

TEXAS ETHICS COMMISSION

IN THE MATTER OF
KENNETH R. TIMMONS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31511169

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on August 15, 2016, to consider sworn complaint SC-31511169. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.063 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 campaign finance reports; and 2) did not cover the correct reporting periods in campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent is the County Commissioner, Precinct 2, for Angelina County, and has served in that position for five consecutive terms.
2. The complaint was filed in connection with the 2014 election cycle in which the respondent was opposed. The complaint alleged that the respondent did not timely file five campaign finance reports and did not cover the correct reporting period in five campaign finance reports.

15-Day Report After Campaign Treasurer Appointment

3. The complaint alleged that the respondent, as an officeholder without a campaign treasurer appointment on file, did not file a campaign finance report within 15 days after filing a campaign treasurer appointment.
4. According to records on file with Angelina County, the respondent filed a campaign treasurer appointment for the 2014 election on November 7, 2013. On February 2, 2010, the respondent filed a final report covering the period from January 4, 2010, through March 2, 2010. Therefore, the respondent did not have a campaign treasurer appointment on file when he filed the campaign treasurer appointment on November 7, 2013.
5. The respondent was an officeholder during all periods of time and would have been required to file a campaign finance report no later than 15 days after he filed the campaign treasurer appointment on November 7, 2013, unless the respondent did not accept political contributions exceeding \$500 or make political expenditures exceeding \$500 during the period from March 3, 2010, through November 6, 2013. In response to the complaint, the respondent stated that he did not have any activity during that period.

Timely Filing of Campaign Finance Reports

6. The complaint alleged that the respondent did not timely file four campaign finance reports: the 30-day and 8-day pre-election reports for the November 4, 2014, general election and the January and July 2015 semiannual reports.

Pre-election reports

7. The respondent was an opposed candidate for County Commissioner, Precinct 2, Angelina County, in the November 4, 2014, general election. The respondent did not elect to file on the modified reporting schedule when he filed his campaign treasurer appointment on November 7, 2013. The respondent was therefore required to file a 30-day pre-election report by October 6, 2014, and an 8-day pre-election report by October 27, 2014. According to records on file with Angelina County, the respondent filed the 30-day pre-election report on October 10, 2014 (four days late), and the 8-day pre-election report on October 28, 2014 (one day late).
8. The 30-day pre-election report disclosed the following totals:
 - \$0 in total political contributions of \$50 or less, unless itemized;
 - \$0 in total political contributions;
 - \$117.70 in total political expenditures of \$100 or less, unless itemized;

- \$117.70 in total political expenditures;
 - \$929.11 in total political contributions maintained; and
 - \$2,000 in total principal amount of all outstanding loans.
9. The 8-day pre-election report disclosed the following totals:
- \$0 in total political contributions of \$50 or less, unless itemized;
 - \$0 in total political contributions;
 - \$493.43 in total political expenditures of \$100 or less, unless itemized;
 - \$493.43 in total political expenditures;
 - \$435.68 in total political contributions maintained; and
 - \$2,000 in total principal amount of all outstanding loans.

Semiannual reports

10. The complaint alleged that the respondent did not file January and July 2015 semiannual reports. The respondent filed a campaign treasurer appointment on November 7, 2013. On December 3, 2014, the respondent filed a report that was marked as a final report. The report covered the period from October 27, 2014, through November 14, 2014. Although the report was marked as a final report, the report did not contain the “designation of final report” page. Therefore, the respondent did not properly file a final report to terminate his campaign treasurer appointment after the November 2014 general election and was required to continue filing semiannual campaign finance reports. The respondent was required to file the January 2015 semiannual report by January 15, 2015, and the July 2015 semiannual report by July 15, 2015.
11. In response to the complaint, the respondent filed another final report covering the period from November 15, 2014, through June 7, 2016. The report covered the periods that were required to be covered by the January and July 2015 semiannual reports at issue.

