

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ORLANDO SANCHEZ,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2506118

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on November 1, 2005, to consider sworn complaint SC-2506118. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 253.035(h) 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 resolution to the respondent.

II. Allegations

1. The complaint alleges that the respondent violated section 254.031(a)(6) of the Election Code because he failed to properly report political contributions and expenditures.
2. The complaint also alleges that the respondent violated section 253.035(h) of the Election Code by improperly reimbursing himself 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. The respondent was a member of the city council of the City of Houston from 1996 through 2001 and a candidate for mayor in 2001 and 2003.
2. The allegation that the respondent failed to properly report political contributions and political expenditures relates to corrected reports that the respondent filed on July 14, 2003, correcting the July 2002 and January 2003 semiannual reports. The complaint alleges that the corrected reports do not adequately explain discrepancies between the political

expenditures reported on the original reports and the amounts reported on the corrected reports.

3. In support of the allegation that the respondent improperly reimbursed himself for political expenditures made from personal funds the complainant included the respondent's July 2002 semiannual report. The report discloses two reimbursements. One is a reimbursement to the respondent on June 18, 2002, of \$3,647.45 for "reimbursement for expenses." The other one is a reimbursement to the respondent on June 18, 2002, of \$450 for "reimbursement for auto expenses." The total of the two expenditures is \$4,097.45.
4. The complainant also included the respondent's January 2003 semiannual report. The report discloses 14 reimbursements to the respondent totaling \$17,565.44. Eight of those reimbursements totaling \$3,600 were for auto expenses.
5. In summary, the amount that the respondent reported as reimbursements to himself during the statute of limitation period is \$21,662.89. Nine of the reimbursements totaling \$4,050 were for reimbursement to the respondent for auto expenses. In the affidavit for the corrected reports the respondent swore that the auto expenses were mileage reimbursement for campaign activities. He also acknowledged that the other expenditures were not disclosed on his original reports.
6. The respondent responded to this allegation by stating that he denies the allegation. He states that he corrected the alleged violation by filing corrected reports before the complaint was filed. The respondent submitted copies of the Schedules G (the schedule used for reporting political expenditures made from personal funds) for the July 2002 and January 2003 corrected reports. The corrected reports disclose 31 pages and 30 pages, respectively, of political expenditures from personal funds. The corrected reports indicate that reimbursement is intended.

IV. Findings and Conclusions of Law

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

1. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rule § 12.5(a)(a). The alleged violations of reporting requirements regarding the respondent's July 2002 and January 2003 semiannual reports, if true, would constitute Class C misdemeanors. ELEC. CODE § 254.041(b). 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 commission may not consider the alleged violations of reporting requirements regarding the respondent's July 2002 and January 2003 semiannual reports.

2. With respect to the alleged reporting violations in this sworn complaint, if an offense was committed, it was committed on the date the original report was filed, not the date the corrected report was filed. Therefore, the reporting violations alleged in this sworn complaint relating to the July 2002 and January 2003 semiannual reports are based on alleged offenses that occurred more than two years before the complaint was filed and are not within the commission's sworn complaint jurisdiction. Allegations that are outside the statute of limitations cannot be considered.
3. Ethics Commission rules prohibit the commission from considering an allegation if the alleged violation is not also a criminal offense and if the allegation is based on facts that occurred more than three years before the date the complaint is filed with respect to the allegation that the respondent improperly reimbursed political expenditures made from personal funds. Ethics Commission Rule § 12.5(a)(2). The period for the three-year statute of limitations begins on the date an alleged improper reimbursement occurred. There are 16 allegations that are within the limitations period and 10 that are not.
4. 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 only if the expenditures from personal funds were fully reported on the report covering the period in which the expenditures were made, including the payees, dates, purposes, and amounts. ELEC. CODE § 253.035. Additionally, the report must indicate that the expenditures were made from personal funds and that reimbursement from political contributions is intended. *Id.* § 253.035(h).
5. The respondent's July 2002 and January 2003 semiannual reports disclose reimbursements to the respondent. According to the respondent's correction affidavits for those two reports the political expenditures from personal funds that were the basis for those reimbursements were not reported in the period in which they were made.
6. The requirement to report political expenditures from personal funds does not apply to the use of a personal vehicle. If a candidate or officeholder uses a personal vehicle for political purposes, reporting is required only if and when the candidate or officeholder pays himself reimbursement from political contributions. Ethics Advisory Opinion No. 347 (1996). The respondent swore in the correction affidavits to the reports at issue that the reimbursements to himself for auto expenses were for mileage reimbursements for political activities. Therefore, there is credible evidence that the respondent did not violate section 253.035(h) of the Election Code with respect to the mileage reimbursements.
7. The remaining political expenditures totaling \$17,612.89 from personal funds at issue were required to be properly reported in order for the reimbursement to be allowed. Those political expenditures from personal funds were not properly reported. Therefore, there is credible evidence that the respondent violated section 253.035(h) of the Election Code by

reimbursing himself for political expenditures from personal funds that were not fully reported during the period in which they were made.

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 candidate or officeholder who makes political expenditures from the candidate's or officeholder's 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 the payees, dates, purposes, and amounts; and the report indicates that the expenditures were made from personal funds and that reimbursement from political contributions is intended. The respondent agrees to comply with this requirement of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the commission has determined is 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 violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$1,000 civil penalty for the violation described under Sections III and IV.

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-2506118.

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

Orlando Sanchez, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director