

TEXAS ETHICS COMMISSION

IN THE MATTER OF

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BEFORE THE

ROBERT D. PIERCE II,

TEXAS ETHICS COMMISSION

RESPONDENT

SC-31109222

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 18, 2012, to consider sworn complaint SC-31109222. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.063 of the Election Code and section 20.61 of the Ethics Commission Rules, 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: 1) did not timely file a January 2010 semiannual report; 2) did not properly disclose on multiple campaign finance reports political contributions and political expenditures; and 3) did not include a properly executed affidavit on a campaign finance report.

III. Facts Supported by Credible Evidence

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

1. The respondent was an incumbent candidate for Walker County Judge in the November 2, 2010, general election.

Timely Filing of Semiannual Report

2. The complaint alleged that the respondent did not timely file the January 2010 semiannual campaign finance report. The allegation is based on a corrected January 2010 semiannual report that was filed by the respondent on January 26, 2010. In the correction affidavit, the respondent indicated that he left off Schedule G (used to disclose political expenditures made from personal funds) in the original report by mistake.

3. In response to the complaint, the respondent provided a true and correct copy of the original January 2010 semiannual report. The report was properly notarized and date stamped by the Walker County clerk on January 11, 2010. Although the respondent disclosed all political expenditures on Schedule F (used to itemize political expenditures), that is not the appropriate schedule to disclose political expenditures made from personal funds. Because the respondent did not include Schedule G when the report was filed, the report was incomplete on January 11, 2010. The respondent filed a corrected report on January 26, 2010.

Purpose of Expenditures

4. The complaint alleged that the respondent did not disclose a purpose for two political expenditures disclosed in the January 2010 semiannual report and one political expenditure disclosed in the 8-day pre-election report that was filed in connection with the March 2, 2010, primary election.
5. Regarding the January 2010 semiannual report, the evidence indicated that the respondent made only one \$750 political expenditure from his personal funds, but disclosed the political expenditure on both Schedule F and Schedule G. The respondent did not provide a purpose for the expenditure on either schedule in the original report. The respondent subsequently corrected the report to provide a description of “filing fee” for the political expenditure on Schedule G. The respondent also removed Schedule F from the report.
6. Regarding the 8-day pre-election report for the March 2010 primary election, the respondent did not provide a purpose for the expenditure on Schedule F of the report. As noted above, the respondent reported political expenditures made from personal funds on both Schedule F and Schedule G. Thus, the same expenditure was also disclosed on Schedule G of the report. In response to the complaint, the respondent swore that although Schedule F did not disclose a purpose for the \$130 expenditure, Schedule G of that same report indicated that the expenditure was for an “Advertisement.” Note that the respondent did not double-report the amount of the expenditure in the expenditure totals boxes. In response to the complaint, the respondent corrected the report to remove Schedule F.

Payee’s Address

7. The complaint alleged, and the evidence indicated, that the respondent did not disclose an address for the \$750 political expenditure disclosed on Schedule F and Schedule G of the January 2010 semiannual report. In response to the complaint, the respondent filed a corrected report and disclosed a complete address for the Republican Party of Walker County.

Full Name of Contributor

8. The complaint alleged that the respondent did not list the full name of a contributor in a final report. The political contribution at issue was disclosed on Schedule A (used to disclose political contributions) of the final report, and disclosed the contributor's initials and last name.
9. The name of the contributor on the check at issue showed the contributor's name as disclosed on the original report. The respondent subsequently corrected the final report to disclose the full name of the contributor.

Political Contributions

10. The complaint alleged that the respondent did not report two political contributions totaling \$600 in the 8-day pre-election report filed in connection with the November 2, 2010, general election. The 8-day pre-election report was filed by the respondent on October 25, 2010, and covered from September 24, 2010, through October 23, 2010. The respondent subsequently filed a final report on January 18, 2011, covering from October 24, 2010, through December 31, 2010. The two political contributions were disclosed on Schedule A of the final report as follows:
 - \$500 from Trinity Industries Employee Political Action Committee, Inc. on October 20, 2010 (corrected to October 26, 2010)
 - \$100 from James & Theresa Frazier on October 23, 2010 (corrected to October 26, 2010)
11. In response to the complaint, the respondent swore that both contributions were received after the October 25, 2010, report (8-day pre-election report), and that the disclosure was based on the date written on the checks rather than the date the checks were received. The respondent provided a copy of each contribution check. The dates on the checks were the same as the information disclosed by the respondent in the original report. The respondent subsequently corrected the final report to list the dates that the contributions were accepted, rather than the date written on each check.

