

BEFORE THE ARKANSAS ETHICS COMMISSION

FILED

MAY 22 2020

In Re: Roderick Talley
Respondent

Case No. **2019-CO-025**
ARKANSAS ETHICS
COMMISSION
BY *WZ*

FINAL ORDER

Came for a final adjudication hearing on May 15, 2020, the complaint filed in this case against the Respondent, Roderick Talley, and based upon due consideration of both the evidence presented at that hearing and the applicable law, the Arkansas Ethics Commission (hereinafter the "Commission") hereby makes the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this matter pursuant to Ark. Code Ann. § 7-6-218.

2. The Respondent is a citizen of the State of Arkansas who, at all times relevant to this case, was a candidate for State Representative - District 36 during the special election in 2019.

3. The Commission is charged with enforcing Ark. Code Ann. § 7-6-203(f) which, at all times relevant to this case, provided, in pertinent part, as follows:

(f)(1) A candidate shall not take any campaign funds as personal income. This subdivision (f)(1) shall not apply to campaign funds that were:

(A) Accumulated prior to the passage of Initiated Act 1 of 1990; or

(B) Disposed of prior to July 28, 1995.

(4)(A) For purposes of this subsection, a candidate who uses campaign funds to fulfill any commitment, obligation, or expense that would exist regardless of the candidate's campaign shall be deemed to have taken campaign funds as personal income.

4. The Commission is also charged with enforcing Ark. Code Ann. § 7-6-207(a)(1)(D) which, at all times relevant to this case, provided as follows:

(a)(1) Except as provided in subsections (c) and (e) of this section, each candidate for state or district office, including a district judge, or a person acting in the candidate's behalf, shall file with the Secretary of State:

(D) No later than thirty (30) days after the end of the month in which the candidate's name has appeared on the ballot in any primary election, runoff election, general election, or special election, or when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot, a final report of all contributions received and expenditures made which have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500)[.]

5. On September 24, 2019, the Commission received a complaint against the Respondent in his capacity as a candidate for State Representative - District 36 during the special election in 2019. The essential allegations of the complaint were that the Respondent used campaign funds to make the following expenditures which were not related to his campaign:

- (a) The purchase of food for himself.
- (b) The purchase of personal hygiene items.
- (c) The payment of a hotel deposit.
- (d) The payment for gas and various travel expenses.
- (e) The payment for drugs.
- (f) The payment to get his grandfather's truck out of impound on June 8, 2019.

6. On September 30, 2019, the Commission sent the Respondent a letter, via certified mail with a return receipt requested, to notify him that an investigation was being commenced concerning the allegations set forth above. The letter went on to state that the focus of the investigation with regard to those allegations would be whether or not he violated Ark. Code Ann. § 7-6-203(f).

7. On October 18, 2019, staff presented the preliminary results of its investigation to the Commission at its regular monthly meeting and was instructed to complete the investigation. The Respondent was notified of the Commission's decision by letter dated October 24, 2019.

8. On February 7, 2020, the Commission sent the Respondent a letter, via first-class mail, as written notice that the scope of the investigation had been expanded to also include whether or not he violated Ark. Code Ann. § 7-6-207(a)(1)(D) by failing to file a Final Report for the special election held on August 6, 2019.

9. On March 10, 2020, the Commission sent the Respondent a letter, via first-class mail, to notify him that the results of the investigation would be presented to the Commission at its regular monthly meeting on March 20, 2020, for purposes of determining whether or not probable cause existed for the finding of a violation.

10. On March 20, 2020, the Commission considered the results of staff's investigation and decided by a vote of 4-0, with Chairman Younger not present, that probable cause existed for finding that the Respondent violated Ark. Code Ann. § 7-6-203(f) by taking campaign funds as personal income in the form of personal meals and Ark. Code Ann. § 7-6-207(a)(1)(D) by failing to file a Final Report for the special election held on August 6, 2019.

11. On March 20, 2020, the Commission sent a letter to the Respondent, via first-class mail, notifying him of the Commission's decision that probable cause existed for finding that he violated Ark. Code Ann. § 7-6-203(f) and Ark. Code Ann. § 7-6-207(a)(1)(D) in his capacity as a candidate for State Representative - District 36 during the special election in 2019.

12. In accordance with the Commission's Rules of Practice and Procedure, the March 20th letter contained a written Offer of Settlement with the proposed outcome being the issuance of a Public Letter of Warning, the imposition of a fine in the amount of Five Hundred Dollars (\$500.00), and the requirement that the Respondent file a Final Report for the special

election held on August 6, 2019, with the Secretary of State within thirty (30) days of the date of acceptance of the written Offer of Settlement.

