

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
THOMAS V. KELLY,	§	TEXAS ETHICS COMMISSION
	§	
RESPONDENT	§	SC-96050

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (commission) met on July 12, 1996, to consider sworn complaint SC-96050 filed against Thomas V. Kelly (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 violations of Sections 253.031 and 254.031, Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Facts Supported by Credible Evidence

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

1. At all times relevant to this complaint, the respondent was a candidate for state senate in the primary election held on March 12, 1996.
2. The complainant alleges that the respondent made campaign expenditures at a time when a campaign treasurer appointment for the candidate was not in effect.
3. The respondent filed a contribution and expenditure report on February 9, 1996, which discloses the payment of a filing fee of \$1,000 on January 1, 1996, and an expenditure of \$286 on January 10, 1996, for a list of voter's names. The respondent did not file a campaign treasurer appointment until February 8, 1996.
4. The respondent has already signed an Order and Agreed Resolution and paid a penalty in another sworn complaint filed by a different complainant for making campaign expenditures at a time when a campaign treasurer appointment was not in effect.

5. The complainant alleges that the respondent failed to timely report political expenditures on his 30-day contribution and expenditure report.
6. The respondent timely reported all political expenditures made during the reporting period on his 30-day contribution and expenditure report.
7. The complainant alleges that the respondent failed to file page 1 of the 8-day contribution and expenditure report.
8. The respondent filed his 8-day contribution and expenditure report without pages 1 and 2. Commission staff notified the respondent that these pages were missing and requested the respondent to resubmit his report. The respondent complied with staff's request.
9. The respondent failed to give the date of an expenditure on his 8-day contribution and expenditure report.
10. The complainant alleges that the respondent committed perjury.

III. Conclusions of Law

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

1. Section 253.031, Election Code, prohibits a candidate from making a campaign expenditure at a time when a campaign treasurer appointment is not in effect.
2. The respondent made campaign expenditures at a time when a campaign treasurer appointment for the candidate was not in effect in violation of Section 253.031. The commission previously assessed a penalty for that violation, which was promptly paid by the respondent. This allegation is therefore dismissed.
3. There is credible evidence that the respondent timely reported all political expenditures on his 30-day contribution and expenditure report, and thus no violation occurred. This allegation is therefore dismissed.
4. Section 254.064, Election Code, requires the 8-day contribution and expenditure report to be filed by the 8th day before the election.
5. The respondent failed to file a complete 8-day report but complied with the commission staff's instructions in filing a corrected report. This allegation is therefore dismissed.

6. Section 254.031(a)(3), Election Code, requires a filer to include the date of political expenditures that in the aggregate exceed \$50 during the reporting period.
7. The respondent failed to include the date of an expenditure made during the reporting period. There is credible evidence that the respondent committed a technical or *de minimis* violation of Section 254.031, Election Code.
8. The commission does not have jurisdiction over perjury offenses. This allegation is therefore dismissed.

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 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. The 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. The respondent acknowledges that Section 253.031, Election Code, prohibits a candidate from making a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. Respondent agrees to fully and strictly comply with this requirement of the law.
4. The respondent acknowledges that Section 254.031, Election Code, requires a filer to include the date of political expenditures that in the aggregate exceed \$50 during the reporting period. Respondent agrees to fully and strictly comply with this requirement of the law.
5. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the 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

A portion of this ORDER and AGREED RESOLUTION (Section III, Paragraphs 1 and 2), 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 section 571.140, Government Code, 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 the respondent has already paid a penalty imposed by the commission as to the allegation of failure to appoint a campaign treasurer; and after considering the sanction deemed necessary to deter future violations, the commission imposes no penalty for the violation of Section 254.031(a)(3), Election Code, described under Section III, Paragraphs 6 and 7.

VII. Order

The Texas Ethics Commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that the executive director shall promptly refer SC-96050 to either the commission or 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 the respondent does not agree to the resolution of SC-96050 as proposed in this ORDER and AGREED RESOLUTION;
3. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-96050;
4. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than August 12, 1996.

AGREED to by Thomas V.Kelly on _____, 1996.

Respondent

EXECUTED ORIGINAL received by the commission on _____, 1996.

Texas Ethics Commission

Tom Harrison, Executive Director
Texas Ethics Commission