Total Political Contributions Maintained

12. The complaint alleged that the respondent did not properly disclose political contributions maintained in the following seven campaign finance reports: 8-day pre-election report for the March 2010 primary election, March 2010 election runoff report, July 2010 semiannual report, 30-day and 8-day pre-election reports for the November 2010 general election, final report, and a July 2011 semiannual report.
13. The respondent's 8-day pre-election report for the March 2010 primary election disclosed \$500 in total political contributions; \$397.66 in total political expenditures, all of which were made before the \$500 contribution was reported; and \$0 in total political

- contributions maintained. Note that the respondent also reported \$0 in total political contributions maintained in the preceding reporting period. The complaint alleged that the total political contributions maintained should be \$500. The difference between the amount disclosed and the amount alleged is \$500. In response to the complaint, the respondent swore that “the failure to list the contribution balances being \$500 was an oversight and a clerical error which was not meant to mislead or substantially affect the matters which should be disclosed.” The respondent corrected the report to disclose \$500 in total political contributions maintained.
14. The respondent’s March 2010 election runoff report disclosed \$0 in total political contributions; \$0 in total political expenditures; and \$0 in total political contributions maintained. The complaint alleged that the total political contributions maintained should be \$500. The difference between the amount disclosed and the amount alleged is \$500. In response to the complaint, the respondent acknowledged that the contribution balance was incorrect. The respondent corrected the report to disclose \$500 in total political contributions maintained.
 15. The respondent’s July 2010 semiannual report disclosed \$0 in total political contributions; \$0 in total political expenditures; and \$0 in total political contributions maintained. The complaint alleged that the total political contributions maintained should be \$500. The difference between the amount disclosed and the amount alleged is \$500. In response to the complaint, the respondent acknowledged that the contribution balance was incorrect. The respondent corrected the report to disclose \$500 in total political contributions maintained.
 16. The respondent’s 30-day pre-election report for the November 2010 general election disclosed \$0 in total political contributions maintained (corrected to \$10,223). The complaint alleged that the total political contributions maintained should be \$10,173. The difference between the amount as originally disclosed and the amount alleged is \$10,173.
 17. The respondent’s 8-day pre-election report for the November 2010 general election disclosed \$10,330.82 in total political contributions maintained. The complaint alleged that the total political contributions maintained should be \$10,830.82. The difference between the amount disclosed and the amount alleged is \$500. In response to the allegation, the respondent swore that he recalculated the figures and believes that the amount was correct as originally reported. The respondent did not file a correction or amendment to the report.
 18. The respondent’s final report disclosed \$160.63 in total political contributions maintained as of December 31, 2010. The complaint alleged that the total political contributions maintained should be \$694.08. The difference between the amount disclosed and the amount alleged is \$533.45. In response to the allegation, the respondent swore that he recalculated the figures and believes that the amount was correct as originally reported. The respondent provided a copy of his bank statement that showed a balance of \$160.63 was maintained from December 13, 2010, through January 13, 2011.

19. The respondent's July 2011 semiannual report disclosed \$160.63 in total political contributions maintained as of June 30, 2011. The complaint alleged that the total political contributions maintained should be \$694.08. The difference between the amount disclosed and the amount alleged is \$533.45. In response to the allegation, the respondent swore that he recalculated the figures and believes that the amount was correct as originally reported. The respondent provided a copy of his bank statement that showed a balance of \$160.63 was maintained from June 13, 2011, through July 13, 2011.

Campaign Finance Report Affidavit

20. The complaint alleged that the respondent's 30-day pre-election report filed in connection with the November 2010 general election did not contain a notary stamp. The allegation appears to be based on a bad copy of the pre-election report that does not clearly show the notary stamp. The respondent provided a certified copy of the report that shows that the notary stamp was present.

IV. Findings and Conclusions of Law

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

Timely Filing of Semiannual Report

1. A candidate shall file two reports for each year as provided by this section. The first report shall be filed not later than July 15. The second report shall be filed not later than January 15. ELEC. CODE § 254.063.
2. A report is late if it is: incomplete; not filed by the applicable deadline; or not filed by computer diskette, modem, or other means of electronic transfer and the filer is required by law to file using one of these methods. Ethics Commission Rules § 18.7(c).
3. Credible evidence indicated that the respondent did not file a complete January 2010 semiannual report by the January 15, 2010, deadline. Since a complete report was not filed by the report deadline, the report is considered late. Therefore, there is credible evidence of a violation of section 254.063 of the Election Code.

