

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ROBERT L. DERBY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3110366

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 6, 2011, to consider sworn complaint SC-3110366. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.061 and 254.063 of the Election Code and section 571.1242(c) of the Government 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 failed to timely file a semiannual report, did not include required information on a campaign finance report, and made campaign expenditures without filing a campaign treasurer appointment.

III. Facts Supported by Credible Evidence

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

1. The respondent was an opposed candidate for trustee of the Conroe Independent School District (CISD) in a November 2, 2010, election.
2. The complaint alleged that the respondent did not timely file a January 2011 semiannual report and did not include cover page information in a final campaign finance report. The complaint also alleged that the respondent made campaign expenditures without filing a campaign treasurer appointment.
3. The respondent filed a campaign treasurer appointment with CISD on July 26, 2010. The respondent did not choose to file under the modified filing schedule. The respondent also filed a campaign finance report on March 3, 2011, that disclosed:
 - \$0 in total political contributions of \$50 or less

- \$0 in total political contributions
 - \$2,174.50 in total political expenditure of \$50 or less
 - \$2,174.50 in total political expenditures
 - \$0 in total political contributions maintained
 - \$0 in total principal amount of outstanding loans
4. The report did not include the first cover page of the campaign finance report Form C/OH. The cover sheet is used to disclose the candidate's name, address, office sought, the identity and date of the election for which the report is filed, the campaign treasurer's information, and identification of political committees from which the candidate received a notice of direct campaign expenditures.
 5. The report included a designation of a final report that terminated the respondent's campaign treasurer appointment and two Schedule G (used to disclose political expenditures made from personal funds) pages that indicated the respondent made approximately \$2,170 in political expenditures from personal funds. The itemized expenditures were disclosed with dates from July 27, 2010, to October 15, 2010.
 6. The respondent did not file any additional reports with CISD.
 7. The commission sent a notice of the sworn complaint to the respondent by delivery confirmation on April 19, 2011. According to the United States Postal Service's record of the delivery, the respondent received the notice on April 21, 2011. The notice informed the respondent that the alleged violations in the sworn complaint were Category One violations, that a response was required not later than 10 business days from the date the notice was received, and that failure to respond constituted a separate violation for which a separate civil penalty may be assessed. The deadline for filing a response to the notice was May 6, 2011. To date, the respondent has not responded to the notice of sworn complaint.

IV. Findings and Conclusions of Law

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

Timely Filing of Reports

1. A candidate shall file a report 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. ELEC. CODE § 254.063(c).
2. If the deadline for a report falls on a Saturday, Sunday, or a legal state or national holiday, the report is due on the next regular business day. Ethics Commission Rules § 20.21(a).

3. The respondent filed a campaign treasurer appointment on July 26, 2010. Thus, the respondent was required to file a semiannual report no later than January 18, 2011. The respondent did not file any reports until March 3, 2011. Therefore, there is credible evidence that the respondent violated section 254.063(c) of the Election Code.

Cover Sheet Information

4. Each report by a candidate must include, in pertinent part, the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed. ELEC. CODE § 254.061(1). Each report must also include the campaign treasurer's name, residence or business street address, and telephone number. *Id.* § 254.061(2). Each report must also include, for each individual making a reportable direct campaign expenditure from whom the candidate received notice under section 22.5 of the Ethics Commission Rules, the full name and address of the individual. *Id.* § 254.061(3); Ethics Commission Rules § 20.219(9).
5. The respondent's final report did not include page 1 of the cover sheet, which is used to disclose information required by section 254.061 of the Election Code and section 20.219(9) of the Ethics Commission Rules. The respondent was a candidate with a campaign treasurer appointment on file and was required to disclose identifying information for himself as both a candidate and a campaign treasurer. In addition, the respondent was required to identify the election in the report. None of that information was included in the report. Therefore, there is credible evidence that the respondent violated sections 254.061(1) and 254.061(2) of the Election Code.
6. Regarding the disclosure of notice of direct expenditures made by individuals, there is no evidence that the respondent received such notice. However, the cover page that is used to disclose whether such notice was received was not included with the report. Therefore, there is insufficient evidence that the respondent violated section 254.061(3) of the Election Code and section 20.219(9) of the Ethics Commission Rules.

Campaign Expenditures Without Campaign Treasurer Appointment

7. A candidate may not knowingly make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE § 253.031(a).
8. The complaint alleged that the respondent made campaign expenditures without filing a campaign treasurer appointment. The expenditures at issue occurred after the respondent filed his campaign treasurer appointment and the respondent's report indicated that the appointment was terminated after all of the expenditures had been made. Therefore, there is credible evidence that the respondent did not violate section 253.031(a) of the Election Code.

Response to Sworn Complaint

9. If an alleged violation in a sworn complaint is a Category One violation, the respondent must respond to the notice required by section 571.123(b) not later than the 10th business day after the date the respondent receives the notice. GOV'T CODE § 571.1242(a)(1). A respondent's failure to timely respond to a sworn complaint is a Category One violation. *Id.* § 571.1242(c).
10. To date, the respondent has not submitted a written response. Therefore, there is credible evidence that the respondent violated section 571.1242(c) of the Government Code by failing to respond to the complaint.

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 a candidate shall file a report not later than January 15. The respondent also acknowledges that each report by a candidate must include, in pertinent part, the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed; and that each report must also include the campaign treasurer's name, residence or business street address, and telephone number. 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. 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 \$750 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-3110366.

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

Robert L. Derby, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director