

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JOHN E. DAVIS,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2610197 & SC-2610215

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 2, 2007, to consider sworn complaints SC-2610197 and SC-2610215. A quorum of the commission was present. The commission determined that there is credible evidence that the respondent violated sections 253.035, 254.031, and 254.035 of the Election Code, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The allegations are that the respondent converted political contributions to personal use, failed to properly disclose the payee for political expenditures, and failed to properly report political expenditures made by credit card.

III. Facts Supported by Credible Evidence

1. The respondent is a state representative from Harris County.
2. Sworn complaint SC-2610197 is based on the respondent's July 2006 semiannual report and alleges that the respondent used political contributions to purchase merchandise for personal use. The complaint also alleges that the respondent failed to properly disclose the payee for political expenditures.
3. The respondent's July 2006 semiannual report discloses a \$1,537.15 political expenditure on May 29, 2006, to "Jersey Boots" for "merchandise purchases."
4. The respondent repaid the campaign for the \$1,537.15 political expenditure made to "Jersey Boots."

5. Sworn complaint SC-2610197 also alleges that on the respondent's July 2006 semiannual report he improperly disclosed a \$426.47 political expenditure as a payment to a staff member for "out-of-pocket" expenses.
6. The respondent filed a corrected report after the complaint was filed to disclose that the \$426.47 political expenditure at issue was made to Office Depot. Under the "purpose" section on the corrected report, the respondent indicated that the expense was to reimburse a staff member and described the expenditure in detail.
7. Sworn complaint SC-2610215 is based on the October 10, 2006, 30-day pre-election report, and alleges that the respondent failed to properly report political expenditures made by credit card because he disclosed the date the credit card statement was paid, rather than the date of the actual expenditure.
8. Sworn complaint SC-2610215 also alleges that political expenditures made by credit card during the reporting period for the July 2006 semiannual report should have been disclosed on the July 2006 semiannual report. The evidence shows that the credit card expenditures in question were made in May and June 2006.
9. The respondent filed a corrected 30-day pre-election report on October 26, 2006. The correction affidavit for that corrected report states, in part, "Itemized American Express entries were changed to reflect date of transaction rather than date of billing." The respondent's corrected report included the date of the expenditure for political expenditures made by credit card.
10. The corrected report changed the dates for approximately 22 political expenditures. The political expenditures were made in the same reporting period as the original report but the expenditure date was corrected to reflect the actual date of the expenditure.
11. On November 10, 2006, the respondent paid a \$500 administrative penalty related to the 30-day pre-election report correction.

IV. Findings and Conclusions of Law

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

SC-2610197

1. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a). Personal use is a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate or officeholder. ELEC. CODE § 253.035(d).
2. In Ethics Advisory Opinion No. 407 (1998), the commission determined that an officeholder may use political contributions to pay clothing expenses if the clothing: (1) is of a type appropriate for the performance of duties or activities of the office held, (2) is not adaptable to general usage as ordinary clothing, and (3) is not so worn.
3. Boots are a type of clothing adaptable to general usage as ordinary clothing. Thus, the respondent's \$1,537.15 expenditure for boots was a conversion to personal use. Therefore, there is credible evidence of a violation of section 253.035(a) of the Election Code.
4. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the 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. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.59.
5. In Ethics Advisory Opinion No. 450 (2003), the commission determined that a political expenditure made to reimburse a staff member may be reported in one of two ways: (1) reporting it as a loan to the candidate from the staff member and then as an expenditure by the candidate to repay the staff member; or (2) report a single expenditure by listing the name of the individual or entity paid by the campaign worker as the payee, showing the date of the expenditure as the date the staff member made the expenditure, and explaining in the "purpose" section that a staff member made the expenditure from personal funds and that the candidate subsequently reimbursed the staff member.
6. The respondent was not required to provide detailed disclosure information for payments for "out of pocket expenses" that were in the aggregate \$50 or less to any single payee. However, the respondent was required to disclose the full name and address of the actual payees, and the date and purposes for political expenditures that exceeded \$50 to any one payee.
7. On the respondent's original July 2006 semiannual report the respondent disclosed the purpose of a \$426.47 political expenditure to be for reimbursement to an individual for "out of pocket expenses." The evidence shows that the proper disclosure would have shown Office Depot as the payee and disclosed the date and purpose of the expenditure. The

original report did not provide that disclosure. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.

SC- 2610215

8. A political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. ELEC. CODE § 254.035. The amount of a political expenditure made by credit card is readily determinable on the date the person receives the credit card statement that includes the expenditure. *Id.* A political expenditure made by credit card during the period covered by a 30-day or 8-day pre-election report is readily determinable when the charge is made. *See id.*
9. Sworn complaint SC-2610215 is based on the respondent's original 30-day pre-election report filed October 10, 2006, and alleges that the respondent did not disclose the proper expenditure date for political expenditures made by credit card and that political expenditures were reported in the wrong reporting period.
10. A 30-day pre-election report must disclose the actual date of a political expenditure made during that reporting period, not the date of the credit card statement (as is allowed for a semiannual report).
11. The respondent's October 26, 2006, corrected 30-day pre-election report shows that the incorrect date was disclosed for approximately 22 political expenditures on the respondent's original report.
12. The expenditures were disclosed in the proper reporting period, but the incorrect dates were disclosed. Therefore, there is credible evidence that the respondent violated sections 254.031(a)(3) and 254.035 of the Election Code with respect to those expenditure dates. The respondent disclosed the proper dates on the correction filed October 26, 2006. As noted, the respondent paid a \$500 administrative penalty related to that correction.
13. The other allegation is that political expenditures made by credit card during the semiannual reporting period were not reported during that reporting period.
14. A political expenditure made by credit card during the reporting period for a semiannual report may be disclosed on the report covering the period in which the credit card statement is received.
15. The evidence indicates that the expenditures at issue in this allegation were made during the July 2006 semiannual reporting period. Section 254.035 of the Election Code allows expenditures made during the semiannual reporting period to be reported when the credit card statement is received, and to disclose the expenditure date as the date the statement is received.

16. The evidence indicates that the respondent received his credit card statement for those expenditures during the reporting period for the 30-day pre-election report. The respondent reported the expenditures on the 30-day pre-election report. Therefore, there is credible evidence of no violation of sections 254.031 and 254.035 of the Election Code with respect to those expenditures.

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 these sworn complaints.
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 person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. The respondent also acknowledges that each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent further acknowledges that a political expenditure is considered to have been made when the amount is readily determinable by the person making the expenditure and that a political expenditure made by credit card during the period covered by a 30-day or 8-day pre-election report is readily determinable when the charge is made. 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 \$1,000 civil penalty for the violations 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 sworn complaints SC-2610197 and SC-2610215.

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

John E. Davis, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director