

TEXAS ETHICS COMMISSION

IN THE MATTER OF
LYDA ANN THOMAS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2811373

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 2009, to consider sworn complaint SC-2811373. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.036, 254.061, and 254.063 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 disclose required information on her January 2007, January 2008, and July 2008 semiannual campaign finance reports, and on her 30-day and 8-day pre-election campaign finance reports for the May 2008 election. The complaint also alleges that the respondent failed to timely file her January 2007 semiannual campaign finance report and failed to file her July 2007 semiannual campaign finance report.

III. Facts Supported by Credible Evidence

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

1. The respondent was the successful opposed incumbent candidate for Mayor of Galveston in the May 10, 2008, election. She was first elected Mayor in 2004, and prior to that she served on the city council in Galveston.
2. The respondent had a campaign treasurer appointment in effect during the period at issue.
3. The complaint alleges that the respondent's reports contained the following errors:

- January 2007 semiannual report failed to disclose the total amount of political contributions maintained;
 - January 2008 semiannual report failed to disclose the date of a political contribution, and disclosed an incorrect total for political contributions maintained;
 - April 2008 30-day pre-election report failed to disclose the “election type,” date of a political contribution, and failed to disclose the total amount of political contributions maintained;
 - May 2008 8-day pre-election report failed to disclose the “period covered,” “election type,” “total principal amount of all outstanding loans,” the date of a political contribution, the dates, addresses, or purposes for two political expenditures, and failed to timely disclose a political expenditure made during a reporting period; and
 - July 2008 semiannual report failed to disclose “election type,” “total principal amount of all outstanding loans,” failed to fully disclose the name, address, and purpose for a political expenditure, and failed to disclose the total amount of political contributions maintained.
4. In response to this sworn complaint, the respondent admitted that all but one of the allegations are true. The respondent filed the following corrected reports on December 11, 2008:
- January 2007 semiannual report was corrected to disclose \$4.44 in contributions maintained. The original report disclosed “0” contributions maintained.
 - January 2008 semiannual report was corrected to disclose the date the previously reported contribution of \$5,000 was accepted, and to disclose \$5,004.44 as the amount of contributions maintained. The original report left the date of the contribution and the contributions maintained blank.
 - April 2008 30-day pre-election report was corrected to disclose that the election type as “general” and to remove a \$5,000 contribution which the respondent swears was “incorrectly reported twice” and appears to be a duplicate contribution to the one reported on the January 2008 semiannual report. The corrected report also discloses two expenditures totaling \$3,895.30 which were incorrectly reported on the original 8-day pre-election

report, the respondent also included date, purpose of payment and address information about these expenditures not previously reported. The original 30-day pre-election report disclosed no selection under "election type" and contained "0" political expenditures.

- May 2008 8-day corrected pre-election report changed the period covered, the election type was disclosed as "general," total political contributions maintained were corrected to \$1,109.14, outstanding loans were disclosed as "0," contributions reported as "0," and total expenditures for the period were reported as "0." The original 8-day pre-election report disclosed no beginning date for the period covered, contained no selection for "election type," total contributions maintained were originally left blank and the original report disclosed two expenditures totaling \$3,895.30 which the respondent corrected to be disclosed on the 30-day pre-election report because the expenditures were made during the 30-day reporting period.
 - July 2008 semiannual report was corrected to disclose the election type as "general," total outstanding loans as "0" and total political expenditures of \$635.13 (originally disclosed as \$50) due to the addition of an expenditure for \$635.13 which the respondent states was mistakenly omitted from the original report (however, the correct total should be \$685.13). The original report did not disclose "election type" and both total loans outstanding and expenditures were left blank previously.
5. The respondent swears that contributions maintained on the 8-day pre-election report were correctly reported as "0" since no contributions were accepted during this period.

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 is required to be filed not later than July 15, and cover 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, and cover 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. Each 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, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
3. Each report must include the principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
4. Each 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).
5. Each report must include as of the last day of a reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
6. Each report filed under this chapter with an authority other than the commission must be in a format prescribed by the commission. ELEC. CODE § 254.036(a).
7. Each report by a candidate must include the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed. ELEC. CODE § 254.061(1).
8. The evidence indicates that the respondent did not timely file her January 2007 or July 2007 semiannual reports. Thus, there is credible evidence that the respondent violated section 254.063 of the Election Code.
9. The evidence indicates that the respondent filed corrections to all of the reports at issue. The evidence indicates that the reports, as originally filed, did not include the required information. Therefore, there is credible evidence that the respondent violated sections 254.031(a)(1), 254.031(a)(2), 254.031(a)(3), 254.031(a)(8), 254.036(a), 254.061(1), and 254.063 of the Election Code as to her January 2007, January 2008, and July 2008 semiannual reports, and her 30-day and 8-day pre-election reports in connection with the May 2008 election.

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 report is required to be filed not later than July 15, and cover 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, and cover 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. The respondent further acknowledges that each campaign finance report is required to include the amount of political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contribution, and the dates of the contributions. The respondent also acknowledges that each report must include the principal amount of all outstanding loans as of the last day of the reporting period. The respondent acknowledges that each campaign finance report is also required to 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. The respondent acknowledges that each report must include as of the last day of a reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. The respondent also acknowledges that each campaign finance report filed with an authority other than the commission must be in a format prescribed by the commission. The respondent further acknowledges that each campaign finance report must include the office sought and the identity and date of the election for which the report is filed. 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-2811373.

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

Lyda Ann Thomas, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director