

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

MARK ALLEN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31906111

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (Commission) met on February 27, 2020, to consider sworn complaint SC-31906111. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 252.002, 254.036, 254.061, 254.063, 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 adopted this resolution.

### II. Allegations

The complaint alleges that the respondent: 1) did not properly file and complete the campaign treasurer appointment, in violation of sections 252.001 and 252.002 of the Election Code; 2) accepted campaign contributions or made or authorized campaign expenditures at a time when a campaign treasurer appointment for the respondent was not in effect, in violation of section 253.031 of the Election Code; 3) did not complete the 30-day and 8-day pre-election reports in the format prescribed by the Commission, by failing to include a cover sheet for each report and failing to report the required cover sheet information, in violation of sections 254.036(a), 254.061, and 254.064 of the Election Code; and 4) did not file a January 2019 semiannual report, in violation of section 254.063(c) of the Election Code.

### III. Findings of Fact and Conclusions of Law

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

1. The respondent was an opposed candidate for Cibolo City Council, District 5, in the November 6, 2018, general election.

**Reporting of Required Campaign Treasurer Information**

2. The complaint alleged that the respondent did not properly file and complete the campaign treasurer appointment (Form CTA).
3. Based on the records provided with the complaint, the respondent filed a Form CTA on August 16, 2018. However, all sections pertaining to information about the campaign treasurer were left blank.
4. In response to the complaint, the respondent admitted that he did not complete Form CTA as required by law. The respondent stated that since he was going to appoint himself as campaign treasurer, he mistakenly thought that he did not need to complete the sections relating to the campaign treasurer on Form CTA. Furthermore, the respondent stated he assumed that the assistant city secretary was aware of the correct way to fill out the Form CTA and relied on her verification prior to filing it. Nevertheless, the respondent also admitted, and now recognizes, that he was ultimately responsible for correctly completing the Form CTA, not the assistant city secretary.
5. On the respondent's own initiative, he filed a new Form CTA on July 5, 2019. The respondent listed himself as the campaign treasurer and disclosed his full name, residential or business address, and telephone number.
6. A candidate shall appoint a campaign treasurer. ELEC. CODE § 252.001. A campaign treasurer appointment must be in writing and include, in relevant part, the campaign treasurer's name; the campaign treasurer's residential or business street address; and the campaign treasurer's phone number. *Id.* § 252.002.
7. At the time of filing the Form CTA on August 16, 2018, the respondent's campaign treasurer appointment did not include the campaign treasurer's name, residential or business street address, or telephone number. Therefore, there is credible evidence of violations of section 252.002 of the Election Code.

**Campaign Reporting Activity when Campaign Treasurer Appointment not in Effect**

8. The complaint alleged that the respondent accepted campaign contributions or made or authorized campaign expenditures when his Form CTA was not in effect.
9. The respondent filed his Form CTA on August 16, 2018. The respondent filed 30-day and 8-day pre-election reports showing that the first reportable activity by the respondent was an \$8.17 political expenditure that occurred on August 19, 2018. The last reportable activity, a \$40.00 in-kind contribution, occurred on October 18, 2018. The respondent did not correct his Form CTA to include the required campaign treasurer information until July 5, 2019, after the filing of this complaint.

10. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE § 253.031(a). A campaign treasurer appointment takes effect at the time it is filed with the authority specified by this chapter. *Id.* § 252.011(a). A campaign treasurer appointment continues in effect until terminated. *Id.* § 252.011(b).
11. The respondent filed the Form CTA on August 16, 2018, but did not include the campaign treasurer's name, residential or business street address, or telephone number. Although incomplete, the respondent's Form CTA was in effect on the date he filed it. There is no evidence to indicate that the respondent accepted a political contribution or made or authorized a political expenditure prior to August 16, 2018. Therefore, there is credible evidence of no violation of section 253.031 of the Election Code.

