

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MARY C. POSS,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-210103

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 6, 2001, and voted to accept jurisdiction of Sworn Complaint SC-210103 filed against Mary C. Poss, Respondent. The commission met again on November 9, 2001, to consider Sworn Complaint SC-210103. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations 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. Allegations

The complainant alleges that the respondent, a city council member, improperly reimbursed herself for political expenditures made from personal funds.

III. Facts Supported by Credible Evidence

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

1. This complaint was filed on January 30, 2001.
2. The respondent is currently a city councilperson in Dallas. The respondent first filed a campaign treasurer appointment in 1988 and ran unsuccessfully in a 1989 election. The respondent was elected to the city council in 1995, and was reelected in 1997, 1999, and 2001.
3. In a campaign finance report filed on January 15, 1999, the respondent disclosed an expenditure paid from political funds on December 10, 1998, to the respondent's spouse in the amount of \$7,651.11. The purpose of the political expenditure was listed as "Campaign Expense Telephones (94-98)."

4. In campaign finance reports filed between 1994 and 1998, the only report disclosing political expenditures that were made from personal funds with reimbursement intended and that were described as telephone expenses was a 30-day before election report filed on April 6, 1995. In this report, the respondent reported two political expenditures made to Southwestern Bell for phone bills in the total amount of \$450.83.
5. In a campaign finance report filed on January 18, 2000, the respondent disclosed three political expenditures from political funds paid to herself on July 19, 1999. The three political expenditures paid to the respondent total \$22,822.78. The first political expenditure in the amount of \$4,983.85 was described as "Unreimbursed Campaign Expenses (8-14-94 to 5-22-95)." The second political expenditure in the amount of \$15,075.25 was described as "Campaign Expense (6-1-95 to 2-28-99)." The third political expenditure in the amount of \$2,763.68 was described as "Campaign Expense (3-1-99 to 5-30-99)."
6. In campaign finance reports originally filed that covered the periods from August 1994 through May 1999, the respondent did not disclose any political expenditures made from personal funds that correspond to the dates referenced in connection with the respondent's July 19, 1999, payment to herself.
7. The only political expenditures made from personal funds disclosed in campaign finance reports filed from August 1994 through May 1999 were the telephone expenditures totaling \$450.83 discussed in paragraph 3, above, and another expenditure disclosed in a campaign finance report filed on July 17, 1995. In this report, the respondent disclosed one political expenditure in the amount of \$3,301.30 made on May 23, 1995, in which the respondent lists herself as "payee." The political expenditure was reported on Schedule G, Political Expenditures Made From Personal Funds, and the purpose of the expenditure was described as "Campaign meeting parking lunches, office supplies, postage, refreshments, luncheon/dinner ticket purchases, cooler rental, news reprints." The respondent checked the box "reimbursement from political contributions intended." The disclosure does not identify the individual entities to which these expenditures were made. The May 23, 1995, expenditure does not fall within the periods referenced in connection with the respondent's July 19, 1999, payments to herself.
8. The respondent's campaign finance reports do not disclose any loans made by the respondent to her campaign that correspond to the 1998 and 1999 reimbursements to herself and her spouse. Although the respondent reported certain personal loans related to her 1989 campaign, the respondent indicated in a campaign finance report filed on April 25, 1997, that the loans had been repaid. In that report and in all subsequently filed reports, the respondent listed "0" as the total principal amount of all outstanding loans.
9. On January 17, 2001, (before this complaint was filed), the respondent filed 18 correction affidavits and corrected campaign finance reports to correct previously filed reports.

Included in the corrected campaign finance reports filed by the respondent are disclosures of political expenditures made from personal funds in 1994 through 1998 that are described as telephone expenses (“Car Phone,” “Hand-held cellular phone,” “Long distance,” “Campaign Office Phone,” “District 9 Hotline,” “Council-related long distance,” etc.), and that total \$7,972.40. In addition to telephone expenditures, the corrected campaign finance reports filed by the respondent also disclosed a total of \$21,978.66 of other political expenditures made from personal funds made during the time periods specified in the respondent’s January 18, 2000, campaign finance report and in connection with the respondent’s July 19, 1999, reimbursements to herself. With the exception of the \$450.83 in telephone expenditures disclosed in the respondent’s April 6, 1995, campaign finance report, the political expenditures disclosed in the respondent’s corrected reports were not originally disclosed as political expenditures made from personal funds with reimbursement intended during the period in which the expenditures were incurred.

10. The respondent submitted an affidavit in response to this complaint in which she swears that neither she, nor to the best of her knowledge and belief, her campaign treasurer, “were aware of or understood the obligation to itemize . . . political expenditures made from personal funds at the time the original expense was incurred.” She swears that she and her treasurer “believed that expenditures were to be reported when the campaign account actually paid the expenses by check written on the account. . . . We believed that information in the reports was to be reported on a ‘cash basis’ like contributions are reported.”
11. The respondent swears that she “did not intend to violate a reporting requirement . . . and [she] caused to be filed corrected reports on [her] own initiative as soon as reasonably practicable after learning of our mistaken understanding of the legal requirements.”
12. An attorney representing the respondent submitted a letter in response to the complaint. The attorney states that “[a]ny violations of the reporting rules were inadvertent, unintentional, and resulted from a misunderstanding of the very complex and counter intuitive requirements of Title 15 with respect to the timing of the reporting of political expenditures made from personal funds.” The attorney notes that the complaint at hand involves “a city council race, staffed entirely by volunteers,” as opposed to a more sophisticated statewide officeholder or political committee. The attorney states that the respondent has no history of prior violations and that the respondent is “absolutely committed to complying fully with all of the requirements of Title 15 of the Texas Election Code and the rules and regulations of the Commission.” The attorney emphasizes that the respondent filed the corrected reports on her own initiative before the complaint was filed. The attorney requests that the complaint be dismissed or that any penalties be waived.

