

# TEXAS ETHICS COMMISSION

**IN THE MATTER OF**  
**MICHAEL S. MYERS,**  
**RESPONDENT**

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**BEFORE THE**  
**TEXAS ETHICS COMMISSION**  
**SC-31308142**

## **ORDER and AGREED RESOLUTION**

### **I. Recitals**

The Texas Ethics Commission (Commission) held a preliminary review hearing on November 30, 2015, to consider sworn complaint SC-31308142. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 252.001, 253.031, 254.031, and 254.064 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: 1) did not timely file a campaign treasurer appointment; 2) accepted political contributions and made political expenditures at a time when he did not have a campaign treasurer appointment in effect; 3) did not properly disclose political contributions and political expenditures; 4) did not timely file the 30-day pre-election report for the May 11, 2013, uniform election; 5) did not include on political advertising the required disclosure statement; and 6) represented that he held an elective public office that he did not hold at the time the representations were made by not including the word “for” before the office sought on political advertising.

### **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 in the Allen Independent School District (ISD) Board of Trustees May 11, 2013, uniform election. At issue are the respondent’s 30-day and 8-day pre-election reports for the May 11, 2013, uniform election.

**Campaign Treasurer Appointment**

2. The complaint alleged that the respondent: 1) did not timely file a campaign treasurer appointment (CTA) in connection with the May 11, 2013, uniform election; and 2) accepted political contributions and made political expenditures at a time when a campaign treasurer appointment was not in effect.
3. On February 28, 2013, the respondent submitted to Allen ISD his application for a place on the ballot in the May 11, 2013, uniform election. On May 3, 2013, the respondent filed a CTA with Allen ISD.
4. In response to the complaint, the respondent stated that he had a campaign treasurer and that “timely” was a subjective term. The respondent also stated that he did not begin accepting contributions until after the first filing deadline had passed.
5. Based on the respondent’s campaign finance reports, the respondent disclosed accepting political contributions totaling approximately \$1,570 and making political expenditures totaling approximately \$670 prior to May 3, 2013.

**Full Name and Address of Contributors**

6. The complaint alleged that the respondent did not properly disclose the full name and complete address information for 12 contributors in the 8-day pre-election report for the May 11, 2013, uniform election.
7. The respondent did not disclose street addresses for 12 contributors who made political contributions totaling approximately \$1,570. Five of the contributions totaling \$1,250 exceeded \$50 each in the aggregate. In response to the complaint, the respondent provided a spreadsheet with additional address information for six of the contributors at issue. The respondent stated that he set up a PayPal website to accept contributions and not all of the contributors provided complete address information. The respondent did not file a corrected report.
8. The respondent disclosed a first and last name for all 12 contributors itemized on Schedule A (used to disclose political contributions) of the 8-day pre-election report filed for the May 11, 2013, uniform election.

**Total Political Contributions**

9. The complaint alleged that the respondent disclosed an incorrect amount for total political contributions on the 30-day and 8-day pre-election reports for the May 11, 2013, uniform election. The complaint alleged that the respondent did not include a \$750 in-kind contribution in the total amount of political contributions.
10. The respondent disclosed \$815 in total political contributions on the cover sheet for the 8-day pre-election report for the May 11, 2013, uniform election. The respondent itemized on Schedule A, 10 contributions totaling \$1,415 dated during the reporting period. (Note that the respondent also itemized two contributions totaling \$150 that should have been disclosed on the 30-day pre-election report.) Therefore, the amount of total political contributions disclosed was short by \$600. The respondent did not file corrected reports.

**Timely Filing of 30-day Pre-election Report**

11. The complaint alleged that the respondent did not timely file the 30-day pre-election report for the May 11, 2013, uniform election, in which the respondent was an opposed candidate.
12. The respondent filed his ballot application with Allen ISD on February 28, 2013. The respondent subsequently filed a campaign treasurer appointment with Allen ISD on May 3, 2013, and selected to file reports on a modified reporting schedule. However, the respondent was not eligible for modified reporting because there was less than 30 days until the election when he filed the declaration for modified reporting.
13. The respondent was required to file the 30-day pre-election report for the May 11, 2013, uniform election with Allen ISD by April 11, 2013. The respondent filed the report with Allen ISD on May 3, 2013.

**Disclosure Statement**

14. The complaint alleged that the respondent's campaign signs did not contain a political advertising disclosure statement. The signs stated in relevant part, "Elect Dr. Michael Myers AISD School Board, Vote May 11th." The signs did not contain a political advertising disclosure statement.
15. In response to the complaint, the respondent stated that the signs were donated to the campaign by a third party. Based on the respondent's 8-day pre-election report for the May 11, 2013, uniform election, the respondent disclosed accepting an in-kind contribution valued at \$750 for 250 political advertising signs. During the preliminary review hearing, the respondent provided additional testimony regarding the political advertising signs at issue.

