

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JEFFREY LEE BRANSCOME,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-230525

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 10, 2003, and voted to accept jurisdiction of Sworn Complaint SC-230525 filed against Jeffrey Lee Branscome. The commission met again on January 9, 2004, to consider Sworn Complaint SC-230525. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of a violation of section 254.183(b) of the 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 complainants allege that the respondent, a mayoral candidate, failed to file pre-election reports in connection with a May 3, 2003, election.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for mayor in Friendswood, Texas, in a May 3, 2003, election.
2. On March 19, 2003, the respondent filed a campaign treasurer appointment with the city secretary. The respondent selected modified reporting.
3. In response to this complaint, the respondent submitted a sworn statement in which he swears that he exceeded \$500 in political expenditures on April 21, 2003.
4. On April 22, 2003, the respondent mailed a report marked as an "exceeded \$500" report to the Ethics Commission. Ethics Commission records show that the Ethics Commission received the report on April 25, 2003, and that on the same day an Ethics Commission lawyer called the respondent to explain that the respondent should have filed the report with the city and that the Ethics Commission would be returning the report to the respondent.

5. The respondent submitted a letter in which he swears that the Ethics Commission lawyer told him that the “exceeded \$500” report would also satisfy the requirement to file an 8-day pre-election report.
6. On May 13, 2003, the respondent filed an “exceeded \$500” report with the city secretary. The respondent did not file a separate 8-day pre-election report to cover April 23, 2003, which is the one additional day that should have been covered on an 8-day pre-election report. The respondent did file a final report with the city secretary on May 13, 2003. That report showed that the respondent would not have been required to report any additional activity on the 8-day pre-election report.

IV. Findings and Conclusions of Law

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

1. A candidate may select modified reporting if he or she does not intend to exceed \$500 in political contributions or political expenditures in connection with the election. ELEC. CODE § 254.181(a).
2. A candidate who selects modified reporting and remains eligible for modified reporting is not required to file pre-election reports under section 254.064 of the Election Code.
3. If a candidate exceeds one of the \$500 thresholds after the deadline for filing a 30-day pre-election report, however, the candidate must file a report within 48 hours of exceeding the threshold. *Id.* 254.183(b).
4. The candidate must then file any other pre-election reports required to be filed after the 48-hour report. *Id.* 254.182(b).
5. The respondent swears that he exceeded the \$500 expenditure threshold on April 21, 2003.
6. Consequently, he was required to file an “exceeded \$500” report by April 23, 2003, and he was required to file an 8-day pre-election report by April 25, 2003. Because the last day to be covered by the 8-day pre-election report was April 23, 2003, the respondent could have satisfied both filing requirements by filing a single report on April 23, 2003, and covering the period ending on April 23, 2003.
7. As a candidate for city office, the respondent was required to file his reports with the city secretary. *Id.* § 252.005(3).
8. On May 13, 2003, the respondent filed an “exceeded \$500” report with the city secretary.

9. In regard to the “exceeded \$500” report, the respondent points out that he mailed a report by the filing deadline but that he mailed it to the wrong filing authority. He also notes that the Ethics Commission’s address is on the reporting form.
10. Both the campaign treasurer appointment form and the reporting form, however, direct filers to read the instructions to the form. The instructions to both forms explain where candidates are required to file reports. Therefore, there is credible evidence that the respondent violated section 254.183(b) of the Election Code.
11. In light of the respondent’s telephone conversation with an Ethics Commission lawyer, the commission dismisses the allegation regarding the 8-day pre-election report.

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 and AGREED RESOLUTION 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 if a candidate who selects modified reporting exceeds one of the \$500 thresholds after the deadline for filing a 30-day pre-election report, the candidate must file a report within 48 hours of exceeding the threshold. *Id.* 254.183(b). The respondent also acknowledges that the candidate must then file any other pre-election reports required to be filed after the 48-hour report. *Id.* 254.182(b). 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 understands and 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. 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 and after considering the sanction necessary to deter future violations, the commission imposes a \$200 civil penalty for the violation described under Sections III and 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-230525;
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 \$200 civil penalty to the Texas Ethics Commission, P. O. Box 12070, Austin, Texas 78711, no later than February 6, 2004; and
4. that the executive director shall promptly set SC-230525 for a preliminary review hearing if the respondent does not agree to the resolution of SC-230525 as proposed in this ORDER and AGREED RESOLUTION.

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

Jeffrey Lee Branscome, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director