

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

CARL ISETT,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2705114, SC-2707158, AND SC-280270

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on October 13, 2008, to consider sworn complaints SC-2705114, SC-2707158, and SC-280270. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.041 and 254.031 of the Election Code, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposes this resolution to the respondent.

### II. Allegations

The complaints allege that the respondent used political contributions to pay his spouse and dependent child for personal services and improperly reported political expenditures.

### 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.
2. The respondent's spouse, Cheri Isett, was a temporary acting state representative for District 84 from April 17, 2006, to October 3, 2006.
3. The campaign finance reports at issue are the respondent's semiannual reports and pre-election reports filed from January 2004 to January 2008.
4. The respondent's reports disclosed 29 political expenditures totaling approximately \$36,331 from political contributions to "Cheri Isett Bookkeeping & Tax Services" (CIB) in Lubbock, Texas, from July 2003 to December 2006. The purposes of the expenditures were accounting, computer maintenance, and report filing.

5. In response to the allegations regarding the payments to CIB, the respondent swears:

Both my wife and I are accountants. In our practice before the IRS, the terms professional services, business expenses, personal income, and personal expenses have very specific legal meanings. Business expenses and professional services are defined as expenses which are “ordinary and necessary” to properly perform a business function. Business and professional income is that income received for products or services sold or rendered. Conversely, personal income and personal expenses are not ordinary or necessary for a business activity, or they inure to the personal benefit of an individual without the presence of a legitimate business function.

Texas Election Code section 253.035 defines personal use of political contributions as any use of the contributions which is *not* “ordinary and necessary expenses incurred in connection with activities ... as a public officeholder.”

I am aware that Federal Election law permits the use of political contributions to pay family members for ordinary and necessary business expenses as long as they are properly documented and are reasonable in amount.

In my reading of the Election Code section 253.041, I took into account the aforementioned definitions and practices when interpreting the term “personal services.” I believed that, being consistent with Election Code section 253.035, “personal services” meant services which were not ordinary and necessary for the function of my office and which inured to my personal benefit without the presence of a legitimate business function.

Due to the fact that the Election Code uses the exact same terminology as the Internal Revenue Code, and that Federal Election law does not label these types of services as “personal,” I believed that using political contributions to pay my wife and daughter for “professional or business services” which were ordinary and necessary for the function of my office was perfectly appropriate and legal.

6. The respondent also swears that his spouse and daughter properly reported all income paid to them from his political contributions on federal income tax returns.
7. The respondent’s personal financial statements (PFS) covering 2003 and 2005 indicate that CIB was a “dba” for “The Tutoring Company” (TTC) at the same address as CIB in Lubbock. The address for CIB and TTC is the same address as the respondent’s residence.

8. Articles of incorporation were filed with the Texas Secretary of State (SOS) on February 7, 1996, that incorporated TTC as a for-profit business corporation. The articles named the respondent as the registered agent and president of TTC and named the respondent's spouse as the treasurer of TTC. In Texas franchise tax public information reports filed for calendar years 2002, 2003, 2004, 2006, and 2007, the respondent was also named as the president and director of TTC and his spouse was named as the secretary, treasurer, and director of TTC.
9. The respondent's PFSs indicate that the respondent was employed by TTC as a director in 2001. The PFSs also indicate that, from 2001 to 2007, he held a beneficial interest in TTC, owned 1,000 to 4,999 shares of stock in TTC, and held 50 percent or more of the outstanding ownership in TTC. The PFSs also indicate that, from 2002 to 2007, he and his spouse held the position of "President – Secy/Treas" with TTC.
10. The respondent's PFSs indicate that the respondent's spouse was employed by TTC as a bookkeeper in 2003 and 2004 and as an accountant in 2005. The PFSs also indicate that his spouse held a beneficial interest in TTC in 2003, 2004, 2005 and 2007. The respondent's PFSs also indicate that his spouse held 50 percent or more of the outstanding ownership in TTC from 2002 to 2007.
11. The respondent's spouse filed a PFS covering 2005 that indicated she was employed by TTC as an accountant and that both she and the respondent owned 1,000 to 4,999 shares of stock in TTC, held a business interest in TTC, held 50 percent or more of the outstanding ownership in TTC, and held the position of "President –Secy/Treas" in TTC.
12. Records of the Lubbock Central Appraisal District for the appraisal roll of 2008 state that the same address disclosed for TTC is a residence owned by the respondent and his wife, for which they filed a homestead exemption. There are no other properties listed in the appraisal district's roll that are owned by the respondent, his spouse, TTC, or CIB.
13. The respondent's reports disclosed four political expenditures totaling approximately \$773 from political contributions to the respondent's daughter, from March 2004 to May 2004. The reports also disclosed 16 political expenditures totaling approximately \$7,506 to the respondent's daughter from March 2005 to December 2005. The reports also disclosed three political expenditures totaling approximately \$240 to the respondent's daughter from March 2006 to April 2006. The purposes of the expenditures were database management, "secretarial," and fundraising commission.
14. The respondent's January 2006 semiannual report disclosed three political expenditures totaling approximately \$279 from political contributions to the respondent's daughter from October 2005 to November 2005. The purpose of the expenditures was mileage. The respondent's July 2004 semiannual report also disclosed a political expenditure of \$240 to