13. On March 25, 2020, the Commission sent the Respondent notice, in accordance with Ark. Code Ann. § 7-6-218(b)(5)(A)(iii), that the 210 days within which the Commission is required to complete its investigation and take final action on a complaint and the 240 days within which the Commission is required to conduct a public or final adjudication hearing and take final action on a complaint were both extended by sixty (60) days.

14. On May 5, 2020, the Commission sent the Respondent a letter, via first-class mail, advising that the Respondent had notified the Commission via telephone that he did not wish to sign the Offer of Settlement and, therefore, a final adjudication hearing would be held on May 15, 2020. Said letter contained a separate written notice providing the information required in Ark. Code Ann. § 25-15-208(a)(2).

15. The Respondent appeared at the final adjudication hearing which was held during the Commission's confidential session on May 15, 2020. Said hearing was conducted in accordance with Ark. Code Ann. § 25-15-213.

16. At all times relevant to this case, the Respondent was a candidate for State Representative - District 36 during the special election in 2019.

17. On or about May 31, 2019, the Respondent opened a campaign bank account *****221 (titled "Campaign to Elect Roderick Talley") as a candidate for State Representative - District 36 for the special election in 2019. The account was with Centennial Bank.

18. The bank records obtained from Centennial Bank, introduced as Exhibit "4" at the hearing, show multiple debits at fast food restaurants for prices equal to the cost of a meal for an individual or two and very small amounts at convenience stores and gas stations outside of central Arkansas. Specifically, the bank records reflected the disbursements shown on the following chart:

Centennial Bank Account *****221			
Roderick Talley-d/b/a Campaign to Elect Roderick Talley			
Vendor	City	Approximate Date of Transaction	Amount
AKJK Crown Washington	Washington, D.C.	June 19, 2019	\$19.87
Exxon Mobile	Hope	June 22, 2019	\$13.71
Exxon Mobile	Hope	June 23, 2019	\$15.98
Hope Super Station	Hope	June 23, 2019	\$2.56
Food Mart	Little Rock	June 24, 2019	\$1.07
McDonald's	Caddo Valley	June 21, 2019	\$4.42
Burger King	Hope	June 23, 2019	\$4.46
Wendy's	Little Rock	June 24, 2019	\$9.09
T Mart	Hope	June 25, 2019	\$5.84
Shell	Little Rock	June 24, 2019	\$7.61
Shell	Little Rock	June 25, 2019	\$3.03
Wendy's	Little Rock	June 26, 2019	\$5.00
Taco Bell	Little Rock	June 25, 2019	\$3.03
Popeyes	Little Rock	July 2, 2019	\$17.39
Loves	Little Rock	July 4, 2019	\$4.68
Sonic	Little Rock	July 3, 2019	\$2.71
McDonald's	Pine Bluff	July 7, 2019	\$4.48
Waffle House	Little Rock	July 9, 2019	\$10.73
Food Mart	Little Rock	July 9, 2019	\$2.17
EZ Mart	Little Rock	July 11, 2019	\$10.01
USA Heritage Vending	Benton	July 13, 2019	\$1.35
Shell	Little Rock	July 18, 2019	\$5.75
Big Red	North Little Rock	July 23, 2019	\$2.83
Big Red	North Little Rock	July 23, 2019	\$12.72
Popeyes	North Little Rock	July 23, 2019	\$5.84
Waffle House	North Little Rock	July 23, 2019	\$10.89
McDonald's	North Little Rock	August 5, 2019	\$5.95

19. The Respondent's sworn statement was taken during the course of the case and it was introduced as Exhibit "6" at the hearing. During his sworn statement, the Respondent admitted that on multiple occasions he used campaign funds to purchase food for immediate, personal consumption when out on the campaign trail. He said his misunderstanding of the Rules on Campaign Finance & Disclosure ("RCF&D") was that he was only prohibited from using campaign funds to purchase food for his household. He stated that he never tried to be deceptive, and merely misunderstood the rules.

20. Section 208 of the RCF&D provides, in pertinent part, as follows:

(a)(1) For purposes of this section and throughout these rules, a candidate or officeholder who uses campaign funds or carryover funds to fulfill any commitment, obligation or expense that would exist regardless of the candidate's campaign or officeholder activity and an officeholder who uses campaign funds (retained as carryover funds) to fulfill any commitment, obligation or expense that would exist regardless of the duties and responsibilities of his or her office shall be deemed to have taken campaign funds as personal income.

