

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RAY C. WILLIAMS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-200206

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 14, 2000, and voted to accept jurisdiction of Sworn Complaint SC-200206 filed against Ray C. Williams, Respondent. The commission met again on November 10, 2000, to consider Sworn Complaint SC-200206. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of a violation of Section 254.063, 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. Allegations

The complainant alleges that the respondent:

1. failed to timely file campaign finance reports;
2. reported expenditures on Schedule H (payments from political contributions made to a business of a candidate or officeholder) but should have reported those expenditures on Schedule F (political expenditures); and
3. failed to accurately report contributions and expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent was an opposed and unsuccessful candidate for sheriff in Kendall County in the November 1996 general election and March 2000 primary election. The respondent filed his original campaign treasurer appointment with the county clerk on April 12, 1996, and filed an amended campaign treasurer appointment on October 4, 1999.

2. The complainant alleges that the respondent failed to timely file six semiannual reports. The file dates for those reports and the activity disclosed are as follows:
 - (a) the July 1999 semiannual report was filed on January 3, 2000, and discloses no reportable activity;
 - (b) the January 1999 semiannual report was filed on January 3, 2000, and discloses no reportable activity;
 - (c) the July 1998 semiannual report was filed on January 3, 2000, and discloses no reportable activity;
 - (d) the January 1998 semiannual report was filed on January 3, 2000, and discloses no reportable activity;
 - (e) the July 1997 semiannual report was filed on January 3, 2000, and discloses no reportable activity; and
 - (f) the January 1997 semiannual report was filed on January 11, 2000, and discloses total political expenditures in the amount of \$449.21.
3. The complainant also alleges that the respondent reported expenditures on Schedule H that should have been reported on Schedule F in his 30-day before election report filed on October 7, 1996. The respondent reported 17 expenditures on Schedule H of that report.
4. The complainant further alleges that the respondent failed to accurately report contributions and expenditures because campaign finance reports filed during the campaign disclose total political expenditures that exceed total political contributions.

IV. Findings and Conclusions of Law

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

1. A candidate must file semiannual reports due twice a year in January and July. Section 254.063, Election Code. A candidate commits a Class C misdemeanor if the candidate knowingly fails to file the report on time. Section 254.041(a) and (b), Election Code; Section 18.95(b), Texas Ethics Commission Rules.
2. The commission may consider an alleged violation that is also a criminal offense only if criminal prosecution is not barred by the applicable criminal statute of limitations. Section 12.5(3), Ethics Commission Rules. A criminal indictment or information alleging a misdemeanor offense must be presented within two years from the date of the commission of the offense. Article 12.02, Code of Criminal Procedure. The complaint was filed February 23, 2000, and thus the commission may not consider an alleged violation that occurred before February 23, 1998. Therefore, the commission may not consider allegations regarding the January 1998, July 1997, and January 1997 semiannual reports.

3. The respondent did not timely file his July 1999 semiannual report, his January 1999 semiannual report, or his July 1998 semiannual report.
4. Accordingly, the commission dismisses the allegations relating to the respondent's January 1998, July 1997, and January 1997 semiannual reports for lack of jurisdiction, and finds that there is credible evidence of a violation of Section 254.063, Election Code, as to the respondent's July 1999, January 1999, and July 1998 semiannual reports.
5. Using Schedule F, a candidate must report expenditures paid to one individual or entity during a reporting period that in the aggregate exceed \$50. Using Schedule H, a candidate must report payments from political contributions made to a business in which the candidate has an interest of more than 10 percent, a position on the governing body, or a position as an officer. Sections 254.031(a)(3) and 254.061(5), Election Code. A candidate who is required to file a pre-election report and knowingly fails to include information that is required by Title 15 to be included in that report commits a Class C misdemeanor. Section 254.041(a), (b), Election Code; Section 18.95(b), Texas Ethics Commission Rules.
6. The report at issue was due by and filed on October 7, 1996. As noted above, the commission may not consider an alleged violation that occurred before February 23, 1998. Because the report at issue was filed on October 7, 1996, the commission dismisses the allegation relating to this report for lack of jurisdiction.
7. The complainant alleges that "during the campaign" the respondent filed campaign finance reports "that showed political expenditures exceeding political contributions (including expenditures paid from personal funds)" and "[t]here were never any pledges or loans reported during the same period." The complainant asks, "Where did the unreported income come from to pay for the excessive expenditures?"
8. The complainant did not identify any specific political contribution or political expenditure that he thought had been inaccurately reported in support of this allegation, and it is not clear exactly which period of time the complainant is referring to. The reports referenced in the complaint are the reports listed in Section III, allegations as to only three of which are not barred by limitations.
9. A candidate's campaign finance reports must include all of the candidate's reportable activity in the periods covered by those reports. Sections 254.031 and 254.061, Election Code. The reports do not function as accounting statements, however, and they may not "balance" for any particular reporting period or election campaign. Even if the reports disclosed total political expenditures that far exceeded total political contributions, however, the commission could not consider the allegation that the respondent failed to accurately report contributions and expenditures in that period because some of the reports are barred by limitations.

10. Therefore, the commission dismisses the allegation that the respondent failed to accurately report contributions and expenditures during his campaign on the basis that there is no credible evidence of a violation of Sections 254.031 and 254.061, Election 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 and 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 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, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that a candidate must timely file semiannual reports due twice a year in January and July. The respondent agrees to fully and strictly comply with this requirement of the law.
4. 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 violations described under Section IV, Paragraphs 3 and 4, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

VI. Confidentiality

This ORDER and AGREED RESOLUTION describes violations that the commission has determined is 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, consequences, extent, and gravity of the violations, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$300 civil penalty for the violations described under Section IV, Paragraphs 3 and 4.

VIII. Order

The 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-200206;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$300 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than December 8, 2000; and
4. that the executive director shall promptly refer SC-200206 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-200206 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2000.

Ray C. Williams, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director