

TEXAS ETHICS COMMISSION

IN THE MATTER OF
LARRY J. GALBREATH,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-290480

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2010, to consider sworn complaint SC-290480. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.036(a) of the Election Code, and credible evidence of a technical or *de minimis* violation of section 254.036(h) of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent: 1) failed to disclose required information on his 30-day pre-election campaign finance report for the May 2009 election, 2) accepted political contributions exceeding \$100 in cash from a contributor during the period covered by the 30-day pre-election campaign finance report, and 3) failed to file the 30-day pre-election report in a format prescribed by the commission, and failed to properly execute an affidavit with that report.

III. Facts Supported by Credible Evidence

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

1. The respondent was the successful candidate for Harlingen City Commissioner, Place 1 in the May 2009 election.
2. The respondent's 30-day pre-election report was marked as received by the local filing authority on April 9, 2009, and was comprised of Form C/OH cover sheet pages one and two.
3. Cover sheet page two of the report disclosed \$240.01 in total political contributions of \$50 or less, \$3,750.01 in total political contributions, a "-" disclosed in the space provided to disclose total political expenditures of \$50 or less, \$1,399.22 in total political expenditures, \$2,170.99 in total political contributions maintained, and \$2,000 in total principal amount of

all outstanding loans. The report included a spreadsheet titled “Donations for Larry Galbreath Campaign” that disclosed the contributors’ names and addresses and the date and amount of each contribution. The contributions totaled \$3,510. The report included a second spreadsheet titled “Expense for Larry Galbreath Campaign” that disclosed the payee, amount, and purpose of political expenditures totaling \$1,399.22. The date of the expenditures and addresses of the payees were not included. Four of the payees received less than \$50 during the reporting period. In addition to the spreadsheet, the report included a Schedule A that disclosed three itemized in-kind political contributions from contributor “Debbie G. Elizarde” totaling approximately \$272, but provided no description of the in-kind contributions. The report also included a Schedule E (loan schedule) that disclosed a \$2,000 loan with the respondent named as the lender but left blank the collateral and guarantor information.

4. The spreadsheet format used for the report was not pre-approved by the executive director of the commission.
5. The report was filed with the City of Harlingen.
6. The donation spreadsheet included a \$250 entry as “cash” under the category “name,” and the name “Norbert Ewers” under the category for address. Page two of the cover sheet is signed by the respondent, and bears the signature, printed name, and title of the officer administering the oath, however, no notary stamp or seal is affixed.
7. On January 22, 2010, the respondent’s attorney submitted a report, which he stated was filed with the local filing authority and that appeared to be a corrected 30-day pre-election report. The report was not date stamped by the filing authority but was signed by the respondent, dated July 22, 2009, and was notarized. However, there is no evidence that the report has been filed with the local filing authority.
8. The corrected report disclosed:
 - contributions previously reported on an attached spreadsheet were disclosed on Schedule A, except for the \$250 contribution from “Norbert Ewers,” which was not disclosed.
 - \$490.01 in total political contributions of \$50 or less. The original report disclosed “240.01” for this amount.
 - expenditures previously reported on an attached spreadsheet were disclosed on Schedule F, with dates and addresses for payees. The original report disclosed no dates or addresses, although it did disclose a “reason” for each expenditure.

9. The respondent stated through his attorney that the contribution originally disclosed as a cash contribution from a single contributor, “Norbert Ewers” was actually a total received by the respondent “in cash contributions from seven different persons at a meet the candidate coffee event sponsored by Mr. Norbert Ewers’ (sic) at his home. The respondent also stated through his attorney that “there was no single cash contribution of more than \$100 dollars.”
10. The respondent did not correct the originally filed Schedule A which disclosed three itemized political contributions from contributor “Debbie G. Elizarde.” The amounts of each contribution remained in the boxes provided to disclose “In-kind contribution description” and the boxes provided to disclose “amount of contribution” remained blank. The respondent also did not check the box provided on Schedule E to indicate that a description of collateral and guarantor information are “not applicable,” although those boxes were also left blank.
11. The respondent stated through his attorney that the original 30-day pre-election report was not filed on the proper forms “because the City Secretary stated to him that his format was acceptable because it contained all information requested.”

IV. Findings and Conclusions of Law

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

Required Information on Campaign Finance Reports

1. Each report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
2. Each report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
3. Each report must 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 dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).

4. The respondent's report that appears to be a corrected 30-day pre-election report [not filed with the filing authority] discloses addresses and dates for seven political expenditures totaling approximately \$1,400. Detailed information was not required for three of the expenditures. Detailed information was required for four political expenditures totaling approximately \$1,310. The respondent's original and corrected reports both failed to disclose the description of three in-kind political contributions totaling approximately \$270, and failed to either disclose required collateral and guarantor information for a loan in the amount of \$2,000 from the respondent, or indicate that this information was "not applicable."
5. Because the loan at issue was made by the respondent, it is apparent that there was no guarantor or collateral information to disclose. Therefore, there is credible evidence of no violation with respect to that allegation.
6. The respondent disclosed approximately \$270 in in-kind contributions, but failed to provide a description of the contributions on his 30-day pre-election report. The respondent did not provide the dates and addresses for four political expenditures, although he did provide a description of the purpose for each one. Therefore, there is credible evidence of a violation of section 254.031 of the Election Code as to the 30-day pre-election report.

Acceptance of Over \$100 in Cash from an Individual during a Reporting Period

7. A candidate, officeholder, or specific-purpose committee may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. ELEC. CODE § 253.033.
8. There is insufficient evidence to show that the respondent accepted political contributions exceeding \$100 in cash from a contributor during the period covered by his 30-day pre-election report. Therefore, there is insufficient evidence of a violation of section 253.033 of the Election Code.

Filing Reports in Format Prescribed by the Commission

9. Each campaign finance report filed with an authority other than the commission must be in a format prescribed by the commission. ELEC. CODE § 254.036(a).
10. The executive director shall prescribe forms for campaign finance reports. Ethics Commission Rules §§ 18.1, 20.19.
11. A campaign finance report filed on paper must be accompanied by an affidavit executed by the person required to file the report. ELEC. CODE § 254.036(h). A campaign finance report is considered to be under oath by the person required to file the report, and the person is

subject to prosecution under chapter 37 of the Penal Code regardless of the absence of or a defect in the affidavit. ELEC. CODE § 254.036(h).

12. The respondent's 30-day report disclosed political contributions and expenditures in a spreadsheet format, which the respondent attached to the report. The format was not pre-approved by the executive director of the commission. Although the spreadsheet included the required information for political contributions the spreadsheet failed to disclose the full addresses of payees and the dates of political expenditures.
13. The spreadsheet format used by the respondent was not prescribed by the commission. Therefore, there is credible evidence of a violation of section 254.036(a) of the Election Code.
14. The respondent filed his 30-day pre-election report on April 9, 2009, and that report was signed but did not bear the seal or stamp of the notary. Because the report is nonetheless considered to be under oath by the respondent and the respondent is subject to prosecution under chapter 37 of the Penal Code regardless of the absence of or a defect in the affidavit, there is credible evidence of a technical or *de minimis* violation of section 254.036(h) 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 each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and 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 dates and purposes of the expenditures. The respondent further acknowledges that campaign finance reports are required to be filed in a format prescribed by the commission and that a campaign finance report filed on paper must be accompanied by an affidavit executed by the person required to file the report. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution includes 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.

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-290480.

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

Larry J. Galbreath, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director