

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

CARL ISETT,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2612268

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2008, to consider sworn complaint SC-2612268. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035, 254.001, and 254.031 of the Election Code and sections 20.59 and 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 failed to properly disclose political expenditures made by credit card, failed to properly disclose political expenditures made as reimbursements to other individuals, and failed to properly disclose political expenditures made with personal funds. The complaint also alleges that the respondent converted political contributions to personal use.

### III. Facts Supported by Credible Evidence

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

1. The respondent is the state representative of District 84 (Lubbock) and was an opposed incumbent candidate 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 30-day and 8-day pre-election reports for the 2006 general election.
3. The respondent disclosed approximately \$5,203 in political expenditures to credit card companies without disclosing the name and address of the actual payees that were paid by the credit card companies. The respondent filed corrections to his reports to disclose the payees of all of the expenditures at issue.

4. The respondent disclosed approximately \$5,880 in reimbursements to the respondent from political contributions. Of that amount, the respondent disclosed approximately \$3,227 as reimbursements to the respondent for the purpose of “travel,” “per diem,” or “travel vouchers.” The respondent filed corrected reports in response to the sworn complaint.
5. Of the approximate \$3,227 in expenditures at issue, the respondent’s corrected reports indicate that the respondent made approximately \$1,841 in expenditures to reimburse himself for mileage on the use of his personal vehicle and that approximately \$1,386 in expenditures were reimbursements described as “per diem” payments. The amounts of reimbursements for mileage were based upon the maximum amount allowable under standard federal rates. The amounts of reimbursements for “per diem” payments were based upon standard federal rates for “meals and incidental expenses.”
6. Of the approximate \$1,841 in reimbursements for mileage, approximately \$710 in expenditures were originally disclosed as reimbursements for “travel” or “travel and per diem.” In addition, a \$388 expenditure was originally disclosed as “costs” and a \$219 expenditure was originally disclosed as a reimbursement for a lobby hunting trip.
7. Regarding the approximate \$3,227 in expenditures, the respondent swears:

A number of the expenditures which the complainant has itemized in his spreadsheet paid to me were not reimbursements at all. They were payments to me for per diem travel and mileage for trips made for political purposes or the carrying out of my duties as State Representative which the State did not pay for. These expenditures were improperly reported as “reimbursements.” The reports have been corrected to properly describe the expenditures as per diem payments.
8. The “per diem” payments were based upon the daily rate for “meals and incidental expenses” published by the General Services Administration for reimbursing expenditures of government officers and employees while traveling in government business. The respondent’s agent informed the commission that the respondent did not keep receipts of the expenditures made from personal funds for which the “per diem” payments served as reimbursements.
9. Of the approximate \$5,880 in expenditures at issue, approximately \$2,653 were disclosed as reimbursements for office decorations, gifts, meals, phone cards, airfare, and lodging. The respondent did not disclose any loans from himself during the period in which the expenditures at issue were made. The respondent swears that the expenditures were reimbursements for political expenditures he made with personal funds. The respondent corrected his reports to disclose the actual payees for approximately \$2,369 of the expenditures at issue and indicated that they were political expenditures made from personal funds. An expenditure of \$283.56 for “Reimb Austin Household expenses” was not corrected. The respondent’s agent informed the commission that receipts for the household expenses are unavailable.

10. The complaint alleges that the respondent failed to properly disclose approximately \$4,904 in expenditures made by campaign or office staff or the respondent's spouse that the respondent subsequently reimbursed using his political contributions. The respondent disclosed a \$129 political expenditure from political contributions to his spouse as a "per diem" reimbursement related to a convention. The respondent also disclosed a total of approximately \$4,775 in expenditures from political contributions to individuals who made purchases on behalf of the respondent. The respondent's original reports did not disclose the names or addresses of the vendors who were actually paid by the individuals. According to corrections filed in response to the complaint, approximately \$1,552 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.
11. The respondent disclosed political expenditures from political contributions from December 2004 to October 2006 totaling approximately \$1,817 for football tickets, \$366 for per diem payments to the respondent for attending football games, and \$776 to the respondent for mileage to attend a football game. The complaint alleges that the expenditures constitute a conversion of political contributions to personal use.
12. In response to the allegation regarding the expenditures related to football games, the respondent swears:

All of the football tickets purchased were for Texas Tech University Games. The tickets which are purchased from contributions are given to constituents or individuals who are instrumental in furthering the political purposes of my campaign and office. Regarding the tickets purchased for the Cotton Bowl game and the related travel, Texas Tech played in the Cotton Bowl game. The amount of political networking which occurs at these football games, including the Cotton Bowl, is substantial. Pre-game, half time, and post-game activities and meetings provided great political benefit to my campaign. It is important to my campaign that I and the individuals to whom I have given the tickets attend the games. Texas Tech University is the single most important institution in the district I have the honor of representing. My visible and consistent support is imperative for my success as a State Representative.
13. The respondent disclosed a political expenditure of \$627.20 to a hotel for the respondent's spouse to attend a wedding of the respondent's chief of staff near Austin, Texas. The complaint alleges that the expenditure constitutes a conversion of political contributions to personal use. In response to the allegation regarding the expenditure for lodging, the respondent swears that his spouse attended the wedding as a representative of his office.
14. On the date the third special session of the 79th legislature began, April 17, 2006, the Texas House of Representatives passed a resolution that authorized the respondent's spouse, Cheri Isett, to act as a Temporary Acting Representative for House District 84 while the respondent

was on active duty in the military. She served in that capacity until October 3, 2006. The third special session of the 79th legislature ended on May 16, 2006.

#### IV. Findings and Conclusions of Law

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

1. A 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 political expenditure means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
3. 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).
4. 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).

#### Credit Card Expenditures

5. A report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. Ethics Commission Rules § 20.59.
6. The respondent made approximately \$5,203 in political expenditures with a credit card and disclosed the expenditures with the names of the credit card companies as the payees. All of the expenditures at issue were made to payees to whom the respondent paid over \$50 in the respective reporting period. Thus, the respondent was required to disclose the actual name and address of each payee for the expenditures. 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 in connection with approximately \$5,203 in political expenditures.

#### Reimbursements to Respondent

7. 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).

8. A candidate is required to report a campaign expenditure from personal funds. *Id.* § 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); Ethics Commission Rules § 20.63(d).
10. Each candidate and each officeholder shall maintain a record of all reportable activity. ELEC. CODE § 254.001(a). The record must contain the information that is necessary for filing the reports required by this chapter. *Id.* § 254.001(c).
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.* In addition, the commission stated that a reimbursement at the rate set in accordance with the General Appropriations Act of the Texas Legislature or any other reasonable rate is appropriate. *Id.*
12. Of the approximate \$5,880 in expenditures at issue, the respondent made approximately \$1,841 in political expenditures from political contributions to reimburse himself for the use of his personal vehicle, based upon the maximum amount allowable under standard federal rates. In accordance with EAO 347, the respondent was only required to disclose the reimbursements for mileage, not the use of the vehicle or purchases of gasoline. Of the reimbursements that were for mileage, approximately \$710 in expenditures were originally disclosed as reimbursements for "travel" or "travel and per diem," \$388 in expenditures were originally disclosed as "costs," and \$219 in expenditures were originally disclosed as reimbursements for a lobby hunting trip. 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(d) of the Ethics Commission Rules by failing to properly disclose the purposes of approximately \$1,317 in expenditures for mileage. Approximately \$524 in reimbursements for mileage were properly disclosed when the reports were originally filed. Therefore, there is credible evidence that the respondent did not violate sections 253.035(h) or 254.031(a)(3) of the Election Code or section 20.63(d) of the Ethics Commission Rules in connection with approximately \$524 in expenditures.
13. In EAO 347, the commission stated that title 15 of the Election Code requires a candidate or officeholder to report political expenditures from personal funds for which the candidate or

officeholder will seek reimbursement from political contributions. Ethics Advisory Opinion No. 347 (1996). The commission also stated that such expenditures are to be reported either as a loan on Schedule E of the campaign finance reporting form or as political expenditures from personal funds on Schedule G of the form. *Id.* When a candidate or officeholder pays himself reimbursement from political contributions for expenditures reported as a loan or reported on Schedule G, the candidate or officeholder must report the reimbursement on Schedule F as an expenditure from political contributions. *Id.*

14. Of the approximate \$5,880 in expenditures at issue, the respondent paid approximately \$1,386 as “per diem” payments to himself from political contributions to reimburse his expenditures made from personal funds while traveling on campaign or officeholder business. Section 253.035(h) of the Election Code and section 20.63(d) of the Ethics Commission Rules require a candidate or officeholder to fully disclose a political expenditure made from personal funds if reimbursement is sought. None of the approximate \$1,386 in expenditures from personal funds were originally disclosed in the respondent’s reports with the indication that they were made from personal funds with the intent to seek reimbursement. 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(d) of the Ethics Commission Rules in connection with the expenditures. There is also credible evidence that the respondent violated section 254.001(a) of the Election Code by failing to properly maintain records of reportable activity in connection with the expenditures.
15. Of the approximate \$5,880 in expenditures at issue, the respondent made approximately \$2,653 in political expenditures for goods and services and subsequently reimbursed himself for the expenditures using political contributions. The respondent disclosed the reimbursements but did not disclose the names and addresses of the actual payees of the expenditures that were made with personal funds, in accordance with EAO 347. 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(d) of the Ethics Commission Rules by failing to properly disclose the payees of the approximate \$2,653 in expenditures made from personal funds.

