

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOE NIXON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2612261

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 26, 2007, to consider sworn complaint SC-2612261. 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 20.63 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 improperly reported political expenditures as reimbursements. The complaint also alleges that the respondent improperly reported political expenditures made with personal funds.

III. Facts Supported by Credible Evidence

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

1. At the time relevant to the complaint, the respondent was a state representative and a candidate in the 2006 primary election.
2. The allegations are based on expenditures disclosed in campaign finance reports filed by Texans for Joe Nixon (TJN), a specific-purpose political committee that supported the respondent as a candidate and assisted the respondent as an officeholder. TJN's January 2005, July 2005, January 2006, and July 2006 semiannual reports and TJN's 30-day and 8-day pre-election reports for the 2006 primary election disclosed approximately \$8,400 in political expenditures as reimbursements to staff members or other individuals.

3. TJN's reports also disclosed approximately \$23,100 in political expenditures to the respondent that were described as reimbursements for various expenses. TJN's reports also disclosed an expenditure of \$4,050 to the respondent for a "mileage reimbursement."
4. In response to the complaint, the respondent swore that he properly reports all political expenditures and that he "incurred none of the expenditures that are the subject of the complaint."
5. The respondent also swore that "all expenditures and reimbursements were timely disclosed and correct in the amounts."
6. The respondent's reports disclosed no political contributions and no political expenditures during the period at issue in the complaint.
7. TJN's reports disclosed a single political contribution of \$10,781.74 from the respondent on July 7, 2004. The date of the contribution is prior to the dates of all of the expenditures at issue in the complaint.
8. As of October 25, 2007, the respondent has not filed corrected reports.

IV. Findings and Conclusions of Law

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

1. The campaign treasurer of a specific-purpose political committee shall file a campaign finance report not later than January 15 and July 15 of each year. ELEC. CODE § 254.123. In addition, the campaign treasurer of a specific-purpose political committee supporting a candidate who is opposed in an election shall file a campaign finance report by the 30th and 8th days before election day. *Id.* § 254.124.
2. A campaign finance report filed by a specific-purpose political committee 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. *Id.* §§ 254.031(a)(3), 254.121.
3. A campaign finance report filed by a specific-purpose political committee must also include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the date of the contributions. *Id.* §§ 254.031(a)(1), 254.121.

4. A specific-purpose political committee means, in pertinent part, a political committee that does not meet the definition of a general-purpose committee and that has among its principal purposes: supporting or opposing one or more identified candidates who are seeking offices that are known or assisting one or more identified officeholders. *Id.* § 251.001(13); Ethics Commission Rules § 20.1(17).
5. A political committee means a group of persons that has as a principal purpose accepting political contributions or making political expenditures. ELEC. CODE § 251.001(12).
6. 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(a).
7. 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 political committee 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.
8. TJN paid approximately \$8,400 to various individuals other than the respondent to reimburse them for political expenditures they made on behalf of TJN. Political expenditures made by a political committee are required to be disclosed as political expenditures in reports filed by the committee’s campaign treasurer. The respondent to this complaint is not the campaign treasurer of TJN. Thus, the respondent was not required to disclose the expenditures. Therefore, there is credible evidence that the respondent did not violate section 254.031 of the Election Code or section 20.61 of the Ethics Commission Rules in connection with the reporting of these expenditures made by TJN.
9. A campaign finance report filed by a candidate must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE §§ 254.031(a)(1), 254.061.
10. A campaign finance report filed by a candidate 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. *Id.* §§ 254.031(a)(3), 254.061.
11. A candidate is required to report a campaign expenditure from personal funds. Ethics Commission Rules § 20.63(a).
 12. An officeholder is required to report officeholder expenditures made from the officeholder's personal funds if the officeholder intends to be reimbursed from political contributions. ELEC. CODE §§ 254.092, 253.035(h); Ethics Commission Rules § 20.63(b).
 13. A candidate or officeholder must report a political expenditure from personal funds as a political expenditure, not as a political contribution or a loan. Ethics Commission Rules § 20.63(c).
 14. 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 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); Ethics Commission Rules § 20.63(d).
 15. A candidate's or officeholder's failure to comply with Ethics Commission Rule § 20.63(d) may not be cured by filing a corrected report after the report deadline has passed. Ethics Commission Rules §20.63(e).
 16. A candidate or officeholder who has complied with Ethics Commission Rule § 20.63(d) and whose personal funds have been reimbursed from political contributions must report the amount of the reimbursement as a political expenditure in the report covering the period during which the reimbursement was made. *Id.* § 20.63(f).
 17. A political expenditure means a campaign expenditure or an officeholder expenditure. ELEC. CODE § 251.001(10).
 18. A campaign expenditure means, in pertinent part, an expenditure made by any person in connection with a campaign for an elective office. *Id.* § 251.001(7). An officeholder expenditure means an expenditure made by any person 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(9).

