

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GARY ELKINS,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-270114

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 28, 2007, to consider sworn complaint SC-270114. 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 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 also alleges that the respondent improperly reported political expenditures as reimbursements. The complaint also alleges that the respondent failed to properly report, and improperly reimbursed, political expenditures made from personal funds.

III. Facts Supported by Credible Evidence

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

1. The respondent is a current state representative.
2. The complaint was filed on January 24, 2007.
3. The allegations are based on the respondents January 2005, July 2005, January 2006, and July 2006 semiannual campaign finance reports.
4. The respondent disclosed the credit card company as the payee for political expenditures totaling approximately \$4,700.
5. The respondent's campaign finance reports disclosed reimbursement to staff totaling approximately \$2,100.

6. The respondent's campaign finance reports disclosed reimbursements to himself totaling approximately \$4,400.
7. The respondent did not previously disclose the political expenditures as having been made from the respondent's personal funds and subject to reimbursement.
8. The respondent did not previously disclose the political expenditures at issue as a loan.

IV. Findings and Conclusions of Law

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

1. 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. ELEC. CODE § 254.041. The statute of limitations for misdemeanors is two years from the date of the commission of the offense. Code of Criminal Procedure, Art. 12.02. Reporting allegations relating to campaign finance reports that were filed before January 24, 2005, are not within the commission's sworn complaint jurisdiction. Some reporting allegations in this complaint relate to the respondent's January 2005 semiannual campaign finance report, which was filed January 2, 2005. Therefore, those reporting allegations will not be considered.
2. 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).
3. 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.
4. The respondent had multiple entries, totaling approximately \$3,900, on his July 2005 and January 2006 campaign finance reports that identified the credit card company as payee instead of the vendor who received payment from the credit card company. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules.
5. 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.
6. 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.
7. On both his original January 2006 and July 2006 semiannual campaign finance reports the respondent disclosed a member of his staff as the payee for one entry. Both described the expenditure as “reimbursement for office supplies for capitol office.” The reimbursements totaled \$1,250. Reimbursement of a staff member may be reported in one of two ways. Neither of those methods were 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.
 8. Ethics Commission rules prohibit the commission from considering an allegation if the alleged violation is not also a criminal offense and if the allegation is based on facts that occurred more than three years before the date the complaint is filed. Ethics Commission Rules § 12.5(a). There is no criminal offense for a violation of section 253.035 of the Election Code. Therefore, the statute of limitation is 3 years. ELEC. CODE § 253.035. The January 2005 campaign finance report falls within that period.
 9. A candidate who makes political expenditures from the candidate’s personal funds may reimburse those personal funds from political contributions only if: (1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures; and (2) 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).
 10. 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).
 11. The respondent’s January 2005 and January 2006 semiannual campaign finance reports disclosed multiple reimbursements to himself. The total amount of reimbursement was approximately \$4,400. The evidence indicates that the respondent did not previously disclose the political expenditures for the reimbursements as having been made from the respondent’s personal funds with the intent to seek reimbursement.
 12. The proper way to report the expenditures would have been to disclose them on Schedule G of the campaign finance report in the period for which the expenditures were made, and check the box labeled “reimbursement from political contributions intended.” Alternatively,

the expenditure could have been reported as a loan on Schedule E. The respondent did not properly disclose political expenditures from personal funds on the reports covering the relevant periods on either Schedule G or on Schedule E. Therefore, there is credible evidence of a violation of section 253.035(h) of the Election Code.

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 report of a political expenditure by credit card must identify the vendor who receives payment from the card company. 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 reimbursement to staff is in accordance with section 20.62 of the Ethics Commission Rules. 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: (1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures; and (2) 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 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 \$1,000 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-270114.

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

Gary Elkins, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director