IV. Findings and Conclusions of Law

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

1. A candidate or officeholder who makes political expenditures from personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully reported on the report covering the period in which the expenditures were made, including payees, dates, purposes, and amounts. Section 253.035(h), Election Code. Additionally, the report must indicate that the expenditures were made from personal funds and that reimbursement from political contributions is intended. *Id.* Alternatively, the law authorizes a candidate or officeholder to report those expenditures as a loan to himself or herself. Section 253.0351, Election Code.
2. A candidate's or officeholder's failure to comply with the procedures for reporting political expenditures made from personal funds may not be cured by filing a corrected report after the original report deadline has passed. Section 22.19(e), Ethics Commission Rules.
3. For an allegation that does not constitute a criminal offense, the commission may not consider an alleged violation based on facts that occurred more than three years before the date the complaint is filed. Section 12.5(4), Ethics Commission Rules.
4. The restriction in Section 253.035(h), Election Code, on reimbursing political expenditures made from personal funds does not include a criminal penalty. Therefore, the commission's three-year statute of limitations rule applies. *See* Section 12.5(4), Ethics Commission Rules.
5. The alleged violations at issue in this complaint are the respondent's reimbursements to herself and her spouse from political funds, not the original requirement to report political expenditures made from personal funds. Although it is necessary to review the respondent's earlier filed campaign finance reports to determine whether reimbursement is legal, the alleged violation is the improper reimbursement, not the failure to properly report the political expenditures when they were originally incurred.
6. This complaint was filed on January 30, 2001. Pursuant to commission rules, any alleged improper reimbursement that occurred prior to January 30, 1998, may not be considered. The respondent's December 10, 1998, payment of \$7,651.11 to the respondent's spouse and the respondent's July 19, 1999, payment of \$22,822.78 to herself occurred within the commission's three-year statute of limitations and therefore may be considered by the commission.
7. With respect to the December 10, 1998, payment of \$7,651.11 to the respondent's spouse for "Campaign Expenses Telephones (94-98)," the respondent was required to report the specific expenditures made from personal funds, and was required to report that

- reimbursement was intended, in the campaign finance reports that were originally filed during 1994 through 1998. With the exception of the \$450.83 in telephone expenditures disclosed in the respondent's April 6, 1995, campaign finance report, the respondent did not do so.
8. With respect to the July 19, 1999, payments to herself totaling \$22,822.78 for "Unreimbursed Campaign Expenses," the respondent was required to report the specific expenditures made from personal funds, and was required to report that reimbursement was intended, in the campaign finance reports that were originally filed during 1994 through 1999. The respondent did not do so.
 9. Although the respondent reported certain personal loans related to her 1989 campaign, the respondent indicated in a campaign finance report filed on April 25, 1997, that the loans had been repaid. In that report and in all subsequently filed reports, the respondent listed "0" as the total principal amount of all outstanding loans. Therefore, the respondent's December 10, 1998, payment to her spouse and her July 19, 1999, reimbursements to herself could not be considered as repayments for previously reported personal loans.
 10. On January 17, 2001, the respondent filed corrected reports and good-faith affidavits disclosing political expenditures made from personal funds totaling \$7,972.40 for telephone expenses between 1994 and 1998. The respondent's corrected reports also disclose a total of \$21,978.66 of political expenditures made from personal funds (not including telephone-related political expenditures) for the time periods referenced in connection with the respondent's July 19, 1999, payments to herself. In the corrected reports, the respondent indicated that she intended to reimburse herself for the expenditures. With the exception of the \$450.83 in telephone expenditures disclosed in the respondent's April 6, 1995, campaign finance report, the political expenditures disclosed in the respondent's corrected reports were not disclosed as political expenditures made from personal funds, with reimbursement intended, in reports originally filed covering the periods in which the expenditures were incurred.
 11. Commission rules provide that a person who files an affidavit swearing that a corrected report, other than one correcting a report due eight days before an election, was filed in good faith is not subject to a fine for a late report. Sections 18.49 and 18.83, Ethics Commission Rules. The law, however, requires proper reporting before a person may reimburse herself from political contributions for political expenditures made from personal funds. Section 253.035(h), Election Code. Reimbursement without properly reporting political expenditures on the original report may not be cured by filing a corrected report after the report deadline has passed. Section 22.19(e), Ethics Commission Rules.

12. Because the respondent reimbursed her spouse \$7,651.11 on December 10, 1998, and reimbursed herself \$22,822.78 on July 19, 1999, for political expenditures made from personal funds that were not properly reported in reports originally filed covering the period in which the expenditures were incurred, there is credible evidence that the respondent violated Section 253.035(h), Election Code.
13. The complainant alleges that if the political expenditures paid to the respondent and the respondent's spouse were for personal services provided by the respondent or the respondent's spouse, those political expenditures would violate Section 253.041, Election Code. Section 253.041, Election Code, restricts certain expenditures made for personal services rendered by a candidate, officeholder, or by the spouse or dependent child of the candidate or officeholder.
14. The campaign finance reports filed by the respondent do not disclose any expenditures for personal services rendered by the respondent, her spouse, or a dependent child. Therefore, there is credible evidence of no violation of Section 253.041, 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 and 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 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, 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 described under Section IV, Paragraph 12, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

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, Government Code, and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$5,000 civil penalty for the violations described under Section IV, Paragraph 12.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-210103;
3. 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 \$5,000 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than December 7, 2001; and
4. that the executive director shall promptly refer SC-210103 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-210103 as proposed in this ORDER and AGREED RESOLUTION.

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

Mary C. Poss, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director