

TEXAS ETHICS COMMISSION

IN THE MATTER OF
WILLIAM L. GULLEY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3100102

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-3100102. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031 of the Election Code, and section 20.231 of the Ethics Commission Rules, credible evidence of a technical or *de minimis* violation of section 254.036 of the Election Code and section 571.1242 of the Government Code, and insufficient evidence of a violation of section 254.031 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 failed to properly report political contributions, political expenditures, and outstanding loans on multiple campaign finance reports, failed to properly notarize the affidavit on a July 2009 semiannual campaign finance report, and failed to properly complete a designation of final report form.

III. Facts Supported by Credible Evidence

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

1. The complaint alleged that the respondent:
 - Disclosed the incorrect amount of total political contributions maintained on his 8-day pre-election report for the May 2009 election and July 2009 semiannual report (also marked as a final report).

- Failed to disclose the correct amount of total outstanding loans on his 30-day and 8-day pre-election reports for the May 2009 election and July 2009 semiannual report (also marked as a final report).
 - Disclosed the incorrect amount of total political contributions on his 8-day pre-election report for the May 2009 election and July 2009 semiannual report (also marked as a final report).
 - Failed to properly itemize political expenditures on his 30-day and 8-day pre-election reports for the May 2009 election and July 2009 semiannual report (also marked as a final report).
 - Failed to properly notarize his July 2009 semiannual report (also marked as a final report).
 - Failed to properly itemize political contributions on his July 2009 semiannual report (also marked as a final report).
 - Failed to properly include a final report statement on his July 2009 semiannual report (also marked as a final report).
2. On February 25, 2009, the respondent filed his campaign treasurer appointment with the City of Huntsville.

30-Day Pre-Election Report

3. On April 9, 2009, the respondent filed a 30-day pre-election report for the May 9, 2009, election, covering from February 25, 2009, through March 30, 2009.
4. The report disclosed on its totals page:
- \$50 in total political contributions of \$50 or less;
 - \$250 in total political contributions;
 - \$78.67 in total political expenditures of \$50 or less;
 - \$4,369.09 in total political expenditures;
 - \$250 in total political contributions maintained; and
 - \$4,119.09 in total outstanding loans.
5. Although the report disclosed \$4,369.09 in total political expenditures, the report did not itemize any of those political expenditures. The report itemized multiple loans from the respondent, totaling approximately \$4,290. The report also disclosed \$78.69 in unitemized loans.

8-Day Pre-Election Report

6. On May 1, 2009, the respondent filed an 8-day pre-election report for the May 9, 2009, election, covering from March 31, 2009, through April 30, 2009.
7. The report disclosed on its totals page:
 - \$1,964 in total political contributions of \$50 or less;
 - \$1,225 in total political contributions;
 - \$78.67 in total political expenditures of \$50 or less;
 - \$7,401.30 in total political expenditures;
 - \$3,189 in total political contributions maintained; and
 - \$4,244.19 in total outstanding loans.
8. Although the report disclosed \$7,401.30 in total political expenditures, the report did not itemize any of those political expenditures. The report did itemize multiple loans from the respondent, totaling approximately \$3,030. The report also itemized \$975 in political contributions. However, the cover sheet of the report disclosed \$1,225 in total political contributions, as opposed to \$2,939 (\$1,964 plus \$975).

July 2009 Semiannual Report

9. It is unclear when the respondent filed his July 2009 semiannual report because it was not signed or date stamped by the local filing authority (although it was on file with them), and did not include a date on the signature page. The report covered May 1, 2009, through July 13, 2009. The report was also marked as a final report on cover sheet page 1, but did not include Form C/OH-FR.
10. The report disclosed on its totals page:
 - \$2,114 in total political contributions of \$50 or less;
 - \$1,225 in total political contributions;
 - \$78.67 in total political expenditures of \$50 or less;
 - \$7,513.30 in total political expenditures;
 - \$3,339 in total political contributions maintained; and
 - \$4,174.30 in total outstanding loans.
11. Although the report disclosed \$7,513.30 in total political expenditures, and \$1,225 in total political contributions, the report did not itemize any political contributions or political expenditures. The report did itemize one \$112 loan from the respondent.

IV. Findings and Conclusions of Law

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

Proper Reporting of Political Contributions and Expenditures

1. 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). The report must also include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2). The report must also 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). Each 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). Each report must also include as of the last day of a reporting period for which the person is required to file a report, 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).

Itemized Political Expenditures

2. The complaint alleged that the respondent failed to properly itemize political expenditures on his 30-day and 8-day pre-election reports for the May 2009 election and July 2009 semiannual report (also marked as a final report). The respondent did not itemize any political expenditures on the reports at issue. The evidence indicates that approximately \$4,290 in political expenditures on his 30-day pre-election report, approximately \$3,030 in political expenditures on his 8-day pre-election report, and \$112 on his July 2009 semiannual report were for expenditures that exceeded \$50 to a payee during the periods covered by those reports. The respondent failed to itemize those expenditures. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.

Total Amount of Outstanding Loans

3. Ethics Advisory Opinion No. 349 (1996) found that “a candidate or officeholder is not required to include political expenditures from personal funds under ‘aggregate principal amount of all outstanding loans as of the last day of the reporting period.’” However the commission also stated that “a filer who reported political expenditures from personal funds as loans may have understandably included such expenditures under ‘aggregate principal amount of all outstanding loans as of the last day of the reporting period’ in a report filed under title 15. We would not consider such a report to be incorrect or false.” Ethics Advisory Opinion No. 349 (1996), n.1.
4. The complaint alleged that the respondent failed to disclose the correct amount of outstanding loans on his 30-day and 8-day pre-election reports for the May 2009 election and July 2009 semiannual report (also marked as a final report). Except for the disclosure of \$78.67 in unitemized loans, the loans that were disclosed by the respondent on the reports at issue indicate they were political expenditures made from personal funds. Including that amount in the outstanding loan total section of the reports at issue was not incorrect. The source of the \$78.67 in unitemized loans, and whether or not it was repaid, is not known. Therefore, there is insufficient evidence of a violation of section 254.031(a)(2) of the Election Code.