the respondent's daughter on June 1, 2004, for reimbursement for "graduation gifts for constituents."

15. The respondent's PFSs covering 2004, 2005, and 2006 indicated that his daughter was a dependent child and that she was employed by the respondent's campaign. The respondent's spouse filed a PFS covering 2005 that indicated that her daughter was her dependent child and that she was employed by the respondent's campaign.
16. The respondent's reports disclosed 18 political expenditures totaling approximately \$39,158 from political contributions to "Lubbock Bookkeeping Services" (LBS) in Lubbock, Texas, from April 2007 to December 2007. The purposes of the expenditures were accounting, bookkeeping, database management, and report filing.
17. Of the approximate \$39,158 in payments made from political contributions to LBS, approximately \$10,201 in expenditures were made between April 27 and June 18, 2007. The remaining approximate \$28,957 in expenditures were made after June 20, 2007.
18. In response to the allegations, the respondent swears that, after the "discovery in January" that the payments made from his political contributions to his spouse for accounting services were for personal services, his wife incorporated LBS, "from which she and her staff began to operate an accounting practice." He further swears:

I do not hold any participating interest in Lubbock Bookkeeping Services, LLC. I am not on the governing body of the business in any fashion or capacity. My wife, Cheri Isett, is the sole member. The business has on file a Post Marital Property Agreement providing that the business is her sole and separate property and estate.

I did not pay from my officeholder account any fees for services performed by my wife. All services which I paid for were performed by staff accountants within the firm. None of the accountants who performed the work are related to me. I was charged the accountants' customary hourly rate. My spouse did not charge my office for any services performed by her either directly or in a supervisory capacity. I have on file timesheets and invoices to support this statement.

Therefore, the payments made from my officeholder account to Lubbock Bookkeeping Services, LLC were entirely legal and appropriate.

19. In response to the allegations, the respondent also swears:

All services performed by Lubbock Bookkeeping Services, LLC were performed by staff accountants who are not related to me. I paid for the work performed by Lubbock Bookkeeping Services, LLC at the firm's normal and usual hourly rate. Lubbock Bookkeeping Services, LLC did not charge my office for any services performed by my wife either directly or in a supervisory capacity.

Regarding the amounts of payments made, Lubbock Bookkeeping Services, LLC charges a flat \$150 per hour for all services for any and all client work they perform. The firm has a number of other clients who pay the same rate for services as my campaign.

The services provided to my campaign include receipts, accounts payable, disbursements, general ledger, tax filings, campaign finance reports, personal financial statements, contributor database management, and correspondence with contributors. Though generally accepted accounting principles are not required of candidate/officeholders in the maintenance of their campaign funds, I believe that the only way to truly be accountable to the public is to maintain these accounting standards. Such controls require additional time in the closing of a period. The electronic filing program employed by the TEC is not integrated with the accounting software used by Lubbock Bookkeeping Services, LLC. The result is a necessary duplicating of every transaction entry- first in the accounting software and then in the TEC software for filing the reports.

