

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GENE E. DEFOREST,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2808304

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 2009, to consider sworn complaint SC-2808304. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(1), 254.031(a)(3), and 254.063 of the Election Code, and credible evidence of technical or *de minimis* violations of sections 254.031(a)(2) and 254.031(a)(6) of the Election Code, laws 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 his January 2007 and July 2007 semiannual campaign finance reports. The complaint also alleges that the respondent failed to properly disclose political contributions, political expenditures, and loan balances in campaign finance reports. The complaint further alleges that the respondent accepted political contributions from corporations.

III. Facts Supported by Credible Evidence

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

1. During the period at issue, the respondent was the constable of Precinct 2 of Montgomery County and was a candidate in the March 2008 primary election. The respondent has been in office since 2001.
2. The deadline for filing the January 2007 semiannual report was Tuesday, January 16, 2007. The respondent filed his January 2007 semiannual report on November 7, 2007.

3. The deadline for filing the July 2007 semiannual report was Monday, July 16, 2007. The respondent filed his July 2007 semiannual report on November 7, 2007.
4. The complaint alleges that the respondent failed to disclose on his January 2007 and July 2007 semiannual reports the total principal amount of all outstanding loans as of the last day of the reporting period.
5. The total principal amount of all outstanding loans as of the last day of the reporting period was left blank in the contributions totals section on both the respondent's January 2007 and July 2007 semiannual reports. The respondent has corrected the reports at issue and disclosed \$0 on each report as the total principal amount of all outstanding loans as of the last day of the respective reporting periods.
6. The complaint alleges that the respondent failed to include in his January 2008 semiannual report the address of a contributor. The respondent's January 2008 semiannual report disclosed a political contribution of \$750 from an individual on November 29, 2007, but did not include the individual's address.
7. The respondent has corrected his January 2008 semiannual report but did not disclose the contributor's address for the political contribution at issue. Instead, the corrected report discloses a contributor's name and address for a \$750 political contribution that is different than the name disclosed on the original report.
8. The complaint alleges that the respondent failed to properly disclose on his July 2007 semiannual report the total amount of political contributions accepted. The allegation is based on calculating the total of all political contributions itemized on Schedule A and adding that amount to the total political contributions of \$50 or less disclosed on page 2 of the coversheet.
9. The respondent's July 2007 semiannual report disclosed \$2,212 as the amount of total political contributions of \$50 or less. The total of all the political contributions itemized on Schedule A is \$12,320. When the two totals are added ($\$2,212 + \$12,320$), the total amount of all political contributions accepted is \$14,532. The respondent's report disclosed \$14,027 as the amount of total political contributions accepted, which is a discrepancy of \$505.
10. The respondent has corrected the report at issue and disclosed \$13,932 as the amount of total political contributions. In the respondent's affidavit filed with the corrected report, the respondent explained that he returned two contributions, totaling \$600. The \$13,932 amount was calculated by subtracting \$600 from \$14,532.

11. The complaint alleges that the respondent failed to disclose in his July 2007 semiannual report the address of the payee for seven political expenditures, totaling approximately \$7,589. The report disclosed the city, state, and zip code for one of the political expenditures at issue but did not include the payee's street address. As for the remaining six political expenditures at issue, the report did not disclose the entire address of the payee. The respondent has corrected the report to disclose the entire address of the payee for the political expenditures at issue.
12. The complaint alleges that the respondent accepted six corporate contributions, totaling \$1,700. The allegations are based on the respondent's July 2007 and January 2008 semiannual reports.
13. In response to the allegations, the respondent admits that he was aware of the prohibition against corporate contributions and swears:

For that reason, when I received contribution checks from entities that sounded as though they were corporations, I would ask the contributor whether they were, in fact, a corporation. I relied on the information, which they provided to me to determine whether I could accept the contribution. In each of the instances in the pending Complaint, I followed that procedure.
14. The respondent's July 2007 semiannual report disclosed a political contribution of \$500 from Conroe Police Association on June 8, 2007, with the following address: PO Box 3324, Conroe, Texas, 77305. According to the Texas Secretary of State's records, Conroe Police Officers' Association is a domestic nonprofit corporation. Its registered agent is listed as James Graham with an address of PO Box 3324, Conroe, Texas, 77305. The respondent swears that the check he received from the Conroe Police Officers Association did not show that it was from an entity that was incorporated. The respondent states that he spoke with James Graham, the president of the association, who "confirmed that the Association is not a corporation and has not operated as a corporation, even though there is a filing with the Texas Secretary of State as such." However, the Texas Secretary of State records show that the association is current in its annual filings. The respondent has returned the contribution.
15. The respondent's July 2007 semiannual report disclosed a political contribution of \$400 from D.P.S. Region III on May 23, 2007, with the following address: 206 F South Loop 336, Conroe, Texas, 77304. The complaint included information from the Texas Secretary of State's website on the Texas Department of Public Safety Officers Association. According to the Texas Secretary of State's records, the Texas Department of Public Safety Officers Association is a domestic nonprofit corporation. Its address is listed as 5821 Airport Blvd, Austin, Texas, 78752. The Texas Secretary of State had no records for an entity named DPS Region III. The respondent asserts that DPS Region III is not the same entity as the Texas

Department of Public Safety Officers Association. The respondent swears that he has confirmed with the president of DPS Region III, Randy Arnaud, that DPS Region III is an unincorporated association.

16. The respondent's July 2007 semiannual report disclosed a political contribution of \$100 from Montgomery County Law Enforcement Association on July 11, 2007, with the following address: 1 Criminal Justice Dr., Conroe, Texas, 77301. According to the Texas Secretary of State's records, Montgomery County Law Enforcement Association is a domestic nonprofit corporation. Its Articles of Incorporation lists all members of the Board of Directors with the following address: #1 Criminal Justice Drive, Conroe, Texas, 77301. The respondent swears that the check he received from the Montgomery County Law Enforcement Association did not show that it was from an entity that was incorporated. The respondent has returned the contribution.
17. The respondent's January 2008 semiannual report disclosed a political contribution of \$100 from Investment Management on November 27, 2007, with the following address: 3500 W. Davis, Conroe, Texas, 77304. The Texas Secretary of State had no records of an entity named Investment Management at that address. The complaint included Internet search results for a company named Investment Management, Inc. The search results list a link to a Conroe, Texas business directory with the following information: "Investment Management Inc 3500 W Davis St # 150c Phone: 409-756-0032." In the respondent's affidavit, the respondent swears that the check he received from Investment Management did not show that it was from a company that was incorporated. The respondent has nevertheless returned the contribution.
18. The respondent's January 2008 semiannual report disclosed a political contribution of \$500 from Kia-Conroe on November 21, 2007, with the following address: 1604 IH 45 N, Conroe, Texas, 77301. The complaint included information on a company named Kia Motors America and Internet search results for Kia of Conroe. The search results list an entity named Cowboy Kia of Conroe at 1604 Interstate 45 North, Conroe, Texas, 77301. In the respondent's affidavit, the respondent swears that the contributor was a local dealer Jetbird, Ltd., a Texas limited partnership, and not Kia Motors America. The respondent also swears that he has confirmed that Jetbird's general partner is 5222 Jetbird, LLC, a Texas limited liability company. The Texas Secretary of State records show that Conroe KIA, Cowboy Kia, and Cowboy Kia of Conroe are all assumed names of Jetbird LTD.
19. The respondent's January 2008 semiannual report disclosed a political contribution of \$100 from Conroe Funeral Home on October 22, 2007. The respondent swears that he did not believe it was a corporation and that he did not know that he could not accept contributions from funeral homes. The respondent has returned the contribution. An Internet search indicates that the actual name of the business is Conroe Funeral Directors and that it is not a

cemetery. The Texas Secretary of State had no records of an entity named Conroe Funeral Home or Conroe Funeral Directors.

