

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BLAKE CLEMENS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31911162

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on June 18, 2020, to consider sworn complaint SC-31911162. A quorum of the Commission was present. The Commission determined that there is credible evidence that the respondent mistakenly failed to file certain semiannual campaign finance reports, and that there is therefore credible evidence of violations of Section 254.063 of the Election Code, a law administered and enforced by the Commission. To resolve and settle the complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleged that the respondent failed to file the January 2018, July 2018, January 2019, and July 2019 semiannual campaign finance reports, in violation of Section 254.063 of the Election Code.

III. Findings of Fact and Conclusions of Law

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

1. The respondent was an unsuccessful candidate for mayor of the City of Addison in the May 6, 2017, and May 4, 2019, municipal elections.
2. On January 18, 2017, the respondent filed a campaign treasurer appointment for the May 6, 2017, election. He subsequently timely filed 30-day and 8-day pre-election reports for the May 2017 election, neither of which was designated a final report. The Addison city secretary's records, obtained by Commission staff through a Texas Public Information Act

- request, reveal no further campaign finance filings by the respondent until the respondent filed his campaign treasurer appointment for the May 2019 election, which the filing authority apparently failed to stamp at the time of filing, but which the respondent signed and dated February 15, 2019. In his response to the sworn complaint, the respondent admitted that he did not file reports following the May 2017 election.
3. Following the respondent's 8-day pre-election report for the May 2017 election, the respondent filed no campaign finance reports until he filed his 30-day pre-election report for the May 2019 mayoral election. The respondent also filed an 8-day pre-election report for the May 2019 election, but did not designate the 8-day pre-election report a final report. The respondent admitted that he did not file a July 2019 semiannual report or any other final report that would terminate his campaign finance reporting obligations after the May 2019 election.
 4. In his sworn response to this complaint, the respondent explained that he did not know that after losing an election, he was required to file a final report to terminate his campaign treasurer appointment to relieve himself of further filing obligations.
 5. In response to the complaint, the respondent promptly filed final reports for January 2018 and July 2019 on December 23, 2019. On his January 2018 report, the respondent reported \$90.08 in contributions and \$109.90 in expenditures; and on his July 2019 report, \$100 in contributions and \$15,390.42 in expenditures. The reports at issue in the complaint therefore disclosed \$190.08 in contributions and \$15,500.32 in expenditures. In his response to the complaint, the respondent explained that the expenditures he made after his election losses were to pay invoices received after the elections.
 6. Title 15 of the Election Code requires that in addition to other required reports, a candidate shall file two reports each year. 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, as applicable, and continuing through June 30. 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, as applicable, and continuing through December 31. TEX. ELEC. CODE § 254.063.
 7. "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. *Id.* § 251.001(1). The filing of a campaign treasurer appointment constitutes affirmative action for the purpose of gaining nomination or election to public office; therefore, the filer of a campaign treasurer appointment is a candidate and is required to file

semiannual campaign finance reports, among other reports. *See id.* §§ 251.001(1); 254.063.

8. If a candidate expects no reportable activity in connection with the candidacy to occur after the period covered by a campaign finance report, the candidate may designate the report as a “final” report. The designation of a report as a final report terminates the candidate’s campaign treasurer appointment and relieves the candidate of the duty to file additional campaign finance reports as a candidate, provided that no further reportable activity with respect to the candidacy occurs. *Id.* § 254.065. A former candidate who has not filed a final report and who still has a campaign finance report on file remains obligated to file semiannual campaign finance reports. *See id.* §§ 251.001; 254.063; 254.065.
9. The respondent’s admission and records on file with the City of Addison indicate that the respondent did not file final reports or the subsequently-due semiannual reports following the May 2017 and May 2019 elections. Because he was required to file, and did not file, the January 2018, July 2018, January 2019, and July 2019 semiannual campaign finance reports, there is credible evidence of violations of Section 254.063 of the Election Code as to those reports.

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 Commission’s findings of fact and conclusions of law described under Section III, and consents to the entry of this order and agreed resolution solely for the purpose of resolving the 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 a former candidate who has not filed a final report and who still has a campaign treasurer appointment on file must continue to file semiannual campaign finance reports by January 15 and July 15 until the candidate files a final campaign finance report or otherwise terminates his or her campaign treasurer appointment. The respondent agrees to comply with this requirement of law.

V. Confidentiality

Section 12.81 of the Ethics Commission Rules enumerates the technical or *de minimis* violations that may be resolved confidentially if raised in a sworn complaint. 1 TEX. ADMIN. CODE § 12.81. The violations found in this order are not included in the list of technical or *de minimis* violations that may be resolved confidentially. 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.

VI. Sanction

Section 571.177 of the Government Code directs that the Commission consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations; and 5) any other matters that justice may require.

The respondent's status as a first-time violator and his demonstrated good faith suggest that a moderate penalty is appropriate. Records on file with the Commission indicate that this is the first sworn complaint against the respondent. Further, the evidence indicates that the respondent has acted in good faith both before and after the complaint was filed. The evidence does not contradict the respondent's contention that he did not timely file the reports at issue because he mistakenly believed that he was not required to file them. The respondent has also been responsive and cooperative in Commission staff's investigation of this complaint. Because the respondent is a first-time violator whose failure to file the reports was a mistake rather than an intentional violation, and because the respondent has responded to the complaint in good faith by correcting his reports and cooperating with Commission staff, the penalty should be reduced to the lowest amount consistent with the amount of contributions and expenditures required to be disclosed on the late-filed reports.

After considering the nature, circumstances, and consequences of the violations described under Section III, and after considering the demonstrated good faith of the violator and that this is the first sworn complaint against him, the Commission imposes a \$600 civil penalty.

VII. 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 sworn complaint SC-31911162.

AGREED to by the respondent on this _____ day of _____, 2020.

Blake Clemens, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director