

TEXAS ETHICS COMMISSION

IN THE MATTER OF
KEN PAXTON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2612257

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 2008, to consider sworn complaint SC-2612257. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035 and 254.031 of the Election Code and sections 20.59 and 20.61 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 failed to properly report political expenditures made by credit card. The complaint alleges that the respondent improperly reported political expenditures made with personal funds. The complaint also alleges that the respondent improperly reported political expenditures as reimbursements.

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 of District 70 and was a candidate for that office in the 2006 general election.
2. The allegations are based on the respondent's January 2005, July 2005, January 2006, and July 2006 semiannual campaign finance reports and the respondent's 30-day pre-election report for the 2006 general election.
3. The respondent's July 2005 semiannual report disclosed the credit card company as the payee for a political expenditure of \$195.70.

4. The respondent's reports disclosed approximately \$1,240 in political expenditures to himself from political contributions to reimburse "out of pocket expenses" made with personal funds. The respondent corrected his reports to indicate that these expenditures included a reimbursement of \$110.63 for mileage.
5. The respondent's reports disclosed two political expenditures totaling \$60 to himself made as reimbursements for political expenditures made with personal funds and included the name of the respective payee and purpose of each expenditure in the section of the report used to disclose the purpose of a political expenditure.
6. The respondent's reports disclosed approximately \$2,263 in political expenditures with the purpose of a reimbursement for mileage or campaign mileage.
7. The respondent's reports disclosed approximately \$520 in political expenditures made to staff and other individuals for the purpose of reimbursing their expenditures. Of these expenditures, approximately \$149 in political expenditures were made to a vendor to whom the respondent only made \$50 or less in political expenditures during the applicable reporting period.
8. In response to the complaint, the respondent filed corrections to his reports to correct the expenditures at issue in the complaint.

IV. Findings and Conclusions of Law

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

1. 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(a)(3).
2. 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.
3. A political expenditure means a campaign expenditure or an officeholder expenditure. ELEC. CODE § 251.001(10).
4. A campaign expenditure means, in pertinent part, a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment in connection with a campaign for an elective office. *Id.* §§ 251.001(6), (7).

5. An officeholder expenditure means, in pertinent part, a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment to defray expenses that are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* §§ 251.001(a)(6), (9).
6. The respondent reported the name of the credit card company and not the vendor who actually received payment from the credit card company for a political expenditure of \$195.70. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules by failing to properly disclose the expenditure.
7. For purposes of reporting under chapter 254 of the Election Code, 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(a). There is credible evidence that the respondent did not violate section 254.031(a)(3) or 254.035 of the Election Code in connection with the date of the expenditure made by credit card.
8. A candidate is required to report a campaign expenditure from personal funds. Ethics Commission Rules § 20.63(a).
9. A candidate or officeholder who makes political expenditures from his or her 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 that covers the period during 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).
10. The respondent made approximately \$1,189 in political expenditures with personal funds and did not disclose the actual payees in connection with the expenditures, that they were made with personal funds, or that reimbursement was intended. Therefore, there is credible evidence that the respondent violated section 253.035(h) of the Election Code by failing to properly disclose the expenditures.
11. In Ethics Advisory Opinion No. 347 (EAO 347), the commission stated that if a candidate or officeholder uses a personal car 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 commission also stated that if a candidate or

officeholder uses a reasonable mileage reimbursement rate that covers gasoline as well as wear and tear on the car, then the purchase of gasoline should not be reported. *Id.*

12. 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 § 20.61.
13. With respect to the approximate \$2,374 in political expenditures made to the respondent as reimbursements for mileage, the respondent did not make the payments from personal funds, but rather used a personal vehicle for political purposes for which reimbursement was subsequently made from political contributions. Thus, in accordance with EAO 347, the respondent was not required to disclose the use of a personal vehicle for political purposes as a political expenditure made from personal funds. However, a reimbursement in the amount of \$110.63 was originally disclosed with the purpose of a reimbursement for “out of pocket expenses” and not mileage. Therefore, there is credible evidence that the respondent violated sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules by failing to properly disclose the purpose of the expenditure. Regarding the remaining approximate \$2,263 in reimbursements for mileage, there is credible evidence that the respondent did not violate section 253.035(h) of the Election Code or section 20.61 of the Ethics Commission Rules.
14. 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) if the expenditure and reimbursement occur during the same reporting period, 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.
15. With respect to the approximate \$520 in political expenditures that the respondent originally disclosed as reimbursements to staff and other individuals, approximately \$149 of the expenditures were made to payees to whom \$50 or less was paid during the respective reporting period in which each expenditure was made. Thus, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code or section 20.61(a) of the Ethics Commission Rules regarding those expenditures because the respondent was not required to itemize them. Regarding the remaining approximate \$371 in expenditures, the respondent did not properly disclose the payee information. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section

20.61(a) of the Ethics Commission Rules by failing to properly disclose the political 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 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 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 acknowledges that a report of a political expenditure by credit card must identify the vendor who receives payment from the card company. The respondent acknowledges that a candidate or officeholder who makes political expenditures from his or her 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 that covers the period during 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 acknowledges that the report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. The respondent acknowledges that the proper way to report a reimbursement to a staff member is in accordance with section 20.62 of the Ethics Commission Rules. 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 \$200 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-2612257.

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

Ken Paxton, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director