

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOHN MASTERSON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31106164

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on January 31, 2013, to consider sworn complaint SC-31106164. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.064 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent did not: 1) file a 30-day pre-election report; 2) timely file an 8-day pre-election report; and 3) properly disclose political contributions and political expenditures.

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 board member for the Conroe Independent School District (CISD) in a November 2, 2010, election.
2. The reports at issue are the 30-day and 8-day pre-election reports for the November 2010 school board election and the final report filed on November 19, 2010.

Filing of Report

30-day Pre-election Report

3. The complaint alleged that the respondent did not file the 30-day report for the November 2010 school board election. The report was due October 4, 2010.

4. The respondent sent his 30-day report to the Texas Ethics Commission instead of to the proper filing authority, CISD. The commission received the report on October 7, 2010, and returned it to the respondent. In a statement dated July 7, 2011, the respondent stated that after the commission returned the report to him, "I later filed the report with Conroe ISD." The commission contacted the local filing authority and received all documents that the respondent had filed as of November 2, 2012. The 30-day report at issue was not included with the documents. However, records indicate that the respondent filed the 30-day report with the CISD on November 9, 2012. The report disclosed \$125 for total political contributions and \$63.16 for total political expenditures.

8-day Pre-election Report

5. The complaint alleged that the respondent filed the 8-day report for the November 2010 school board election late. The report was due October 25, 2010. The report was filed on November 1, 2010, with the CISD. The report disclosed \$822 for total political contributions and \$647 for total political expenditures. The respondent corrected the report on November 9, 2012. The corrected report disclosed \$50 for total political contributions and \$644.93 for total political expenditures.

Contributions and Expenditures

8-day Pre-election Report

6. Regarding the 8-day report, the complaint alleged that the respondent did not itemize on Schedule A (used for political contributions) political contributions exceeding \$50 and did not itemize on Schedule F (used for political expenditures) political expenditures exceeding \$50.
7. The respondent did not have any contributions exceeding \$50 during the reporting period.
8. The 8-day report disclosed the following (with corrections noted in brackets):
- | | | |
|---|-------|------------|
| Total Political Contributions of \$50 or less | \$75 | [\$50] |
| Total Political Contributions | \$822 | [\$50] |
| Total Political Expenditures of \$50 or less | \$63 | [\$35.70] |
| Total Political Expenditures | \$647 | [\$644.93] |
| Contributions Maintained | \$175 | [\$0] |
9. On the initial report, the respondent did not itemize any contributions or expenditures.
10. On the corrected 8-day report, the respondent itemized on Schedule F an expenditure of approximately \$160 and itemized on Schedule G (used for political expenditures from personal funds) two expenditures totaling approximately \$450.

11. The respondent disclosed his political expenditures as a contribution.
12. The respondent included with his response a copy of the 30-day report that he sent to the commission. On that report, the respondent disclosed \$25 for total political contributions of \$50 or less, \$125 for total political contributions, and itemized a \$100 contribution on Schedule A. The remaining contribution of \$50 was disclosed on the 8-day report.
13. The respondent re-reported the \$125 of contributions from the 30-day report on the 8-day report. Total political contributions on the 8-day report should have been \$50 as reflected by the corrected report the respondent filed. The \$822 that the respondent disclosed for total political contributions on the 8-day report was made up of the contributions during the 8-day report period of \$50, the total contributions from the 30-day report period of \$125, and the total expenditures disclosed on the 8-day report of \$647. The respondent did not accept any contributions exceeding \$50 during the reporting period for the 8-day report. The respondent made approximately \$610 of expenditures exceeding \$50 during the report period for the 8-day report that he did not itemize on the initial 8-day report.

Final Report

14. The complaint alleged that, on the final report, the respondent did not itemize political contributions exceeding \$50 on Schedule A and did not itemize political expenditures exceeding \$50 on Schedule F and Schedule G.
15. The respondent did not have any political contributions or political expenditures exceeding \$50 during the reporting period.
16. The final report disclosed the following (with corrections noted in brackets):

Total Political Contributions of \$50 or less	\$75	[\$0]
Total Political Contributions	\$822	[\$0]
Total Political Expenditures of \$50 or less	\$63	[\$0]
Total Political Expenditures	\$822	[\$0]
Contributions Maintained	\$0	

17. The evidence indicated that the respondent reported the cumulative total of contributions and expenditures instead of just the contributions accepted and the expenditures made during the reporting period.

