

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JAMES “JAY” CUNNINGHAM,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-32203133

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on May 11, 2022, to consider sworn complaint SC-32203133. A quorum of the Commission was present. The Commission determined that there is credible evidence of a violation 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 adopted this resolution.

II. Allegation

The complaint alleged that the respondent did not file a January 2022 semiannual campaign finance report, which was due by January 18, 2022 (January 15 deadline extended due to holiday weekend), 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 a successful candidate for Clear Creek ISD Trustee, District 5, in the May 1, 2021 election. The respondent currently holds the office.
2. The sworn complaint was filed on March 25, 2022. The complaint alleged that the respondent did not file a January 2022 semiannual report. Records on file with Clear Creek ISD show the respondent filed a campaign treasurer appointment on April 9, 2021, and that the respondent did not file a final report after the May 1, 2021 election. The last report filed by the respondent was the July 15, 2021 semiannual report, which was not marked as a final report.
3. In response to the complaint, the respondent acknowledged the violation and stated that he did not think he had to file a report since he was not up for election during the reporting period. The respondent filed the report on April 20, 2022. The respondent confirmed that he did not accept any political contributions or make any political expenditures during the

reporting period.

4. A candidate shall file two reports for each year. Tex. 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 under this subchapter, as applicable, and continuing through June 30. *Id.* § 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 under this subchapter, as applicable, and continuing through December 31. *Id.* § 254.063(c).
5. If a candidate expects no reportable activity in connection with the candidacy to occur after the period covered by a report filed under this subchapter, the candidate may designate the report as a "final" report. *Id.* § 254.065(a). The designation of a report as a final report: (1) relieves the candidate of the duty to file additional reports under this subchapter, except as provided by Subsection (c); and (2) terminates the candidate's campaign treasurer appointment. *Id.* § 254.065(b).
6. The respondent had a campaign treasurer appointment on file during the period at issue and was required to file the January 2022 semiannual report by January 18, 2022 (January 15 deadline extended due to holiday weekend). The respondent filed the report late on April 20, 2022. 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 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 a candidate shall file two reports for each year until a final report is filed – the second report shall be filed not later than January 15 and 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. The respondent agrees to comply with these requirements of the law.

V. Confidentiality

This order and agreed resolution describes a violation that the Commission has determined is 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

The respondent has a prior late report. The respondent filed the 30-day pre-election report for the May 1, 2021 election late on April 9, 2021.

After considering the nature, circumstances, and consequences of the violation described under Section III, after considering the respondent's prior late report, and after considering the sanction necessary to deter future violations, the Commission imposes a \$500 civil penalty.

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 SC-32203133.

AGREED to by the respondent on this _____ day of _____, 2022.

James "Jay" Cunningham, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director