#### Reimbursements to Staff

16. In Ethics Advisory Opinion No. 450, 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. Ethics Advisory Opinion No. 450 (2003).

17. Of the approximate \$4,904 in expenditures at issue, the respondent paid \$129 to his spouse from political contributions as a “per diem” reimbursement related to a convention. As previously discussed, the respondent used per diem rates to reimburse himself and his spouse for meals and incidental expenses incurred while traveling and did not keep receipts or other records regarding the expenditures. Although the respondent may not have directed his spouse to purchase meals or other goods or services from any specific payee, the respondent originally discussed the purpose of the expenditure as a reimbursement for “travel expense,” which does not adequately describe the purpose of the expenditure. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code by failing to properly disclose the expenditure.
18. Of the approximate \$4,904 at issue, the respondent made a total of approximately \$4,775 in expenditures from political contributions to individuals who made purchases on behalf of the respondent. The respondent’s original reports did not disclose the names or addresses of the vendors who were actually paid by the individuals. Of these expenditures, it appears that approximately \$1,552 were made to payees to whom \$50 or less was paid during the respective reporting period in which each expenditure was made. Thus, the respondent was not required to itemize those expenditures. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code in connection with the expenditures. The remaining approximate \$3,223 in expenditures at issue were disclosed in corrected reports with the names and addresses of the vendors in the reports, which were not disclosed in the reports when they were originally filed. The reports indicate that the expenditures were made to payees to whom the respondent made political expenditures that exceeded \$50 in the respective reporting period. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code by failing to properly disclose the expenditures.

#### Conversion to Personal Use

19. 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” means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. *Id.* § 253.035(d).
20. “Personal use” does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of rent, utility, and other reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County. *Id.* § 253.035(d)(1).
21. In Ethics Advisory Opinion No. 356 (EAO 356), the commission addressed whether a state representative may use political contributions to pay for transportation and hotel expenses to attend the swearing-in ceremony of a United States Congressman from Texas. Ethics Advisory Opinion No. 356 (1997). The commission stated that such expenditures would be

- permissible if the attendance was in connection with the state representative's activities as a member of the Texas Legislature or was to further the state representative's possible candidacy in future state or local elections in Texas by assisting the state representative in making or maintaining political contacts. *Id.*
22. The respondent made the expenditures related to the tickets for football games for campaign and officeholder purposes. Therefore, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code in connection with the expenditures. The expenditures for mileage were also in connection with campaign and officeholder purposes. Therefore, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code in connection with the reimbursements for mileage.
  23. In Ethics Advisory Opinion No. 241 (EAO 241), the commission determined that a legislator may use political contributions to pay for "meals for state business not reimbursed by the state." Ethics Advisory Opinion No. 241 (1995). The commission also addressed whether a legislator may use political contributions for meals in Austin that do not take place in connection with the conduct of state business. Specifically, the issue was whether the costs of such meals are "reasonable housing or household expenses." The commission stated that the costs of such meals would not be considered "household expenses" because a legislator would incur meal costs whether or not he was required to reside in Austin. *Id.*
  24. The respondent spent approximately \$366 for "per diem" reimbursements related to the football games. Presumably, the respondent would have been required to eat meals on the same days he was traveling regardless of whether he was traveling to or from, or attending, the football games or working on completely personal matters. There is no evidence that any meals the respondent ate while traveling were in any way connected to his campaign or officeholder activities other than the fact that he was traveling to or from a football game or was in the same city as the event. Thus, in accordance with EAO 241, political contributions could not be used to pay for such meals. Therefore, there is credible evidence that the respondent violated section 253.035(a) of the Election Code by converting \$366 in political contributions to personal use. There is also credible evidence that the respondent violated section 254.001(a) of the Election Code in connection with the reimbursements for per diem expenses by failing to properly maintain records of the expenditures.
  25. The expenditure of \$627.20 for lodging was made in connection with a wedding for a staff member of the respondent. There is credible evidence that the respondent did not violate section 253.035(a) of the Election Code in connection with the expenditure.

### **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 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 also acknowledges that a report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. The respondent also 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 also acknowledges that each candidate and each officeholder shall maintain a record of all reportable activity and that the record must contain the information that is necessary for filing the reports required by this chapter. The respondent also acknowledges that a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. 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 \$1,600 civil penalty. The respondent must also reimburse \$366 to political contributions from personal funds and provide evidence of the reimbursement to the commission.

**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-2612268.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Carl Isett, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director