

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JAY AIYER,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-250432

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on March 23, 2006, to consider sworn complaint SC-250432. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 253.035 of the Election Code, and section 20.59 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent converted campaign contributions to personal use, failed to properly report political expenditures and loans, and filed a semiannual campaign finance report late.

III. Facts Supported by Credible Evidence

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

1. The respondent is a Houston Community College System (HCCS) trustee who ran for Houston City Council in the November 8, 2005, election. The complaint is based on the respondent's campaign finance reports that were filed with HCCS before he began filing with the City of Houston.
2. The complainant submitted copies of the respondent's campaign finance reports that were received from HCCS's general counsel in response to an open records request by a third party. The respondent's signature is on the cover page of those reports.
3. At the respondent's direction, the HCCS general counsel submitted to the commission what is indicated as copies of all reports filed by the respondent between July 2002 and June 28, 2005. The January 2005 semiannual report that the commission received from HCCS in

- response to the complaint has a different Schedule F (political expenditure schedule) than the copy of the January 2005 semiannual report that was submitted with the complaint. The signature page of this report appears to be the same as the one submitted with the complaint.
4. On March 7, 2005, the respondent's opponent sent the respondent a letter that stated that the opponent had reviewed the respondent's campaign finance reports and that he had improperly reported credit card expenditures. The opponent asked that the respondent provide her with the information.
 5. On March 21, 2005, the respondent sent his opponent an e-mail with an attachment disclosing detailed expenditures for what allegedly had been disclosed as credit card expenditures on his July 2004 and January 2005 semiannual reports.
 6. The expenditures match those that are disclosed on the reports the commission received from HCCS, but do not match the expenditures on the reports received with the complaint.
 7. In the reports submitted with the complaint, the respondent's January 2005 semiannual report discloses that on September 13, 2004, the respondent made a \$5,000 political expenditure to himself for "Loan Repayment." The respondent's campaign finance reports do not disclose any loans or political expenditures from personal funds.
 8. The reports that were sent to the commission by HCCS in response to the complaint do not show the \$5,000 "Loan Repayment" from the respondent to himself that is disclosed on the copy of the January 2005 report that the complainant submitted with the complaint, although the total expenditures disclosed on both copies of the January 2005 semiannual reports are the same.
 9. The respondent's July 2004 semiannual report discloses that on May 19, 2004, the respondent made a \$1,000 political expenditure to himself for "Reimbursement." The respondent's campaign finance reports do not disclose the purpose of the reimbursement or disclose any loans or political expenditures from personal funds.
 10. On April 26, 2005, after the complaint was filed, the respondent corrected the July 2004 semiannual report to state the purpose of the expenditure as "Reimbursement for personal check to Pratham Gala held on 5/15/04."
 11. The January 2005 semiannual report that was received with the complaint did not disclose a \$2,685 political expenditure that the respondent made to Walden and Associates.
 12. The January 2005 semiannual report that was received with the sworn complaint did not disclose a \$5,000 political expenditure to "Lone Star Strategies," and a \$2,500 political expenditure to Keir Murray.

13. The respondent disclosed the expenditures to his opponent in response to her March 7, 2005, inquiry. The copy of the report submitted by HCCS in response to the complaint discloses the expenditures, although the Schedule F of that report is different than the one filed with the complaint.
14. The respondent's July 2004 semiannual report discloses a credit card company as payee for three political expenditures totaling \$6,394.65. The respondent's January 2005 semiannual report discloses a credit card company as payee on four separate political expenditures totaling \$5,056.47.
15. In response to the March 7, 2005, inquiry by his opponent the respondent sent her an e-mail with a spreadsheet attached that detailed the expenditures.
16. The respondent filed corrected reports on April 26, 2005, that detail expenditures but the correction does not acknowledge that the expenditures were originally disclosed as credit card companies.
17. On the copy of the report submitted with the complaint, the respondent's January 2005 semiannual report discloses a \$1,000 political expenditure made on December 6, 2004, and a \$735.02 political expenditure made on December 8, 2004, but discloses no payee, address or purpose.
18. The copy of the January 2005 semiannual report submitted in response to the complaint includes detailed expenditures and the same political expenditure total as the report submitted with the complaint, but does not include these specific expenditures.
19. The respondent's July 2004 semiannual report discloses a \$456.11 political expenditure made on March 16, 2004, but does not disclose the payee address or purpose of the expenditure.
20. The respondent did not include Schedule F on the campaign finance report he filed October 7, 2003, although he reported \$4,678.48 in political expenditures on the cover page. There are no expenditures of \$50 or less reported. There is no Schedule F with the original report.
21. The complaint alleges that the respondent failed to file a January 2003 semiannual campaign finance report covering the period July 1, 2002, through December 31, 2002. That report was due January 15, 2003.
22. The respondent filed a sworn response in which he denies the allegations. The respondent did not provide an affidavit explaining the discrepancies between the reports submitted with the complaint and the reports submitted at his direction by HCCS in response to the complaint.