21. Breakfast, lunch, dinner, and refreshments are personal expenses that would exist regardless of a campaign; i.e., someone running for office would need to eat three (3) meals a day whether or not he or she were running for office.

22. At the hearing, the Respondent testified that the small purchases at fast food restaurants, convenience stores, and gas stations were for food and bottled water for individuals who were helping him campaign. This testimony contradicted the testimony the Respondent gave during his sworn statement. The sworn statement was earlier in time and the Commission found it to be more credible.

23. Alternatively, the Respondent testified that the purchases made at fast food restaurants, convenience stores, and gas stations were tantamount to reimbursing himself for lost income during a leave of absence from his employment.

24. During his sworn statement, the Respondent explained a Two Hundred Dollars (\$200.00) cash withdrawal from his campaign account as income for lost wages. It was his testimony that he cut the hair of six (6) to seven (7) people per week and they each paid Twenty-Five Dollars (\$25.00) to Thirty-Five Dollars (\$35.00) directly to him. However, he did not produce any records documenting a leave of absence or the amount of income he lost.

25. Although Section 207 of the RCF&D does allow a candidate to reimburse himself or herself for lost income during a leave of absence, the Respondent never produced any records

documenting a leave of absence or the amount of income he lost. Simply spending campaign funds on personal meals is not in compliance with Section 207 of the RCF&D.

26. The Secretary of State's office is the filing office for state and district candidates. A Certification of Non-Filing was introduced as Exhibit "5" at the hearing and it reflected that the Respondent had not filed his Final C&E Report for the District 36 special election in 2019 as of March 11, 2020. The Final C&E Report would have been due by September 30, 2019, making it more than seven (7) months late as of the date of the hearing.

27. The Respondent testified at the hearing that the bank statements he needed to prepare a Final Report had been stolen and that he had filed a police report. The Respondent offered no testimony to explain why he could not have obtained copies of the bank statements and filed a Final Report.

28. When it returned to public session, the Commission voted on the following matter:

A motion was made by Commissioner Hampton and seconded by Commissioner Irby to find the Respondent violated Ark. Code Ann. § 7-6-203(f) by paying for his personal meals with campaign funds and Ark. Code Ann. § 7-6-207(a)(1)(D) by failing to file a Final Report for the special election held on August 6, 2019, and shall be issued a Public Letter of Caution, fined One Hundred Dollars (\$100.00), and ordered to file a Final Report within thirty (30) days. The motion passed by a vote of 3-0, with Commissioners Eastwood and Klein not voting since they were attending the meeting by telephone.

29. The Respondent committed a violation of Ark. Code Ann. § 7-6-203(f) by paying for his personal meals with campaign funds.

30. The Respondent committed a violation of Ark. Code Ann. § 7-6-207(a)(1)(D) by failing to file a Final Report for the special election held on August 6, 2019.

31. With respect to the Respondent's violation of Ark. Code Ann. § 7-6-203(f) and Ark. Code Ann. § 7-6-207(a)(1)(D), the Commission found that a Public Letter of Caution shall be issued.

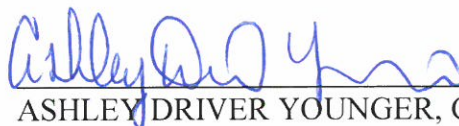
32. With respect to the Respondent's violation of Ark. Code Ann. § 7-6-203(f) and Ark. Code Ann. § 7-6-207(a)(1)(D), the Commission found that a fine of One Hundred Dollars (\$100.00) shall be imposed.

33. The One Hundred Dollars (\$100.00) fine imposed shall be due and payable within thirty (30) days from the entry of this Order.

34. With respect to the Respondent's violation of Ark. Code Ann. § 7-6-207(a)(1)(D), the Commission found that the Respondent shall be ordered to file a Final Report for the special election held on August 6, 2019, within thirty (30) days from the entry of this Order.

IT IS, THEREFORE, CONSIDERED, DECIDED and ORDERED by the Commission that the Respondent, Roderick Talley, shall be found to have violated Ark. Code Ann. § 7-6-203(f) and Ark. Code Ann. § 7-6-207(a)(1)(D) in his capacity as a candidate for State Representative - District 36 during the special election in 2019; that the Respondent shall be issued a Public Letter of Caution; that the Respondent shall be fined One Hundred Dollars (\$100.00), with that amount due and payable within thirty (30) days from the entry of this Order; and that the Respondent shall be ordered to file a Final Report for the special election held on August 6, 2019, within thirty (30) days from the entry of this Order.

IT IS SO ORDERED this 22 day of May, 2020.



ASHLEY DRIVER YOUNGER, Chairman
Arkansas Ethics Commission