

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOSEPH "JOEY" HERALD,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3180107

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on December 13, 2018, to consider sworn complaint SC-3180107. A quorum of the Commission was present. The Commission determined that there is credible evidence of a violation of section 20.205 of the Ethics Commission Rules, and credible evidence of a technical or *de minimis* violation of section 254.091 of the Election Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleged that the respondent: 1) did not properly disclose political contributions and/or loans; 2) did not properly disclose the title of the "office held" in the January 2016 and January 2017 semiannual reports as required by section 254.091 of the Election Code; 3) did not disclose the title of the "office sought" on a campaign treasurer appointment as required by section 20.205 of the Ethics Commission Rules; and 4) did not properly transfer his campaign treasurer appointment as required by section 252.010 of the Election Code.

III. Findings and Conclusions of Law

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

1. The respondent is a former Councilmember of the City of Allen who is a current candidate for Collin County Commissioner, Precinct 2, in the March 6, 2018, primary election.

Disclosure of Political Contributions and Loans

2. The complaint alleged that the respondent did not disclose political contributions and/or loans in his campaign finance reports. The respondent's January 2016 semiannual report

disclosed \$3,000 in total political contributions maintained, but only \$700 in political contributions. His previous report disclosed \$0 in total political contributions maintained. In response to the complaint, the respondent admitted that he did not disclose a \$2,300 personal loan in his July 2015 semiannual report.

3. Each report filed 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).
4. A candidate or officeholder who deposits personal funds in an account in which political contributions are held shall report the amount of personal funds deposited as a loan. *Id.* § 253.0351(c).
5. There is credible evidence that the respondent did not disclose a \$2,300 personal loan in the July 2015 semiannual report. However, the complaint was filed on January 12, 2018. The statute of limitations for a reporting violation is two years. Ethics Commission Rules § 12.5. Therefore, any possible violations regarding the July 2015 semiannual campaign finance report fall outside of the statute of limitations.

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6. The complaint also alleged that the respondent did not properly disclose the title of his "office held" in the January 2017 semiannual report; and did not disclose the title of his "office sought" on the campaign treasurer appointment filed with Collin County.
7. In response to the complaint, the respondent admitted these violations. Records on file with the City of Allen and Collin County confirm the respondent disclosed "City Council" and did not include "Place 3" along with his office held in the January 2016 and January 2017 semiannual reports, and the respondent left blank the filed for disclosing the title of the "office sought" in the campaign treasurer appointment filed with Collin County on November 30, 2017.
8. Each report by an officeholder must include the officeholder's full name and address and the office held. *Id.* § 254.091(1).
9. Each candidate's campaign treasurer appointment shall include the office sought by the candidate making the appointment, if known. Ethics Commission Rules § 20.205(3).
10. There is credible evidence of technical or *de minimis* violations of section 254.091(1) of the Election Code and credible evidence of a violation of section 20.205(3) of the Ethics Commission Rules.

Transfer of Campaign Treasurer Appointment

11. The complaint also alleged that the respondent did not properly transfer his campaign treasurer appointment from the City of Allen to Collin County.
12. If a candidate who has filed a campaign treasurer appointment decides to seek a different office that would require the appointment to be filed with another authority, a copy of the appointment certified by the authority with whom it was originally filed must be filed with the other authority in addition to the new campaign treasurer appointment. ELEC. CODE § 252.010(c).
13. Records on file with the City of Allen reveal that the respondent did not have an active campaign treasurer on file when he filed his campaign treasurer appointment with Collin County. The respondent's campaign treasurer appointment, filed January 28, 2015, had been terminated by the filing of a final report in July 2015. Accordingly, the respondent was not required to comply with section 252.010 of the Election Code. Therefore, there is credible evidence of no violation of section 252.010 of the Election Code.

IV. 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) each report by an officeholder must include the officeholder's full name and address and the office held; and 2) each candidate's campaign treasurer appointment shall include the office sought by the candidate making the appointment, if known. The respondent agrees to comply with these requirements of the law.

V. 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 \$200 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-3180107.

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

Joseph "Joey" Herald, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director