

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
JOHN THOMAIDES,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-31112274

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on March 27, 2013, to consider sworn complaint SC-31112274. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.063 of the Election Code, a law 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 did not timely file multiple campaign finance reports, and accepted political contributions and made political expenditures at a time when the respondent did not have a campaign treasurer appointment in effect.

### III. Facts Supported by Credible Evidence

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

#### Semiannual Reporting Issues

1. The respondent is a city council member for the City of San Marcos, Texas.
2. The complaint alleged that the respondent did not timely file his July 2010, January and July 2011 semiannual reports.
3. Records provided by the City of San Marcos show that a July 2010 semiannual report was scanned by the city on July 15, 2010. The report was notarized on July 15, 2010. The report disclosed \$17,344.56 in political contributions and \$1,840.04 in political expenditures. The report also itemized numerous political contributions and political expenditures. The July 2010 semiannual campaign finance report was due on July 15, 2010.

4. A second July 2010 semiannual report indicates that it was filed with the City of San Marcos on July 23, 2010. This report only included cover sheets pages one and two. The report disclosed the same amount of totals disclosed on the originally filed reports, but did not include the previous schedules used for the itemization of political contributions and political expenditures. It appears the only other change made to the report was a change in address for the campaign treasurer and the addition of multiple offices sought. The report disclosed "1-15-10 thru 2/6/10 City Council pl. 6, 7-7-10 thru 7/15/10 MAYOR," under the place on the report for office sought. The report was notarized on July 23, 2010.
5. On January 18, 2011, the respondent filed a campaign finance report with the City of San Marcos marked on the cover sheet as a final report. The report did not include form C/OH-FR, the portion of a final report where a filer indicates whether or not he is now an officeholder, and if not, whether the filer has any unexpended contributions, interest or retained assets purchased from political contributions. In his response to the complaint, the respondent indicated that he intended this report to be his January 2011 semiannual report, not his final report. The report disclosed \$4,700 in total political contributions and \$17,665.09 in total political expenditures. The January 2011 semiannual campaign finance report was due on January 18, 2011. The deadline was extended from January 15, 2011, due to the weekend and a holiday. On January 3, 2012, the respondent filed a correction to this report to indicate on the cover sheet that it was his January 2011 semiannual report.
6. The respondent filed his July 2011 semiannual report with the City of San Marcos on August 31, 2011. The report disclosed \$3,514 in total political contributions and \$3,190.09 in total political expenditures. The July 2011 semiannual campaign finance report was due on July 15, 2011.

#### **POLITICAL ACTIVITY WITHOUT A CAMPAIGN TREASURER**

7. The complaint alleged that the respondent accepted political contributions and made political expenditures at a time when the respondent did not have a campaign treasurer appointment on file with the City of San Marcos, Texas. The complainant based his allegations on the report filed by the respondent on January 18, 2011, that indicated on the cover sheet that it was a final report. The complaint alleges that campaign expenditures made and campaign contributions accepted after the filing of that report were made or accepted by the respondent without a campaign treasurer on file since a final report terminates the active campaign treasurer appointment of a candidate.
8. On July 23, 2010, the respondent filed with the City of San Marcos form ACTA, the form used to amend a campaign treasurer appointment. The respondent indicated on that form that he held the office of City Council, Place 3, but now intended to seek the office of Mayor of San Marcos.

9. The respondent was an unsuccessful candidate for Mayor of San Marcos in an election held on November 2, 2010.
10. The respondent filed a campaign finance report on January 18, 2011, with the City of San Marcos that indicated on the cover sheet that it was a final report. The report only covered through December 31, 2010. The report did not include form C/OH-FR, the portion of a final report where a filer indicates whether or not he is a current officeholder, and if not, whether the filer has any unexpended contributions, interest or retained assets purchased from political contributions. A final report should cover through the date that the report is filed.
11. In his response to the complaint, the respondent swore, in pertinent part, that:

...There was an inadvertent error made by checking the “Final Report” box instead of the “January 15” box on the cover sheet. It was not my intention to have made this my final report thereby putting me in violation of Section 253.031...
12. On January 3, 2012, the respondent filed a correction to the report filed January 18, 2011, to indicate it was his January 2011 semiannual report.
13. On August 13, 2011, the respondent filed form CTA, used to appoint a campaign treasurer. The respondent chose a different individual as his campaign treasurer than that on his ACTA filed previously, and listed the office sought as City Council, Place 3.
14. On August 31, 2011, the respondent filed a July 2011 semiannual report with the City of San Marcos. The report disclosed political contributions accepted and political expenditures made before the respondent filed form CTA on August 13, 2011.