**Misleading Use of Office Title**

16. The complaint alleged that the respondent represented that he held the office of Allen ISD board of trustees, Place 5, by not including the word “for” in political advertising signs. The political advertising signs stated, “Elect Dr. Michael Myers AISD School Board.”
17. In response to the complaint, the respondent stated that the signs were donated to his campaign and that he was not aware of the requirement to include the word “for” on political advertising. During the preliminary review hearing, the respondent provided additional testimony regarding the signs at issue.

**IV. Findings and Conclusions of Law**

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

**Campaign Treasurer Appointment**

1. “Candidate” means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include the filing of an application for a place on the ballot. ELEC. CODE § 251.001(1)(B).
2. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. *Id.* § 252.001.
3. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. *Id.* § 253.031(a).
4. The respondent filed his application for a place on the ballot on February 28, 2013, and was a candidate. The respondent did not file a CTA with Allen ISD until May 3, 2013, 64 days after he filed his ballot application. In addition, credible evidence indicates that the respondent accepted political contributions and made political expenditures prior to filing his CTA. Therefore, there is credible evidence of violations of sections 252.001 and 253.031(a) of the Election Code.

**Full Name and Address of Contributors**

5. Each 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).
6. Regarding five of the contributions at issue totaling \$1,250, the contributions each exceeded \$50 in the aggregate. Thus, the respondent was required to provide the complete address of each contributor, and he did not do so. Therefore, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code with respect to those five contributions.
7. The remaining seven contributions did not each exceed \$50 in the aggregate. Thus, the respondent was not required to provide the complete addresses for those seven contributors. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code with respect to those seven contributions.
8. The respondent disclosed a first and last name for all 12 contributors at issue, and there was no evidence that the full names of the contributors were not properly disclosed. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code with respect to disclosing the full name of those 12 contributors.

**Total Political Contributions**

9. Each campaign finance 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).
10. The respondent did not include an in-kind political contribution totaling \$750 in the amount of total political contributions on the cover sheet of the 8-day pre-election report for the May 11, 2013, uniform election. In addition, the respondent included two political contributions totaling \$150 that were required to be disclosed in the 30-day pre-election report. One of the contributions exceeded \$50 and should have been itemized on Schedule A of the 30-day pre-election report for the May 11, 2013, uniform election. Therefore, there is credible evidence of a violation of sections 254.031(a)(1) and 254.031(a)(6) of the Election Code.

**Timely Filing of 30-day Pre-election Report**

11. 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 and 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).

12. An opposed candidate required to file pre-election reports may file a report under a modified reporting schedule instead if the candidate does not intend to accept political contributions that in the aggregate exceed \$500 or to make political expenditures that in the aggregate exceed \$500 in connection with the election. *Id.* § 254.181(a). To be entitled to file reports under this subchapter, an opposed candidate must file with the campaign treasurer appointment a written declaration of intent not to exceed \$500 in political contributions or political expenditures in the election. *Id.* § 254.182(a).
13. To file under the modified schedule, a candidate must file the declaration required under subsection (c) of this section no later than the 30th day before the first election to which the declaration applies. Ethics Commission Rules § 20.217(e).
14. Although the respondent selected modified reporting on the campaign treasurer appointment, he filed the declaration less than 30 days before the election. Thus, the respondent was not eligible to file under the modified reporting schedule.
15. The respondent was required to file the 30-day pre-election report for the May 11, 2013, uniform election with Allen ISD by April 11, 2013. The respondent filed the report with Allen ISD on May 3, 2013, which was 22 days after the filing deadline. Therefore, there is credible evidence of a violation of section 254.064(b) of the Election Code.

### **Disclosure Statement**

16. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising, and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001(a).
17. The evidence is insufficient to show that the respondent knowingly caused the political advertising at issue to be published or distributed without the required disclosure statement. Therefore, there is insufficient evidence of a violation of section 255.001 of the Election Code.

**Misleading Use of Office Title**

18. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. ELEC. CODE § 255.006(b). For purposes of this section, a person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks and the political advertising or campaign communication states the public office sought but does not include the word “for” in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. *Id.* § 255.006(c).
19. “Campaign communication” means, in pertinent part, a written communication relating to a campaign for election to public office. *Id.* § 251.001(17).
20. The evidence is insufficient to show that the respondent knowingly represented in a campaign communication that he held a public office that he did not hold at the time the representations were made. Therefore, there is insufficient evidence of a violation of section 255.006 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 candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code.

The respondent acknowledges that a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect.

The respondent acknowledges that a 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 acknowledges that each campaign finance report must 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 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 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.

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 nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$250 civil penalty.

The respondent agrees that the Texas Ethics Commission, P. O. Box 12070, Austin, Texas 78711, must receive from the respondent full payment of the \$250 civil penalty no later than November 30, 2016, and agrees to waive any right to a formal hearing related to this sworn complaint. The respondent agrees that if the full amount is not received by November 30, 2016, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

**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-31308142.

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

\_\_\_\_\_  
Michael S. Myers, Respondent

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

Texas Ethics Commission

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