

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
THOMAS C. COLE,  
RESPONDENT

§  
§  
§  
§  
§

BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-3100111

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on February 23, 2011, to consider sworn complaint SC-3100111. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.061, and 254.064 of the Election Code, section 20.231 of the Ethics Commission Rules, and section 571.1242 of the Government 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 file a 30-day pre-election report, failed to timely file an 8-day pre-election report, and failed to include required information on an 8-day pre-election report and final report.

### 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:
  - Failed to file a 30-day pre-election report for the May 2009 election.
  - Failed to disclose the campaign treasurer's telephone number on his 8-day pre-election report for the May 2009 election.
  - Failed to timely file his 8-day pre-election report for the May 2009 election.
  - Failed to disclose the total amount of political contributions of \$50 or less on his 8-day pre-election report for the May 2009 election.
  - Disclosed the incorrect amount of total political contributions on his 8-day pre-election report for the May 2009 election.
  - Failed to disclose the total amount of political expenditures of \$50 or less on his 8-day pre-election report for the May 2009 election.

- Disclosed the incorrect amount of total political expenditures on his 8-day pre-election report for the May 2009 election.
  - Failed to disclose the amount of total political contributions maintained on his 8-day pre-election report for the May 2009 election.
  - Failed to disclose the total amount of outstanding loans on his 8-day pre-election report for the May 2009 election.
  - Failed to properly itemize political expenditures exceeding \$50 in the aggregate during the reporting period on his 8-day pre-election report for the May 2009 election.
  - Failed to fully disclose the address of five political contributions on his 8-day pre-election report for the May 2009 election.
  - Failed to disclose the purpose of six political expenditures on his 8-day pre-election report for the May 2009 election.
  - Failed to timely report political expenditures on his 8-day pre-election report for the May 2009 election.
  - Failed to complete a final report statement on his 8-day pre-election report for the May 2009 election.
2. On February 16, 2009, the respondent filed his campaign treasurer appointment with the City of Huntsville.
3. According to the records of the City of Huntsville the respondent has not filed the 30-day pre-election report for the May 2009 election.

### **8-Day Pre-Election Report**

4. On May 1, 2009, the respondent filed an 8-day pre-election report for the May 2009 election. The report did not disclose a period covered. The report also indicated that it was a final report, but did not include Form C/OH-FR (used to properly file a final report). The 8-day pre-election report for the May 2009 election was due on May 1, 2009.
5. The report disclosed on its totals page:
- A blank space for total political contributions of \$50 or less
  - \$550 in total political contributions
  - A blank space for total political expenditures of \$50 or less
  - \$972.58 in total political expenditures
  - A blank space for total political contributions maintained
  - A blank space for outstanding loans
6. The report itemized seven political contributions. Of those seven contributions, five did not disclose an address and two were dated after the date that the report was filed. The itemized political contributions totaled approximately \$750.

7. The report also itemized six political expenditures. The itemized political expenditures totaled approximately \$2,160. The report did not disclose a purpose for any of the political expenditures. The entries for each expenditure also disclosed multiple dates.
8. On February 4, 2010, staff mailed notice of this sworn complaint by delivery confirmation. According to United States Postal Service Records, the notice was delivered to the respondent on February 8, 2010. To date the respondent has not submitted a response to this complaint.

#### **IV. Findings and Conclusions of Law**

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

##### **Campaign Treasurer Telephone Number**

1. Each campaign finance report by a candidate must include the campaign treasurer's name, residence or business street address, and telephone number. ELEC. CODE § 254.061(2).
2. The complaint alleged that the respondent failed to disclose the telephone number of his campaign treasurer on his 8-day pre-election report for the May 2010 election. The respondent did not disclose the telephone number of his campaign treasurer on that report. Therefore, there is credible evidence of a violation of section 254.061(2) of the Election Code.