Purpose of Expenditures

4. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
5. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of

goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure. *Id.* § 20.61(a)(2).

6. Regarding the \$750 political expenditure, the respondent did not disclose a purpose on either Schedule F or Schedule G of the original report. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules with respect to that expenditure.
7. Regarding the \$130 political expenditure, the respondent did not disclose a purpose on Schedule F of the report. However, the respondent also disclosed the same expenditure on Schedule G (the appropriate schedule) of the report and indicated that the expenditure was for an advertisement. Since the political expenditure was made from the respondent's personal funds, the respondent was not required to disclose the expenditure on Schedule F. Although the reporting is somewhat confusing, in context the error is minor. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules with respect to that expenditure.

Payee's Address

8. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 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 the expenditures. ELEC. CODE § 254.031(a)(3).
9. The respondent was required to list the full address for the Republican Party of Walker County because the political expenditure exceeded \$50 during the reporting period. The respondent did not list the payee's address when the original January 2010 semiannual report was filed. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.

Full Name of Contributor

10. 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 by the person or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
11. It is not a valid basis of a complaint to allege that a report required under Chapter 254, Election Code, contains the improper name or address of a person from whom a political contribution was received if the name or address in the report is the same as the name or address that appears on the check for the political contribution. GOV'T CODE § 571.122(e).
12. Although section 571.122(e) of the Government Code was not in effect during the time at issue, the contributor name as disclosed by the respondent is the same as the name that appeared on the contribution check, and the disclosure substantially complies with the

applicable reporting requirements. There is credible evidence of no violation of section 254.031(a)(1) of the Election Code.

Political Contributions

13. 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 by the person or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
14. Each campaign finance 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).
15. Although the dates disclosed by the respondent fell within the period covered by the 8-day pre-election report, credible evidence indicates that the respondent did not receive or accept the contributions during the period covered by the 8-day pre-election report. Thus, the respondent was not required to disclose the contributions in the 8-day pre-election report. There is credible evidence of no violations of section 254.031(a)(6) of the Election Code.
16. Although the respondent disclosed the contributions in the correct reporting period, the respondent did not disclose the correct dates that the contributions were accepted. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(1) of the Election Code.

Total Political Contributions Maintained

17. 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).
18. Regarding the 8-day pre-election report and the runoff election report for the March 2010 primary election, and the July 2010 semiannual report, the respondent acknowledged that the contributions maintained balances were incorrect because he inadvertently left out \$500 in each report. Therefore, there is credible evidence of violations of section 254.031(a)(8) of the Election Code with respect to those three reports.
19. Regarding the 30-day pre-election report for the November 2010 general election, the respondent did not list the correct amount of total political contributions maintained in the original report. The difference was \$10,223. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code with respect to that report.
20. Regarding the 8-day pre-election report for the November 2010 general election, the commission has previously determined that there is no violation of section 254.031(a)(8) of the Election Code if the difference between the amount of political contributions

maintained as originally disclosed and the amount alleged, a correct amount, does not exceed the lesser of 10% of the amount originally disclosed or \$2,500. The difference between the amount disclosed and the amount alleged in the 8-day pre-election report is less than \$1,033.08. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code with respect to that report.

21. Regarding the final report and the July 2011 semiannual report, the bank statements provided by the respondent indicate that the contributions maintained balances were the same as the amounts disclosed by the respondent. Therefore, there is credible evidence of no violations of section 254.031(a)(8) of the Election Code with respect to those reports.

Campaign Finance Report Affidavit

22. Each campaign finance report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code." ELEC. CODE § 254.036(h).
23. The report was properly signed and notarized. Therefore, there is credible evidence of no violation of section 254.036(h) 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) a campaign finance 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 by the person or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions; 2) a campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made, and the dates and purposes of the expenditures; 3) a campaign finance 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; 4) a candidate shall file two reports each year. The

first report shall be filed not later than July 15. The second report shall be filed not later than January 15; and 5) a report is late if it is incomplete, not filed by the applicable deadline, or not filed by computer diskette, modem, or other means of electronic transfer and the filer is required by law to file using one of these methods.

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 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 \$250 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-31109222.

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

Robert D. Pierce II, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director