

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JAMES DONALD STROUP,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-231076

ORDER and AGREED RESOLUTION

I. Recitals

Sworn Complaint SC-231076 was filed with the Texas Ethics Commission (the commission) against James Donald Stroup on October 28, 2003. The executive director of the commission accepted jurisdiction of Sworn Complaint SC-231076 on November 3, 2003. The commission met on January 9, 2004, to consider Sworn Complaint SC-231076. A quorum of the commission was present at the meeting. The commission determined that there is credible evidence of a violation of section 254.063 of the Election Code, a law administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegation

The complainant alleged that the respondent failed to file a semiannual campaign finance report.

III. Facts Supported by Credible Evidence

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

1. The respondent was an incumbent councilman and a candidate for mayor in a May 3, 2003, City of Lucas election. The complainant was the incumbent mayor and the respondent's opponent in that election.
2. The complainant alleges that the respondent failed to file a semiannual campaign finance report. The city secretary stated in an October 30, 2003, telephone conversation with staff that she received a campaign treasurer appointment from the respondent on February 26, 2003, but that she had not received any campaign finance reports from the respondent as of the date of that conversation.

3. The respondent filed an affidavit in response to the complaint on November 20, 2003. In his affidavit, he swears:

After receiving a reminder from the City of Lucas that a Campaign Finance Expenditure report was due, I completed the report on August 22, 2003. The document was sent by mail to both Texas Ethics Commission and The City of Lucas on August 27, 2003. I assumed that the City of Lucas had received the report on or about August 29th, the same day as the Texas Ethics Commission. I had no reason to follow up to insure that the City of Lucas received the report.

Possibilities for consideration are

1. The City of Lucas mistakenly misplaced or misdirected the report.
2. The report was lost in the mail.

Furthermore, I believe that this complaint was initiated by [the complainant] in retaliation to complaint #SC-230528 filed against him on May 27, 2003.

4. Attached to the respondent's affidavit, is a copy of the respondent's July 2003 semiannual campaign finance report. The report is marked, "RECEIVED AUG 29, 2003 Texas Ethics Commission." It discloses no contributions, and it discloses total expenditures in the amount of \$729. According to records on file with the Ethics Commission, the Commission returned a Form C/OH to the respondent on or about September 17, 2003, with a cover letter that included the following note: "As a candidate for mayor, you should file this document with the city secretary."

IV. Findings and Conclusions of Law

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

Late Report

1. A candidate who files an appointment of a campaign treasurer must file semiannual campaign finance reports due twice a year in January and July. ELEC. CODE § 254.063. If the candidate is seeking a city office, the reports must be filed with the city clerk or city secretary. ELEC. CODE §§ 254.063 and 254.066.
2. A candidate may file a campaign finance report by first-class United States mail. ELEC. CODE § 251.007. A campaign finance report filed by first-class United States mail is timely if the report is properly addressed with postage prepaid and bears a post office cancellation mark indicating a time within the period for filing the report. *Id.*

3. There is credible evidence that the respondent filed his campaign treasurer appointment with the city secretary on February 26, 2003. Thus, there is credible evidence the respondent was required to file the semiannual campaign finance report due by July 15, 2003.
4. Additionally, there is credible evidence that the respondent completed that report on August 22, 2003, and mailed it to the city secretary on August 27, 2003. Thus, there is credible evidence the respondent filed the report with the city secretary, but there is also credible evidence that he filed it after the due date.
5. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code.

Frivolous Complaint

6. A sworn complaint that is groundless and brought for the purpose of harassment is a frivolous complaint. GOV'T CODE § 571.176. A person who files a frivolous complaint is subject to a civil penalty. *Id.* The respondent asserts that the complainant initiated this complaint in retaliation for the respondent's earlier complaint.
7. Even if a complainant files a sworn complaint against a respondent to gain vengeance for the respondent's earlier sworn complaint, and even if the complainant's vengeful complaint can be considered to be a source of harassment for the respondent, a complaint is not groundless if there is an arguable basis for the factual allegations and legal conclusions it contains. *See Neitzke v. Williams*, 490 U.S. 319 (1989). Here, there is not only an arguable basis for the factual allegations and legal conclusions the complaint contains, but there is also credible evidence to support them. Therefore, there is credible evidence that the complaint is not frivolous.

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 this sworn complaint.
2. The respondent consents to the entry of this ORDER and AGREED RESOLUTION before any adversarial evidentiary hearings before the commission, and before any formal adjudication 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 provided by law.

3. The respondent acknowledges that a candidate who files an appointment of a campaign treasurer must file semiannual campaign finance reports due twice a year in January and July. The respondent agrees to fully comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent agrees that the commission will consider the respondent to have committed the violation described under Section IV 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, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 civil penalty for the violation described under Section IV.

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-231076.
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 \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than February 6, 2004; and
4. that the executive director shall promptly set SC-231076 for a preliminary review hearing if the respondent does not agree to the resolution of SC-231076 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 20__.

James Donald Stroup, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director