

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JOHN R. AMES,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-290233

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 16, 2009, to consider sworn complaint SC-290233. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 254.064 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. Allegation

The complaint alleged that the respondent failed to timely file an 8-day pre-election report for a runoff election.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful candidate for tax assessor of Dallas County in the Democratic primary runoff election held on April 8, 2008, and in the November 2008 general election.
2. The complaint alleged that the respondent failed to timely file an 8-day pre-election report for the runoff election.
3. The complaint included a copy of the respondent's runoff election report and the envelope used to mail the report.
4. The 8-day pre-election report for the April 2008 primary runoff election was due on March 31, 2008. The respondent's runoff report shows that it was received and date stamped by the Dallas County Elections Department on April 10, 2008.

5. The copy of the envelope bears a postmark date of March 31, 2008. The envelope was addressed to Dallas County, but not specifically to the Elections Department, and the address did not include a suite or room number. A handwritten notation on the envelope indicates that it was received in a Dallas County office on April 2, 2008. A date stamp on the envelope indicates that it was received in the Dallas County Elections Department on April 10, 2008.
6. The report disclosed the following totals:
 - \$45,507.08 in total political contributions
 - \$21,332.67 in total political expenditures
 - \$665.21 in total political contributions maintained
 - \$30,000 in total principal amount of all outstanding loans
7. In response to the sworn complaint, the respondent submitted an affidavit in which he swears that he did not intend to file his runoff election report late. He states that the reporting period was from February 24, 2008, through March 29, 2008, and that since the 29th fell on a Saturday, he was unable to get the report notarized and mailed until Monday, March 31, 2008.

IV. Findings and Conclusions of Law

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

1. An opposed candidate in a runoff election shall file one report for that election. The runoff election report *must be received by the authority* [Emphasis added] with whom the report is required to be filed not later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day. ELEC. CODE § 254.064(e).
2. The evidence indicates that the respondent mailed his runoff election report on the due date, which was March 31, 2008. The evidence also shows that the report was received by the filing authority after the due date and after the runoff election. To be considered timely filed, the report must have been received by the filing authority, and not postmarked, by the due date. Therefore, there is credible evidence that the respondent violated section 254.064(e) of the Election Code.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the commission:

1. 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 opposed candidate in a runoff election shall file one report for that election. The runoff election report must be received by the authority with whom the report is required to be filed not later than the eighth day before runoff election day. The respondent agrees to comply with this requirement 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 \$1,000 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-290233.

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

John R. Ames, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director