

TEXAS ETHICS COMMISSION

IN THE MATTER OF
DON WILLIAMS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-210104

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 11, 2001, and voted to accept jurisdiction of Sworn Complaint SC-210104 filed against Don Williams, Respondent. The commission considered Sworn Complaint SC-210104 that same day. A quorum of the commission was present. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of Section 254.063, 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 the respondent.

II. Allegations

The complainant alleges that the respondent, an unopposed candidate for city council, failed to file required campaign finance reports for a May 6, 2000, city election.

III. Facts Supported by Credible Evidence

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

1. At all times relevant to this complaint, the respondent was an unopposed candidate for city council in a May 6, 2000, city election.
2. In response to staff's request for copies of filings made by the respondent with the city, the city secretary sent a letter to the commission dated February 27, 2001, stating that the respondent has not filed any campaign finance reports with her office since May 1998. She attached copies of the respondent's campaign treasurer appointment and modified reporting declaration for the May 4, 1996, election, and the May 2, 1998, election.

3. The respondent filed a sworn response stating:

To the best of my recollection I filed a Campaign Finance form. I usually file at the time I sign-up to run for office. However, it is possible I may have forgotten to file for this election. At this time, a year after the fact, I am not for certain.

Since I had no one running against me at this election, I spent no money nor did I receive any money for campaigning. Enclosed you will find a copy of my **final** Campaign Finance report.

4. The respondent enclosed a final report that he filed with the city secretary on March 6, 2001, covering from May 1, 2000, through May 1, 2002, and disclosing no activity.
5. On April 16, 2001, the respondent sent the commission a copy of another report that he filed with the city secretary on April 16, 2001, covering from March 1, 1996, through May 6, 2000, disclosing political contributions totaling \$50 and political expenditures totaling \$135.

IV. Findings and Conclusions of Law

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

1. A person who has a campaign treasurer appointment on file is required to file two campaign finance reports each year. Section 254.063, Election Code.
2. As a person with an active campaign treasurer appointment, the respondent was required to file semiannual reports in July 1996, in January and July of 1997 through 2000, and in January 2001.
3. A candidate commits a Class C misdemeanor if the candidate knowingly fails to file a campaign finance report on time. Section 254.041(a) and (b), Election Code.
4. The commission may consider an alleged violation that is also a criminal offense only if criminal prosecution is not barred by the applicable criminal statute of limitations. Section 12.5(3), Ethics Commission Rules. A criminal indictment or information alleging a misdemeanor offense must be presented within two years from the date of the commission of the offense. Article 12.02, Code of Criminal Procedure. The complaint was filed January 31, 2001, and thus the commission may not consider an alleged violation that occurred before January 31, 1999. Therefore, the commission may not consider allegations regarding the six reports required to be filed during or before January 1999.

5. The only campaign finance reports filed by the respondent are the final report filed on March 6, 2001, and the report filed on April 16, 2001, covering from March 1, 1996, through May 6, 2000. Therefore, there is credible evidence that the respondent did not timely file the semiannual reports due July 1999, January and July 2000, and January 2001.

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. 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, Paragraph 5, 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 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, Government Code, and may be disclosed by members and staff of the 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, 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 civil penalty of \$200 for the violations described under Section IV, Paragraph 5.

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-210104;
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 \$200 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than June 8, 2001; and
4. that the executive director shall promptly refer SC-210104 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-210104 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2001.

Don Williams, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director