

TEXAS ETHICS COMMISSION

IN THE MATTER OF

Terry Pruden,

RESPONDENT

§
§
§
§
§

BEFORE THE

TEXAS ETHICS COMMISSION

SC-94047

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission ("commission") met on October 14, 1994, to consider sworn complaint SC-94047 filed against Terry Pruden ("Respondent"). A quorum of the commission was present. Based on the investigation conducted by commission staff to date, the commission determined there was credible evidence of a violation of § 254.123 of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to Respondent.

II. Facts Supported by Credible Evidence

Credible evidence available to the commission would support the following findings of fact:

1. At all times relevant to this complaint, Respondent was the campaign treasurer for Forward El Paso Committee ("FEPC"), a specific-purpose committee, organized to support a 1990 El Paso bond measure election. Prior to the formation of FEPC, a bank account was opened in the name "Citizens Committee for the Bond Election," the anticipated name of the specific-purpose committee. This committee was, in fact, never formed, however, contributions to and expenditures from FEPC were made to and drawn from this account.
2. Respondent timely filed FEPC's first sworn report of contributions and expenditures with the El Paso City Secretary on a form entitled *Specific-Purpose Committee Sworn Report of Contributions and Expenditures*, and covering the period beginning February 15, 1990 and ending on May 16, 1990. This report was designated as the "30th day before an election" report.
3. Respondent timely file the second report on a form entitled *Candidate/Officeholder Sworn Report of Contributions And Expenditures*. This report covered the period beginning May 16 and ending on June 8, and was designated as the "8th day before an election" report.
4. Respondent timely filed the last report on the *Candidate/Officeholder Sworn Report of Contributions And Expenditures* form. This report covered the period beginning February 16 and ending on July 5, and was designated as the "Final Report (Attach Part X-05)" report. Part X-05 was not attached.
5. Since July 1990, Respondent has filed no other reports on behalf of FEPC.
6. In December 1991, FEPC received a refund of over-payment of advertising expenses which was deposited in FEPC's bank account. These surplus funds remained in the account gathering interest until May 10, 1994, when the account was closed and the funds were contributed to The 1994 Bond

Committee, another specific-purpose committee supporting a 1994 City of El Paso bond measure election. Respondent failed to file a timely report on this activity.

7. In an affidavit filed with the commission on October 11, 1994, Respondent swore that, "As a result of excess funds which were refunded from the advertising agency which was involved in the 1990 bond campaign, I elected to close out the residual account for the Citizens Committee for the Bond Election (wherein I served as treasurer in 1990) making the complete contribution to the 1994 bond committee. As I previously stated, I believe that all necessary filing requirements for the Citizens Committee for the Bond Election [FEPC] involving the 1990 bond campaign were completed."

III. Conclusions of Law

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

1. Section 254.125 (Final Report of Committee for Supporting or Opposing Candidate or Measure) which was in effect during all times material to this complaint states:
 - (a) *If a specific-purpose committee for supporting or opposing a candidate or measure expects no reportable activity in connection with the election to occur after the period covered by a report filed under this subchapter, the committee's campaign treasurer may designate the report as a "final" report.*
 - (b) *The designation of a report as a final report:*
 - (1) *relieves the campaign treasurer of the duty to file additional reports under this subchapter, except as provided by Subsection (c); and*
 - (2) *terminates the committee's campaign treasurer appointment.*
 - (c) *If, after a committee's final report is filed, reportable activity with respect to the election occurs, the committee must file the appropriate reports under this subchapter and is otherwise subject to the provisions of this title applicable to political committees. A report filed under this subsection may be designated as a final report.*
2. The last report filed by Respondent on the form *Candidate/Officeholder Sworn Report of Contributions And Expenditures* did not effectively terminate FEPC's campaign treasurer appointment for two reasons. It was the wrong form and Part X-05 was not completed and attached to the report. Prior to January 1, 1992, in order to properly terminate FEPC's appointment of campaign treasurer, Respondent should have filed FEPC's final report on form *Specific-Purpose Committee Sworn report of Contributions and Expenditures*. In addition, he should have designated it as a final report by selecting "Final report of committee supporting or opposing a candidate or measure", and by executing and attaching "Part S-09" (*Designation of Final Report/Affidavit of Dissolution By Specific-Purpose Committee*) to the report.
3. There is sufficient credible evidence that Respondent violated § 254.123 (Semiannual Reporting Schedule for Committee) of the Election Code which provides in material part:
 - (a) *The campaign treasurer of a specific-purpose committee shall file two reports for each year as provided by this section.*
 - (b) *The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the committee'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.*

(c) *The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the committee'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 December 31.*

4. Because FPEC had not effectively terminated its campaign treasurer appointment, Respondent, as campaign treasurer, was required to file timely reports twice each year until such time as the committee effectively filed a final report.

IV. Representations and Agreement by Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. Respondent neither admits nor denies the facts detailed under Section II and the commission's findings and conclusions of law detailed under Section III, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. Respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. Respondent waives any right to a hearing before the commission or an administrative law judge appointed by the commission, and further waives any right to a post-hearing procedure established or provided by law.
3. Respondent acknowledges that § 254.123 of the Election Code requires a specific-purpose committee to file timely reports at least twice a year until a proper report effectively terminates the reporting responsibilities of the campaign treasurer. Respondent agrees to file all past reports and to fully and strictly comply with this requirement of the law in the future.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, Respondent understands and agrees that the commission will consider the Respondent to have committed the violations detailed in Section III if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the Respondent.

V. Confidentiality

This ORDER and AGREED RESOLUTION describes an alleged violation that the commission has determined would be neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under Texas Government Code § 571.140(b), and may be disclosed by members and staff of the Texas Ethics Commission.

VI. Sanction

After considering the seriousness of the violation described under Sections II and III, including the nature, circumstances, consequences, extent, and gravity of the violation; that no previous violations by this Respondent are known to the commission; and the sanction deemed necessary to deter future violations, the commission imposes a \$100.00 civil penalty for the violation described under Section III.

VII. Order

The Texas Ethics Commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to Respondent;

2. that if Respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete disposition of SC-94047;
3. that Respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original together with payment for the \$100.00 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than November 21, 1994; and
4. that the executive director shall promptly refer SC-94047 to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if Respondent does not agree to the disposition of SC-94047 as proposed in this ORDER and AGREED RESOLUTION;

AGREED to by Terry Pruden on _____, 1994.

Terry Pruden, Respondent

EXECUTED ORIGINAL received by the commission on _____, 1994.

John Steiner, Executive Director
Texas Ethics Commission