Total Political Contributions

5. The complaint alleged that the respondent disclosed the incorrect amount of total political contributions on his 8-day pre-election report for the May 2009 election and July 2009 semiannual report.
6. The respondent disclosed \$1,225 in total political contributions on his 8-day pre-election report for the May 2009 election. The report also disclosed \$1,964 in total political contributions of \$50 or less. The report only itemized \$975 in political contributions on Schedule A of the report. Total political contributions on a campaign finance report is determined by adding total political contributions of \$50 or less with the amount of political contributions itemized on Schedule A during the period covered by the report. It appears that the respondent added the amount of total political contributions disclosed on his 30-day pre-election report for the May 2009 election (\$250) with the total amount of political contributions itemized on his 8-day pre-election report for the May 2009 election (\$975) to determine the amount of total political contributions on that report (\$1,225). As a result, the respondent did not report the correct amount for total political contributions on the report. Therefore, as to the respondent’s 8-day pre-election report for the May 2009 election, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code.

7. The respondent disclosed \$1,225 in total political contributions on his July 2009 semiannual report. The report also disclosed \$2,114 in total political contributions of \$50 or less. The report did not itemize any political contributions on Schedule A. It appears that the totals on the respondent's July 2009 semiannual report were cumulative totals. Total political contributions on a campaign finance report is determined by adding total political contributions of \$50 or less with the amount of political contributions itemized on Schedule A during the period covered by the report. The respondent failed to use that method to determine his total political contributions. Therefore, as to the respondent's July 2009 semiannual report for the May 2009 election, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code.

Total Political Contributions Maintained

8. The complaint alleged that the respondent disclosed the incorrect amount of total political contributions maintained on his 8-day pre-election report for the May 2009 election and July 2009 semiannual report (also marked as a final report). The amount of political contributions maintained cannot necessarily be calculated by looking at the face of a report, and the evidence is insufficient to show that the disclosed amounts were incorrect. Therefore, there is insufficient evidence of a violation of section 254.031(a)(8) of the Election Code.

Itemized Political Contributions

9. The complaint alleged that the respondent failed to properly itemize political contributions on his July 2009 semiannual report.
10. The respondent disclosed \$1,225 in total political contributions on his July 2009 semiannual report, but detailed no political contributions on Schedule A. As previously stated, it appears that the totals for political contributions disclosed on the respondent's July 2009 semiannual report were cumulative totals. Using that method to calculate totals on a campaign finance report is incorrect. However, it does not appear that the respondent accepted any political expenditures exceeding \$50 from an individual contributor during the period covered by the report at issue. There is insufficient evidence of a violation of section 254.031(a)(1) of the Election Code.

Requirement to Include a Completed Affidavit in a Campaign Finance Report

11. Each campaign finance report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, under penalty of perjury, that the accompanying report is true

and correct and includes all information required to be reported by me under Title 15, Election Code.” ELEC. CODE § 254.036(h).

12. The complaint alleged that the respondent failed to include a properly notarized affidavit with his July 2009 semiannual report. The Election Code does not specifically define “affidavit,” but the generally accepted definition includes the requirement that the facts being sworn to be done so before an officer qualified to administer an oath. The affidavit accompanying the respondent’s July 2009 semiannual report was not properly executed by the respondent. It did not contain a notary stamp or seal, and only contained the signature of the respondent. Nevertheless, section 254.036 of the Election Code also provides that a campaign finance report is considered to be under oath even if the affidavit is defective. Therefore, with regard to the respondent’s July 2009 semiannual report, there is credible evidence of a technical violation of section 254.036(h) of the Election Code.

Completing a “Designation of Final Report”

13. A final report must include a final report statement (contained on Ethics Commission Form C/OH-FR) that includes the information required by section 20.231 of the Ethics Commission Rules.
14. The complaint alleged that the respondent failed to properly complete his final report statement on his July 2009 semiannual report that was also marked as a final report. The respondent did not include form C/OH-FR with that report. Form C/OH-FR contains statements required by section 20.231 of the Ethics Commission Rules to be signed by the respondent. The respondent failed to include that information. Therefore, there is credible evidence of a violation of section 20.231 of the Ethics Commission Rules.

Timely Response to Notice of a Sworn Complaint

15. A respondent must respond to the notice of a Category One violation not later than the 10th business day after the date the respondent receives the notice. Failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. GOV’T CODE § 571.1242(a)(c).
16. The United State Postal Service website shows that the notice of this complaint was delivered on January 19, 2010. The notice stated that the respondent was required to respond within 10 business days (February 2, 2010) from receipt of the notice. The respondent’s response was postmarked on February 3, 2010, and received on February 5, 2010. The respondent failed to timely respond. There is credible evidence of a technical or *de minimis* violation of section 571.1242(a)(c) of the Government 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 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 also acknowledges that each 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 also acknowledges that a final report must include a final report statement (contained on Ethics Commission Form C/OH-FR) that includes the information required by section 20.231 of the Ethics Commission Rules.

The respondent also acknowledges that each campaign finance report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

The respondent also acknowledges that a respondent must respond to the notice of a Category One violation not later than the 10th business day after the date the respondent receives the notice. Failure to respond to a notice of sworn complaint within the time required is a separate Category One violation.

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-3100102.

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

William L. Gulley, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director