Contributions Maintained

18. The complaint alleged that, on the final report, total political contributions maintained should be \$175. The final report disclosed \$0 in total political contributions maintained. The respondent did not receive any contributions between the 8-day report and the final report.

IV. Findings and Conclusions of Law

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

Filing of Report

30-day Pre-election Report

1. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through the 40th day before election day. The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. ELEC. CODE § 254.064.
2. The respondent was an opposed candidate in the November 2010 CISD election. The respondent did not choose modified reporting. Therefore, the respondent was required to file 30-day and 8-day reports with the CISD.
3. The 30-day report was due October 4, 2010. The respondent filed the 30-day report with the CISD on November 9, 2012. The 8-day report was due October 25, 2010. The respondent filed the 8-day report with the CISD on November 1, 2010. There is credible evidence of violations of section 254.064 of the Election Code.

Contributions and Expenditures

4. Each report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of those contributions. ELEC. CODE § 254.031(a)(1).
5. Each report must include the amount of political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of those expenditures. ELEC. CODE § 254.031(a)(3).
6. Each report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of

\$50 (\$100 as of September 28, 2011) or less made during the reporting period. ELEC. CODE § 254.031(a)(5).

7. Each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).

8-day Pre-election Report

8. The respondent was not required to itemize political contributions because he only accepted one contribution during the reporting period and it was in the amount of \$50. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code.
9. The respondent over-reported total political contributions of \$50 or less on his initial report by \$25 because he included a \$25 political contribution from the 30-day report. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(5) of the Election Code.
10. The respondent over-reported total political contributions on his initial report by \$772 because he included \$125 of political contributions from the 30-day report and political expenditures of \$647 in his contribution total. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code.
11. The respondent did not itemize political expenditures of approximately \$610 that exceeded \$50. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.
12. The respondent over-reported total political expenditures of \$50 or less on his initial report by approximately \$30. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(5) of the Election Code.
13. The respondent over-reported total political expenditures on his initial report by \$2.07. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code.

Final Report

14. The respondent was not required to itemize political contributions because he did not accept any during the reporting period. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code.
15. The respondent over-reported total political contributions of \$50 or less on his initial report by \$75 because he included the \$75 of political contributions of \$50 or less from his prior

- reports. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(5) of the Election Code.
16. The respondent over-reported total political contributions on his initial report by approximately \$820 because he included political contributions and political expenditures from prior reports. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code as to total political contributions.
 17. The respondent was not required to itemize political expenditures because he did not have any during the reporting period. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.
 18. The respondent over-reported total political expenditures of \$50 or less on his initial report by approximately \$60 because he included political expenditures from prior reports. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(5) of the Election Code.
 19. The respondent over-reported total political expenditures on his initial report by approximately \$820 because he included political contributions and political expenditures from prior reports. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code as to total political contributions.

Contributions Maintained

20. Each report must include as of the last day of the reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
21. The 8-day report disclosed \$175 for contributions maintained, the total of all contributions that the respondent received during that period. The final report disclosed that the respondent made \$822 of political expenditures. The respondent re-reported the \$647 of expenditures he disclosed on his 8-day report which were made from personal funds and reported \$175 of new political expenditures. The evidence showed that the new expenditures were from the \$175 of contributions the respondent had remaining. The correct amount of contributions maintained was \$0. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election 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: 1) in addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through the 40th day before election day. The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day; 2) each report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 (\$100 as of September 28, 2011) or less made during the reporting period; 3) each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; and 4) each report must include the amount of political expenditures that in the aggregate exceed \$50 (\$100 as of September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of those expenditures.

The respondent agrees to 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 nature, circumstances, and consequences of the violations described under Sections III and IV, and the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty.

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-31106164.

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

John Masterson, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director