

TEXAS ETHICS COMMISSION

IN THE MATTER OF

MICHAEL C. ABBOTT,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31210310, SC-31210319, SC-31210320,
SC-31210321, SC-31211332, SC-31211333,
AND SC-31211334

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 21, 2014, to consider sworn complaints SC-31210310, SC-31210319, SC-31210320, SC-31210321, SC-31211332, SC-31211333, and SC-31211334 (collectively, the complaints). A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.063, and 254.064 of the Election Code and section 20.219 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaints alleged that the respondent: 1) did not properly disclose political contributions, loans, and political expenditures on campaign finance reports; and 2) did not timely file campaign finance reports.

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 Orange County Court-at-Law Judge.

Timely Filing of Campaign Finance Reports

2. The complaints alleged that the respondent did not timely file a January 2012 semiannual report, a July 2012 semiannual report, and the 30-day pre-election report for the November 2012 general election.
3. The respondent submitted a sworn statement admitting to filing the three reports late.
4. The January 2012 semiannual report was due on January 17, 2012, but was not filed until January 18, 2012.
5. The July 2012 semiannual report was due on July 16, 2012, but was not filed until July 24, 2012.
6. The 30-day pre-election report was due on October 9, 2012, but was not filed until October 10, 2012.

Reporting a Loan

7. The complaints alleged the respondent failed to report a political loan that stemmed from a transaction between the respondent and another individual. The respondent and the individual entered into an agreement for the respondent to purchase a voter database from the individual for \$1,500. The agreement called for the respondent to make an initial payment of \$500 with the \$1,000 balance to be paid in full by a later date. The respondent claimed the database was defective and refused to pay the \$1,000 balance.
8. The extension of credit was made pursuant to a normal business transaction and not made with the intent to aid a campaign.
9. The respondent reported the initial \$500 payment to the individual for the database as a political expenditure on Schedule G of his campaign finance report and did not report the \$1,000 balance as an expenditure, loan, or credit.

Reporting Political Expenditures

10. The complaints alleged the respondent failed to disclose the amounts of two political expenditures on Schedule G of the January 2012 semiannual report. The respondent left blank the box where the amount of each expenditure was supposed to be disclosed.
11. One of the expenditures was for the \$1,500 filing fee to secure a place on the ballot and the other \$500 was for the voter database the respondent purchased.

12. The respondent submitted a sworn statement in which he admitted that he failed to disclose the amount of each expenditure. He also filed corrected reports disclosing the amounts of the expenditures.

Reporting Political Contributions

13. The complaints alleged the respondent failed to properly disclose a \$450 in-kind contribution on both his 30-day pre-election report and his July 2012 semiannual report because he did not describe the in-kind contributions.
14. In his sworn response, the respondent admitted he failed to describe the in-kind contributions. He submitted an affidavit in which he described the in-kind contributions as access to a voter database.

IV. Findings and Conclusions of Law

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

Timely Filing of Campaign Finance Reports

1. A candidate shall file two reports for each year. ELEC. CODE § 254.063(a). The first report shall be filed not later than July 15. The report covers the period beginning January 1, 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, as applicable, and continuing through June 30. *Id.* § 254.063(b). The second report shall be filed not later than January 15. The report covers the period beginning July 1, 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, as applicable, and continuing through December 31. *Id.* § 254.063(c).
2. The respondent was required to file the January 2012 and July 2012 semiannual reports by, respectively, January 17, 2012, and July 16, 2012 (deadlines extended due to weekends). The respondent did not file the reports by the due dates. Therefore, there is credible evidence of violations of sections 254.063(b) and 254.063(c) of the Election Code.
3. 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 is required to file two reports. *Id.* § 254.064(a). 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, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b). 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. *Id.* § 254.064(c).

4. The respondent was required to file the 30-day pre-election report no later than October 9, 2012. The respondent did not file the report by the due date. Therefore, there is credible evidence of a violation of section 254.064(b) of the Election Code.

Reporting of a Loan

5. Each report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. *Id.* § 254.031(a)(2).
6. “Contribution” does not include a transfer for consideration of any thing of value pursuant to a contract that reflects the usual and normal business practice of the vendor. Ethics Commission Rules § 20.1(3).
7. A campaign finance report from a candidate must include the amount of political expenditures that in the aggregate exceed \$100 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 purpose of the expenditures. ELEC. CODE § 254.031(a)(3).
8. A political expenditure is defined, in relevant part, as an expenditure made by any person in connection with a campaign for an elective office. *Id.* §§ 251.001 (7), (10). “Expenditure” means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
9. For purposes of reporting, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. *Id.* § 254.035(a).
10. The proper way for a candidate to report a transaction in which goods are purchased on credit is to report the full amount of the expenditure on the report covering the period in which the purchase agreement was made. The date of the purchase agreement, and not the date the

actual payment is made, is the relevant date for campaign finance reporting purposes. Ethics Advisory Opinion No. 262 (1995).

11. The transaction at issue was a purchase of goods on credit pursuant to the vendor's normal business practice and not with the intent to aid a campaign. Therefore, the transaction was required to be reported as a political expenditure rather than a loan. There is credible evidence of no violation of section 254.031(a)(2) of the Election Code.

Reporting of Political Expenditures

12. In regard to the expenditure for the voter database, the expenditure was made in connection with the respondent's campaign for elective office. Therefore, the expenditure was a campaign expenditure required to be fully disclosed. The expenditure was reported, but the amount of the payment was not disclosed. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.
13. In regard to the expenditure made for the filing fee, the respondent failed to disclose the amount. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.

Reporting Political Contributions

14. Each 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, the dates of the contributions, and a description of any in-kind contribution. ELEC. CODE § 254.031(a)(1); Ethics Commission Rules § 20.219(10)(E).
15. The respondent was required to disclose a description of the in-kind contributions in the form of access to the voter database. The respondent did not disclose the descriptions. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code and section 20.219(10)(E) of the Ethics Commission Rules.

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 these sworn complaints.

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 candidate shall file two reports for each year. The first report shall be filed not later than July 15. The report covers the period beginning January 1, 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, as applicable, and continuing through June 30. The second report shall be filed not later than January 15. The report covers the period beginning July 1, 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, as applicable, and continuing through December 31.

The respondent further acknowledges that 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 is required to 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, 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.

The respondent further acknowledges that a campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 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.

The respondent further acknowledges that 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, the dates of the contributions, and a description of any in-kind contributions.

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 after considering the sanction necessary to deter future violations, the commission imposes a \$375 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-31210310, SC-31210319, SC-31210320, SC-31210321, SC-31211332, SC-31211333, and SC-31211334.

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

Michael C. Abbott, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director