#### **IV. Findings and Conclusions of Law**

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

##### **Semiannual Reporting Issues**

1. A candidate shall file two reports for each year. ELEC. CODE § 254.063(a). The first report shall be filed not later than July 15. The report covers the period beginning January 1, 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, as applicable, and continuing through June 30. ELEC. CODE § 254.063(b). The second report shall be filed not later than January 15. The report covers the period beginning July 1, 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, as applicable, and continuing through December 31. ELEC. CODE § 254.063(c).

2. The complaint alleged that the respondent did not timely file his July 2010 semiannual report. An original version of this report was notarized on July 15, 2010, and scanned by the city on July 15, 2010. Therefore, the evidence indicates that the respondent's original July 2010 semiannual report was received by the City of San Marcos on or before July 15, 2010. The respondent filed a second July 2010 semiannual report on July 23, 2010 that appeared to be intended as a correction to the originally filed July 2010 semiannual report. The report did not include the previously itemized political contributions and political expenditures, but changed the address for the campaign treasurer and added multiple offices sought. It appears that the changes to the report did not substantially affect disclosure of the respondent's campaign finances. However, the report was not correct when it was originally filed. The July 2010 semiannual campaign finance report was due on July 15, 2010. A complete report was not properly filed until July 23, 2010. There is credible evidence of a technical or *de minimis* violation of section 254.063(b) of the Election Code.
3. The complaint alleged that the respondent did not timely file his January 2011 semiannual report. The respondent filed what the report indicated was a final report on January 18, 2011, with the City of San Marcos. On January 3, 2012, the respondent corrected that report to indicate it was his January 2011 semiannual report, not a final report. The period covered by the original report was consistent with the January 2011 semiannual report. The change to the report did not substantially affect disclosure of the respondent's campaign finances. However, the report was not correct when it was originally filed. The January 2011 semiannual report was due on January 18, 2011. The report was not properly filed until January 3, 2012. There is credible evidence of a technical or *de minimis* violation of section 254.063(c) of the Election Code.
4. The complaint alleged that the respondent did not timely file his July 2011 semiannual report. The respondent filed the July semiannual report with the City of San Marcos on August 31, 2011. The July 2011 semiannual campaign finance report was due on July 15, 2011. The respondent did not timely file that report. Therefore, with regard to the July 2011 semiannual report, there is credible evidence of a violation of section 254.063(b) of the Election Code.

#### **POLITICAL ACTIVITY WITHOUT A CAMPAIGN TREASURER**

5. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. ELEC. CODE § 252.001.
6. 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).
7. The complaint alleged that the respondent accepted political contributions and made political expenditures at a time when the respondent did not have a campaign treasurer appointment

on file with the City of San Marcos. The respondent filed a campaign finance report on January 18, 2011, with the City of San Marcos that indicated on the cover sheet that it was a final report. A final report typically would include form C/OH-FR, and cover through the date that the report is filed. The report at issue did not include form C/OH-FR and covered through December 31, 2010, not January 18, 2011, which is consistent with the requirements for the January 2011 semiannual report. The evidence as a whole indicates that the respondent did not intend the report to be a final report. Since the report that the respondent filed was not a final report the respondent did not terminate his campaign treasurer upon filing the report. Therefore, it was permissible for the respondent to continue to accept campaign contributions and make campaign expenditures after the report was filed. There is credible evidence of no violations of sections 252.001 and 253.031(a) 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 shall file two reports for each year. The first report shall be filed not later than July 15. The report covers the period beginning January 1, 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, as applicable, and continuing through June 30. The second report shall be filed not later than January 15. The report covers the period beginning July 1, 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, as applicable, and continuing through December 3. 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 nature, circumstances, and consequences of the violations described under Sections III and IV, and the sanction necessary to deter future violations, the commission imposes a \$350 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-31112274.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
John Thomaides, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director