8. The respondent filed a 30-day pre-election report for the May 2006 election, covering a period from March 1, 2006, through April 13, 2006. The report was not date stamped to reflect the date that it was filed with the school board but indicates that it was notarized by the NFISD election coordinator on April 13, 2006.
9. A report marked as a July 2006 semiannual report, covering a period from April 14, 2006, through July 15, 2006, was not date stamped to indicate when it was filed with the school board, and it was not signed or notarized. The report itemized political contributions but did not disclose the name and address of the contributors. In addition, the report itemized political expenditures but did not disclose the address of the payees.
10. A report marked as a final report, covering a period from July 16, 2006, through April 12, 2008, was not date stamped to indicate when it was filed with the school board, and it was not signed or notarized. The report did not include an affidavit designating the report as a final report. The report disclosed reimbursements to the respondent as political expenditures

- on Schedule F (used to disclose political expenditures), and disclosed the purpose of the expenditures but did not disclose the payee's address.
11. On October 10, 2008, the respondent filed a corrected July 2006 semiannual report to disclose the addresses of payees. In the correction affidavit filed with the report, the respondent swears that she did not have names of contributors because her records were destroyed in a fire at her home on August 10, 2007. The respondent submitted a copy of a report about the fire from the Houston Arson Bureau to the commission.
 12. Also on October 10, 2008, the respondent filed a corrected final report with a properly executed affidavit designating the report as a final report. The report disclosed political expenditures made from personal funds on Schedule G (used to report political expenditures made from personal funds) but incorrectly disclosed the respondent as the payee instead of the actual recipients of the payments.
 13. The respondent filed a second corrected final report, covering all of the reporting periods from April 14, 2006, through November 5, 2008. The report was not date stamped to reflect the date that it was filed with the school board but indicates that it was notarized by the NFISD executive secretary on November 13, 2008. The commission contacted the NFISD executive secretary and was informed that the day she signed and notarized the report was also the day the report was filed with her. The report disclosed total political contributions of \$2,500 and total political expenditures of \$2,826.39.

IV. Findings and Conclusions of Law

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

1. A candidate is required to file two reports for each year. The first report shall be filed not later than July 15. The report covers 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. The report covers 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 campaign finance reports until the candidate terminates her campaign treasurer appointment. The designation of a report as a final report terminates a candidate's campaign treasurer appointment. ELEC. CODE § 254.065.
3. The evidence indicates that the NFISD school board had on file a campaign treasurer appointment for the respondent dated February 14, 2006. The treasurer appointment triggered the requirement to file campaign finance reports as a candidate.

4. The evidence indicates that the respondent did not terminate her campaign treasurer appointment until, at the earliest, October 10, 2008, when she filed a final report. Thus, the respondent was required to file semiannual reports from July 2006 through July 2008.
5. The evidence indicates that the respondent filed a 30-day pre-election report for the May 2006 general election on or about April 13, 2006, but did not file any other report until after March 11, 2008. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code with respect to the July 2006, January 2007, July 2007, and January 2008, semiannual reports.

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 is required to 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 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 \$300 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-2807296.

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

Barbara Ann Gaston, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director