19. An expenditure means 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. *Id.* § 251.001(6).
20. A political contribution means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
21. A campaign contribution means, in pertinent part, a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3). An officeholder contribution means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that are incurred by the 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(4).
22. A contribution means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2).
23. “Candidate” means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. *Id.* § 251.001(1).
24. The provisions of title 15 of the Election Code applicable to an officeholder apply only to a person who holds an elective public office and to the secretary of state. *Id.* § 251.002(a).
25. As a candidate for public office, the respondent was required to disclose campaign expenditures made with personal funds.
26. As a holder of a public office, the respondent was required to disclose officeholder expenditures made with personal funds for which reimbursement from political contributions was intended.
27. TJN paid approximately \$23,100 to the respondent to reimburse him for expenditures the respondent made with personal funds that were either in connection with the respondent’s campaign for elective office or to defray expenses the respondent incurred in performing a duty or engaging in an activity in connection with his office that were not reimbursable with public funds. Thus, the respondent used personal funds to make approximately \$23,100 in expenditures that were either campaign expenditures or officeholder expenditures.

28. The \$23,100 that TJN paid to the respondent to reimburse him for his campaign and officeholder expenditures were either offered or given with the intent that they be used in connection with the respondent's campaign for elective office or were offered or given with the intent that they be used to defray expenses that were incurred by the respondent in performing a duty or engaging in an activity in connection with his office and were not reimbursable with public money. Therefore, the reimbursements to the respondent were political contributions to the respondent.
29. The respondent accepted approximately \$23,100 in political contributions from TJN and used the funds to reimburse himself for campaign and officeholder expenditures made with personal funds. In order to use political contributions to reimburse his political expenditures made with personal funds, the respondent was required to properly disclose the political expenditures he made with personal funds in accordance with section 253.035(h) of the Election Code and section 20.63 of the Ethics Commission Rules.
30. In addition, the respondent was required to disclose all campaign expenditures made with personal funds in accordance with section 20.63(a) of the Ethics Commission Rules, regardless of whether reimbursement was intended. The respondent's campaign finance reports disclosed none of the political expenditures at issue that were made with personal funds. Therefore, there is credible evidence that the respondent violated sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules by failing to properly disclose political expenditures made with personal funds.
31. 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.*
32. With respect to the \$4,050 payment to the respondent as a "mileage reimbursement," the respondent did not make a payment from personal funds, but rather used a personal vehicle for political purposes. 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. Therefore, there is credible evidence that the respondent did not violate sections 254.031(a)(3) or 253.035(h) of the Election Code or section 20.63 of the Ethics Commission Rules in connection with the mileage reimbursement.

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 is required to report a campaign expenditure from personal funds and an officeholder is required to report an officeholder expenditure made from personal funds if the officeholder intends to be reimbursed from political contributions. The respondent also 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 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 an \$11,600 civil penalty. In the alternative, the commission imposes a \$2,400 civil penalty if the respondent files all necessary corrections to his campaign finance reports by December 3, 2007.

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-2612261.

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

Joe Nixon, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director