

TEXAS ETHICS COMMISSION

IN THE MATTER OF

DON L. MASSEY,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-990518

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 9, 1999, and voted to accept jurisdiction of Sworn Complaint SC-990518 filed against Don L. Massey, Respondent. The commission met again on December 10, 1999 to consider Sworn Complaint SC-990518. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of Sections 254.031(a)(3), 254.064(b), and 254.064(c), 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

The complainant alleged that the respondent failed to timely file the 30-day before election report due April 1, 1999, and the 8-day before election report due April 23, 1999. The complainant further alleged that the respondent failed to accurately report expenditures and failed to accurately report the type of report filed or the time period covered by the report.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent was a successful candidate for city council in the May 1, 1999, election. The respondent filed a campaign treasurer appointment on February 15, 1999.
2. The 30-day before election report was notarized on April 5, 1999, and disclosed that the respondent accepted political contributions totaling \$1200, all of which were \$50 or less. The report also disclosed that the respondent made political expenditures totaling \$1200. The respondent did not itemize the political expenditures on Schedule F, but listed the amount and purpose of each expenditure on the cover sheet. In response to the complaint, the respondent submitted a list of his expenditures which included the payee's name, address,

- amount, and date for each expenditure. The respondent also included copies of the expenditure receipts. The respondent did not indicate the type of report he was filing but did disclose that the report covered the period ending April 1, 1999.
3. The 8-day before election report was notarized on April 26, 1999, and disclosed that the respondent accepted political contributions totaling \$1500, all of which were \$50 or less. The report also disclosed that the respondent made political expenditures totaling \$1500. On the report received from the city secretary, the respondent did not itemize the political expenditures on Schedule F, and did not list the amount or purpose of each expenditure on the cover sheet. The respondent did not indicate the type of report he was filing but did disclose that the report covered the period from April 1, 1999, through April 26, 1999.
 4. In response to the complaint, the respondent swore that on April 28, 1999, he went back to the clerk and added the amount and purpose of each expenditure to his 8-day before election report. He also provided a copy of the report which included the additional information. Additionally, the respondent submitted to the commission a list of his expenditures which included payee names and addresses and amounts and dates of expenditures. The political expenditures totaled \$1500. The respondent also included copies of all but two of the expenditure receipts.

IV. Findings and Conclusions of Law

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

1. An opposed candidate is required to file campaign finance reports 30 days and 8 days before the election. Section 254.064, Election Code. For the May 1, 1999, election, the 30-day before election report was due on April 1, 1999. This report was notarized on April 5, 1999, and there is no evidence to indicate that the report was timely filed. Therefore, there is credible evidence that the 30-day before election report was late and that the respondent violated Section 254.064(b), Election Code.
2. For the May 1, 1999, election, the 8-day before election report was due on April 23, 1999. This report was notarized on April 26, 1999, and there is no evidence to indicate that the report was timely filed. Therefore, there is credible evidence that the 8-day before election report was late and that the respondent violated Section 254.064(c), Election Code.
3. On each campaign finance report required to be filed, a candidate must disclose the amount of each political expenditure that exceeds \$50 made during a reporting period, the full name and address of the person to whom the payment is made, and the date and purpose of the expenditure. Section 254.031(a)(3), Election Code. Although the respondent swore that he initially disclosed the amounts and purposes of the expenditures when he filed the pre-

election reports, these reports did not disclose the names and addresses of the persons to whom the payments were made nor the dates on which the expenditures were made.

4. In response to this complaint, the respondent provided a list of persons who received payments, the dates on which the expenditures were made, and partial payee addresses for each pre-election report. The respondent also provided copies of all but two receipts for these expenditures. 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. The respondent attempted to correct his reports, but the city secretary has no record of that. In addition, a corrected 8-day before election report is subject to a fine. Therefore, there is credible evidence that the respondent violated Section 254.031(a)(3), Election Code.

V. 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 facts described under Section III and the commission's findings and conclusions of law described 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, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that candidates are required to file timely campaign finance reports and that candidates are required to itemize political contributions and expenditures which exceed \$50 on these reports. The respondent agrees to fully and strictly comply with these requirements 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 violations described under Section IV, Paragraphs 1, 2, and 4, 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 a violation that the commission has determined is 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.

VII. Sanction

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$300 civil penalty for the violations described under Section IV, Paragraphs 1, 2, and 4.

VIII. Order

The 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-990518;
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 January 7, 2000; and
4. that the executive director shall promptly refer SC-990518 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-990518 as proposed in this ORDER and AGREED RESOLUTION.

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

Don L. Massey, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director