

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SUSAN LOVELL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3140128

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on October 5, 2015, to consider sworn complaint SC-3140128. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of section 254.063 of the Election Code, section 571.1242 of the Government Code, and section 12.52 of the Ethics Commission Rules, 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. Allegation

The complaint alleged that the respondent did not file semiannual campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. During the time in question the respondent was a former at-large city council member for Place 2, City of Houston.

Filing of Campaign Finance Reports

2. The complaint alleged that the respondent did not file the July 2012, January 2013, and July 2013 semiannual campaign finance reports.
3. During the period of time relevant to the complaint, the respondent had an active campaign treasurer appointment on file with the City of Houston City Secretary's office, although the respondent left office in January of 2012. Credible evidence indicates that the respondent never filed a final report terminating her campaign treasurer appointment and filing requirements as a candidate. Therefore, the respondent was required to file the July 2012 semiannual report by the July 16, 2012, deadline (deadline was extended due to a weekend),

the January 2013 semiannual report by the January 15, 2013, deadline, and the July 2013 semiannual report by the July 15, 2013, deadline.

4. In response to the complaint, the respondent sent copies of the three semiannual reports to the Commission. However, the reports were not authenticated by the City of Houston City Secretary's Office. As a city council candidate/officerholder, the respondent was required to file the reports with the City of Houston City Secretary's Office, not the Commission.
5. To date, the respondent has not filed the semiannual reports at issue with the City of Houston City Secretary's Office.

Response to Sworn Complaint

6. Sworn complaint SC-3140128 was filed on February 20, 2014. The Commission sent notices of the sworn complaint to the respondent by delivery confirmation on February 25, 2014, and a second notice on March 12, 2014. Both notices of the sworn complaint were sent by delivery confirmation. According to the United States Postal Service's record of the delivery, the second notice of this complaint was delivered to the respondent on March 14, 2014. The notice informed the respondent that the alleged violations in the sworn complaint were Category One violations, and that a response was required not later than 10 business days from the date the notice was received and that failure to respond constituted a separate violation for which a separate civil penalty may be assessed. Based on the delivery date of the second notice, the respondent was required to respond to the sworn complaint by March 28, 2014.
7. In response, the respondent submitted campaign finance reports that appear to be the three semiannual reports at issue. However, the reports were not filed with the City of Houston City Secretary's office. The respondent did not submit a written response addressing the allegations.

IV. Findings and Conclusions of Law

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

Filing of Campaign Finance Reports

1. A candidate shall file two reports for each year as provided by this section. ELEC. CODE § 254.063(a).
2. The first report shall be filed not later than July 15 and covers the period beginning January 1, 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 subchapter, as applicable, and continuing through June 30. *Id.* § 254.063(b).

3. The second report shall be filed not later than January 15 and covers the period beginning July 1, 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 subchapter, as applicable, and continuing through December 31. *Id.* § 254.063(c).
4. The designation of a report as a final report: (1) relieves the candidate of the duty to file additional reports; and (2) terminates the candidate's campaign treasurer appointment. *Id.* § 254.065(b).
5. "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. *Id.* § 251.001(1). Examples of affirmative action include the filing of a campaign treasurer appointment. *Id.* § 251.001(1)(A).
6. Although the respondent was no longer an officeholder at the time the reports at issue were due, because she still had a campaign treasurer appointment on file with her local filing authority and no final report was filed with the local filing authority to terminate the campaign treasurer appointment, the respondent still had an obligation under the law to file semiannual campaign finance reports as a candidate. The respondent did not file the three semiannual reports at issue. Therefore, there is credible evidence of violations of section 254.063 of the Election Code.

Response to Sworn Complaint

7. If an alleged violation in a sworn complaint is a Category One violation, the respondent must respond to the notice required by section 571.123(b) not later than the 10th business day after the date the respondent received the notice. GOV'T CODE § 571.1242(a)(1). A respondent's failure to timely respond to a sworn complaint is a Category One violation. *Id.* § 571.1242(c).
8. The response required by section 571.1242 of the Government Code must be in writing, admit or deny the allegations set forth in the complaint, and be signed by the respondent. Ethics Commission Rules § 12.52(a).
9. If a respondent does not submit a response within the time period prescribed by section 571.1242 of the Government Code, the Commission may issue an order imposing a civil penalty for failure to file a response. *Id.* § 12.52(b).
10. The respondent was required to submit a response to the Commission by March 28, 2014. Although the respondent submitted campaign finance reports in response, the respondent did not address the allegations. Therefore, there is credible evidence of a violation of section 571.1242(c) of the Government Code and section 12.52 of the Ethics Commission Rules.

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 a candidate shall file two reports each year. The first report shall be filed not later than July 15. The second report shall be filed not later than January 15.

The respondent also acknowledges that a respondent must respond to a notice of a sworn complaint that contains a Category One violation within 10 business days of receiving the notice of the sworn complaint, and failure to respond to a notice of a sworn complaint within the time required is a separate Category One violation.

The respondent also acknowledges that the response required by section 571.1242 of the Government Code must be in writing, admit or deny the allegations set forth in the complaint, and be signed by the respondent. If a respondent does not submit a response within the time period prescribed by section 571.1242 of the Government Code, the commission may issue an order imposing a civil penalty for failure to file a response.

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 \$1,500 civil penalty contingent upon the respondent filing the reports at issue with the City of Houston by November 4, 2015. If the respondent does not file the reports at issue by November 4, 2015, then the Commission imposes a \$2,500 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-3140128.

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

Susan Lovell, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director