

TEXAS ETHICS COMMISSION

IN THE MATTER OF

SIDNEY WAYNE MOORE,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-200309

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-200309 filed against Sidney Wayne Moore, Respondent. The commission met again on June 16, 2000, to consider Sworn Complaint SC-200309. 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 violations of Sections 252.002 and 254.061, 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. Allegations

The complainant alleges that the respondent, a candidate for sheriff, failed to timely file a campaign treasurer appointment, failed to timely file his application for a place on the Republican Party primary ballot, gave a post office box instead of a residence or business street address for the campaign treasurer's address on the campaign treasurer appointment, and failed to amend his campaign treasurer appointment to name his new campaign treasurer.

III. Facts Supported by Credible Evidence

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

1. At all times relevant to this complaint, the respondent was a candidate in the March 14, 2000, primary election for the Republican nomination for sheriff. The respondent was successful in the primary election.
2. The respondent filed his campaign treasurer appointment on January 4, 2000, the same day on which he filed his application for a place on the ballot. In an affidavit submitted in response to this complaint, the respondent swears that county offices were closed January 3 and the Republican county chair "failed to post his whereabouts." Thus, both documents were filed January 4.

3. The complainant submitted no evidence that the respondent took any affirmative action for the purpose of gaining nomination or election to public office before appointing a campaign treasurer.
4. The respondent's campaign treasurer appointment lists a post office box instead of a street address. The respondent filed an affidavit admitting that he listed a post office box on his campaign treasurer appointment instead of a street address but states that he lives in the country and does not have a physical address. He states that this was an oversight that will be corrected on his next report.
5. The respondent's campaign treasurer appointment names the respondent as campaign treasurer. The respondent's campaign finance reports filed on January 20, 2000, and February 14, 2000, list a different individual as campaign treasurer. The respondent states in his affidavit that when he discovered that he had not filed the proper forms to amend his campaign treasurer appointment, he immediately filed the amendment on February 28, 2000. Thus, the original campaign treasurer appointment was in effect when the respondent filed the January and February campaign finance reports.

IV. Findings and Conclusions of Law

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

1. The complainant alleges that the respondent failed to timely file a campaign treasurer appointment. Each candidate is required to appoint a campaign treasurer. Section 252.001, Election Code. "Candidate" is defined in relevant part as a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office. An example of affirmative action is the filing of an application for a place on the ballot. Section 251.001(1), Election Code.
2. This allegation is dismissed on the basis that there is no credible evidence that the respondent violated Section 252.001, Election Code.
3. The complainant alleges that the respondent failed to timely file his application for a place on the Republican primary ballot. The Ethics Commission does not have jurisdiction to administer or enforce the provisions of the Election Code relating to filing an application for a place on a ballot. Thus, jurisdiction of this allegation is refused.
4. The complainant alleges that the respondent gave a post office box instead of a residence or business street address for the campaign treasurer's address on the campaign treasurer appointment. A campaign treasurer appointment must include the campaign treasurer's residence or business street address. Section 252.002, Election Code. There is credible evidence that the respondent committed a technical or *de minimis* violation of Section 252.002, Election Code.

5. The complainant alleges that the campaign treasurer appointment filed by the respondent lists the respondent as campaign treasurer. The respondent's campaign finance reports, however, list a different individual as campaign treasurer. The campaign treasurer appointment and reports on file with the county clerk support this allegation.
6. A campaign treasurer appointed under Chapter 252, Election Code, may be removed at any time by the appointing authority by filing the written appointment of a successor. The appointment of a successor terminates the appointment of the campaign treasurer who is removed. Section 252.012, Election Code; Section 20.207, Ethics Commission Rules.
7. Each campaign finance report must include the campaign treasurer's name. Section 254.061, Election Code. The respondent's campaign finance reports failed to include the name of the individual who was technically still treasurer. Therefore, there is credible evidence of a violation of Section 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. 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 4 and 7, 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 a violation 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 no civil penalty for the violations described under Section IV, Paragraphs 4 and 7.

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-200309;
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 14, 2000; and
4. that the executive director shall promptly refer SC-200309 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-200309 as proposed in this ORDER and AGREED RESOLUTION.

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

Sidney Wayne Moore, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director