

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

LEE P. BROWN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2209104

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on October 11, 2002, and voted to accept jurisdiction of Sworn Complaint SC-2209104 filed against Lee P. Brown. The commission met again on April 11, 2003, to consider Sworn Complaint SC-2209104. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of a violation of section 253.035 of the 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 improperly reimbursed himself for political expenditures made from personal funds and failed to report reimbursements that he made to his campaign. The complainant also challenges the truth of affidavits filed by the respondent.

### III. Facts Supported by Credible Evidence

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

1. At all times relevant to this sworn complaint, the respondent held the office of Mayor of the City of Houston.
2. The allegations in this complaint relate to activity reported by the respondent on a July 2002 semiannual report; on a corrected July 2002 semiannual report; and on a corrected runoff report in connection with a December 2001 election.
3. Both corrected reports were filed before this complaint was filed.
4. The respondent's July 2002 semiannual report discloses a \$976.58 reimbursement that the respondent made to himself. The purpose of the reimbursement is described as

- “Reimbursement for out-of-pocket political travel expenses including meals and airfare for political meetings.”
5. On July 30, 2002, the respondent filed a corrected July 2002 semiannual report and good-faith affidavit in which he itemized eight political expenditures made from personal funds totaling \$976.58. The purpose provided for the expenditures included the following: Airfare – US Conference of Mayors, Meals – US Conference of Mayors, and Transportation – US Conference of Mayors.
  6. The respondent’s July 2002 semiannual report also discloses a \$245.63 expenditure on Schedule F made on May 4, 2002, which names “Bob’s Steak & Chop House” as the payee. The purpose provided for the expenditure is “political dinner meeting expense.”
  7. The corrected July semiannual report discloses a \$245.63 expenditure on Schedule F made on May 4, 2002, which names “Bob’s Steak & Chop House” as the payee. The purpose provided for that expenditure is “Officeholder expense – Dinner for security staff.”
  8. The complainant questions whether the respondent intends to seek reimbursement twice for the same expenditure.
  9. In response to this complaint the respondent’s attorney states that the May 4, 2002, expenditure of \$245.63 disclosed on the July 2002 semiannual report and the May 4, 2002, expenditure of \$245.63 disclosed on the corrected report are the same expenditure. He states that the corrected report more adequately explains the reason and nature of the expense previously reported on the original report.
  10. On July 30, 2002, the respondent also filed a corrected runoff report. The report was in connection with a December 2001 election. The corrected report includes the following sworn statement from the respondent: “My campaign reimbursed me twice for only one personal expense. My next report will show on Schedule F my reimbursement back to the campaign for this duplicate payment.”
  11. The next report filed by the respondent was the January 2003 semiannual report. That report did not include a reimbursement from the respondent to his campaign.
  12. The respondent’s attorney states that the reimbursement was made on July 30, 2002, but “[t]hrough inadvertence, the personal expense reimbursement was not reported on the January 3rd report as promised. The Campaign recognizes this advertent oversight and is preparing a Corrected Form and Good-Faith Affidavit to be filed with the City Secretary of Houston on or before April 3, 2003.”

13. A filer who files a Corrected Report and Good-Faith Affidavit swears to the following:

“I swear or affirm under penalty of perjury that this corrected report is true and correct and that I am filing this corrected report promptly after learning of error(s) in the original report. I swear or affirm, under penalty of perjury, that I did not intend to violate a reporting requirement when I filed the original report.”

14. The complainant contends that the respondent did not file corrected reports promptly as stated in good-faith affidavits filed with various reports.

#### **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. Elec. Code § 253.035(h). Additionally, the report must indicate that the expenditures were made from personal funds and that reimbursement from political contributions is intended. *Id.* Ethics Commission Rules specifically provide that the failure of a candidate or officeholder 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. Ethics Commission Rules § 22.19(e).
2. The respondent’s July 2002 and corrected July 2002 reports show that the respondent used political contributions to reimburse himself for \$976.58 in political expenditures from personal funds that were not timely reported. Therefore, there is credible evidence that the respondent violated section 253.035(h) of the Election Code.
3. In regard to the complainant’s concern that the respondent intends to reimburse himself twice for the same expenditure, there is no evidence that the respondent reimbursed himself even once. The commission has no jurisdiction to consider an allegation regarding a possible future violation of the law. Therefore, the commission dismisses this allegation.
4. The respondent’s corrected runoff report shows that the respondent used political contributions to reimburse himself for \$100 in political expenditures from personal funds that he had not in fact made. The respondent’s attorney states the \$100 reimbursement was made on July 30, 2002, and was inadvertent. There is credible evidence that the respondent violated section 253.035 of the Election Code by using political contributions to reimburse himself for political expenditures that were not in fact made.

5. The commission also dismissed the allegation regarding the respondent's failure to comply with the assurance he made in a good-faith affidavit. In a sworn complaint proceeding, the commission may disregard a good-faith affidavit and impose a penalty for the reporting violation in the original report, but the commission does not have jurisdiction to consider an allegation of perjury.

### **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. The respondent acknowledges that a candidate or officeholder who makes political expenditures from personal funds may reimburse those personal funds from political contributions only if the expenditures are properly and timely reported on the report covering the period in which the expenditures were made, including payees, dates, purposes, and amounts. Elec. Code § 253.035(h). The respondent also acknowledges that the report must indicate that the expenditures were made from personal funds and that reimbursement from political contributions is intended, *id.*, and that Ethics Commission rules specifically provide that the failure of a candidate or officeholder 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. The respondent agrees to fully and strictly comply with these legal requirements.
4. 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, Paragraphs 2 and 4, 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 of the 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, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$250 civil penalty for the violations described under Section IV, Paragraphs 2 and 4.

## 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-2209104.
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 \$250 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 9, 2003; and
4. that the executive director shall promptly refer SC-2209104 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-2209104 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Lee P. Brown, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Karen Lundquist, Executive Director