### **Cover Sheet Information on Campaign Finance Reports**

12. The complaint alleged that the respondent did not complete the 30-day and 8-day pre-election reports in the format prescribed by the Commission and failed to report the required cover sheet information.
13. On October 4, 2018, the respondent filed what appeared to be a 30-day pre-election report, based on when the report was notarized. However, the report lacked cover sheet pages one and three (used to disclose schedule subtotals) for campaign finance reports prescribed by the Commission. On October 29, 2018, the respondent filed what appeared to an 8-day pre-election report, also based on when the report was notarized. This report was also missing cover sheet pages one and three.
14. The respondent did not address the missing pages of the coversheet for each report in his response to the complaint. However, the respondent did file corrected 30-day and 8-day pre-election reports to include the missing cover sheet pages, with the accompanying correction affidavits. Additionally, although not alleged but at the behest of Commission staff, the respondent corrected certain activity in his 8-day pre-election report that was supposed to be reported in his 30-day pre-election report. Specifically, two political expenditures made on October 3, 2018, totaling \$62.59. The respondent also corrected page two of each coversheet to accurately reflect total contributions and expenditures for each reporting period. The respondent also corrected the periods covered and the election date for each campaign finance report.
15. Campaign finance reports that are required to be filed under Title 15 of the Election Code must be in a format prescribed by the Commission. ELEC. CODE. § 254.036. Campaign finance reports must include, in relevant part, the candidate's full name, address, office sought, and the identity and date of the election for which the report is filed; and the

- campaign treasurer's name, residence or business address, and telephone number. *Id.* § 254.061(1); (2).
16. 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. *Id.* § 254.064.
  17. The respondent did not include his name, address, the office sought, period covered by the report, and the identity and date of the election for which the report is filed, as well as the campaign treasurer's name, residence or business address, and telephone number on cover sheet page one of the 30-day and 8-day pre-election reports. The campaign finance report prescribed by the Commission also requires candidates to include cover sheet page three for a listing of the schedule subtotals. The respondent did not include that page in the 30-day and 8-day pre-election reports. Therefore, there is credible evidence of violations of sections 254.036(a), 254.061, and 254.064 of the Election Code.

### **Filing of January 2019 Semiannual Report**

18. The complaint alleged that the respondent did not file a semiannual report due by January 15, 2019. The sworn complaint was filed on June 17, 2019. However, the respondent did not file the report until October 22, 2019, 286 days late. The report showed the respondent had \$0 in political expenditures and political contributions during the reporting period.
19. Candidates are required to file two reports each year. ELEC. CODE § 254.063(a). One of the required reports must be filed no later than January 15 of each year. *Id.* § 254.063(c). This report covers the period beginning July 1, the day the candidates files a Form CTA, or the first day after the period covered by the last required report and continues through December 31 of the same year. *Id.* § 254.063(c).
20. Regarding the January 2019 semiannual report, credible evidence shows the respondent filed the report 286 days late. Therefore, there is credible evidence of a violation of section 254.063 of the Election Code.

#### **IV. 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 findings of fact and conclusions of law described under Section III 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 candidate's Form CTA must include the campaign treasurer's name, residential or business address, and telephone number; 2) each campaign finance report that a candidate files must be in a format prescribed by the Commission and include all cover sheet pages and list the period covered by the report. The respondent also acknowledges that each report required to be filed by a candidate must include the candidate's full name, address, office sought, the identity and date of the election for which the report is filed, and the campaign treasurer's name, residence or business address, and telephone number; and 3) a candidate shall file two reports for each year. The second report shall be filed not later than January 15. The respondent agrees to comply with these requirements of the law.

#### **V. 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.

#### **VI. Sanction**

After considering the nature, circumstances, and consequences of the violations described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$200 civil penalty to be paid within 90 days from the date of execution of this order. If the \$200 penalty is not paid within 90 days from the date of execution of this order, then the penalty is increased to \$2,500 and will be referred to the Office of the Attorney General of Texas for collection.

**VII. 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-31906111.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mark Allen, Respondent

EXECUTED by the Commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Anne Temple Peters, Executive Director