

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
REGINALD SUTTON,  
RESPONDENT

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§

BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-2406119

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission held a preliminary review hearing on November 12, 2004, to consider sworn complaint SC-2406119. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 255.005, 255.006, and 254.063 of the Election Code, and section 571.1242 of the Government Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

### II. Allegations

The complaint alleges that the respondent failed to properly file campaign finance reports, misrepresented his identity with respect to campaign communications, and represented in campaign communications that he held an office he did not hold. There is an additional contention that the respondent failed to timely respond to the notice of the sworn complaint.

### III. Facts Supported by Credible Evidence

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

1. The complaint relates to a port authority election held on May 3, 2003.
2. The respondent was a candidate for port commission.
3. People in the community received telephone calls seeking support for the respondent.
4. The calls came from a telephone number displayed as "Port Commission" by the recipients' caller identification devices.

5. The telephone number from which the calls originated was listed in a telephone book as "Port Commissioners Campaign Headquarters."
6. The address listed for that telephone number was an office that the respondent used for campaign purposes.
7. One recipient of the calls asked the caller if she was calling from the port commission and was told "yes." Upon further questioning, the caller stated she was calling from the respondent's phone bank.
8. The complaint alleges that the respondent violated section 254.063 of the Election Code because he did not properly file campaign finance reports.
9. The respondent filed a July 2003 semiannual report disclosing contributions totaling \$2,450 and expenditures totaling \$2,263.
10. On November 25, 2003, the respondent filed an amendment to the July 2003 semiannual report disclosing additional in-kind contributions totaling \$3,607.50. The respondent did not disclose the dates of those contributions, but indicates that the report covered a period from April 4, 2003, through May 3, 2003.
11. At the time of the complaint the respondent had not filed a January 2004 semiannual report.
12. The respondent timely filed a July 2004 semiannual report that indicated no activity. The report did not include the period that should have been covered by the January 2004 semiannual report.
13. The respondent received the notice of the sworn complaint on July 12, 2004. The respondent did not respond to the notice.

#### **IV. Findings and Conclusions of Law**

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

1. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person misrepresents the person's identity or, if acting or purporting to act as an agent, misrepresents the identity of the agent's principal, in political advertising or a campaign communication. ELEC. CODE § 255.005.
2. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. ELEC. CODE § 255.006.

3. "Campaign communication" means a written or oral communication relating to a campaign for nomination or election to public office. ELEC. CODE § 251.001(17).
4. The telephone calls were campaign communications because they related to an election for public office.
5. The telephone calls both misrepresented the identity of the person responsible for the calls and represented that the respondent held an office he did not hold. Therefore, there is credible evidence that the respondent committed technical or *de minimis* violations of section 255.005 and 255.006 of the Election Code.
6. Candidates must file semiannual reports in July and January. ELEC. CODE § 254.063.
7. A person violates the reporting requirements of chapter 254 of the Election Code if the person knowingly fails to file a report on time or to include in the report information that is required to be included. ELEC. CODE § 254.041.
8. The respondent did not timely file the January 2004 semiannual report.
9. After the filing deadline, the respondent corrected his July 2003 report to add additional contributions that were substantially in excess of those previously reported.
10. On the corrected report, the date of those contributions was not disclosed.
11. There is credible evidence that the respondent violated section 254.063 of the Election Code with respect to the July 2003 and January 2004 semiannual reports.
12. A respondent must respond to a sworn complaint that contains category two violations within 25 business days of receiving the notice of the sworn complaint. Failure to respond by the deadline is a separate category one violation. GOV. CODE § 571.1242.
13. The respondent made no response to the sworn complaint other than appearing at the preliminary review hearing, approximately 85 business days after he received the sworn complaint notice. Therefore, there is credible evidence that the respondent violated section 571.1242 of the Government 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 or 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 this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a person commits an offense if, with intent to injure a candidate or influence the result of an election, the person misrepresents the person's identity or, if acting or purporting to act as an agent, misrepresents the identity of the agent's principal, in political advertising or a campaign communication. The respondent acknowledges that a person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. Additionally, the respondent acknowledges that candidates must file semiannual reports in July and January. Finally, the respondent acknowledges that a respondent must respond to a sworn complaint that contains category two violations within 25 business days of receiving the notice of the sworn complaint. The respondent agrees to fully comply with these requirements of the law.

#### **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 \$1,000 civil penalty for the violations described under Section IV.

#### **VIII. Order**

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-2406119.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Reginald Sutton, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director