

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JOHN E. DAVIS,

RESPONDENT

§
§
§
§
§

BEFORE THE

TEXAS ETHICS COMMISSION

SC-2611242

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 21, 2007, to consider sworn complaint SC-2611242. A quorum of the commission was present. The commission determined that there is credible evidence of violations 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 resolution to the respondent.

II. Allegations

The complaint alleges that the respondent converted political contributions to personal use, improperly reimbursed political expenditures made from personal funds, and failed to properly report political expenditures made by credit card.

III. Facts Supported by Credible Evidence

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

1. The respondent is a state representative from Harris County.
2. The allegations relate to the respondent's corrected January 2005, July 2005, January 2006, and July 2006 semiannual campaign finance reports, and his October 10, 2006, corrected 30-day pre-election report.
3. The reports originally disclosed political expenditures to credit card companies but were corrected to disclose the actual payees of the political expenditures, among other things. The complaint is based on information derived from the corrected reports. The complaint alleges

that the corrections show that the expenditures were disclosed in the wrong reporting period because the transaction dates preceded the reporting periods at issue.

4. The respondent provided an affidavit in which he addresses the allegations that he reported political expenditures made by credit card in the wrong reporting period. The respondent swears that he reported the expenditures when the charge was made or when he received the statement for the charge. There is no evidence to refute that assertion.

January 2005 Semiannual Campaign Finance Report

5. With respect to the corrected January 2005 semiannual campaign finance report, the complaint alleges that the respondent disclosed credit card expenditures in the wrong reporting period and converted political contributions to personal use.
6. The respondent's corrected January 2005 semiannual campaign finance report discloses the actual payees for the expenditures disclosed in the original report as having been made to American Express. In the "purpose" section of the corrected report the respondent discloses the actual transaction date of each expenditure. Most of the expenditures at issue were made in June 2004, although some were made as early as April and May 2004.
7. The complainant also asserts that the respondent converted political contributions to personal use. In his sworn response, the respondent states that he repaid to his campaign \$636.32 for personal use of political contributions. The amount was included on the original report in the expenditures that were disclosed as political expenditures to American Express. The respondent also swears that he repaid to his campaign \$952.60 for an expenditure disclosed on the original report as a political expenditure to GT Johnson. The total that the respondent swears he repaid the campaign for the personal use of political contributions was \$1,588.92 (\$636.32 and \$952.60). The evidence shows that the respondent repaid approximately \$1,588 to his campaign for the personal use of political contributions.

July 2005 Semiannual Campaign Finance Report

8. With respect to the corrected July 2005 semiannual campaign finance report, the complaint alleges that the respondent disclosed credit card expenditures in the wrong reporting period, improperly reimbursed himself from political contributions, and converted political contributions to personal use.
9. The corrected report disclosed on Schedule F (political expenditure schedule) six political expenditures with a notation in the "purpose" section that the expenditures were made by credit card, and disclosing transaction dates in December 2004.

10. The respondent's corrected July 2005 semiannual campaign finance report also includes a Schedule G (used for disclosing political expenditures from personal funds) that discloses approximately \$3,488 in political expenditures made from personal funds.
11. Eight of the entries on that schedule indicate they were made to VISA. In his sworn response, the respondent states that on his original July 2005 semiannual campaign finance report he disclosed \$4,680 as a reimbursement to himself for "out-of-pocket" expenses, which includes the \$3,488 disclosed on Schedule G of the corrected report. The \$4,680 also included \$275.30 in non-detailed personal expenditures. The respondent's correction affidavit states that he filed Schedule G "for information purposes only."
12. The respondent swears that with respect to the July 2005 semiannual campaign finance report, the total he repaid his campaign was approximately \$5,880. That amount included the \$4,680 originally disclosed as a reimbursement to himself, as well as an additional \$663.45 in non-detailed personal expenditures, and a \$535.78 expenditure originally disclosed as a political expenditure to Big State Trailers. The total amount reimbursed for personal use of political contributions was approximately \$1,475.

January 2006 Semiannual Campaign Finance Report

13. With respect to the corrected January 2006 semiannual campaign finance report, the complaint alleges that the respondent disclosed credit card expenditures in the wrong reporting period on his corrected January 2006 semiannual campaign finance report, and converted political contributions to personal use.
14. The corrected report disclosed on Schedule F seven political expenditures with a notation in the "purpose" section that the expenditures were made by credit card, and disclosing transaction dates in June 2005.
15. The complainant asserts that, based on the difference in the amount of political expenditures disclosed on the original and corrected reports, the respondent converted political contributions to personal use.
16. The respondent's affidavit explains that he moved \$1,898.98 in political expenditures to the cover sheet under aggregate total of political contributions of \$50 or less and repaid \$336.52 to the campaign for expenditures that he determined he had made for personal uses.