Additionally, as a result of the rash of Ethics complaints in 2007, I employed Lubbock Bookkeeping Services, LLC with the responsibility to research every Advisory Opinion so that compliance with Ethics laws could be insured.

20. A certificate of formation filed with the SOS indicates that LBS was established as a limited liability company named "Lubbock Bookkeeping Services, LLC," on February 26, 2007. The certificate also states that LBS does not have managers and that management is reserved to its members. The respondent's spouse was named as the registered agent and sole "managing member" of LBS. The address of LBS is the same address as the respondent's homestead and TTC. Records of the Texas Comptroller of Public Accounts also indicate that the respondent's spouse is the sole officer or director of LBS.

21. The evidence indicates that the clients of CIB were transferred to LBS and that the services at issue were provided by an employee of LBS who was not the respondent's spouse.
22. The respondent submitted a copy of a "postmarital property agreement" that was signed by the respondent and his spouse on June 20, 2007, including a notarized acknowledgment of the agreement by each spouse. According to the agreement, LBS and "all cash and other assets contributed to, used by, or received from [LBS]" were partitioned and exchanged so that the respondent's spouse held the property as her sole and separate property and estate, subject to any indebtedness attributable to the property. The respondent's spouse also agreed to "assume and satisfy without contribution from [the respondent] all such obligations" related to any indebtedness attributable to the property. Further, the respondent renounced his rights, titles and interests in and to the property, in addition to appreciation in value. Both spouses also agreed that "all income and revenue from [LBS and the cash and other assets contributed to, used by, or received from LBS] shall for all purposes of this Agreement be considered the separate property of [the respondent's spouse]." Lastly, the respondent waived his rights and claims to the income from his wife's separate property. The agreement stated that it was effective as of its "effective date," which is indicated in the agreement as January 1, 2007.
23. Included with the postmarital property agreement is a "release of community property interest," in which the respondent conveyed to his spouse all right, title, and interest held by reason of community property law in LBS and all of its assets, all contributions made to LBS, and all money or other value received from LBS. The release was signed on June 20, 2007, and includes a notarized acknowledgment by the respondent.
24. The respondent's July 2007 semiannual report disclosed approximately \$11,701 in political expenditures made to LBS and did not disclose a street address or city, state, or zip code for the expenditures. The evidence indicates that the report has been corrected to reflect the full address of the firm.

#### **IV. Findings and Conclusions of Law**

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

1. A candidate or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business. ELEC. CODE § 253.041(a)(1).

2. A candidate or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to the candidate or officeholder or the spouse or dependent child of the candidate or officeholder. *Id.* § 253.041(a)(2).
3. A payment that is made from a political contribution to a business described by section 253.041(a) of the Election Code and that is not prohibited by that subsection may not exceed the amount necessary to reimburse the business for actual expenditures made by the business. *Id.* § 253.041(b).
4. In Ethics Advisory Opinion No. 35, the commission addressed whether a candidate who owned 50 percent of the stock in a corporation could purchase advertising services and supplies from the business. Ethics Advisory Opinion No. 35 (1992). The commission stated:

[A] candidate may make a payment from a political contribution to such a business as long as the payment does not exceed the amount necessary to reimburse the business for actual expenditures made by the business. In other words, the business may not make any profit on such a transaction.

*Id.*
5. In Ethics Advisory Opinion No. 249, the commission addressed whether a legislator may use political contributions to pay for using an airplane owned by a corporation in which the legislator has an interest. Ethics Advisory Opinion No. 249 (1995). The commission stated:

[I]n a situation in which a payment from political contributions is subject to both the restriction in section 253.041 and also the prohibition on corporate political contributions, the payment to the corporation must be in the amount reasonably necessary to reimburse the corporation for its expenses, neither more nor less.

