

TEXAS ETHICS COMMISSION

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February 20, 2015

Mr. Michael R. Southerland

RE: Notice of Reporting Error
SC-31410235
(Michael R. Southerland, Respondent)

Dear Mr. Southerland:

The Texas Ethics Commission (Commission) met on February 12, 2015, to consider SC-31410235. A quorum of the Commission was present. **The Commission determined that there is credible evidence of reporting errors that do not materially defeat the purpose of disclosure.** To resolve and settle this case without further proceedings, the Commission proposed this Notice of Reporting Error Agreement (agreement).

The Commission **found credible evidence** that:

1. The respondent did not disclose the date of acceptance of a political contribution as required by section 254.031(a)(1) of the Election Code; and
2. The respondent did not cover the proper reporting periods on campaign finance reports as required by sections 254.063(b) and 254.064(b) of the Election Code.

The Commission **did not find credible evidence** that:

1. The respondent did not disclose political expenditures for the repayment of a loan as required by section 254.031(a)(3) of the Election Code, and did not properly disclose the aggregate principal amount of all outstanding loans as required by section 254.031(a)(2) of the Election Code; and
2. The respondent did not include the proper office sought and election date on the cover sheet of a report as required by section 254.061(1) of the Election Code; and

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3. The respondent knowingly represented in campaign communications that he held a public office that he did not hold at the time the representations were made by not including the word “for” to clarify that he did not hold that office as required by section 255.006 of the Election Code.

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

Date of Acceptance of a Political Contribution

1. It was contended that the respondent did not properly disclose the date of acceptance of a political contribution. The contribution at issue was for \$1,000 from a married couple. The respondent disclosed “12:00:00 AM” as the date of acceptance. In response, the respondent stated that the mistake was due to a computer formatting error, and that the correct date of acceptance was September 19, 2014. The respondent did not disclose the date of the contribution at issue. **Therefore, there is credible evidence of noncompliance with section 254.031(a)(1) of the Election Code.**

Disclosure of Total Principal Amount of Outstanding Loans

2. It was contended that the respondent did not properly disclose political expenditures for the repayment of a loan, or in the alternative, did not properly disclose total outstanding loans. The respondent’s July 2014 semiannual report disclosed a total principal amount of outstanding loans of \$15,025.81. The respondent’s next report, the 30-day pre-election report for the November 2014 general election, disclosed a total principal amount of outstanding loans of \$458.04. The 30-day pre-election report did not disclose any expenditures for repayment of the outstanding loans.
3. In response to the complaint, the respondent provided campaign finance reports filed between 2008 and the July 2014 semiannual report at issue. In the reports, the respondent disclosed expenditures from personal funds and loans from personal funds totaling \$15,405.82. The respondent stated that the loans have not been repaid. The respondent also indicated that the loans and expenditures from personal funds were made in connection with a prior campaign for another office. The respondent mistakenly believed that his campaign finance reports filed while running for city councilmember should not include financial information related to his former campaign for mayor. Based on that belief, the respondent did not disclose the total principal amount of outstanding loans in connection with his mayoral campaign.
4. A candidate or officeholder is not required to include political expenditures from personal funds under the aggregate principal amount of all outstanding loans. The respondent previously included political expenditures from personal funds and loans from personal funds in the aggregate principal amount of all outstanding loans. However, the respondent was not required to do this on the report at issue. **Therefore, there is credible evidence of compliance with section 254.031(a)(2) of the Election Code.**

5. The evidence indicates that the respondent did not make any expenditures to reimburse himself for expenditures from personal funds or loans made by the respondent. **Therefore, there is credible evidence of compliance with section 254.031(a)(3) of the Election Code.**

Reporting Periods Covered

6. It was contended that the respondent did not cover the correct reporting periods on his July 2014 semiannual report and 30-day pre-election report for the November 2014 general election. The July 2014 semiannual report covered the period between January 16, 2014, and July 15, 2014. The last day of the previous report, the January 2014 semiannual, was January 15, 2014. The 30-day pre-election report for the November 2014 general election covered the period between August 15, 2014, and October 5, 2014. The last day of the previous report, the July 2014 semiannual, was July 15, 2014.
7. The respondent's July 2014 semiannual report should have covered January 1, 2014, through June 30, 2014. The respondent did not cover the correct period. However, the incomplete information did not substantially affect disclosure because the respondent's previous report covered the omitted dates. **Therefore, there is credible evidence of technical or *de minimis* noncompliance with section 254.063(b) of the Election Code with respect to that report.**
8. The respondent's 30-day pre-election report for the November 2014 general election should have covered July 1, 2014, through September 25, 2014. The respondent did not cover the correct period and did not disclose activity from July 16, 2014, through August 14, 2014. **Therefore, there is credible evidence of noncompliance with section 254.064(b) of the Election Code with respect to that report.**

Office Sought and Election Date

9. It was contended that the respondent did not properly disclose the office sought and election date on his July 2014 semiannual report. The respondent disclosed that the office sought was "Mayor City of Bryan" and the election date was November 5, 2013. The respondent was an unsuccessful candidate for mayor of the city of Bryan in the uniform election held November 5, 2013. On August 25, 2014, the respondent filed an appointment of campaign treasurer indicating that he was seeking the office of Bryan City Councilmember, District 4. A candidate is only required to disclose the office sought if known, and needs only disclose the date of the next election in which the candidate intends to participate. The evidence indicates that at the time the respondent filed the July 2014 semiannual report, he was not yet seeking the office of Bryan City Councilmember. Therefore, the respondent was not required to disclose the office sought and election date for that office. **There is credible evidence of compliance with section 254.061(1) of the Election Code.**

Misleading Use of Office Title

10. It was contended that the respondent knowingly represented in campaign communications that he held a public office that he did not hold at the time the representations were made by not including the word “for” to clarify that he did not hold that office. The complaint included photographs of campaign signs that included the word “for” underneath the office title and tilted at an upward angle. The respondent’s campaign communications included the word “for” in an appropriate type size adjacent to the name of the office sought to clarify that the candidate did not hold that office. **Therefore, there is credible evidence of compliance with section 255.006 of the Election Code.**

By signing this agreement and returning it to the Commission:

1. You consent to this agreement.
2. You accept the determinations made by the Commission in this agreement.
3. You waive any right to further proceedings in this matter.
4. You understand and agree that the Commission will consider this agreement in any future proceedings against you regarding similar allegations.
5. You acknowledge 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 under this chapter, the full name and address of the person making the contributions, and the dates of the contributions.

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 under this subchapter, as applicable, and continuing through June 30.

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.

You agree to comply with these requirements of the law.

This agreement describes some reporting errors that the Commission has determined are neither technical nor *de minimis*. Accordingly, this agreement is not confidential under section 571.140 of the Government Code.

This agreement is a final and complete resolution of SC-31410235.

Michael R. Southerland, Respondent

Date signed by Respondent

Executed original agreement received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director