

TEXAS ETHICS COMMISSION

IN THE MATTER OF
FRANKIE M. FRIEND,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3200245

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on June 18, 2020, to consider sworn complaint SC-3200245. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Sections 254.031, 254.063, and 254.064 of the Election Code and Section 20.61 of the Ethics Commission Rules, laws administered and enforced by the Commission. To resolve and settle the complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleged that the respondent: 1) did not file the 30-day pre-election report for the May 4, 2019, election, in violation of Section 254.064 of the Election Code; 2) did not timely file the 8-day pre-election report for the May 4, 2019, election, in violation of Section 254.064 of the Election Code; 3) did not cover the correct reporting period in the 8-day pre-election report for the May 4, 2019, election, in violation of Section 254.064 of the Election Code; 4) did not properly disclose the purpose of political expenditures on the 8-day pre-election report for the May 4, 2019, election, in violation of Section 254.031 of the Election Code and Section 20.61 of the Ethics Commission Rules; 5) did not disclose an in-kind political contribution, in violation of Section 254.031 of the Election Code; and 6) did not file the July 2019 semiannual report, in violation of Section 254.063 of the Election Code.

III. Findings of Fact and Conclusions of Law

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

1. The respondent was an opposed candidate for Garden Ridge City Council, Place 2, in the May 4, 2019, election. The respondent filed the modified reporting declaration with the campaign treasurer appointment on February 15, 2019.

Failure to File the 30-day Pre-election Report

2. The complaint alleged that the respondent made political expenditures that exceeded \$500 on March 18, 2019, and therefore, was required to file the 30-day pre-election report. The complaint further alleged that the respondent did not file the 30-day pre-election report.
3. In response to the complaint, regarding the failure to file the report, the respondent swore that she “did not do this on purpose” and was “willing to fill it out now.” After the complaint was filed, the respondent filed the 30-day pre-election report, which disclosed \$0 in total political contributions and \$2,340 in total political expenditures. The report disclosed one expenditure of \$2,340 on March 18, 2019.
4. Records on file with the Garden Ridge City Secretary show that the respondent had not filed a 30-day pre-election report at the time the complaint was filed. The records also show that the respondent disclosed a political expenditure made from personal funds of \$2,346 on March 18, 2019, on the original 8-day pre-election report filed for the May 4, 2019, election.
5. In addition to other required reports, 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. Tex. Elec. Code § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. *Id.* § 254.064(b). The 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. *Id.*
6. An opposed candidate or specific-purpose committee required by Chapter 254 of the Election Code to file pre-election reports may file a report under the modified filing schedule instead if the candidate or committee does not intend to accept political contributions that in the aggregate exceed \$500 or to make political expenditures that in the aggregate exceed \$500 in connection with the election. *See* Tex. Elec. Code § 254.181(a). A candidate or committee filing under the modified filing schedule is not required to file any reports of political contributions and political expenditures other than the semiannual reports required to be filed not later than July 15 and January 15. *See id.* § 254.184(b). An opposed candidate or specific-purpose committee that exceeds \$500 in political contributions or political expenditures in the election shall file pre-election reports as required by Chapter 254 of the Election Code. *See id.* § 254.183(a).

7. As a modified filer, the respondent made a political expenditure that exceeded \$500 during the reporting period beginning the date she filed the campaign treasurer appointment, February 15, 2019, and continuing through March 25, 2019. Therefore, she was required to file the 30-day pre-election report, which was due by April 4, 2019.
8. Credible evidence indicates that although the respondent was a modified filer, she was required to file the 30-day pre-election report for the May 4, 2019, election, but did not file the report. Therefore, there is credible evidence of a violation of Section 254.064 of the Election Code.

Failure to Timely File the 8-day Pre-election Report

9. The complaint alleged that the respondent did not timely file the 8-day pre-election report for the May 4, 2019, election.
10. In response to the complaint, the respondent swore that she “did not do this on purpose” and would “fix it” if she could.
11. Records on file with the Garden Ridge City Secretary show that the respondent filed the 8-day pre-election report on April 30, 2019.
12. In addition to other required reports, 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. Tex. Elec. Code § 254.064(a). The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. *Id.* § 254.064(c). The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.*
13. The 8-day pre-election report for the May 4, 2019, election was due by April 26, 2019.
14. Credible evidence indicates that the respondent filed the 8-day pre-election report for the May 4, 2019, election four days late. Therefore, there is credible evidence of a violation of Section 254.064 of the Election Code.

Failure to Cover Correct Reporting Period on the 8-day Pre-election Report

15. The complaint alleged that the respondent did not cover the correct dates for the reporting period on the 8-day pre-election report for the May 4, 2019, election.

16. In response to the complaint, the respondent swore that she “did not do this on purpose” and was “willing to fill in the correct information now.” After the complaint was filed, the respondent corrected the reporting period covered on the report.
17. Records on file with the Garden Ridge City Secretary show that the respondent covered the period from March 18, 2019, through April 28, 2019, on the original 8-day pre-election report filed.
18. The 8-day pre-election report covers the period beginning the 39th day before the election and continuing through the 10th day before election day. *See* Tex. Elec. Code § 254.064(c).
19. The respondent’s 8-day pre-election report was required to cover the period beginning March 26, 2019, and continuing through April 24, 2019.
20. Credible evidence indicates that the respondent did not cover the correct reporting period for the 8-day pre-election report for the May 4, 2019, election. Therefore, there is credible evidence of a violation of Section 254.064 of the Election Code.

