

TEXAS ETHICS COMMISSION

IN THE MATTER OF

KEL SELIGER,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2612269

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2008, to consider sworn complaint SC-2612269. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031 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 improperly reported political expenditures made with personal funds, improperly reported political expenditures as reimbursements, and 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 a state senator and was an opposed incumbent candidate for the office in the 2004 general election. The respondent was also an opposed candidate for the office in a special election held on January 20, 2004.
2. The respondent's July 2006 semiannual campaign finance report disclosed a \$2,500 political expenditure to the respondent, "For Specific Reimbursements of 2004 Primary & General Election Filing Fees."
3. Regarding the expenditure, the respondent swears that he properly reported \$2,500 in political expenditures from his personal funds on Schedule G in a report due on December 22, 2003, which was due 30 days before the special election held on January 20, 2004. The respondent originally filed the 30-day pre-election report on December 22, 2003, in which he disclosed two political expenditures from personal funds of \$1,250 each to the Secretary of

- State and to “Texas GOP” for “Filing Fees” on December 3, 2003. The report indicated that the respondent intended reimbursement from political contributions.
4. The respondent’s reports disclosed the following political expenditures from political contributions as reimbursements to individuals:
 - Approximately \$8,590 to an individual for “Contract Labor & Gas Reimbursement” or “Contract Labor - \$285.00 Gas Reimbursement - \$50.00.”
 - Two \$50 expenditures to an individual for gasoline.
 - Approximately \$510 to an individual for “travel reimbursement.”
 - Approximately \$2,908 to various individuals for office supplies, meals, postage, and other goods and services.
 5. In response to the complaint, the respondent corrected the purposes of the approximate \$8,590 in expenditures for contract labor and gas reimbursements, the additional \$100 in expenditures for gasoline, and the approximate \$510 in expenditures for “travel reimbursements.”
 6. Regarding the approximate \$2,908 in reimbursements to various individuals for goods and services, the names and addresses of the vendors of the expenditures were not disclosed in the reports when they were originally filed. The respondent corrected the payee information for approximately \$2,792 in expenditures by either disclosing the actual payees of the expenditures or adding the expenditures to the total amount of \$50 or less in reports. According to the corrections, expenditures totaling approximately \$562 were made to a vendor to whom the respondent only made \$50 or less in expenditures during the applicable reporting period. The respondent also disclosed an additional approximate \$196 in loan repayments related to the expenditures.
 7. The complaint alleges that the respondent converted political contributions to personal use by purchasing a vehicle with political contributions. The allegation is based on the respondent’s disclosure of a political expenditure of \$21,846.40 to “Texas Chrysler” on January 18, 2005, for “Vehicle – Chrysler Pacifica” in his July 2005 semiannual report. The complaint alleges that the expenditure is “clearly a purchase for personal use” but included no additional evidence to support the allegation.
 8. There is evidence that the respondent used the vehicle for campaign and officeholder activity, but not for personal use.

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). A report must also include the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. *Id.* § 254.031(a)(5).
2. A candidate is required to report a campaign expenditure from personal funds. *Id.* § 20.63(a).
3. 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).
4. The respondent disclosed a \$2,500 reimbursement from political contributions for filing fees. The respondent's 30-day pre-election report for the January 2004 special election clearly disclosed \$2,500 in political expenditures from personal funds for filing fees and indicated that reimbursement was intended. The respondent made the reimbursement at issue to repay himself for using personal funds to pay the filing fees. Therefore, there is credible evidence that the respondent did not violate section 253.035(h) of the Election Code in connection with the \$2,500 reimbursement.
5. In Ethics Advisory Opinion No. 450, the commission stated that in a situation in which a member of a candidate's campaign staff makes a campaign expenditure on behalf of the candidate and later receives reimbursement from the candidate, the candidate is required to 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 campaign worker made the expenditure, and explaining in the "purpose" section that a campaign worker made the expenditure from personal funds and that the candidate subsequently reimbursed the campaign worker. Ethics Advisory Opinion No. 450 (2003).

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. 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).
8. Of the expenditures at issue, approximately \$8,590 in expenditures were paid to an individual for contract labor and “stipends” for gasoline. Additionally, the respondent paid an approximately \$610 to individuals for compensation and to reimburse the individuals for the use of personal vehicles. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code because the payees of approximately \$9,200 in expenditures were properly disclosed in the respondent’s reports.
9. Of the remaining approximate \$2,908 in expenditures that were reported as reimbursements to other individuals, approximately \$562 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 did not violate section 254.031(a)(3) of the Election Code in connection with the expenditures because itemization was not required.
10. Of the remaining approximate \$2,346 in expenditures that were reported as reimbursements, the approximately \$2,230 of the expenditures were made to payees to whom the respondent made political expenditures that exceeded \$50 in the respective reporting period. The actual payees of the expenditures were not properly disclosed in the respondent’s reports when they were originally filed. The remaining approximate \$116 in reimbursements were not corrected. The respondent also disclosed an additional approximate \$196 in loan repayments related to the expenditures that were not properly disclosed when the reports were originally filed. 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 approximately \$2,542 in political expenditures.
11. 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). “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. *Id.*

12. In Ethics Advisory Opinion No. 430, the commission stated that a candidate or officeholder may purchase an asset in whole or in part with political contributions, provided that the candidate or officeholder uses personal funds to pay for any personal use of the asset. Ethics Advisory Opinion No. 430 (2000). The commission also stated in Ethics Advisory Opinion No. 204 that the use of an automobile purchased with political contributions to perform duties connected with holding a public office is a permissible use of political funds. Ethics Advisory Opinion No. 204 (1994).
13. The evidence shows that the respondent used political contributions to purchase a vehicle for \$21,846.40 in January 2005. There is no evidence that the respondent used the vehicle for personal purposes and the evidence indicates that the respondent uses the vehicle for campaign or officeholder purposes and not for personal purposes. Therefore, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code in connection with the purchase of the vehicle.

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 acknowledges that the proper method of reporting reimbursements to staff members 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 \$300 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-2612269.

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

Kel Seliger, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____

David A. Reisman, Executive Director