

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JERRY K. JOHNSON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-96068

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on March 14, 1997, to consider sworn complaint SC-96068 filed against Jerry K. Johnson (the respondent). A quorum of the commission was present. The commission voted to accept jurisdiction of this complaint. Based on the investigation conducted by commission staff, the commission determined there was credible evidence of a violation of Section 253.035(h), Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Facts Supported by Credible Evidence

Credible evidence available to the commission would support the following findings of fact:

1. At all times relevant to this complaint, the respondent was a state representative who was also a candidate for state senate.
2. The complainant alleges that the respondent violated Section 253.035, Election Code, by making \$16,808.46 in payments to himself out of campaign funds without disclosing the name of the business or other entity to which he made payments from personal funds for political purposes, and without disclosing other details of each transaction.
3. The respondent's campaign finance reports show that he made 24 payments totaling \$16,808.46 to himself. The explanations provided by the respondent under the "purpose" section of the political expenditures schedule indicate that the expenditures were payments to himself for expenditures he made from personal funds in connection with his performance of duties or activities as a candidate for or holder of a public office.

4. The respondent reports the 24 expenditures at issue as “political expenditures” and lists himself as the payee. Under the “purpose” section of the political expenditures schedule, the respondent breaks down the expenditures by listing what they were for and the amount attributed to each (i.e. supplies \$60, travel \$60, dues \$70, etc.). The precise amount for each item was not always disclosed.
5. In response to this complaint, the respondent filed four corrected reports and good-faith affidavits (January 1995 semiannual, July 1995 semiannual, 30-day before election report for the 1996 primary, and July 1996 semiannual) itemizing the 24 expenditures in question.

III. Conclusions of Law

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

1. Section 253.035(a), Election Code, provides that a person who accepts a political contribution as a candidate or as an officeholder may not convert the contribution to personal use.
2. Section 253.035(d), Election Code, provides that “personal use” means “a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office.”
3. There is no evidence available to commission staff to show that the expenditures were made for the respondent’s personal use. There is no credible evidence that the respondent violated Section 253.035(a), Election Code.
4. Section 253.035(h), Election Code, provides specific reporting requirements for a candidate or officeholder who makes political expenditures from personal funds and who intends to seek reimbursement from political contributions. That section requires the candidate or officeholder to fully report those expenditures on the report covering the period in which the expenditures were made, including payees, dates, purposes, and amounts, and to indicate that the expenditures were made from personal funds and that reimbursement from political contributions is intended. Alternatively, the law authorizes a candidate or officeholder to report those expenditures as a loan to himself or herself. Section 253.0351, Election Code.
5. The respondent neglected to fully identify the actual payee for the expenditures at issue as required by Section 253.035(h), Election Code.
6. A person filing reports under Title 15, Election Code, who files an affidavit swearing that a corrected report was filed in good-faith is not subject to a fine for a late report. *See* Sections 18.49 and 18.83, Ethics Commission Rules. However, the good-faith affidavit will not cure a violation under Section 253.035(h), Election Code, for failure to properly report political expenditures from personal funds. There is credible evidence that the respondent violated Section 253.035(h), Election Code.

IV. Representations and Agreement by the Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits nor denies the facts detailed under Section II and the commission's findings and conclusions of law detailed under Section III, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge appointed by the commission, and further waives any right to a post-hearing procedure established or provided by law.
3. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations detailed in Section III, Paragraphs 4, 5, and 6, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

V. Confidentiality

This ORDER and AGREED RESOLUTION describes an alleged violation that the commission has determined would be neither technical or *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under Section 571.140, Government Code, and may be disclosed by members and staff of the Texas Ethics Commission.

VI. Sanction

After considering the seriousness of the violations described under Sections II and III, including the nature, circumstances, consequences, extent, and gravity of the violation; that no previous violations by this respondent are known to the commission; and after considering the sanction deemed necessary to deter future violations, the commission imposes a \$100 civil penalty for the violations described under Section III, Paragraphs 4, 5, and 6.

VII. Order

The Texas Ethics Commission hereby ORDERS:

1. that the portions of this sworn complaint that allege violations under Section III, Paragraphs 1, 2, and 3, are dismissed;

2. that this proposed AGREED RESOLUTION be presented to the respondent;
3. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-96068;
4. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than April 14, 1997; and
5. that the executive director shall promptly refer SC-96068 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-96068 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 1997.

 Jerry K. Johnson, Respondent

EXECUTED ORIGINAL received by the commission on: _____
 DATE

Texas Ethics Commission

By: _____
 Tom Harrison, Executive Director