July 2006 Semiannual Campaign Finance Report

17. With respect to the corrected July 2006 semiannual campaign finance report, the complaint alleges that the respondent disclosed credit card expenditures in the wrong reporting period,

- improperly reimbursed himself from political contributions, and converted political contributions to personal use.
18. The corrected report disclosed on Schedule F, 15 political expenditures with a notation in the “purpose” section that the expenditures were made by credit card, and disclosing transaction dates in November and December 2005.
 19. The respondent’s corrected July 2006 semiannual campaign finance report also includes a Schedule G that discloses approximately \$2,134.80 in political expenditures made from personal funds. Three of the entries on that schedule indicate they were made to VISA. In his sworn response, the respondent states that on his original July 2006 semiannual campaign finance report he disclosed \$3,800.07 as a reimbursement to himself for “out-of-pocket” expenses, which included the amount disclosed on Schedule G of the corrected report. The respondent’s correction affidavit states that he filed Schedule G “for information purposes only.”
 20. The respondent swears that, with respect to the January 2006 semiannual campaign finance report, the total amount that he repaid to his campaign was \$6,158.90. That amount was made up of the \$3,800.07 reimbursement to himself, which included \$413.87 in expenditures that the respondent states were for personal use, \$821.68 of personal expenses that were originally included in the disclosure of political expenditures to American Express, and an expenditure for \$1,537.15 for boots (for which a fine was assessed in sworn complaint SC-2610197.) The total amount reimbursed to the campaign for personal use of political contributions, not including the boots, was approximately \$1,235.

October 10, 2006, 30-day Pre-Election Report

21. With respect to the corrected October 10, 2006, 30-day pre-election report, the complaint alleges that the respondent disclosed credit card expenditures in the wrong reporting period. The corrected reports show that the credit card expenditures in question were made in May and June 2006. The evidence indicates that the respondent received his credit card statement for those expenditures after June 30, 2006, and during the reporting period for the 30-day pre-election report.

IV. Findings and Conclusions of Law

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

Reporting Period for Credit Card Expenditures

1. 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 semiannual report may be included in the report for the period during which the charge was made or for the period in which the person receives the credit card statement that includes the expenditure. Ethics Commission Rules § 20.57.
2. The complaint alleges that the respondent reported political expenditures made by credit card in the wrong reporting period.
3. The respondent corrected the reports to disclose the actual payees of the credit card expenditures at issue as well as the dates of the expenditures. The complaint alleges that the corrections show that the expenditures were disclosed in the wrong reporting period because the transaction dates preceded the reporting periods at issue.
4. If the respondent made those expenditures during a semiannual reporting period he was allowed to disclose them as having been made on the actual expenditure date or on the date he received the credit card statement that included the expenditures. The respondent swears he reported the expenditures when the charge was made or when he received the statement for the charge. There is no evidence to refute that assertion. Therefore, there is credible evidence of no violation of section 254.035 of the Election Code with respect to the semiannual reports at issue.
5. With respect to the allegations related to the October 10, 2006, 30-day pre-election report there is credible evidence of no violation of section 254.035 of the Election Code.

Personal Use of Political Contributions/Improper Reimbursement

6. 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).
7. The respondent's affidavit details the amounts that the respondent repaid to his campaign funds with respect to each semiannual report at issue. The evidence shows that the respondent used political contributions for individual purposes not connected with the

performance of duties or activities as a candidate or officeholder with respect to the following semiannual reports:

January 2005:	\$1,588.92
July 2005:	\$1,475.53
January 2006:	\$ 337.52
July 2006:	<u>\$1,235.55</u>
Total:	\$4,635.52

There is credible evidence that the respondent converted the expenditures at issue to personal use in violation of section 253.035(a) of the Election Code. The respondent previously paid a penalty with respect to the \$1,537.15 expenditure for boots, so that amount is not included in the total.

8. 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. ELEC. CODE § 253.035(h).
9. The respondent's affidavit details the amounts that the respondent paid to his campaign for reimbursements he made to himself. The evidence shows that the respondent reimbursed himself for political expenditures made from personal funds without disclosing the expenditures in the reporting periods in which the expenditures were made and indicating his intent to seek reimbursement with respect to the following semiannual campaign finance reports:

July 2005:	\$4,680.00	(includes \$275.03 for personal use)
July 2006:	<u>\$3,800.07</u>	(includes \$413.87 for personal use)
Total:	\$8,480.07	

10. There is credible evidence that the respondent reimbursed himself for political expenditures made from personal funds in violation of section 253.035(h) of the Election Code. The reimbursements at issue were considered in a previous sworn complaint based on allegations that the respondent did not disclose the actual payees for political expenditures. The respondent paid a penalty and the commission issued an open order in that sworn complaint. Those allegations are essentially based on the same conduct at issue in this sworn complaint.

The respondent has paid a civil penalty related to that conduct.

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 person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use, and that 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. The respondent further 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 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 \$500 civil penalty.

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-2611242.

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