##### **Timely Filing a Campaign Finance Report**

3. In addition to other required reports, 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). 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, as applicable, and continuing through the 40th day before election day. ELEC. CODE § 254.064(b). 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. ELEC. CODE § 254.064(c).
4. The complaint alleged that the respondent failed to file a 30-day pre-election report for the May 2009 election. There were three political contributions totaling approximately \$300 and three political expenditures totaling at least \$550 that fell within the reporting period for the 30-day pre-election report that were instead disclosed on the 8-day pre-election report. The respondent did not file a 30-day pre-election report. Therefore, there is credible evidence of a violation of section 254.064(b) of the Election Code.

5. The complaint also alleged that the respondent failed to timely file the 8-day pre-election report for the May 2009 election. The respondent filed the 8-day pre-election report for the May 2009 election on May 1, 2009, the day the report was due. Therefore, there is credible evidence of no violation of section 254.064(c) of the Election Code.

### **Proper Reporting of Political Contributions and Expenditures**

6. 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 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). 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).
7. The complaint alleged that the respondent failed to disclose the total amount of political contributions and political expenditures of \$50 or less on his 8-day pre-election report for the May 2009 election. On the totals page of the report at issue the respondent did not disclose an amount for total political contributions of \$50 or less or total political expenditures of \$50 or less. Therefore, there is credible evidence of violations of section 254.031(a)(5) of the Election Code.

8. 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. On the report at issue the respondent did not disclose a total for political contributions of \$50 or less, but did disclose \$550 in total political contributions. The respondent itemized on Schedule A approximately \$750 in political contributions (some of which should have been disclosed on a 30-day pre-election report). Therefore, with regard to total political contributions disclosed on 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.
9. The complaint alleged that the respondent disclosed the incorrect amount of total political expenditures on his 8-day pre-election report for the May 2009 election. On the report at issue the respondent did not disclose a total for political expenditures of \$50 or less, but did disclose \$972.58 in total political expenditures. The respondent itemized approximately \$2,160 in political expenditures on the report (some of which should have been disclosed on a 30-day pre-election report). Therefore, with regard to total political expenditures disclosed on 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.
10. The complaint alleged that the respondent failed to disclose the amount of total political contributions maintained on his 8-day pre-election report for the May 2009 election. On the totals page of the report at issue the respondent did not disclose an amount for total political contributions maintained. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.
11. The complaint alleged that the respondent failed to disclose the total amount of outstanding loans on his 8-day pre-election report for the May 2009 election. On the totals page of the report at issue the respondent did not disclose an amount for total principal amount of outstanding loans as of the last day of the reporting period. Therefore, there is credible evidence of a violation of section 254.031(a)(2) of the Election Code.
12. The complaint alleged that the respondent failed to properly itemize political expenditures exceeding \$50 in the aggregate during the reporting period on his 8-day pre-election report for the May 2009 election. On the report at issue, the respondent itemized on Schedule F six political expenditures with multiple dates for each expenditure and what appears to be the total for the expenditures made on those dates. Each campaign finance report is 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 proper way to itemize those expenditures would have been to separate each expenditure by date and disclose the amount, payee, and purpose of each individual expenditure. Although the respondent disclosed dates for the political expenditures, he did not disclose the amount of the expenditure for each date and did not disclose a purpose for any of the expenditures. Some expenditures also appear to have been disclosed on the incorrect report. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.

13. The complaint alleged that the respondent failed to fully disclose the address of five political contributions on his 8-day pre-election report for the May 2009 election. The report at issue itemized seven political contributions. Of those seven contributions, five did not disclose an address. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code.

#### **Complete a Designation of Final Report**

14. 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.
15. The complaint alleged that the respondent failed to properly complete his final report statement on his 8-day pre-election report for the May 2009 election 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.

#### **Response to Notice of a Sworn Complaint**

16. 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).
17. The United States Postal Service website shows that the notice of this complaint was delivered on February 8, 2010. The notice stated that the respondent was required to respond within 10 business days from receipt of the notice. The respondent failed to file the required response. Therefore, there is credible evidence of a violation of section 571.1242 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 by a candidate must include the campaign treasurer's name, residence or business street address, and telephone number.

The respondent also acknowledges that in addition to other required reports, 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. 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, as applicable, and continuing through the 40th day before election day.

The respondent also 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 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. 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. Each report must also 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. 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. 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.

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 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-3100111.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Thomas C. Cole, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director