

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BURNICE J. GAINES, JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2909218

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 11, 2010, to consider sworn complaint SC-2909218. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(1) and 254.031(a)(3) of the Election Code and credible evidence of technical or *de minimis* violations of sections 254.031(a)(2), 254.031(a)(5), 254.031(a)(6), and 254.031(a)(8) of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent's campaign finance reports failed to properly disclose political contributions, political expenditures, total political contributions maintained, and outstanding loan balances.

III. Facts Supported by Credible Evidence

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

1. The respondent is Walker County Commissioner, Precinct 1.

Total Political Contributions Maintained

2. The complaint alleged that the respondent failed to disclose total political contributions maintained on four campaign finance reports. The allegations arose from the respondent's January 2008 semiannual report, 30-day pre-election report for the November 2008 general election, 8-day pre-election report for the November 2008 general election, and January 2009 semiannual report. On each report, the respondent left the field for total political contributions maintained blank. In response to the complaint, the respondent filed corrections to each report and wrote "None" or "\$0" in each field for total political contributions maintained. There is no evidence that the respondent maintained political contributions that were not disclosed.

Political Contributions and Expenditures

3. The complaint alleged that the respondent failed to properly disclose political contributions and expenditures on five campaign finance reports.
4. The respondent's January 2008 semiannual report disclosed no amounts in the fields for total political contributions and total political expenditures of \$50 or less. The report also failed to disclose the full addresses of two persons to whom political expenditures were made in the amount of \$778.73. The respondent filed a corrected report and disclosed \$0 as the correct amount of total political expenditures and total political contributions of \$50 or less. The respondent also disclosed the full addresses of the two persons to whom political expenditures were made.
5. The respondent's July 2008 semiannual report disclosed \$750 in total political contributions from one contributor. The respondent failed to provide the date of this contribution. The respondent filed a corrected report and disclosed the date of the contribution.
6. The respondent's 30-day pre-election report for the November 2008 general election disclosed no amount in total political expenditures of \$50 or less. The report also failed to disclose the full address of one person to whom a political expenditure was made in the amount of \$141.32. The complaint also alleged that the respondent failed to disclose the actual vendor payee of a political expenditure for \$150. The respondent filed a corrected report and disclosed \$40 in total political expenditures of \$50 or less, the full address of the person to whom the political expenditure was made, and provided additional information regarding the vendor of the products or services purchased for \$150 (although the original payee was correct).
7. The respondent's 8-day pre-election report for the November 2008 general election disclosed no amount of total political expenditures of \$50 or less. The respondent filed a corrected report and wrote "None" in the field for total political expenditures of \$50 or less.
8. The respondent's January 2009 semiannual report disclosed no amount in the field for total political contributions and total political expenditures of \$50 or less. The report also did not disclose the purpose of one political expenditure for \$100. The respondent filed a corrected report and disclosed \$0 as the correct amounts of total political contributions and total political expenditures of \$50 or less. The respondent also disclosed the purpose of the \$100 political expenditure as "campaign fliers."

Political Contributions from Corporations

9. Based on the respondent's 8-day pre-election report for the November 2008 general election, the complaint alleged that the respondent accepted a political contribution from

a corporation. The report disclosed one political contribution totaling \$200 from Rafter S. Co. located in Huntsville, Texas. The complaint alleged this was a corporate contribution. In response to the complaint, the respondent provided an affidavit from the owner of Rafter S. Co. stating that the company is not a corporation but a private company. Records of the Texas Secretary of State show incorporated entities with a similar name, but none are in Huntsville and some are no longer in existence.

Timely Filing of Report

10. The complaint alleged that the respondent failed to timely file his 30-day pre-election report for the November 2008 general election. The report is date stamped as received by the Walker County Clerk on October 6, 2008. In response to the complaint, the respondent stated that the report was timely received because the filing deadline was extended because of the weekend.

Outstanding Loans

11. The complaint alleged that the respondent failed to disclose the total principal amount of all outstanding loans as of the last day of the reporting period on four campaign finance reports. The allegations address the respondent's January 2008 semiannual report, 30-day pre-election report for the November 2008 general election, 8-day pre-election report for the November 2008 general election, and January 2009 semiannual report. On each report, no amount was entered in the field for total principal amount of all outstanding loans. There is no evidence that the respondent had outstanding loans that were required to be disclosed. The respondent filed corrections to each report at issue and entered \$0 or wrote the word "None" in the field for total principal amount of all outstanding loans.

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. Each report must include as of the last day of the 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).
2. The respondent filed corrections to the reports at issue to disclose the correct amounts of total political contributions maintained as of the last day of the reporting period as \$0. The original reports left blank the space to disclose this information. There is no evidence that the respondent maintained political contributions that were not disclosed. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(8) of the Election Code.

Political Contributions and Expenditures

3. 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).
4. 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).
5. Each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. ELEC. CODE § 254.031(a)(5). The report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
6. The respondent filed corrections to the reports at issue to disclose the correct amounts of political contributions and expenditures, the dates on which they were received, and the purposes and payees of each political expenditure. The allegations related to failure to disclose the total amount of political contributions and total amount of political expenditures of \$50 or less were based on the fact that the respondent left the space used to report those totals blank on the reports at issue. In all instances, except one that was corrected to disclose \$40 in political expenditures, there were no political contributions or political expenditures that were required to be reported in those categories. Therefore, with respect to those totals, there is credible evidence of technical or *de minimis* violations of sections 254.031(a)(5) and 254.031(a)(6) of the Election Code. With respect to the allegations that the respondent failed to include complete information for certain political contributions and political expenditures, there is credible evidence of violations of sections 254.031(a)(1) and 254.031(a)(3) of the Election Code with respect to the purpose of a political expenditure, addresses of payees, and the date of a political contribution, and credible evidence of no violation with respect to the \$150 expenditure.

Political Contributions from Corporations

7. 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.
8. 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.

9. 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.
10. The contributor in question was not a corporation. Therefore, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code.

Timely Filing of Report

11. 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).
12. 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. 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.* § 254.064(b).
13. 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. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.064(c).
14. Although the respondent's 30-day pre-election report for the November 2008 general election was not received until October 6, 2008, the report was timely filed because the deadline was extended to October 6, 2008. Therefore, there is credible evidence of no violation of section 254.064 of the Election Code.

Outstanding Loan Balances

15. 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).
16. The respondent filed corrections to the reports at issue to disclose \$0 or "None" as the total principal amount of all outstanding loans. At the time the original reports were filed, the respondent did not include this information. However, there is no evidence that the respondent accepted any loans that required disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(2) of the Election Code.

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 each campaign finance report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. The respondent acknowledges that 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. The respondent also acknowledges that 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. The respondent acknowledges that each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. The respondent also acknowledges that the report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The respondent acknowledges that each report must include as of the last day of the 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 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. No 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 no civil penalty for the violations described under sections III and IV.

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-2909218.

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

Burnice J. Gaines, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director