

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOSEPH ALLEN PROVOST,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2807297

FINAL ORDER

The Texas Ethics Commission, having heard this case and voting to find violations of laws under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The respondent is Joseph Allen Provost, whose last known mailing address is 8403 Claiborne Street, Houston, Texas 77078-2811. A sworn complaint was filed with the Texas Ethics Commission against the respondent on July 21, 2008. The Notice of Hearing was mailed to the respondent on January 7, 2010, by certified mail, return receipt requested, restricted delivery, and by delivery confirmation.
2. The preliminary review hearing was held on February 11, 2010, at 11:00 a.m., by the Texas Ethics Commission in Austin, Texas.
3. The respondent did not appear at the hearing.
4. The respondent is a former school board trustee for the North Forest Independent School District (NFISD). The respondent was a successful opposed candidate in the November 2007 general election.
5. The local filing authority provided copies of all documents filed by the respondent.
6. The respondent filed a campaign treasurer appointment and an application for a place on the ballot on or about August 6, 2007. The respondent did not elect modified reporting.
7. On April 29, 2008, the respondent filed a 30-day pre-election report that covered a period ending on October 7, 2007. The report's cover page did not disclose the beginning date for the period covered. The report indicated the office held was "NFISD Trustee 6," and did not indicate an office sought. The report disclosed zero political contributions, \$2,598 in total political expenditures, \$2,637.11 in total political contributions maintained as of the last day of the reporting period, and zero loans. The report did not disclose any unitemized political contributions or unitemized political expenditures. Schedule F (used for reporting political expenditures) disclosed three political expenditures totaling \$2,598.

8. Also on April 29, 2008, the respondent filed a campaign finance report that did not indicate the report type and that covered the period from October 8, 2007, through October 29, 2007. The report indicated the office held was "NFISD Trustee 6," and did not indicate an office sought. The report disclosed \$2,250 in political contributions (other than pledges or loans) and \$2,637.11 in total political contributions maintained as of the last day of the reporting period. The report's cover page left blank the space for total political expenditures of \$50 or less (unless itemized), total political contributions of \$50 or less (unless itemized), total political expenditures, and total amount of outstanding loans. Schedule A (used for reporting political contributions) disclosed six political contributions totaling \$2,250. Additionally, Schedule A disclosed three in-kind contributions, but failed to disclose the amount of each in-kind contribution.
9. The respondent did not file a 15-day after campaign treasurer appointment report.
10. In August 2008, in response to the complaint, the respondent submitted an affidavit in which he swore that he did not know that he had not filed required reports or that documents filed were either incorrect or untimely until he was informed by the Harris County District Attorney's Office. The respondent swore that once he learned of the errors, he took every step he was aware of to correct the problem. The respondent swore that any error that occurred was from lack of clearly understanding the procedures.
11. In April 2009, the respondent provided a second affidavit in which he swore that he was confused as to the reporting requirements for school board trustees.
12. Records of the local filing authority do not show whether or not the respondent filed a final report in prior years.
13. On April 14, 2009, the respondent filed a corrected report that covered the period from September 1, 2007, through January 15, 2008. The correction affidavit accompanying the report indicated the respondent added dollar amounts for in-kind contributions and changed the amount of total political contributions. The report indicated the office held and office sought were NFISD trustee. The report disclosed \$4,700 in total political contributions, \$4,148 in total political expenditures, \$2,006.08 in total political contributions maintained as of the last day of the reporting period, and zero loans. The report disclosed no unitemized political contributions or unitemized political expenditures. Schedule A of the corrected report disclosed the value of the three in-kind contributions for which the respondent previously failed to include a dollar amount. The three in-kind contributions totaled approximately \$1,450.
14. Also on April 14, 2009, the respondent filed a corrected report that covered the period from October 8, 2007, through October 29, 2007. The correction affidavit accompanying the report indicated the respondent added dollar amounts for in-kind contributions and changed the amount of total political contributions. The report indicated the office held and office sought were NFISD trustee. The report disclosed \$3,700 in total political contributions, zero political expenditures, \$2,637.11 in total political contributions

maintained as of the last day of the reporting period, and zero loans. The report disclosed no unitemized political contributions or unitemized political expenditures. Schedule A of the corrected report disclosed the same value for the three in-kind contributions as the other corrected report. The report was signed by the respondent but not notarized.

15. On May 26, 2009, the respondent filed a corrected report that was marked as a 30-day and 8-day pre-election report and that covered the period from July 1, 2007, through October 27, 2007. The correction affidavit accompanying the report indicated the respondent added dollar amounts for in-kind contributions. The report indicated the office held and office sought were NFISD trustee. The report disclosed \$3,700 in total political contributions, \$2,023 in total political expenditures, \$2,637.11 in total political contributions maintained as of the last day of the reporting period, and zero loans. The report disclosed no unitemized political contributions or unitemized political expenditures. Schedule A of the corrected report disclosed the same value for the three in-kind contributions as the other corrected reports. The three in-kind contributions totaled approximately \$1,450.
16. Pre-election reports for the November 2007 election were due on October 9, 2007, and October 29, 2007.

Conclusions of Law

1. Disposition of this case is within the jurisdiction of the Texas Ethics Commission. GOV'T CODE § 571.061.
2. The respondent received legally sufficient notice of the hearing in this case. GOV'T CODE § 571.032 and 1 TAC § 12.21. The hearing was held in accordance with section 12.23, 1 Texas Administrative Code.
3. 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. ELEC. CODE § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. *Id.* § 254.064(b). The report covers 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 under this chapter, as applicable, and continuing through the 40th day before election day. *Id.* 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. *Id.* § 254.064(c). The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.*
4. An officeholder who appoints a campaign treasurer shall file a report that covers the period beginning the first day after the period covered by the last required report or the day the officeholder takes office, as applicable, and continuing through the day before the date the officeholder's campaign treasurer is appointed. *Id.* § 254.094. The report shall

be filed not later than the 15th day after the date the officeholder's campaign treasurer is appointed. *Id.*

5. The respondent was an opposed candidate in the November 2007 general election and did not elect modified reporting. Therefore, the respondent was required to file 30-day and 8-day pre-election reports before the November 2007 general election. Although the respondent filed reports after receiving notice from a local prosecutor's office, the reports were not filed by the respective deadlines. Therefore, there is credible evidence of violations of sections 254.064(b) and 254.064(c) of the Election Code.
6. If the respondent had filed a final report before becoming a candidate in 2007, he may have been required to file a report within 15 days of filing a campaign treasurer appointment for the 2007 election. The evidence is unclear as to whether the respondent filed a campaign treasurer appointment or a final report prior to his filing a campaign treasurer appointment in August 2007. Therefore, there is insufficient evidence of a violation of section 254.094 of the Election Code.
7. The Texas Ethics Commission may impose a sanction against the respondent of not more than \$5,000 or triple the amount at issue, whichever amount is greater. *Id.* § 571.173

Therefore, the Texas Ethics Commission orders that:

1. The respondent pay to the Texas Ethics Commission, within 30 days of the date of this order, a civil penalty in the amount of \$500.

Order Date: _____

FOR THE COMMISSION

David A. Reisman
Executive Director
Texas Ethics Commission