

TEXAS ETHICS COMMISSION

IN THE MATTER OF
FRANK PALOMINO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2211131

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 13, 2002, and voted to accept jurisdiction of Sworn Complaint SC-2211131 filed against Frank Palomino. The commission held a preliminary review hearing on July 11, 2003, and determined that there was credible evidence of a violation of a law administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent failed to report political contributions and political expenditures on his campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for district clerk; the complainant is the incumbent district clerk.
2. The complainant provided copies of the respondent's July 2002 semiannual report and the respondent's 30-day and 8-day pre-election reports in connection with the November 2002 election. On all three reports, the respondent checked the box to show no reportable activity.
3. The complainant also submitted photographs of the respondent's yard signs. The complainant states that the photographs were taken on October 30, 2002. The photographs show that the signs were professionally made by Lone Star Posters of Fort Worth.
4. On November 4, 2002, seven days after the filing deadline and one day before the election, the respondent filed a corrected 8-day pre-election report with the Tarrant County Elections Administrator. The corrected report discloses total political contributions of \$300 and total political expenditures of \$1,480.46.

IV. Findings and Conclusions of Law

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

1. Each campaign finance report must include all political contributions accepted and political expenditures made during the reporting period. Elec. Code § 254.031.
2. The respondent initially reported no activity on his 8-day pre-election report. Seven days after the filing deadline, the respondent filed a corrected report disclosing that he accepted \$300 in contributions and made \$1,408.46 in expenditures during the reporting period. Therefore, there is credible evidence that the respondent violated section 254.031 of the Election Code.
3. The respondent also alleges that the complainant filed a frivolous complaint. A frivolous complaint is a complaint that is groundless and brought in bad faith or is groundless and brought for the purposes of harassment. Gov't Code § 571.176. The complaint is not groundless because the respondent did in fact fail to properly report his political expenditures. Since the complaint is not groundless, by definition it is not frivolous.

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 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 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 provided by law.
3. The respondent acknowledges that each campaign finance report made by a candidate must include all contributions accepted and expenditures made during the reporting period. The respondent agrees to fully and strictly comply with these requirements of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent agrees that the commission will consider the respondent to have committed the violation described under Section IV, Paragraph 2, 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. No Sanction

After considering the seriousness of the violation described under Sections III and IV, including the circumstances, consequences, and gravity of the violation, 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 violation described under Section IV, Paragraph 2.

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-2211131;
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 August 8, 2003; and
4. that the executive director shall set SC-2211131 for an informal hearing if the respondent does not agree to the resolution of SC-2211131 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 20__.

Frank Palomino, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director