

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
RANDALL BIRDWELL, TREASURER	§	TEXAS ETHICS COMMISSION
GREATER-HOUSTON BUILDERS	§	
ASSOCIATION HOME-P.A.C.	§	
RESPONDENT	§	SC-96029

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (“commission”) met on June 14, 1996, to consider sworn complaint SC-96029 filed against Randall Birdwell, Treasurer, Greater-Houston Builders Association HOME-P.A.C. (the “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 Section 254.154 (Additional Reports of Committee Involved in Election), a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the 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, the respondent was the treasurer of a general-purpose committee.
2. The complaint alleges that the respondent violated Section 254.154, Election Code, by failing to file an 8-day report disclosing a \$1,000 expenditure which was a contribution to a candidate involved in the primary election.
3. In an affidavit of timely report, the assistant campaign treasurer of the committee swore that he filed the required report disclosing the expenditure by the deadline.
4. The photocopy of the 8-day report shows three expenditures made on the 40th day before the primary election. The expenditures totaled \$600 and were contributions to candidates involved in the election. These expenditures were made in the period covered by the 30-day report. The respondent did not file a 30-day report.

III. Conclusions of Law

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

1. A person filing reports under Title 15, Election Code, May file an affidavit of timely report, and the report is considered to have been filed before the deadline. The respondent filed such an affidavit with a photocopy of the original report, and therefore no violation occurred concerning the 8-day report.
2. Section 254.154, Election Code, requires the treasurer of a political committee to file a 30-day report if an expenditure in connection with an election is made on the 40th day before the election. The respondent violated that section by failing to file the 30-day report.

IV. Representations and Agreement by the Respondent

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

1. The 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. The 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. The 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. The respondent acknowledges that Section 254.154, Election Code, requires the treasurer of a political committee to file a 30-day report if an expenditure in connection with an election is made on the 40th day before the election. The respondent agrees to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violation 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 or *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under Section 571.140, Government Code, 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 after considering the sanction deemed necessary to deter future violations, the commission imposes a \$100 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 the respondent;
- (2) that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-96029;
- (3) that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than July 12, 1996; and
- (4) that the executive director shall promptly refer SC-96029 to either the commission or 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 the respondent does not agree to the resolution of SC-96029 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 1996.

Randall Birdwell, Respondent

EXECUTED ORIGINAL received by the commission on: _____
DATE

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director