Failure to Properly Disclose the Purpose of Political Expenditures on the 8-day Pre-election Report

21. The complaint alleged that the respondent did not properly disclose the purpose of political expenditures on the 8-day pre-election report for the May 4, 2019, election. Specifically, the complaint alleged that the true purpose of the expenditures was for a political rally held at Garden Ridge’s Paul Davis Park on April 20, 2019.
22. In response to the complaint, the respondent swore that she “was not sure what else [she] could have put on the form.” After the complaint was filed, the respondent corrected the 8-day pre-election report and disclosed the purpose of one expenditure as “ADVERTISING EXPENSE” and the purpose of two expenditures as “EVENT EXPENSE.”
23. Records on file with the Garden Ridge City Secretary show that the respondent disclosed the purpose of one expenditure of \$180 as “EASTER EGG HUNT/EARTH DAY PLASTIC EGGS; CANDY PLASTIC BAGS” and one expenditure of \$365 as “EASTER EGG HUNT EARTH DAY” on the original report filed.
24. Each report must include the amount of political expenditures that in the aggregate exceed \$100 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. Tex. Elec. Code § 254.031(a)(3). For reporting required under Section 254.031 of the Election

Code, the purpose of an expenditure means a description of the category of goods, services, or other thing of value for which an expenditure is made. 1 Tex. Admin. Code § 20.61(a)(1). The purpose of an expenditure must include both a description of the category of goods or services received in exchange for the expenditure and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. A description of an expenditure that merely states the item or service purchased is not adequate because doing so does not allow a person reading the report to know the allowable activity for which an expenditure was made. *Id.* § 20.61(f).

25. Credible evidence indicates that the respondent disclosed the items she purchased, but did not disclose the category of goods or services to show the activity, a campaign event, for which she made the expenditures. Therefore, there is credible evidence of violations of Section 254.031(a)(3) of the Election Code and Section 20.61 of the Ethics Commission Rules.

Failure to Disclose an In-kind Contribution

26. The complaint alleged that the respondent did not disclose an in-kind contribution of \$160 for a park rental fee for the respondent's political rally that was paid by another individual.
27. In response to the complaint, the respondent swore that she "did not know you had to pay to reserve a place in the city park." She further swore that the expenditure would have been \$80 for her part. After the complaint was filed, the respondent disclosed an in-kind contribution of \$180 on April 2, 2019, for "CITY PARK RESERVATION FOR EARTH DAY."
28. Records on file with the Garden Ridge City Secretary show that the respondent disclosed \$0 in total contributions on the original 8-day pre-election report filed. The records also show that the respondent had not filed any other reports at the time the complaint was filed.
29. 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, the full name and address of the person making the contributions, and the dates of the contributions. Tex. Elec. Code § 254.031(a)(1). "In-kind contribution" means a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. 1 Tex. Admin. Code § 20.1(8).
30. Credible evidence indicates that the respondent did not disclose an in-kind contribution of the park rental fee for her campaign event. Therefore, there is credible evidence of a violation of Section 254.031(a)(1) of the Election Code.

Failure to File a July 2019 Semiannual Report

31. The complaint alleged that the respondent did not file the July 2019 semiannual report.
32. In response to the complaint, the respondent swore that she did not file the report because she “never realized” she needed to do so. After the complaint was filed, the respondent filed the July 2019 semiannual report, which disclosed \$0 in political contributions and \$2,885 in political expenditures.
33. Records on file with the Garden Ridge City Secretary show that the respondent had not filed a final report or the July 2019 semiannual report at the time the complaint was filed.
34. A candidate shall file two reports for each year as provided by Chapter 254 of the Election Code. Tex. Elec. Code § 254.063(a). The first report shall be filed not later than July 15. *Id.* § 254.063(b). The first 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. *Id.*
35. The respondent did not file a final report after the May 4, 2019, election and was therefore required to file a July 2019 semiannual report. The July 2019 semiannual report was due by July 15, 2019.
36. Credible evidence indicates that the respondent did not file the July 2019 semiannual report. Therefore, there is credible evidence of a violation of Section 254.063 of the Election Code.

IV. 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 Commission’s findings of fact and conclusions of law described under Section III, 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: 1) for each election in which a person is a candidate and has an opponent whose name is on the ballot, the person shall file two reports in addition to other reports required by Chapter 254 of the Election Code. This requirement

applies to an opposed candidate who files a modified reporting declaration, but exceeds \$500 in political contributions or political expenditures in the election. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The 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. The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day; 2) each report must include the amount of political expenditures that in the aggregate exceed \$100 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 purpose of an expenditure means a description of the category of goods, services, or other thing of value for which an expenditure is made; 3) each report must include the amount of political contributions, including in-kind 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 dates of the contributions; and 4) a candidate shall file two reports each year as provided by Chapter 254 of the Election Code. The first report shall be filed not later than July 15. The first 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.

4. The respondent agrees to fully and strictly comply with the above requirements of law.

V. Confidentiality

This order and agreed resolution describes certain 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.

VI. Sanction

After considering the nature, circumstances, and consequences of the violations described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$250 civil penalty to be paid within 30 days from the date of execution of this order. If the \$250 penalty is not paid within 30 days from the date of execution of this order, then the penalty

is increased to \$2,500 and will be referred to the Office of the Attorney General of Texas for collection.

VII. 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 sworn complaint SC-3200245.

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

Frankie M. Friend, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director