

TEXAS ETHICS COMMISSION

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IN THE MATTER OF § BEFORE THE
§
DONALD J. FLOYD, § TEXAS ETHICS COMMISSION
§
RESPONDENT § SC-31410249

RECEIVED

ORDER
and
AGREED RESOLUTION

24443

FEB 21 2017

Texas Ethics Commission

I. Recitals

The Texas Ethics Commission (Commission) met on October 13, 2016, to consider sworn complaint SC-31410249. 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. Allegations

The complaint alleged that the respondent accepted political contributions in excess of the contribution limits prescribed by sections 253.155 and 253.157 of the Election Code.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful incumbent candidate for District Judge, 172nd Judicial District, in the November 4, 2014, general election. The respondent was unopposed in the March 4, 2014, primary election.
2. The 172nd Judicial District has a population between 250,000 and one million. Because the respondent was unopposed in the primary election, the applicable contribution limit of \$2,500 was increased by 25 percent.

3. The complaint alleged that the respondent accepted political contributions from law firms (law firm one, law firm two, law firm three, and law firm four) and a married couple that were in excess of the contribution limits under the Judicial Campaign Fairness Act (JCFA).
4. The contributions at issue were disclosed in the respondent's 30-day pre-election report for the November 2014 general election and January 2014 semiannual report.

Law Firm Contribution Limits

5. The respondent disclosed accepting a \$15,000 contribution from law firm one on November 6, 2013.
6. The respondent disclosed accepting a \$15,000 contribution from law firm two on November 4, 2013.
7. The respondent disclosed accepting a \$15,000 contribution from law firm three on November 26, 2013.
8. The respondent disclosed accepting a \$5,000 contribution from law firm four on September 22, 2014.
9. Law firm four is a sole proprietorship. The respondent returned \$2,500 of the contribution from law firm four after receiving notice of the sworn complaint. In his response to the complaint, the respondent provided a copy of the check to law firm four.
10. In response to the complaint, the respondent denied violations with regards to all the contributions at issue that were accepted from law firms. The respondent provided copies of letters from law firms one, two and three that purported to allocate each contribution at issue among individual members of the law firms in equal amounts. The letters were dated after the complaint was filed.
11. In response to written questions sent by the Commission, representatives of law firm one, law firm two, and law firm three stated that the contributions were allocated among the lawyers of each law firm before the lump sum contribution from each law firm was made to the respondent and that the lump sum contribution from each law firm was the way each law firm had contributed to judicial races in the past. None of the law firms produced documentation that supported the allocation of contributions among the lawyers of each law firm prior to the contributions being made to the respondent.

Individual Contribution Limits

12. The respondent disclosed accepting a contribution of \$5,000 from a married couple on September 26, 2014.

13. After receiving notice of the complaint, the respondent returned \$2,500 of the contribution from the married couple to the married couple. In his response to the complaint, the respondent provided a copy of the check to the married couple.

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 the prescribed limits in connection with each election in which the person is involved. ELEC. CODE § 253.155(a). The contribution limit is \$2,500 if the population of the judicial district is 250,000 to one million. *Id.* § 253.155(b)(2)(B).
2. "In connection with an election" means with regard to a contribution that is designated in writing for a particular election, the election designated; or with regard to a contribution that is not designated in writing for a particular election or that is designated as an officeholder contribution, the next election for that office occurring after the contribution is made. *Id.* § 254.152(2).
3. A law firm is a "person" for purposes of the Judicial Campaign Fairness Act. Ethics Advisory Opinion No. 342 (1996).
4. 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: (1) is unopposed in the primary election; or (2) does not have an opponent in the general election whose name is to appear on the ballot. ELEC. CODE § 253.162(a).
5. For a candidate to whom section 253.162(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.* § 253.162(b).
6. Subject to Section 253.162 of the Election Code, a judicial candidate or officeholder may not accept a political contribution in excess of \$50 from a person if: (1) the person is a law firm, a member of a law firm, or a general-purpose committee established or controlled by a law firm; and (2) the contribution when aggregated with all political contributions accepted by the candidate or officeholder from the law firm, other members of the law firm, or a general-purpose committee established or controlled by the law firm

in connection with the election would exceed six times the applicable contribution limit under Section 253.155 of the Election Code. *Id.* § 253.157(a).

7. "Member" means a partner, associate, shareholder, employee, or person designated "of counsel" or "of the firm." *Id.* § 253.157(e).
8. 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. ELEC. CODE § 253.158(a).
9. The population of the 172nd Judicial District is between 250,000 and one million. Because the respondent was unopposed in the primary election, the applicable contribution limit of \$2,500 was increased by 25 percent. Therefore, the respondent was subject to a \$3,125 contribution limit per individual contributor. Additionally, the respondent was prohibited from accepting political contributions in excess of \$50 from a law firm or member of a law firm if he had already accepted \$18,750 in political contributions from the law firm and all of its members.
10. With regard to the \$15,000 contribution accepted from law firm one, the respondent accepted \$11,875 in excess of the individual contribution limit. With regard to the \$15,000 contribution accepted from law firm two, the respondent accepted \$11,875 in excess of the individual contribution limit. With regard to the \$15,000 from law firm three, the respondent accepted \$11,875 in excess of the individual contribution limit. Therefore, there is credible evidence of violations of section 253.155 of the Election Code with regard to those contributions.
11. With regard to the \$5,000 contribution accepted from law firm four, the respondent accepted \$1,875 in excess of the individual contribution limit. Therefore, there is credible evidence of a violation of section 253.155 of the Election Code with regard to that contribution.
12. None of the contributions at issue, when aggregated with all political contributions accepted by the respondent from a law firm, other members of a law firm, or a general purpose committee established or controlled by a law firm in connection with the election exceeded \$18,750, which is six times the applicable contribution limit under sections 253.155 and 253.157 of the Election Code. Therefore, there is credible evidence of no violation of section 253.157 of the Election Code.
13. With regard to the \$5,000 contribution accepted from the married couple, the respondent accepted \$1,875 in excess of the individual contribution limit. Therefore, there is credible evidence of a violation of section 253.155 of the Election Code with regard to this contribution.
14. The total amount of political contributions accepted by the respondent in excess of the contribution limits is \$39,375 (note that the respondent returned \$5,000 of that amount to two contributors after receiving notice of the complaint).

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; and 2) 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 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 of this order and after considering the sanction necessary to deter future violations, the Commission imposes a \$3,937.50 civil penalty, contingent upon the respondent reimbursing the amount at issue (\$34,375) to the respective contributors by February 1, 2018. If the respondent does not reimburse the amount at issue by February 1, 2018, then the Commission imposes a \$38,312.50 civil penalty. The respondent shall furnish to the Commission evidence of the returned 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 SC31410249.

AGREED to by the respondent on this 25th day of January 2017.

Donald J. Floyd
Donald J. Floyd, Respondent

EXECUTED ORIGINAL received by the Commission on: February 21, 2017

Texas Ethics Commission

By: Seana Willing
~~Jan Steusloff, Interim Executive Director~~
Seana Willing