

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
WILLIAM R. MITCHELL	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-94088

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (“commission”) met on May 12, 1995, to consider sworn complaint SC-94088 filed against William R. Mitchell (the “respondent”). A quorum of the commission was present. Based on the investigation conducted by commission staff to date, the commission determined there was credible evidence of a violation of §§ 254.031 and 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 proposes this agreed resolution to respondent.

II. Facts Supported by Credible Evidence

Credible evidence available to the commission would support the following findings of fact:

1. At all relevant times to this complaint, the respondent was a candidate for Uvalde County Judge in the November 1994 election.
2. The complaint, filed with the commission on December 12, 1994, alleges that the respondent failed to notarize four of his reports, failed to disclose contributions and expenditures, and failed to file reports timely.
3. One of the unnotarized report was six days late. One of the unnotarized reports and two other C\OH reports, although timely filed, failed to disclose all expenditures. The 30-day before election report failed to disclose a \$300 expenditure; the 8-day before election report did not disclose a \$917.60 expenditure; and the final report did not list a \$100 expenditure.
4. On April 10, 1995, the respondent submitted corrected forms C/OH and good faith affidavits for the four reports.

III. Conclusions of Law

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

1. Section 254.031 (General Contents of Reports), of the Election Code, provides in material part:
 - (a) *Except as otherwise provided by this chapter, each report filed under this chapter must include:*
 - (1) *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;

* * *

(3) *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 person to whom the expenditures are made, and the dates and purposes of the expenditures;*

* * *

2. Section 254.064 (Additional Reports of Opposed Candidate) of the Election Code requires opposed candidates to file an "8-day" and a "30-day" before election reports.
3. Section 18.85 (Fine for a Late Report) of the Ethics Commission Rules states that the base fine for a late report is \$100.
4. Under the Ethics Commission Rules a filer who submits a corrected report after the filing deadline is subject to a late fine if material information was left out of the original report. Section 18.83 (No Fine for Certain Corrected Reports) permits the commission to waive the late fine on a filer who submits a corrected report if the filer completes a "Corrected Form C/OH and Good-Faith Affidavit." Completing this form will not, however, allow the filer to avoid a late fine in connection with a report due 8 days before the election. Also, the fine for a late "8-day" report is the standard \$100 fine plus the greater of \$100 for each day the report is late or 10% of the contributions that were not timely reported.
5. Dismiss the complaint as to the timely filed "30-day" and "final" reports because the corrected reports cured the defects.
6. Respondent violated 254.064 of the Election Code by filing a report 6 (six) days late.
7. Respondent violated §§ 254.031 and 254.064 of the Election Code by failing to file a complete/accurate 8-day before the election report. The corrected report failed to cure the defects because the failure to disclose the required information was material. The commission can assess up to a \$10,000 fine for this report.

IV. Representations and Agreement by Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. Respondent neither admits nor denies the facts detailed under Section II and the commission's findings and conclusions of law detailed under Section III, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. Respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. Respondent waives any right to a hearing before the commission or an administrative law judge appointed by the commission, and further waives any right to a post-hearing procedure established or provided by law.
3. Respondent acknowledges that § 254.031 of the Election Code lists the general contents of reports which must be filed by a candidate and/or officeholder for public office and that § 254.064 lists the reports required to be filed by opposed candidates. Respondent agrees to fully and strictly comply with this requirement of the law.

4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, Respondent understands and agrees that the commission will consider the respondent to have committed the violation detailed in Section III if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

V. Confidentiality

This ORDER and AGREED RESOLUTION describes an alleged violation that the commission has determined would be neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under Texas Government Code § 571.140(b), and may be disclosed by members and staff of the Texas Ethics Commission.

VI. Sanction

After considering the seriousness of the violation described under Sections II and III, including the nature, circumstances, consequences, extent, and gravity of the violation; that no previous violations by this respondent are known to the commission; and the sanction deemed necessary to deter future violations, the commission imposes a \$300.00 (\$100 for the late report and \$200 for the incomplete 8-day before election report) civil penalty for the violation described under Section III.

VII. Order

The Texas Ethics Commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to respondent;
2. that if respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete disposition of SC-94088;
3. that respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original together with payment for the \$300.00 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than June 23, 1995; and
4. that the executive director shall promptly refer SC-94088 to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if respondent does not agree to the disposition of SC-94088 as proposed in this ORDER and AGREED RESOLUTION;

AGREED to by William R. Mitchell on _____, 1995.

William R. Mitchell, Respondent

EXECUTED ORIGINAL received by the commission on _____, 1995.

James P. Mathieson Jr., General Counsel
Texas Ethics Commission