

TEXAS ETHICS COMMISSION

IN THE MATTER OF
DAVID W. LINDEMOOD,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31404111

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 29, 2014, to consider sworn complaint SC-31404111. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 253.155 of the Election Code, a law 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 accepted political contributions in excess of the judicial contribution limits.

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 for District Judge, 318th Judicial District, in the March 4, 2014, primary election and will not have an opponent in the November 2014 general election.
2. The 318th Judicial District has a population less than 250,000.
3. The complaint alleged that the respondent accepted political contributions totaling \$11,500 from six married couples that exceeded the contribution limits under the Judicial Campaign Fairness Act (JCFA).

4. The contributions at issue were disclosed in the respondent's January 2014 semiannual report and 30-day pre-election report for the March 4, 2014, primary election. Regarding five of the married couples, the respondent accepted political contributions totaling \$2,000 from each couple, with each spouse contributing \$1,000. Regarding the remaining couple, the respondent accepted political contributions totaling \$1,500, with each spouse contributing \$750.
5. In response to the complaint, the respondent acknowledged accepting the contributions at issue but swore that he did not accept the contributions knowing that they were in excess of the limits under the JCFA. The respondent acknowledged that the contributions at issue were given by married couples, none of which contain individuals who are related to the candidate by consanguinity.

IV. Findings and Conclusions of Law

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

1. A judicial candidate or officeholder may not knowingly accept political contributions from a person that in the aggregate exceed \$1,000 in connection with an election for a judicial district office if the population of the judicial district is less than 250,000. ELEC. CODE § 253.155(a), (b).
2. For purposes of Sections 253.155 and 253.157 of the Election Code, a contribution by the spouse or child of an individual is considered to be a contribution by the individual. *Id.* § 253.158(a).
3. For purposes of a contribution limit prescribed by Section 253.155, 253.157, or 253.160 of the Election Code, and the limit on reimbursement of personal funds prescribed by Section 253.162 of the Election Code, the general primary election and general election for state and county officers are considered to be a single election in which a judicial candidate is involved if the candidate is unopposed in the primary election, or does not have an opponent in the general election whose name is to appear on the ballot. *Id.* § 253.1621(a).
4. For a candidate to whom Section 253.1621(a) of the Election Code applies, each applicable contribution limit prescribed by Section 253.155, 253.157, or 253.160 of the Election Code is increased by 25 percent. A candidate who accepts political contributions from a person that in the aggregate exceed the applicable contribution limit prescribed by Section 253.155, 253.157, or 253.160 of the Election Code but that do not exceed the adjusted limit as determined under this subsection may use the amount of those contributions that exceeds the limit prescribed by Section 253.155, 253.157, or 253.160 of the Election Code only for making an officeholder expenditure. *Id.* § 253.1621(b).

5. In *Osterberg v. Peca*, the Texas Supreme Court considered the meaning of the word “knowingly” in section 253.131(a) of the Election Code. The court in its opinion stated: “A person who knowingly makes or accepts a campaign contribution or makes a campaign expenditure in violation of this chapter is liable for damages as provided by this section.” *Osterberg v. Peca*, 12 S.W.3d 31 (Tex. 2000). The court also stated that the legislature’s intent regarding section 253.131(a) was that “knowingly” refers only to the act of making or accepting a contribution or expenditure and not to whether the contribution or expenditure violated the Election Code. *Id.* at 38. Part of the court’s reasoning was that the legislature had specifically created additional knowledge requirements in other statutes in title 15 of the Election Code but had not done so in section 253.131(a). *Id.* The court also cited section 253.003(b) of the Election Code, which states, “A person may not *knowingly* accept a political contribution *the person knows to have been made in violation of this chapter (emphasis added).*” *Id.* The court held that “knowingly” applies only to whether a person is making a “campaign contribution” or “campaign expenditure” and that it is not necessary to determine whether the person knew they were violating the Election Code. *Id.* at 39.
6. *Osterberg*’s treatment of the word “knowingly” in title 15 of the Election Code supports the conclusion that, under a plain reading of section 253.155(a) of the Election Code, the respondent would have committed a violation if he knowingly accepted a political contribution that happened to be in excess of the JCFA limits, regardless of whether he actually knew that the contribution exceeded the JCFA limits.
7. Since the 318th Judicial District has a population of less than 250,000, the unadjusted contribution limits prohibited the respondent from accepting political contributions from any person that exceeded \$1,000. However, since the respondent does not have an opponent in the general election whose name is to appear on the ballot, the \$1,000 limit is increased to \$1,250. When a judicial candidate accepts a political contribution from a person who is married, the contribution is considered to be a contribution from the person’s spouse for purposes of the contribution limits. Thus, the respondent could not accept more than \$1,250 in the aggregate from a married couple.
8. Credible evidence establishes that the respondent accepted political contributions totaling \$11,500 from six different married couples, each of which made political contributions that in the aggregate exceeded \$1,250. The aggregate amount of the contributions at issue that were made in excess of the limits totaled \$4,000. Therefore, there is credible evidence of violations of section 253.155 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: 1) a judicial candidate or officeholder may not knowingly accept a political contribution from a person that in the aggregate exceeds the statutory limit on contributions; 2) for purposes of the judicial contribution limits, a contribution by the spouse or child of an individual is considered to be a contribution by the individual; and 3) a person who receives a political contribution that exceeds the judicial contribution limits shall return the contribution to the contributor not later than the later of the last day of the reporting period in which the contribution is received or the fifth day after the date the contribution is received. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the commission has determined is 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 violation described under Sections III and IV of this order, and after considering the sanction necessary to deter future violations, the commission imposes a \$400 civil penalty, contingent upon the respondent reimbursing the amount at issue (\$4,000) to the respective contributors by November 29, 2014. If the respondent does not reimburse the amount at issue by November 29, 2014, then the commission imposes a \$4,000 civil penalty. The respondent shall furnish to the commission evidence of the required payments.

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-31404111.

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

David W. Lindemood, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley,
Executive Director