

TEXAS ETHICS COMMISSION

IN THE MATTER OF
HERB EVANS
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-980212

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 12, 1998, to consider sworn complaint SC-980212 filed against Herb Evans (the respondent). A quorum of the commission was present. The commission voted to accept jurisdiction of this complaint. Based on the investigation conducted by commission staff, the commission determined there was credible evidence of a violation of Section 254.064, 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 the respondent.

II. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for justice of the peace in the March 10, 1998, primary election.
2. The complainant alleges that the respondent violated Section 254.064, Election Code, by failing to timely file a 30-day before election report due on February 9, 1998, and that the respondent violated Travis County Ordinance, Subtitle C, Chapter 32, Subchapter A, adopted under Subchapter B, Chapter 159, Local Government Code, by failing to timely file a personal financial statement due by January 14, 1998.
3. The respondent's campaign treasurer appointment was filed with the county clerk on August 5, 1997. The respondent filed his 30-day before election report on February 19, 1998. The respondent's 30-day before election report disclosed campaign contributions totaling \$1,675 and campaign expenditures totaling \$5,381.
4. In his response to this complaint, the respondent swears that his preoccupation with campaigning and the illness of his bookkeeper contributed to his late filings but acknowledges that "it was no one's responsibility but mine." In addition, the respondent

furnished evidence that he filed sworn complaints against himself in justice court, charging himself with a misdemeanor criminal violation for each of the late filings, pleaded guilty to each complaint, and was assessed and paid a fine for each complaint in the amount of \$100 and court costs in the amount of \$46.25, all of which occurred on February 19, 1998.

III. Conclusions of Law

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

1. Sections 571.061 and 571.121(b), Government Code, limit the commission's sworn complaint jurisdiction. Therefore, the alleged violation of the Travis County financial disclosure ordinance is not within the commission's sworn complaint jurisdiction.
2. An opposed candidate must file a campaign finance report no later than the 30th day before the election. Section 254.064, Election Code. The respondent's 30-day before election report was due on February 9, 1998, and it was filed on February 19, 1998.
3. There is credible evidence that the respondent violated Section 254.064, Election Code.

IV. Representations and Agreement by the 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. The 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. 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, Paragraphs 2 and 3, 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 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 no previous violation by this respondent is known to the commission; that the respondent has already paid a criminal fine for this violation, and after considering the sanction deemed necessary to deter future violations, the commission imposes no civil penalty for the violation described under Section III, Paragraphs 2 and 3.

VII. Order

The Texas Ethics Commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-980212;
3. 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 July 10, 1998; and
4. that the executive director shall promptly refer SC-980212 either to 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-980212 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 1998.

Herb Evans, Respondent

EXECUTED ORIGINAL received by the commission on: _____
DATE

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director