IV. Findings and Conclusions of Law

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

{In the absence of an affidavit from the respondent explaining the discrepancy between the two copies of the respondent's January 2005 semiannual report, there is credible evidence that the reports received with the sworn complaint were originally filed by the respondent.}

Improper Reporting of Political Expenditures

1. A campaign finance report must disclose the amount of political expenditures that in the aggregate exceed \$50 and that are made during a reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(3).
2. There is credible evidence that the respondent violated the above referenced statute and rule because he did not properly disclose political expenditures, as follows:

The respondent failed to disclose on his original January 2005 semiannual report a \$2,658 political expenditure made to Walden and Associates. The respondent corrected that report before the complaint was filed.

The January 2005 semiannual report that was submitted with the complaint did not disclose the name of the payee, payee address, or purpose, for a \$1,000 political expenditure made on December 6, 2004, or for a \$735.02 political expenditure made on December 8, 2004.

The January 2005 semiannual report that was submitted with the complaint did not disclose a \$5,000 political expenditure to "Lone Star Strategies" or a \$2,500 political expenditure to Keir Murray.

The respondent failed to disclose on his July 2004 semiannual report the payee address and purpose for a \$456.11 political expenditure made on March 16, 2004.

The respondent failed to include Schedule F on the campaign finance report he filed October 7, 2003. He reported \$4,678.48 in political expenditures on the cover page, but there are no expenditures of \$50 or less reported.

3. A report of a political expenditure by credit card must identify the vendor who receives payment from the card company. Ethics Commission Rules § 20.59.

The respondent's July 2004 semiannual report did not disclose the actual payee for political expenditures made on a credit card.

The respondent's January 2005 semiannual report that was submitted with the complaint did not disclose the actual payee for political expenditures made on a credit card.

Improper Reimbursement for Use of Personal Funds

4. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. A candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report required to be filed under title 15 of the Election Code that covers the period in which the expenditures from personal funds were made, and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. ELEC. CODE § 253.035.
5. There is credible evidence that the respondent violated the above referenced statute because he used political funds to reimburse himself for the use of personal funds without first properly reporting the political expenditures made with those funds, as follows:

On September 13, 2004, the respondent made a \$5,000 political expenditure to himself for "Loan Repayment." However, the respondent's campaign finance reports do not disclose any loans or political expenditures from personal funds.

The respondent's July 2004 semiannual report disclosed that on May 19, 2004, the respondent made a \$1,000 political expenditure to himself for "Reimbursement." The respondent's campaign finance reports do not disclose the purpose of the reimbursement or disclose any loans or political expenditures from personal funds.

Late Filing of January 2003 Semiannual Report

6. A person commits an offense that is a Class C misdemeanor if the person knowingly fails to include required information in a campaign finance report. *Id.* § 254.041. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rules § 12.5(3).

7. The statute of limitations for Class C misdemeanors is two years from the date of the commission of the offense. Code of Criminal Procedure Article 12.02. The allegation that the respondent filed his January 2003 semiannual report late is based on conduct that occurred more than two years before the complaint was filed (April 11, 2005), and is therefore not within the commission's sworn complaint jurisdiction.

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 or 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 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 campaign finance report must disclose the amount of political expenditures that in the aggregate exceed \$50 and that are made during a reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures and that a report of a political expenditure made by credit card must identify the vendor who receives payment from the credit card company. The respondent further acknowledges that a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. A candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report required to be filed under this title that covers the period in which the expenditures from personal funds were made, and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. The respondent agrees to comply with these requirements of the law.

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, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$10,000 civil penalty for the violations described under Sections III and IV.

The respondent agrees that the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, must receive from the respondent full payment of the \$10,000 civil penalty no later than September 21, 2007. The respondent agrees that if the full amount is not received by that date the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

VIII. 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-250432.

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

Jay Aiyer, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director