

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BERNICE HANATH,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-230310

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 10, 2003, and voted to accept jurisdiction of Sworn Complaint SC-230310 filed against Bernice Hanath. The commission met again on September 11, 2003, to consider Sworn Complaint SC-230310. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of violations of sections 254.031, 254.036 and 254.151 of the Election Code, laws enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complaint involves allegations that the respondent, the treasurer of a political committee, failed to comply with a number of reporting requirements.

III. Facts Supported by Credible Evidence

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

1. The complainant filed this complaint in April 2003 and filed supplemental allegations in June 2003.
2. All of the allegations relate to a political committee named "Property Owners Association Political Committee of Washington County" that has been involved in several Washington County elections.
3. In an agreed order signed on May 15, 2003, the commission assessed a civil penalty of \$1,800 in a sworn complaint filed by the same complainant against the committee.
4. The respondent was appointed campaign treasurer for the committee on October 8, 2002.
5. After her appointment, the respondent filed reports for the committee covering a period during which there was no campaign treasurer appointment on file with the commission. The

- respondent was not legally responsible for filing those reports. The respondent's legal responsibility for filing reports began on October 8, 2002, the day she was appointed campaign treasurer for the committee.
6. The complainant raises a number of allegations regarding reports for which the respondent was not legally responsible.
 7. This Order and Agreed Resolution addresses only the allegations regarding reports for which the respondent was legally responsible.
 8. The complainant alleges that the respondent failed to report the total of outstanding loans on the 8-day pre-election report due on October 28, 2002. On November 1, 2002, the respondent filed a 30-day pre-election report for the October 7, 2002, deadline. (The respondent was not required to file the report.) On that report, the respondent disclosed loans that had been repaid on October 28, 2002.
 9. The complainant alleges that the respondent failed to disclose the total amount of expenditures for the period covered by the 8-day pre-election report due on January 24, 2003. The respondent itemized two expenditures on the proper reporting schedule, but did not enter the total amount of expenditures on the report cover sheet.
 10. The complainant alleges that the respondent filed an improper affidavit of exemption from electronic filing. In connection with the January 2003 semiannual report, the respondent filed forms claiming two different exemptions from the electronic filing requirement. The evidence shows that she was only entitled to claim one of the two exemptions.
 11. The complainant alleges that the respondent violated the law by swearing that the reports she filed were true and incorrect when in fact the reports were not correct.
 12. The complainant alleges that the respondent filed the 8-day pre-election report due on October 28, 2002, and the 8-day pre-election report due on January 24, 2003, on paper without filing an affidavit of exemption from electronic filing.
 13. The respondent did in fact file an affidavit of exemption from electronic filing with the 8-day pre-election report due on October 28, 2002. The respondent did not file an affidavit of exemption from electronic filing with the 8-day pre-election report due on January 24, 2003, although she did file one later.
 14. The complainant alleges that the respondent failed to disclose a proper address for the committee on committee's reports. The respondent disclosed a post office box for the committee.
 15. The respondent failed to indicate the election for which her reports were filed. The respondent corrected the reports to add this information.
 16. The complainant alleges that the respondent's reports do not satisfy the requirement to disclose the name of each identified measure supported or opposed by the committee and to

- indicate whether the committee supported or opposed the measure. ELEC. CODE § 254.0151(4). Although current forms include a separate box for the information required by section 254.151(1) of the Election Code, earlier forms did not include a separate box for that information. The respondent swears that she used forms provided by the Ethics Commission to file the reports in question. She also corrected her reports using an updated version of the form.
17. The respondent failed to include contributor occupations on the report due on October 26, 2002.
 18. The complainant alleges that the respondent failed to file a 30-day pre-election report for the January 2, 2003, filing deadline. The evidence does not support this allegation.
 19. The complainant alleges that the 8-day pre-election report due on January 24, 2003, covered the wrong period. Although the cover sheets indicate that the report covers a period longer than the prescribed period, all of the activity disclosed on the report occurred during the prescribed period.
 20. The complainant alleges that the amended campaign treasurer appointment filed by the committee is incomplete and inaccurate. The respondent submitted a corrected amended campaign treasurer appointment.
 21. The complainant alleges that respondent improperly reported a refund of a membership fee. The evidence shows that the respondent reported the refund as a political expenditure.
 22. The complainant alleges that the respondent improperly reported membership fees as political contributions. A membership fee paid to a political committee is a political contribution.