Reporting Periods

12. The complaint alleged that the respondent did not disclose in five campaign finance reports the correct period covered. The periods disclosed by the respondent, along with the correct periods that were required to be disclosed, are as follows (note that the respondent did not have any gaps in the periods covered):
- January 2014 semiannual report covered November 12, 2013, through December 31, 2013 (report should have covered the period starting November 7, 2013, when the respondent filed a campaign treasurer appointment)

- 30-day pre-election report for the March 4, 2014, primary election covered December 31, 2013, through February 3, 2014 (report should have covered the period January 1, 2014, through January 23, 2014)
- 8-day pre-election report for the March 4, 2014, primary election covered February 3, 2014, through February 24, 2014 (report should have covered the period January 24, 2014, through February 22, 2014)
- July 2014 semiannual report covered February 24, 2014, through June 30, 2014 (report should have covered the period starting February 23, 2014)
- 30-day pre-election report for the November 4, 2014, general election covered June 30, 2014, through October 4, 2014 (report should have covered the period July 1, 2014, through September 25, 2014)

IV. Findings and Conclusions of Law

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

15-Day Report After Campaign Treasurer Appointment

1. An officeholder who appoints a campaign treasurer shall file a report as provided by this section. ELEC. CODE § 254.094(a). The report covers the period beginning the first day after the period covered by the last report required to be filed under this chapter or the day the officeholder takes office, as applicable, and continuing through the day before the date the officeholder's campaign treasurer is appointed. *Id.* § 254.094(b). The report shall be filed not later than the 15th day after the date the officeholder's campaign treasurer is appointed. *Id.* § 254.094(c).
2. If at the end of any reporting period prescribed by this subchapter an officeholder who is required to file a report with an authority other than the commission has not accepted political contributions that in the aggregate exceed \$500 or made political expenditures that in the aggregate exceed \$500, the officeholder is not required to file a report covering that period. *Id.* § 254.095.
3. If a candidate expects no reportable activity in connection with the candidacy to occur after the period covered by a report filed under this subchapter, the candidate may designate the report as a "final" report. *Id.* § 254.065(a). The designation of a report as a final report: (1) relieves the candidate of the duty to file additional reports under this subchapter, except

as provided by Subsection (c); and (2) terminates the candidate's campaign treasurer appointment. *Id.* § 254.065(b).

4. Credible evidence indicates that the respondent did not accept political contributions exceeding \$500 or make political expenditures exceeding \$500 during the period required to be covered by the 15-day after report. Therefore, there is credible evidence of no violation of section 254.094 of the Election Code.

Timely Filing of Campaign Finance Reports

5. A candidate shall file two reports for each year as provided by this section. ELEC. CODE § 254.063(a). 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).
6. 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. *Id.* § 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).
7. A final report must contain the following: if the candidate is an officeholder, a statement that the officeholder is aware that he or she remains subject to filing requirements applicable to an officeholder who does not have a campaign treasurer appointment on file. Ethics Commission Rules § 20.231(7).

Pre-election reports

8. The respondent was an opposed candidate for County Commissioner, Precinct 2, Angelina County, in the November 4, 2014, general election. The respondent did not elect to file on the modified reporting schedule when he filed his campaign treasurer appointment on November 7, 2013. The respondent was therefore required to file a 30-day pre-election report by October 6, 2014, and an 8-day pre-election report by October 27, 2014. The respondent filed the 30-day pre-election report on October 10, 2014 (four days late), and the 8-day pre-election report on October 28, 2014 (one day late). Therefore, there is credible evidence of violations of section 254.064 of the Election Code.

Semiannual reports

9. The respondent filed a campaign treasurer appointment on November 7, 2013. On December 3, 2014, the respondent filed a report that was marked as a final report. Although the report was marked as a final report, the report did not contain the “designation of final report” page. Therefore, the respondent did not properly file a final report to terminate his campaign treasurer appointment and was required to continue filing semiannual reports. The respondent was required to file the January 2015 semiannual report by January 15, 2015, and the July 2015 semiannual report by July 15, 2015. The respondent filed the reports at issue in response to the complaint on June 7, 2016. Therefore, there is credible evidence of violations of section 254.063 of the Election Code.

Reporting Periods

10. A candidate shall file two reports for each year as provided by this section. ELEC. CODE § 254.063(a). The first report shall be filed not later than July 15. The report 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). The second report shall be filed not later than January 15. The report 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).
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. *Id.* § 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. Regarding the five reports at issue, the respondent did not cover the periods of time as required by the Election Code. However, the respondent did not leave any gaps in the periods covered and in some instances the respondent disclosed more activity than was required. The errors were not misleading and did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of sections 254.063 and 254.064 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 candidate shall file two reports for each year. 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. 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; and 2) 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 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 covers the period beginning the 39th day before election day and continuing through the 10th day before election day.

The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes certain 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.

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-31511169.

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

Kenneth R. Timmons, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director