

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SHELTON LEE HUBBARD,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-230744 and SC-230746

ORDER and AGREED RESOLUTION

I. Recitals

Sworn Complaint SC-230744 was filed with the Ethics Commission (the commission) on July 28, 2003. Sworn Complaint SC-230746 was filed with the commission on July 30, 2003. Shelton Lee Hubbard was named as a respondent in both complaints. The commission met on January 9, 2004, to consider Sworn Complaints SC-230744 and SC-230746. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.064 of the Election Code, 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 file a 15-day after campaign treasurer appointment report, a 30-day pre-election report, an 8-day pre-election report, and a July 2003 semiannual report. The complainant also alleges that the respondent violated the Code of Fair Campaign Practices.

III. Facts Supported by Credible Evidence

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

1. The respondent was a non-incumbent candidate for city council in the May 3, 2003, election in a city with a population of 2,805.
2. The city secretary provided staff with a certified letter stating that the respondent had not filed a campaign treasurer appointment and had not filed any campaign finance reports in connection with the May 3, 2003, election.
3. The respondent did not submit a response to the sworn complaint.

IV. Findings and Conclusions of Law

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

1. An officeholder who appoints a campaign treasurer must file a campaign finance report not later than the 15th day after the date the officeholder's campaign treasurer is appointed. ELEC. CODE § 254.094. Because the respondent was not an officeholder, he would not have been required to file a 15-day after treasurer appointment report even if he had filed a treasurer appointment. Therefore, there is credible evidence that the respondent did not violate section 254.094 of the Election Code.
2. An opposed candidate is required to file reports 30 days and 8 days before the election. ELEC. CODE § 254.064. An opposed candidate is not required to file 30-day and 8-day pre-election reports if the opposed candidate selects modified reporting on his or her campaign treasurer appointment and declares that he or she does not intend to accept political contributions or make political expenditures that in the aggregate exceed \$500 in connection with the election. *Id.* § 254.181. The respondent was an opposed candidate in the May 3, 2003, election. The respondent did not file a campaign treasurer appointment and did not select modified reporting. Therefore, the respondent was required to file a 30-day pre-election report and an 8-day pre-election report. The respondent did not file either report. Therefore, there is credible evidence that the respondent violated section 254.064 of the Election Code by failing to file a 30-day pre-election report and by failing to file an 8-day pre-election report.
3. An individual who has a campaign treasurer appointment on file is a candidate and is required to file semiannual reports. ELEC. CODE §§ 251.001(1)(A) (defining "candidate") and 254.063 (requiring a candidate to file semiannual reports). Because the respondent did not have a campaign treasurer appointment on file on July 15, 2003, he was not subject to the requirement to file a July 2003 semiannual report. Therefore, there is credible evidence that the respondent did not violate section 254.063 of the Election Code by failing to file the July 2003 semiannual report.
4. Compliance with the Code of Fair Campaign Practices is voluntary and not enforceable by the Ethics Commission.

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 and AGREED RESOLUTION 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 an opposed candidate is required to file reports 30 days and 8 days before the election unless the candidate is eligible to file reports under the modified reporting schedule. ELEC. CODE §§ 254.064, 254.181. 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 Sections III and 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, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$300 civil penalty for the violations described under Sections III and IV.

VIII. Order

The commission hereby ORDERS:

1. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-230744 and of SC-230746 as to the respondent;
2. 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 February 6, 2003; and

3. that the executive director shall promptly set a preliminary review hearing if the respondent does not agree to the resolution of SC-230744 and SC-230746 as proposed in this ORDER and AGREED RESOLUTION.

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

Shelton Lee Hubbard, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director