

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BRYAN HUGHES,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-270113

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 11, 2007, to consider sworn complaint SC-270113. 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 20.61 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 report and improperly reimbursed political expenditures made from 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.
2. The allegations are based on the respondent's January 2005, July 2005, January 2006, and July 2006 semiannual campaign finance reports and the pre-election campaign finance reports due in October 2006.
3. The reports at issue disclosed approximately fifteen alleged reimbursements to the respondent as political expenditures on Schedule F, totaling approximately \$19,400.

4. Of that amount, the respondent did not previously disclose approximately \$10,900 either as having been made from personal funds with the intent to seek reimbursement or as loans.
5. The respondent disclosed political expenditures from personal funds with the intent to seek reimbursement, in the amount of approximately \$1,600, for reimbursements for car rental and other expenses.
6. The respondent disclosed political expenditures to himself and his law firm for office rent on several reports, totaling approximately \$6,800.
7. The respondent disclosed campaign workers as the payee and “expense reimbursement” as the purpose of the expenditures on several reports, totaling approximately \$4,400.
8. On June 22, 2007, the respondent corrected the reports in question.

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 filed by an officeholder is required to include the full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period. ELEC. CODE § 254.031(a)(3).
2. A candidate who makes political expenditures from the candidate’s personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures and the report 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).
3. In the alternative, a candidate who makes political expenditures from the candidate’s personal funds may report the amount expended as a loan and may reimburse personal funds from political contributions in the amount of the reported loan. ELEC. CODE § 253.0351(a).
4. A candidate is required to report a campaign expenditure from personal funds. An officeholder is required to report an officeholder expenditure from personal funds if the officeholder intends to be reimbursed from political contributions. A candidate’s or officeholder’s failure to comply with the disclosure requirements for the use of personal funds may not be cured by filing a corrected report after the report deadline has passed. A candidate or officeholder who has complied with the requirements 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. Ethics Commission Rules § 20.63.
5. The respondent's January 2005, July 2005, January 2006, and July 2006 semiannual campaign finance reports, and pre-election campaign finance reports due in October 2006 disclosed multiple reimbursements to the respondent, for a total of approximately \$19,400.
 6. The evidence indicates that the respondent did not previously disclose political expenditures as having been made from personal funds with the intent to seek reimbursement for reimbursements totaling approximately \$10,900. Thus, reimbursement for those expenditures was not permitted. Therefore, there is credible evidence of a violation of sections 253.035(h) and 254.031 of the Election Code and section 20.63 of the Ethics Commission Rules.
 7. The evidence indicates that the respondent properly disclosed political expenditures from personal funds in the amount of approximately \$1,600 for reimbursements for car rental and other expenses that were made from the respondent's personal funds with the intent to seek reimbursement. Therefore, there is credible evidence of no reporting violation of sections 253.035 and 254.031 of the Election Code for these expenditures.
 8. The evidence also indicates that the respondent properly reported political expenditures to himself and his law firm for office rent on several reports, totaling approximately \$6,800. Thus, there is credible evidence of no reporting violation of sections 254.031 and 253.035 (h) of the Election Code for these expenditures.
 9. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rules § 12.5. Failing to timely file or filing incomplete campaign finance reports is a Class C misdemeanor. The statute of limitations for misdemeanors is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Therefore, the commission does not have jurisdiction to consider allegations of reporting violations that occurred before January 24, 2005. Some of the allegations relating to improper reporting of political expenditures are outside the statute of limitations. Those allegations are not addressed by this order.
 10. Each campaign finance report filed by an officeholder is required to include the full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period. ELEC. CODE § 254.031(a)(3).
 11. 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.

12. In Ethics Advisory Opinion No. 450 (2003), which describes the proper method for reimbursements during the period at issue, 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.
13. The respondent’s campaign finance reports disclosed reimbursement to campaign workers for “expense reimbursement,” totaling approximately \$4,400. Neither of the proper reporting methods was used and the actual payee was not disclosed. Therefore, there is credible evidence of a violation of section 254.031 of the Election Code and section 20.61 of the Ethics Commission Rules.

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 filed by an officeholder is required to include the full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period. The respondent acknowledges that a candidate who makes political expenditures from the candidate’s personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, and the report clearly designates those expenditures as having been made from the person’s personal funds and that the expenditures are subject to reimbursement. In the alternative, a candidate who makes political expenditures from the candidate’s personal funds may report the amount expended as a loan and may reimburse personal funds from political contributions in the amount of the reported loan. 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

reimbursements to staff 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 \$1,500 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-270113.

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

Bryan Hughes, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director