IV. Findings and Conclusions of Law

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

1. The respondent was responsible for filing the 8-day pre-election report due on October 28, 2002. Because the prescribed period for the 8-day pre-election report ended on October 26, 2002, that report should have disclosed an outstanding loan balance (even though the loan was repaid on the *due date* for the report). Also, the respondent should have reported the loan repayment on the report covering the period that included October 28, 2002. She did not do so. Therefore, there is credible evidence that the respondent violated sections 254.031(a)(2) and 254.031(a)(3) of the Election Code in connection with the loan that was repaid on October 28, 2002.
2. Regarding the allegation that the respondent failed to disclose the total amount of expenditures for the period covered by the 8-day pre-election report due on January 24, 2003, the respondent itemized two expenditures on the proper reporting schedule, but did not enter the total amount of expenditures on the report cover sheet. Therefore, there is credible evidence that the respondent violated section 254.031(a)(5) of the Election Code.

3. Regarding the exemption from electronic filing that the respondent submitted with her January 2003 semiannual report, she complied with the Election Code provisions regarding electronic filing because she was entitled to claim one of the exemptions. Therefore, the allegation is dismissed.
4. Regarding the allegation that the respondent improperly swore that her reports were correct, the Ethics Commission has jurisdiction to consider an allegation that a filer failed to comply with filing requirements, but the Ethics Commission does not have jurisdiction to consider an allegation that a filer swore that her reports were true and correct when they were not in fact correct. Therefore, the allegation is dismissed.
5. Because the respondent did not file an affidavit of exemption from electronic filing with the 8-day pre-election report due on January 24, 2003, there is credible evidence that the respondent violated section 254.036(c), which requires that a filer must submit an affidavit of exemption from electronic filing with each report filed on paper.
6. Regarding the allegation that the respondent failed to disclose a proper address for the committee on committee's reports, the respondent disclosed a post office box for the committee. which satisfied the applicable reporting requirement. Therefore, the allegation is dismissed.
7. Regarding the allegation that the respondent failed to indicate the election for which her reports were filed, the evidence supports this allegation. The respondent corrected the reports to add this information. Therefore, there is credible evidence that the respondent violated section 254.061(1) of the Election Code.
8. Regarding the allegation that the respondent's reports do not satisfy the requirement to disclose the name of each identified measure supported or opposed by the committee and to indicate whether the committee supported or opposed the measure, the allegation is dismissed because the Ethics Commission apparently provided outdated forms to the respondent.
9. The evidence supports the allegation that the respondent failed to include contributor occupations on the report due on October 26, 2002. Therefore, there is credible evidence that the respondent violated section 254.151(6) of the Election Code.
10. The evidence does not support the allegation that the respondent failed to file a 30-day pre-election report for the January 2, 2003, filing deadline. Therefore, the allegation is dismissed.
11. Regarding the allegation that the 8-day pre-election report due on January 24, 2003, covered the wrong period, all of the activity disclosed on the report occurred during the prescribed period. Therefore, the allegation is dismissed.
12. Regarding the allegation that the amended campaign treasurer appointment filed by the

- committee is incomplete and inaccurate, the committee, not the campaign treasurer, is responsible for filing amendments to the committee's campaign treasurer appointment. Therefore, the allegation is dismissed.
13. Regarding the allegation that respondent improperly reported a refund of a membership fee, the respondent reported the refund as a political expenditure which was a proper way to report the refund. Therefore, the allegation is dismissed.
 14. Regarding the allegation that the respondent improperly reported membership fees as political contributions, because the membership fees paid to this political committee were political contributions and the respondent reported them as such the allegation is dismissed.

V. Representations and Agreement by Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits or 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 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 the treasurer of a political committee must include the outstanding loan balance and total of itemized expenditures on each campaign finance report filed by the committee's treasurer. The respondent further acknowledges that an affidavit of exemption from electronic filing must be filed with each report, that each report must indicate the election for which the report is filed, and that when detailed reporting is required each report must include the occupation of contributors. The respondent agrees to fully 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 violations described under Section IV, 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 are 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 nature of the violations described in Sections III and IV, and the fact that the

committee involved recently paid an \$1,800 penalty with regard to similar issues, many of which are directly related to this complaint, the commission imposes no civil penalty for the violations described under Section IV.

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-230310;
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 October 9, 2003; and
4. that the executive director shall promptly set SC-230310 for a preliminary review hearing if the respondent does not agree to the resolution of SC-230310 as proposed in this ORDER and AGREED RESOLUTION.

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

Bernice Hanath, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director