

TEXAS ETHICS COMMISSION

IN THE MATTER OF
TERRY R. SIMONS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-260264

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on September 21, 2006, to consider sworn complaint SC-260264. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.001, 252.005, and 253.031 of the Election Code, laws administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to properly file a campaign treasurer appointment and made or authorized unlawful political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for Justice of the Peace of Denton County in the March 2006 primary election.
2. On December 5, 2005, the respondent filed an application for a place on the ballot with the chair of the Denton County Republican Party ("Party") and paid a \$1,000 filing fee.
3. The respondent filed a campaign treasurer appointment with the City of Carrollton on January 24, 2002, indicating that the respondent sought the office of "Place #4."
4. The respondent filed a campaign treasurer appointment with the Denton County elections office on February 28, 2006, indicating that the respondent sought the office of justice of the peace.
5. The respondent swears that he was not informed that he needed to file a campaign treasurer appointment form when he filed his application to run for justice of the peace with the Party,

and that his failure to file the form “was not through neglect, willfulness or careless indifference,” but was rather “as a result of lack of knowledge.”

6. The respondent’s 8-day pre-election campaign finance report discloses approximately \$2,300 in political contributions and approximately \$2,200 in political expenditures between February 10 and February 14, 2006. The respondent’s reports do not disclose a political expenditure to the Party for a filing fee.
7. On or about December 5, 2005, the respondent completed and submitted an order form to the Party that requested a “Two-Time Ad to be run in the Dec. 2005 and Feb 2006 Pre-Primary Issues” of the Party’s newsletter by checking a box for a 1/8-page advertisement at the cost of \$400, checking a line that reads “Charge my credit card,” and providing a credit card number. The form also indicates that \$800 was the total cost for the advertisements. The respondent also provided a picture to the Party for the advertisements.
8. The respondent swears that he “investigated the possibility of placing an ad in the County-wide Republican newspaper” for his campaign and completed the credit card authorization form submitted by the complainant. He also swears that he never completed the application and that the order form “was never approved and the advertisement was never run,” that his credit card was charged, and that he received a full repayment.

IV. Findings and Conclusions of Law

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

1. Each candidate shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. ELEC. CODE § 252.001. If a candidate who has filed a campaign treasurer appointment decides to seek a different office that would require the appointment to be filed with another authority, a copy of the appointment certified by the authority with whom it was originally filed must be filed with the other authority in addition to the new treasurer appointment. *Id.* § 252.010(a).
2. The office of justice of the peace is a precinct office. TEX. CONST. art. V, § 18; GOV’T CODE § 27.002. A candidate’s campaign treasurer appointment must be filed with the county clerk, if the appointment is made for candidacy for a precinct office. ELEC. CODE § 252.005(2).
3. A candidate means, in pertinent part, a person who knowingly and willingly takes affirmative action for the purpose of election to public office, including the filing of an application for a place on the ballot and the making of a campaign expenditure. *Id.* §§ 251.001(1)(B), (G).
4. A campaign expenditure means, in pertinent part, a payment of money and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment in connection with a campaign for an elective office. *Id.* §§ 251.001(6), (7).

5. There is credible evidence that the respondent was a candidate for justice of the peace on December 5, 2005. As a candidate for justice of the peace, the respondent was required to file a campaign treasurer appointment with Denton County no later than December 5, 2005. The respondent did not file a campaign treasurer appointment with Denton County until February 28, 2006. Therefore, there is credible evidence that the respondent violated sections 252.001 and 252.005 of the Election Code by failing to properly file a campaign treasurer appointment with the county.
6. A candidate may not knowingly make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect with the proper filing authority. ELEC. CODE § 253.031(a), 1 T.A.C. § 22.1(a).
7. There is credible evidence that the respondent made or authorized campaign expenditures before February 28, 2006. Therefore, there is credible evidence that the respondent violated section 253.031(a) of the Election Code by making or authorizing campaign expenditures at a time when a campaign treasurer appointment was not in effect with the proper filing authority.

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 this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that each candidate shall appoint a campaign treasurer as provided by chapter 252 of the Election Code; that, if a candidate who has filed a campaign treasurer appointment decides to seek a different office that would require the appointment to be filed with another authority, a copy of the appointment certified by the authority with whom it was originally filed must be filed with the other authority in addition to the new treasurer appointment; that a candidate for the office of justice of the peace must file a campaign treasurer appointment with the county clerk; and that a candidate may not knowingly make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect with the proper filing authority. The respondent agrees to 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 \$100 civil penalty for the violations described under Sections III and IV.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-260264.

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

Terry R. Simons, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director