*Id.*
6. 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(a). The criminal offense for a violation of section 253.041 of the Election Code is a Class A misdemeanor. ELEC. CODE § 253.041(c). The statute of limitations for a Class A misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Of the approximate \$36,331 in expenditures made to CIB, approximately \$10,793 in expenditures were made more than two

years before the postmark date of the earliest of the complaints that contain the allegations (SC-2705114). Therefore, the remaining approximate \$25,538 in expenditures made to CIB are within the commission's sworn complaint jurisdiction.

7. Of the approximate \$8,519 in expenditures made to the respondent's daughter for database management, secretarial services, and fundraising commission, approximately \$1,465 in expenditures were made more than two years before the postmark date of the earliest of the complaints that contain the allegations (SC-2705114). Therefore, the remaining approximate \$7,054 in expenditures made to the respondent's daughter are within the commission's sworn complaint jurisdiction.
8. Of the approximate \$519 in expenditures made to the respondent's daughter for reimbursements and mileage, the reimbursement of \$240 was made more than two years before the postmark date of the earliest of the complaints that contain the allegations (SC-2705114). Therefore, the remaining approximate \$279 in expenditures made to the respondent's daughter for mileage are within the commission's sworn complaint jurisdiction.
9. A political contribution means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
10. A campaign contribution means 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 or on a measure. *Id.* § 251.001(3).
11. 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).
12. A contribution means, in pertinent part, 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).
13. In Ethics Advisory Opinion No. 434, the commission determined that a candidate may use political contributions to compensate a niece or nephew for work in connection with the candidate's campaign. Ethics Advisory Opinion No. 434 (2001). The commission stated that a candidate may not use political contributions to pay himself for campaign work or to pay a spouse or dependent child for campaign work. *Id.*
14. The evidence indicates that the respondent paid approximately \$25,538 from political contributions to CIB for his spouse's personal services. The evidence also indicates that CIB is an assumed name of TTC, a corporation in which the respondent held 50 percent or more

- of the outstanding ownership and for which the respondent served as a director and president at the time the expenditures were made. Therefore, there is credible evidence that the respondent violated section 253.041(a)(1) of the Election Code in connection with approximately \$25,538 in expenditures.
15. Regarding the payments to the respondent's daughter, the evidence indicates that the expenditures at issue were made from political contributions and were for personal services rendered by his daughter.
  16. Based on the respondent's income tax returns and other evidence considered at the hearing, there is credible evidence that the respondent did not violate section 253.041(a)(2) of the Election Code in connection with the expenditures.
  17. Regarding the approximate \$279 in expenditures to the respondent's daughter for mileage, there is credible evidence that the expenditures were not payments for personal services. Therefore, there is credible evidence that the respondent did not violate section 253.041(a)(2) of the Election Code in connection with the expenditures.
  18. The respondent made approximately \$39,158 in political expenditures to LBS from political contributions. The respondent was not on the governing board and did not serve as an officer of LBS. Nevertheless, there is a question as to whether the payments were made in violation of section 253.041 of the Election Code because the payments ultimately inured to the benefit of his spouse. However, there is insufficient evidence that the payments were made in violation of section 253.041(a)(2) of the Election Code.
  19. Each 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).
  20. The respondent disclosed approximately \$11,701 in political expenditures to LBS without properly disclosing a payee address. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code in connection with the expenditures.

#### **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 these sworn complaints.

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 or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the spouse or dependent child of the candidate or officeholder to a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business. The respondent also acknowledges that each 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 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 \$6,400 civil penalty, contingent upon the respondent reimbursing the amount at issue (\$25,538) to his political funds by November 12, 2008. Any reimbursements to political funds made pursuant to this order and agreed resolution shall be made from the respondent's personal funds and shall be reported on Schedule G (used for reporting political expenditures from personal funds) of the respondent's campaign finance reports and indicate that no reimbursement is intended. If the respondent does not reimburse the amount at issue by November 12, 2008, then the commission imposes a \$31,938 civil penalty to be paid from the respondent's personal funds, which shall be reported on Schedule G of the respondent's campaign finance reports and indicate that no reimbursement is intended. The respondent shall furnish to the commission evidence of the required payments.

### **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-2705114, SC-2707158, and SC-280270.

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