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 must 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 must 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 semiannual reports until the candidate terminates his campaign treasurer appointment. The designation of a report as a final report terminates a candidate's campaign treasurer appointment. ELEC. CODE § 254.065.
3. If the deadline for a report falls on a Saturday, Sunday, or a legal state or national holiday, the report is due on the next regular business day. Ethics Commission Rules § 20.21.
4. The respondent was a candidate during the period at issue. The evidence shows that the respondent filed his January 2007 and July 2007 semiannual reports on November 7, 2007. However, the reports were due on January 16, 2007, and July 16, 2007, respectively. Therefore, there is credible evidence of violations of section 254.063 of the Election Code.
5. Each campaign finance report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
6. The evidence indicates that the respondent filed corrections to the reports at issue to disclose the total principal amount of all outstanding loans as of the last day of the reporting periods at issue. However, at the time the original reports were filed, the respondent failed to disclose this information. The respondent had no outstanding loans during the periods at issue but left that section of the form blank. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(2) of the Election Code.
7. Each campaign finance 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. ELEC. CODE § 254.031(a)(1).
8. The evidence shows that the respondent failed to properly disclose information related to a \$750 political contribution in his January 2008 semiannual report. This information was required because the contribution at issue exceeded \$50 during the reporting period. Therefore, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code with respect to this political contribution.
 9. Each campaign finance report must include the total amount of all political contributions accepted during the reporting period. ELEC. CODE § 254.031(a)(6).
 10. The evidence indicates that the respondent disclosed an incorrect amount of total political contributions on his July 2007 semiannual report due to an error in calculating the total political contributions. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code.
 11. Each campaign finance report must include 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. ELEC. CODE § 254.031(a)(3).
 12. The evidence shows that the respondent failed to disclose the full address of the payee for the seven political expenditures at issue. This information was required because the expenditures exceeded \$50 during the reporting period. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code with respect to these political expenditures.
 13. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003.
 14. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094.
 15. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
 16. A cemetery company, whether incorporated or not, is considered a corporation for the purpose of the prohibition on corporate contributions. ELEC. CODE § 253.093(a).

17. The evidence shows that two entities, the Conroe Police Officers Association and the Montgomery County Law Enforcement Association, were registered as corporations with the Texas Secretary of State at the time the contributions at issue were accepted. The respondent swears he did not know these contributors were corporations at the time he accepted the contributions. He swears that the checks he received from these contributors did not show that they were from an entity that was incorporated. The evidence is insufficient to refute his assertion. Therefore, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code with respect to the political contributions from the Conroe Police Officers Association and Montgomery County Law Enforcement Association.
18. No records were found that an entity named DPS Region III was ever registered as a corporation with the Texas Secretary of State. The evidence indicates that DPS Region III is not the same as the Texas Department of Public Safety Officers Association, which is a corporation. The Texas Secretary of State records show that Conroe Kia, Cowboy Kia, and Cowboy Kia of Conroe were assumed names of Jetbird LTD, but the records indicate that Jetbird LTD was not incorporated. Thus, the evidence indicates that the contributions at issue were not made by a corporation. Therefore, there is credible evidence of no violations of sections 253.003 and 253.094 of the Election Code with respect to the political contributions from DPS Region III and Kia Conroe.
19. No records were found that an entity named Investment Management was ever registered as a corporation with the Texas Secretary of State. Further, the respondent swore that he did not know that Investment Management was a corporation at the time he accepted the contribution because the check did not show that it was from a company that was incorporated. Therefore, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code with respect to the political contribution from Investment Management.
20. Cemetery companies are considered corporations for purposes of the prohibition against corporate contributions. The contribution was disclosed as being made by a funeral home. The evidence does not show that the funeral home at issue was also a cemetery company. Therefore, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code with respect to the political contribution from Conroe Funeral Home.

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 also acknowledges that each campaign finance report must include:

- (a) 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 required to file a report, the full name and address of the person making the contributions, and the dates of the contributions;
- (b) the aggregate principal amount of all outstanding loans as of the last day of the reporting period;
- (c) 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
- (d) the total amount of all political contributions accepted.

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.

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-2808304.

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

Gene E. DeForest, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director