

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOHN FREDDIE GROHMAN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-231288

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on May 7, 2004, to consider Sworn Complaint SC-231288. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.061, 254.063, 255.006 and 255.007, 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. This complaint arises out of a November 2002 election in Runnels County. The complainant and the respondent were opponents in a race for county commissioner. The complainant was declared the winner of the election, and the respondent filed a lawsuit challenging the election results.
2. A district court voided the results of the November 2002 election and called a new election for April 8, 2003. The respondent won the April 2003 election by two votes.
3. The complainant alleges that the respondent:
 - filed the July 2002, January 2003, and July 2003 semiannual reports after the applicable filing deadlines;
 - failed to file a campaign finance report within 48 hours after exceeding \$500 in political expenditures;
 - failed to timely file pre-election reports in connection with the April 2003 election;
 - failed to report all political contributions;
 - failed to report all political expenditures;
 - failed to accurately report total political expenditures;
 - failed to list his full name on reports;
 - failed to include an election date on a report;
 - failed to include disclosure statements on political advertising;
 - failed to include a right-of-way notice on campaign signs;

- omitted the word “for” in political advertising; and
- misused public funds for political advertising.

III. Facts Supported by Credible Evidence

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

1. The complainant submitted certified copies of documents that the respondent filed with the Runnels County filing authority:
 - The respondent filed a campaign treasurer appointment on March 11, 2002, and selected modified reporting.
 - The respondent filed a July 2002 semiannual report on July 12, 2002. The report discloses no political contributions, and it discloses a single political expenditure in the amount of \$31.93. The totals page for the report (Exhibit A) indicates there was no reportable activity for the reporting period. In the space for “total political expenditures,” the number “31.93” is crossed out.
 - The respondent filed a report for the January 2003 semiannual report on April 22, 2003. The report discloses no contributions. It lists a political expenditure of \$90 on October 8, 2002, and a political expenditure of \$2,500 on December 16, 2002. The purpose of the latter expenditure is described as “retainer for contest of election.” The totals page discloses \$81.87 in unitemized political contributions and \$2,590 in total expenditures.
 - The respondent filed an 8-day pre-election report in connection with the April 2003 election on April 24, 2003. The report discloses no political contributions and \$108 in political expenditures.
 - The respondent filed a July 2003 semiannual report on July 15, 2003. The report disclosed no activity. The report was marked as a final report.
2. The complainant also submitted copies of photographs of campaign signs supporting the respondent and copies of e-mails that show the respondent’s wife as the sender.
3. The respondent filed a detailed sworn response.

IV. Findings and Conclusions of Law

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

1. A candidate must file a semiannual report by January 15 and July 15 of each year. ELEC. CODE § 254.063. For reporting purposes, the respondent was a candidate during the period in which he had a campaign treasurer appointment on file, which was from March 11, 2002, through July 15, 2003. *Id.* § 251.001(1). Therefore, he was required to file semiannual

reports in July 2002, January 2003, and July 2003. The evidence shows that the respondent filed the July 2002 and July 2003 semiannual reports by the applicable deadlines and that he filed the January 2003 report after the applicable deadline. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code in connection with the January 2003 semiannual report.

2. A candidate who does not intend to exceed \$500 in political contributions or political expenditures in connection with any election in an election cycle may elect to file on the modified reporting schedule. ELEC. CODE §§ 254.181, 254.182; 1 T.A.C. § 20.17. A candidate who selects modified reporting and remains eligible for modified reporting is not required to file pre-election reports during the election cycle. ELEC. CODE § 254.084, 1 T.A.C. 20.217(f). A candidate who selects modified reporting and exceeds one of the \$500 thresholds after the deadline for a pre-election report but before the election must file a report within 48 hours after exceeding the threshold. ELEC. CODE § 254.083.
3. The respondent selected modified reporting when he filed his campaign treasurer appointment. The evidence shows that the respondent did not exceed either one of the \$500 thresholds before the November 2002 election. Therefore, he was not required to file a 48-hour report before the November 2002 election.
4. On December 16, 2002, the respondent made a campaign expenditure in the amount of \$2,500, but this expenditure did not occur during a period that gave rise to the requirement to file a 48-hour report. Therefore, there is credible evidence that the respondent did not violate section 254.083 of the Election Code by failing to file a 48-hour report in December 2002.
5. A candidate who exceeds one of the \$500 thresholds and becomes ineligible for modified reporting must file pre-election reports under section 254.064 of the Election Code for the remainder of the election cycle. ELEC. CODE § 254.184, 1 T.A.C. § 20.217(f). Ethics Commission Rules define an election cycle as a “single election and any related primary or runoff election.” This definition does not make clear that the April 2003 election would be part of the same election cycle as the November 2002 election. Therefore, current rules do not support a finding that the respondent violated section 254.064 of the Election Code by failing to file pre-election reports in connection with the April 2003 election.
6. A candidate must disclose all political contributions accepted during a reporting period. ELEC. CODE § 254.031. The complainant alleges that the respondent did not report contributions accepted in connection with the election contest and the April 2003 election, but he acknowledges that he has no evidence regarding specific contributions. In his response, the respondent states that he accepted no contributions. Therefore, there is credible evidence that the respondent did not violate section 254.031 of the Election Code by failing to report contributions.
7. A candidate must disclose all political expenditures made during a reporting period. ELEC. CODE § 254.031. The complainant speculates that the respondent’s costs in connection with the election contest must have exceeded the amount (\$2,671.87) reported on the January

