

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
JIM H. SMITH, JR.,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-2710217

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2008, to consider sworn complaint SC-2710217. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.093 of the Election Code, and section 571.1242 of the Government Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

### II. Allegations

The complaint alleges that the respondent failed to provide required information on campaign finance reports. The complaint also alleges that the respondent failed to file semiannual campaign finance reports.

### III. Facts Supported by Credible Evidence

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

1. The respondent was a successful candidate for the Klein Independent School District (KISD) board of trustees.
2. The respondent filed a 30-day pre-election report with the local filing authority on April 13, 2006, covering January 1, 2006, through April 12, 2006. The report contains blank spaces for entries concerning "total political contributions" and "total political contributions maintained." The report also does not include payee addresses for two political expenditures made from personal funds.

3. The respondent filed a report marked as both an 8-day pre-election report and a final report with the local filing authority on May 17, 2006. The space to disclose the period covered by the report was left blank. The report disclosed \$1,500 in total political contributions and \$6,144 in total political expenditures. Actual calculated totals show approximately \$1,450 in total political contributions and \$6,280 in total political expenditures. The space was left blank for outstanding loan totals. There was no purpose disclosed for the eight itemized expenditures, nor was the payee address disclosed for three of those expenditures. (Four out of the eight expenditures occurred on or before April 12, 2006, and should have been disclosed on the respondent's April 2006 30-day pre-election report that covered the period through April 12, 2006. That report did not include those political expenditures.) The date was not disclosed for one of the eight political expenditures. Although the report type was also marked as final, it did not include a designation of final report page (Form C/OH-FR).
4. On July 5, 2006, the respondent filed with the local authority, another report that did not disclose a period covered and that was marked as a final report. The report disclosed \$1,555 in total political contributions and \$6,144 in total political expenditures, and \$165 of political contributions maintained. This report contained a designation of final report page, but indicated that the respondent was both an officeholder and that the respondent was not an officeholder.
5. On November 2, 2007, the commission mailed by certified mail the initial notice of the complaint to the respondent. On November 30, 2007, the notice letter was returned to the commission unclaimed. On December 13, 2007, at the request of the respondent, a second notice was mailed by certified mail, restricted delivery. On December 20, 2007, the respondent received and signed for the second notice. As of April 3, 2008, the respondent has not submitted a response.

#### **IV. Findings and Conclusions of Law**

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

1. A candidate is required to file two reports for 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. ELEC. CODE § 254.063.

2. Filing a final campaign finance report terminates an individual's status as a candidate. If the individual holds an elective public office, he or she may have additional reporting requirements as an officeholder. ELEC. CODE § 254.065.
3. An officeholder is required to file two reports each year. The first report is due not later than July 15. The report covers the period beginning January 1, the day the officeholder takes office, 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 is due not later than January 15. The report covers the period beginning July 1, the day the officeholder takes office, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31. ELEC. CODE § 254.093.
4. The evidence indicates that the respondent attempted to file a final report on May 17, 2006. On July 5, 2006, the respondent filed another report marked as a final report that included the designation of final report page. The filing of a final report terminated the respondent's requirement to file campaign finance reports as a candidate. However, as an officeholder, the respondent was required to file July 2006, January 2007, and July 2007 semiannual reports.
5. The respondent filed the July 5, 2006, report after the end of the reporting period, but before the due date for the July 2006 semiannual report. Even if the report is accepted as the respondent's July 2006 officeholder report, there is credible evidence of violations of section 254.093 of the Election Code because the respondent did not file January 2007 and July 2007 semiannual reports as an officeholder.
6. Each campaign finance report filed must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. The report must also include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The report must also include, as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031.
7. The evidence indicates that the respondent did not disclose the required totals on his April 2006 30-day pre-election report. The report also did not include payee addresses for multiple political expenditures. Therefore, there is credible evidence of violations of sections 254.031 of the Election Code.

8. The evidence indicates that the respondent failed to disclose the purpose and payee addresses of multiple expenditures on his May 2006 8-day pre-election report. The evidence also indicates that the respondent disclosed multiple expenditures that should have been reported on his April 2006 30-day pre-election report. In addition, the date was not disclosed for one expenditure. The evidence also indicates that the respondent failed to include outstanding loan totals on the report. Therefore, as to those allegations, there is credible evidence of violations of section 254.031 of the Election Code.
9. The evidence indicates that the respondent miscalculated the total political contributions and total political expenditures on his May 2006 report. However, the amount of the miscalculation is easily ascertained by looking at the report. Therefore, as to those allegations there is credible evidence of a technical or *de minimis* violation of section 254.031 of the Election Code.
10. The complaint alleges that the amount of political contributions maintained disclosed on the respondent's May 2006 report is incorrect. However, the amount of political contributions maintained cannot necessarily be calculated by looking at the face of a report. There is insufficient evidence of a violation of section 254.031 of the Election Code.
11. A respondent must respond to the notice of a Category One violation not later than the 10th business day after the date the respondent receives the notice. A failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. GOV'T CODE § 571.1242(a)(c).
12. The respondent received the notice of the sworn complaint on December 20, 2007. The notice stated that the respondent was required to respond within 10 business days from receipt of the notice. The respondent failed to respond. Therefore, there is credible evidence of a violation of section 571.1242 of the Government 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 an officeholder is required to file two reports each year. The first report is due not later than July 15. The report covers the period beginning January 1, the day the officeholder takes office, 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 is due not later than January 15. The report covers the period beginning July 1, the day the officeholder takes office, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31. The respondent also acknowledges that each campaign finance report filed must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. The report must also include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The report must also include, as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. The respondent also acknowledges that a respondent must respond to the notice of a Category One violation not later than the 10th business day after the date the respondent receives the notice, and that a failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$900 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-2710217.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Jim H. Smith Jr., Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director