

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

GENEVIEVE NICKIE ALLEN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-970845

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on October 9, 1998, to consider sworn complaint SC-970845 filed against Genevieve Nickie Allen (the respondent). A quorum of the commission was present. The commission voted to accept jurisdiction of the complaint. Based on the investigation conducted by the commission staff, the commission determined there was credible evidence of a violation of Sections 253.035(h), 254.064(c), and 254.183(b), Election Code, laws 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. Allegations

1. The complainant alleges that the respondent, who had elected the modified reporting procedures, failed to file a campaign finance report within 48 hours after exceeding \$500 in political expenditures.
2. The complainant alleges that the respondent failed to properly report political contributions of \$250 on her campaign finance report filed on April 28, 1997.
3. The complainant alleges that the respondent failed to account for all political contributions and expenditures in her campaign finance reports.

### III. 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 a candidate for city council in an election held on May 3, 1997.

2. The respondent filed an appointment of campaign treasurer on March 19, 1997, and signed the modified reporting declaration stating that she did not intend to accept political contributions that in the aggregate exceeded \$500 or make political expenditures that in the aggregate exceeded \$500 in connection with the election.
3. On April 28, 1997, the respondent filed a report disclosing that she had exceeded \$500 in expenditures on April 11, 1997. The April 28, 1997, report disclosed that the respondent made a total of \$1414.19 in expenditures from personal funds. The respondent did not indicate on this report that she intended to reimburse herself from political contributions for those expenditures.
4. The April 28, 1997, report disclosed that the respondent received \$250 in contributions. On the report as it was originally filed, those contributions were not itemized, nor were they reported as contributions of \$50 or less.
5. The respondent filed a final report on May 6, 1997. The final report disclosed that the respondent made \$97.43 in expenditures from political contributions, and accepted \$300 in political contributions. The respondent disclosed on her final report that she had no unexpended political contributions or assets purchased with political contributions.
6. In response to this complaint, the respondent swore that she did not realize or remember that she was required to change reporting methods when her political expenditures exceeded \$500.
7. In response to this complaint, the respondent swore that the contributions of \$250 listed on her April 28, 1997, report were each less than \$50 and that she mistakenly misreported this information when the report was originally filed. The respondent filed a good-faith affidavit and a corrected report showing that the contributions were less than \$50.
8. In response to this complaint, the respondent filed a good-faith affidavit and corrected report which disclosed that she reimbursed herself with political contributions in the amount of \$452.57 for the political expenditures made from personal funds.

#### **IV. Conclusions of Law**

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

1. A candidate who does not intend to accept political contributions that in the aggregate exceed \$500 or to make political expenditures that in the aggregate exceed \$500 may file under the

- modified reporting procedures in Subchapter G, Chapter 254, Election Code. Sections 254.181 and 254.184, Election Code.
2. If a candidate who has elected modified reporting exceeds \$500 in contributions or expenditures after the date that the 30-day before election report would be due, the candidate must file a report not later than 48 hours after the \$500 threshold is exceeded. Section 254.183(b), Election Code.
  3. The respondent's campaign finance report discloses that the respondent exceeded \$500 in campaign expenditures on April 11, 1997. Under the regular reporting requirements, the 30-day before election report would have been due on April 3, 1997. Because the respondent exceeded the \$500 threshold after the 30-day before election report was due, the respondent was required to file a report disclosing that she had exceeded \$500 within 48 hours of April 11, 1997. The respondent did not file the report until April 28, 1997. Thus, there is credible evidence that the respondent violated Section 254.183(b), Election Code.
  4. Once the candidate has exceeded the \$500 threshold, the candidate is subject to the regular reporting requirements. Section 254.183(a), Election Code.
  5. Under the regular reporting requirements, a campaign finance report is due eight days before the election. Section 254.064(c). In connection with the May 3, 1997, election, the 8-day before election report was due on April 25, 1997.
  6. The respondent did not file a campaign finance report until April 28, 1997. This report included the period required to be covered in the 8-day before election report. Therefore, because the respondent did not timely file an 8-day before election report, there is credible evidence that the respondent violated Section 254.064(c), Election Code.
  7. A person filing a campaign finance report must disclose the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the contributor, and the dates of the contribution. Section 254.031(a)(1), Election Code. For contributions that are \$50 or less, the report must contain either the total amount of these contributions, or a specific listing of each contribution. Section 254.031(a)(5), Election Code.
  8. The respondent's April 28, 1997, report as originally filed indicated that the respondent had accepted a total of \$250 in contributions. The respondent did not identify any portion of this total as consisting of contributions of \$50 or less, nor did the respondent provide detailed reporting information regarding these contributions. In response to this complaint, the respondent swore that each contribution was less than \$50 and that she misreported the information on the cover page of the report. The respondent has filed a good-faith affidavit and a corrected report showing that the contributions were less than \$50 each.

9. A person filing reports under Title 15, Election Code, who files an affidavit swearing that a corrected report, other than one correcting a report due eight days before an election, was filed in good faith is not subject to a fine for a late report. Sections 18.49 and 18.83, Ethics Commission Rules.
10. The respondent's report filed April 28, 1997, was not an 8-day before election report. Because the respondent filed a good-faith affidavit and corrected this report, the respondent is not subject to a fine for improperly reporting these contributions.
11. A candidate who makes political expenditures from the candidate's personal funds may reimburse himself or herself from political contributions for those expenditures only if the expenditures are fully reported as political expenditures, and if the candidate clearly designates those expenditures as having been made from the candidate's personal funds and that the expenditures are subject to reimbursement. Section 253.035(h), Election Code.
12. The respondent's April 28, 1997, report disclosed that the respondent made \$1414.19 in political expenditures from personal funds, but did not indicate that reimbursement was intended. In response to this complaint, the respondent disclosed that she reimbursed herself with political contributions for the expenditures made from personal funds. Because the respondent reimbursed herself with political contributions for expenditures made from personal funds but did not indicate that reimbursement was intended, there is credible evidence that the respondent violated Section 253.035(h), Election Code.
13. Reimbursement for expenditures made from personal funds must be reported by a filer as a political expenditure. Sections 251.001(6) and (7), 254.031(a)(3), Election Code. Although the respondent did not originally report that she had reimbursed herself with political contributions for the expenditures made from personal funds, the respondent filed a good-faith affidavit and corrected final report in response to this complaint which disclosed these expenditures.
14. A person filing reports under Title 15, Election Code, who files an affidavit swearing that a corrected report, other than one correcting a report due eight days before an election, was filed in good faith is not subject to a fine for a late report. Sections 18.49 and 18.83, Ethics Commission Rules.
15. The respondent's final report filed May 6, 1997, was not an 8-day before election report. Because the respondent filed a good-faith affidavit and corrected this report disclosing that she reimbursed herself for political expenditures made from personal funds, the respondent is not subject to a fine for failure to report this expenditure.

## V. 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 III and the commission's findings and conclusions of law detailed under Section IV, 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. 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 violations detailed in Section IV, Paragraphs 3, 6, and 12, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

## VI. Confidentiality

This ORDER and AGREED RESOLUTION describes alleged violations that the commission has determined would be neither technical nor *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.

## VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations; 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 \$300 civil penalty for the violations described under Section IV, Paragraphs 3, 6, and 12.

**VIII. 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-970845;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$300 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than November 6, 1998; and
4. that the executive director shall promptly refer SC-970845 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-970845 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Genevieve Nickie Allen

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_  
DATE

Texas Ethics Commission

By: \_\_\_\_\_  
Tom Harrison, Executive Director