- 2003 semiannual report. In his response, the respondent states that the January 2003 semiannual report “contains the information regarding additional attorney’s fees.” There is insufficient evidence that the respondent violated section 254.031 of the Election Code by failing to report political expenditures.
8. A campaign finance report must include an entry for total political expenditures during the reporting period. ELEC. CODE § 254.031(a)(6). The complainant alleges that the respondent did not properly report total political expenditures on his July 2002 and January 2003 semiannual reports.
 9. On his July 2002 semiannual report, the respondent itemized a political expenditure in the amount of \$31.95. On the cover sheet he checked the box for “no reportable activity.” (He had written “31.95” in the space on the cover sheet for total expenditures, but crossed it out). Therefore, there is credible evidence that the respondent violated section 254.031(a)(6) of the Election Code in connection with the July 2002 semiannual report.
 10. On his January 2003 semiannual report, the respondent itemized political expenditures in the amount of \$2,590. He also disclosed \$81.87 in unitemized political contributions. The report lists total political expenditures of \$2,590. The respondent acknowledges that the total should have included both itemized and unitemized political expenditures rather than just itemized political expenditures. Therefore, there is credible evidence that the respondent violated section 254.031 of the Election Code in connection with the January 2003 semiannual report.
 11. Each report by a candidate must include the candidate’s full name. ELEC. CODE § 254.061(a). We interpret this to mean that a report must include a candidate’s commonly used first name (or initials) and last name, not that the report must include a candidate’s name as it appears on his or her birth certificate. The complaint gives the respondent’s name as John Freddie Grohman. On his campaign treasurer appointment and on all but one of his reports, the respondent gives his name as Freddie Grohman. (On one report he gives his name as “John F. Freddie Grohman.”) The respondent swears that he does not use the name John. Therefore, there is credible evidence that the respondent did not violate section 254.061(a) of the Election Code.
 12. Each report by a candidate must include the date of the election for which the report is filed. ELEC. CODE § 254.061(a). The respondent did not list an election date on his July 2002 semiannual report. Therefore, there is credible evidence of a technical and *de minimis* violation of section 254.061(a) of the Election Code.
 13. Section 255.001 of the Election Code requires certain political advertising to include a disclosure statement. The Court of Criminal Appeals held, however, that the applicable version of section 255.001 of the Election Code (the version that was in effect before September 1, 2003) was unconstitutional. Therefore, the commission cannot find a violation of section 255.001 of the Election Code.

14. A person may not enter into a contract to print a political advertising sign and may not instruct another person to place a political advertising sign that does not include information about placing the sign in the right-of-way of a highway. *Id.* § 255.007. The complainant provided photographs of signs that appear not to include a right-of-way notice. The respondent implicitly acknowledges that the signs did not have right-of-way notice by saying, “All future signs seen from the roadway will contain the correct wording.” There is credible evidence that the respondent violated section 255.007 of the Election Code.
15. A person may not represent in political advertising that a candidate holds a public office that the candidate does not hold at the time that the representation is made. ELEC. CODE § 255.006(b). Political advertising represents that a non-incumbent candidate holds an office he or she does not hold if the political advertising states the public office sought but does not include the word “for” to clarify that the candidate does not hold that office. *Id.* § 255.006(c). The photographs of the respondent’s signs show that the word “for” does not appear in a way that clarifies that the respondent did not hold the office of county commissioner. Therefore, there is credible evidence of a technical and *de minimis* violation of section 255.006 of the Election Code.
16. An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. ELEC. CODE § 255.003. The complainant provided copies of e-mails that show the respondent’s wife as the sender. He alleges that the e-mails were sent from a school district e-mail account. There is no evidence that the respondent himself sent the two e-mails. Therefore, there is no evidence that the respondent violated section 255.003 of the 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 or 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 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 must file a semiannual report by January 15 and July 15 of each year; a campaign finance report must include an entry for total political expenditures during the reporting period; each report by a candidate must include the date of the election for which the report is filed; a person may not enter into a contract to print a political advertising sign and may not instruct another person to place a political advertising sign that does not include information about placing the sign in the right-of-way of a highway; and, a person may not represent in political advertising that a candidate holds a

public office that the candidate does not hold at the time the representation is made. The respondent agrees to fully comply with these requirements of the law.

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 of the 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, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$200 civil penalty for the violations described under Section IV.

VIII. Order

The commission hereby ORDERS that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-231288.

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

John Freddie Grohman, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director