

TEXAS ETHICS COMMISSION

IN THE MATTER OF

KELLY M. CROSS,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31807252

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on October 3, 2018, to consider sworn complaint SC-31807252. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of section 254.064 of the Election Code, a law administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegation

The complaint alleged that the respondent did not timely file the 8-day pre-election campaign finance report for the March 6, 2018, primary election. Although not alleged in the complaint, the Commission also considered whether the respondent timely filed the 30-day pre-election report for the March 6, 2018, primary election.

III. Facts Supported by Credible Evidence

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

1. The respondent was an opposed incumbent candidate for Bexar County Judge, Probate Court No. 1, in the March 6, 2018, primary election.
2. Records on file with Bexar County confirm the respondent filed a campaign treasurer appointment on September 26, 2013. The respondent did not elect to file campaign finance reports on the modified reporting schedule.
3. The 30-day pre-election report for the March 6, 2018, primary election was due by February 5, 2018, and the 8-day pre-election report was due by February 26, 2018. Bexar County records confirm that the respondent filed the 8-day pre-election report late on July 5, 2018. The report disclosed that the respondent accepted a political contribution totaling \$100 and made political expenditures totaling approximately \$45,300 during the reporting period. In response to the complaint the respondent acknowledged the violation.

4. Although not specifically alleged in the complaint, records on file with Bexar County also indicate that the respondent filed the 30-day pre-election report one-day late on February 6, 2018. The respondent contacted the Commission and self-reported the violation.

IV. Findings and Conclusions of Law

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

1. 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. ELEC. CODE § 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. The report 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 chapter 254, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b). 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. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.064(c).
2. Credible evidence indicates that the respondent did not timely file the 30-day and 8-day pre-election reports for the March 6, 2018, primary election. Therefore, there is credible evidence of a violation of sections 254.064(b) and 254.064(c) 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 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. 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. 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 \$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-31807252.

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

Kelly M. Cross, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director