

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

FRANK L. NOVARK,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31011416

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) held a preliminary review hearing on May 28, 2014, to consider sworn complaint SC-31011416. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.064 of the Election Code 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 did not properly report political contributions, political expenditures, and loans on campaign finance reports, and did not timely file a pre-election 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 an opposed candidate for Walker County Commissioner, Precinct 4, in the November 2, 2010, general election. On December 8, 2009, the respondent filed a campaign treasurer appointment with the Walker County Clerk. He did not elect to follow the modified reporting schedule.

#### Timely Filing of Campaign Finance Report

2. The complaint alleged that the respondent did not timely file an 8-day pre-election report for the November 2, 2010, election. The report was due October 25, 2010. The respondent filed an 8-day pre-election report on November 1, 2010.

**Political Contributions, Loans, and Political Expenditures**

3. The complaint alleged that on the 30-day and 8-day pre-election reports for the November 2010 election the respondent: 1) did not itemize political contributions exceeding \$50 on Schedule A; 2) did not itemize political expenditures exceeding \$50 on Schedule F; 3) did not disclose the total amount of political contributions of \$50 or less, the total amount of political expenditures of \$50 or less, and the total principal amount of all outstanding loans; and 4) disclosed an incorrect amount for total political contributions maintained.
4. The respondent's 30-day pre-election report covered a period beginning January 29, 2010, through October 3, 2010. The cover sheet of the report disclosed \$2,500 for total political contributions, \$2,500 for total political expenditures, and \$2,500 for total political contributions maintained. No political contributions or expenditures were itemized in the report. The fields for total political contributions of \$50 or less, total political expenditures of \$50 or less, and total principal amount of all outstanding loans were left blank.
5. The respondent's 8-day pre-election report covered a period beginning October 4, 2010, through October 25, 2010. The cover sheet of the report disclosed \$2,900 for total political contributions, \$2,900 for total political expenditures, and \$2,900 for total political contributions maintained. No political contributions or expenditures were itemized in the report. The fields for total political contributions of \$50 or less, total political expenditures of \$50 or less, and total principal amount of all outstanding loans were left blank.
6. On December 22, 2010, the respondent filed corrections to the two reports at issue and disclosed \$0 in the fields that were left blank in the original reports. In the 30-day corrected report, he itemized six political contributions totaling \$2,500 and four political expenditures totaling \$2,500. In the 8-day corrected report, he corrected the amounts for total political contributions and total political expenditures to \$400, and he itemized two political contributions totaling \$400 and one political expenditure of \$400. He also corrected the amount for total political contributions maintained to \$0 in both reports.

**Response to a Sworn Complaint**

7. United States Postal Service records show that the notice of this complaint was delivered to the respondent on December 13, 2010. The notice informed the respondent that he was required to respond to the allegations within 10 business days from the date of receipt of the notice and that failure to respond constituted a separate violation for which a separate civil penalty may be assessed. The response to the sworn complaint was due December 28, 2010. The respondent mailed his response to the complaint on January 31, 2011.

#### IV. Findings and Conclusions of Law

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

##### Timely Filing of Campaign Finance Report

1. 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. *Id.* § 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. *Id.* § 254.064(c).
2. The 8-day pre-election report for the November 2010 election was due October 25, 2010. The respondent filed his report on November 1, 2010, which was seven days late. Therefore, there is credible evidence of a violation of section 254.064 of the Election Code.

##### Political Contributions

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. The respondent accepted political contributions from persons that exceeded \$50 during the reporting periods at issue. However, he failed to itemize those contributions when the reports were originally filed. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code regarding both reports at issue.

##### Total Outstanding Loans

5. Each campaign finance report must 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).
6. The respondent filed corrections to the reports at issue to disclose \$0 as the total principal amount of all outstanding loans as of the last day of the reporting periods at issue. At the

time the original reports were filed, the respondent did not include this information and had left this field blank in the totals section of each report at issue. However, there is no evidence that the respondent had accepted any loans that required disclosure. Therefore, with respect to those totals, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(2) of the Election Code.

### **Political Expenditures**

7. Each report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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).
8. The respondent made political contributions that exceeded \$50 during the reporting periods at issue. However, he failed to itemize those expenditures when the reports were originally filed. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code regarding both reports at issue.

### **Total Contributions/Expenditures of \$50 or Less**

9. 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 \$100 (\$50 until September 28, 2011) or less made during the reporting period. ELEC. CODE § 254.031(a)(5).
10. The respondent filed corrections to the reports at issue to disclose \$0 as the amount for total political contributions of \$50 or less and total political expenditures of \$50 or less. At the time the original reports were filed, the respondent did not include this information and had left these fields blank in the totals section of each report at issue. However, there is no evidence that the respondent had accepted any political contributions or made any political expenditures that required disclosure in those categories. Therefore, with respect to those totals, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(5) of the Election Code.

### **Total Political Contributions/Expenditures**

11. Each report must 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).
12. The respondent disclosed incorrect amounts for total political contributions and total political expenditures on the original 8-day pre-election report. The difference between the amounts originally disclosed and the correct amounts is \$2,500. There is credible evidence of violations of section 254.031(a)(6) of the Election Code with respect to the 8-day pre-election report.

**Political Contributions Maintained**

13. Each report must 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).
14. The respondent disclosed an incorrect amount for total political contributions maintained on both reports at issue. He corrected the amount from \$2,500 to \$0 on the 30-day pre-election report and from \$2,900 to \$0 on the 8-day pre-election report. Therefore, with respect to those totals, there is credible evidence of violations of section 254.031(a)(8) of the Election Code.

**Response to a Sworn Complaint**

15. The 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 and 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. United States Postal Service records show that the notice of this complaint was delivered to the respondent on December 13, 2010. The notice informed the respondent that he was required to respond to the allegations within 10 business days from the date of receipt. A response to the sworn complaint was due December 28, 2010. The respondent mailed his response to the complaint on January 31, 2011, which was more than 30 days after the response deadline. Therefore, there is credible evidence of a violation of section 571.1242(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: 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, the full name and address of the person making the contributions, and the dates of the contributions; 2) each report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting

period; 3) each report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made and the dates and purposes of the expenditures; 4) each 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 \$100 (\$50 until September 28, 2011) or less made during the reporting period; 5) each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; 6) 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; 7) 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, and 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; and 8) 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 and 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 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 \$250 civil penalty, contingent on the responding paying the \$250 penalty in full by December 4, 2014. If the \$250 penalty is not paid in full by December 4, 2014 the commission imposes a \$1,500 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-31011416.

AGREED to by the respondent on this \_\_\_\_\_ day of June, 2014.

\_\_\_\_\_  
Frank L. Novark, Respondent

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

Texas Ethics Commission

By: \_\_\_\_\_  
Natalia Luna Ashley, Executive Director