

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JERRY KELLY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-260391

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 2, 2007, to consider sworn complaint SC-260391. A quorum of the commission was present. The commission determined that there is credible evidence that the respondent violated sections 253.031 and 254.031 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to properly report political expenditures, political contributions, and total contributions maintained on campaign finance reports. The complaint also raises the matter of the respondent making political expenditures without first filing a campaign treasurer appointment.

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 state representative.
2. The allegations are based on the respondent's February 6, 2006, 30-day pre-election report and March 2, 2006, 8-day pre-election report.
3. On January 18, 2006, the respondent filed a campaign treasurer appointment with the commission.
4. The complaint alleges that the respondent failed to disclose the \$750 filing fee he paid as a candidate for state representative.

5. The evidence shows that in order for the respondent to have been on the ballot the filing fee would have been paid no later than January 2, 2006. The filing fee is not disclosed on the reports that the respondent filed.
6. The complaint also alleges that the 30-day pre-election report does not cover the period from January 1-17, 2006. The report discloses the period covered as January 18, 2006, through February 6, 2006.
7. The complaint alleges that the respondent's 30-day pre-election report discloses political contributions over and above the amount of political expenditures but discloses \$0 contributions maintained. That report discloses total political contributions of \$482, total political expenditures of \$464.87, no loans, and \$0 political contributions maintained.
8. The complaint alleges that the 8-day pre-election report is incorrect because it fails to disclose \$128 in political contributions. That report discloses total political contributions of \$40, total political expenditures of \$336 (\$168 are political expenditures of \$50 or less and \$168 of itemized political expenditures from personal funds), a \$168 loan from the respondent to himself, and \$0 political contributions maintained.
9. The respondent swears, "I have reported all expenditures and contributions. All monies expended in this campaign over and above those listed came from my own funds."

IV. Findings and Conclusions of Law

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

1. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE § 253.031(a).
2. Each campaign finance report filed by a candidate is required to include the amount of political contributions from each person that in the aggregate exceed \$50 and are accepted during the reporting period. ELEC. CODE § 254.031(a)(1).
3. Each campaign finance report is required to include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the date and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
4. Each campaign finance report is also required to include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing

- of the political expenditures of \$50 or less made during the reporting period. ELEC. CODE § 254.031(a)(5).
5. Each campaign finance report is required to include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
 6. Each campaign finance report is required to include the total amount of political contributions maintained as of the last day of a reporting period. ELEC. CODE § 254.031(a)(8).
 7. With respect to the 30-day pre-election report, reporting total political contributions maintained as \$0 is not, by itself, a violation. However, because the report was the respondent's first report and discloses contributions over and above the amount of expenditures, the reports and the response do not explain how the disclosure of \$0 political contributions maintained is accurate. The report on its face indicates that there were political contributions maintained, albeit a small amount (\$17.13) that were not reported. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.
 8. With respect to the 8-day pre-election report, the report discloses \$168 in political expenditures from personal funds, \$168 in political expenditures of \$50 or less, a \$168 loan from the respondent to himself and \$336 in total political expenditures. The report on its face does not indicate that political contributions of \$128 were not reported. Therefore, there is credible evidence of no violation of section 254.031 of the Election Code.
 9. A campaign expenditure is an expenditure made by any person in connection with a campaign for an elective office or on a measure. ELEC. CODE § 251.001(7).
 10. The respondent states in his response that he spent money out of personal funds for his campaign that he failed to disclose on his campaign finance reports. Campaign expenditures from personal funds are required to be reported (for example, the \$750 filing fee). Therefore, there is credible evidence of a violation of sections 254.031(a)(3), (a)(5), and (a)(6) of the Election Code.
 11. For each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports, the first not later than the 30th day before election day and the second not later than the eighth before election day. The first report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under chapter 254 of the Election Code, as applicable, and continuing through the 40th day before election day. ELEC. CODE § 254.064.

12. A candidate is a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election, and includes filing an application for a place on the ballot. ELEC. CODE § 251.001(1).
13. The respondent filed a campaign treasurer appointment on January 18, 2006. The respondent paid a \$750 filing fee no later than January 2, 2006. Thus, the respondent became a candidate no later than January 2, 2006.
14. The respondent's 30-day pre-election report discloses the period covered as January 18, 2006, through February 6, 2006. The respondent's report does not disclose activity prior to January 18, 2006. Although the commission has consistently taken the position that all opposed candidates must file pre-election reports disclosing all activity, where a candidate does not have a campaign treasurer appointment on file the statute is ambiguous with respect to the beginning date for the report.
15. Nevertheless, a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE § 253.031(a). The evidence shows that the respondent made a political expenditure (the \$750 filing fee) at a time when he did not have a campaign treasurer appointment on file. Therefore, there is credible evidence that the respondent violated section 253.031 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 this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. The respondent acknowledges that each campaign finance report is required to include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the date and purposes of the expenditures. The respondent acknowledges that each campaign finance report is required to

include the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period and the total amount of all political expenditures made during the reporting period. The respondent further acknowledges that each campaign finance report is required to include the total amount of political contributions maintained as of the last day of a reporting period. 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 \$200 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-260391.

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

Jerry Kelly, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director