

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GARNET COLEMAN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2709206

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 13, 2008, to consider sworn complaint SC-2709206. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035(h) and 254.031(a)(3) of the Election Code, section 571.1242 of the Government Code, and sections 20.59, 20.61, and 20.63 of the Ethics Commission Rules, laws and rules 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 on campaign finance reports. The respondent's reports also disclose that he improperly reported political expenditures as reimbursements, failed to properly report, and improperly reimbursed, political expenditures made from personal funds, and failed to disclose the principal occupation or job title and employer of certain contributors. The respondent also failed to timely file a response.

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 147 and was an opposed incumbent candidate in the 2006 primary election.

Failure to Properly Report Political Expenditures Made by Credit Card

2. The complaint alleges that the respondent failed to properly report political expenditures made by credit card, in violation of section 254.031(a)(3) of the Election Code, and section 20.59 of the Ethics Commission Rules. Although the respondent did not disclose the actual payee for the expenditures at issue, he described the purpose of the expenditures at issue. The allegations are based on the following reports:

- January 2006 semiannual report disclosing \$89,111 in contributions and \$39,995.46 in expenditures.
 - Disclosed American Express as the payee for two credit card expenditures totaling approximately \$1,194.
- 30-day pre-election report for the March 7, 2006, primary election disclosing \$17,050 in contributions and \$52,148.63 in expenditures.
 - Disclosed American Express as the payee for six credit card expenditures totaling approximately \$2,608.
- 8-day pre-election report for the March 7, 2006, primary election disclosing \$88,298.34 in contributions and \$24,332.81 in expenditures.
 - Disclosed American Express as the payee for a credit card expenditure totaling approximately \$3,240.
- July 2006 semiannual report disclosing \$81,590.45 in contributions and \$78,077.67 in expenditures.
 - Disclosed American Express as the payee for five credit card expenditures totaling approximately \$9,216.
 - Disclosed J P Morgan Chase Bank NA as the payee for three credit card expenditures totaling approximately \$2,071.

This report disclosed the credit card company as payee on a total of approximately \$11,287 in political expenditures.

- January 2007 semiannual report disclosing \$109,991 in contributions and \$113,311.38 in expenditures.
 - Disclosed American Express as the payee for nine credit card expenditures totaling approximately \$13,819.

- Disclosed J P Morgan Chase Bank NA as the payee for five credit card expenditures totaling approximately \$3,308.

This report disclosed the credit card company as payee on a total of approximately \$17,127 in political expenditures.

- July 2007 semiannual report disclosing \$16,496 in contributions and \$47,836.04 in expenditures.

- Disclosed American Express as the payee for six credit card expenditures totaling approximately \$20,191.

- Disclosed J P Morgan Chase Bank NA as the payee for six credit card expenditures totaling approximately \$4,529.

This report disclosed the credit card company as payee on a total of approximately \$24,720 in political expenditures.

3. As noted above, the respondent provided the purpose of the expenditures and in some cases the specific amount associated with the purpose. However, the respondent did not disclose the names or addresses of the vendors who actually received payment from the credit card company on any of the reports.
4. The respondent swears that he did not intentionally violate any provision of law relating to the itemization of campaign and officeholder expenses and swears that all complained of reports were corrected promptly after receiving notice of the complaint. The respondent swears that the original reports were incorrect because of a misunderstanding in the application of Election Code, Title 15's reporting requirements as viewed against general accounting principles. The explanation of correction on all of the corrected reports states, "The originally filed version of this report did not itemize expenditures made on credit cards – it just listed payments to the credit card company. The corrected report itemizes expenditures within each credit card payment." None of the corrected reports identify which expenditures were previously reported within a credit card payment.
5. As to the January 2006 semiannual report, which disclosed the credit card company as the payee on a total of approximately \$1,194 of expenditures, the respondent filed a corrected report on October 31, 2007. The report disclosed \$56,277.75 in total political expenditures (\$16,282.29 more than disclosed originally) and disclosed approximately \$17,268 of expenditures on Schedule F that were not itemized on the initial report. The initial report disclosed total political expenditures of \$50 or less, unless itemized of \$172.31. The corrected report disclosed total political expenditures of \$50 or less, unless itemized of \$895.11. The respondent filed another corrected January 2006 semiannual report on July 28, 2008, to add employers and occupation of donors that were omitted from the original report.

- The respondent mistakenly corrected the original report instead of correcting the corrected report filed October 31, 2007. Therefore, the previous corrections are no longer on the respondent's most current corrected report. The respondent has indicated that he will file another correction so that all the corrections are viewable on the most current corrected report.
6. As to the 30-day pre-election report, the respondent filed two 30-day pre-election reports on February 6, 2006. They both disclose the credit card company as the payee on a total of approximately \$2,608 of expenditures. The respondent filed a corrected 30-day pre-election report on October 31, 2007. The report disclosed \$60,098.67 in total political expenditures (\$7,950.04 more than disclosed originally) and disclosed approximately \$4,518 of expenditures on Schedule F that were not itemized on the initial report. All of the payees of the approximately \$4,518 in expenditures were paid more than \$50 during the reporting period. The initial report disclosed total political expenditures of \$50 or less, unless itemized of \$50.67. The corrected report disclosed total political expenditures of \$50 or less, unless itemized of \$532.70. The respondent filed another corrected 30-day pre-election report on July 28, 2008, to add employers and occupation of donors that were omitted from the original report. The respondent mistakenly corrected the original report instead of correcting the corrected report filed October 31, 2007. Therefore, the previous corrections are no longer on the respondent's most current corrected report. The respondent has indicated that he will file another correction so that all the corrections are viewable on the most current corrected report.
 7. As to the 8-day pre-election report, the respondent filed two 8-day pre-election reports on February 27, 2006. They both disclose the credit card company as the payee on a total of approximately \$3,240 of expenditures. The respondent filed a corrected 8-day pre-election report on October 31, 2007. The report disclosed \$23,867.90 in total political expenditures (\$464.91 less than disclosed originally) and disclosed approximately \$3,764 of expenditures on Schedule F that were not itemized on the initial report. The initial report disclosed total political expenditures of \$50 or less, unless itemized of \$24.01. The corrected report disclosed total political expenditures of \$50 or less, unless itemized of \$300.77. The respondent filed another corrected 8-day pre-election report on July 28, 2008, to add employers and occupation of donors that were omitted from the original report. The respondent mistakenly corrected the original report instead of correcting the corrected report filed October 31, 2007. Therefore, the previous corrections are no longer on the respondent's most current corrected report. The respondent has indicated that he will file another correction so that all the corrections are viewable on the most current corrected report.
 8. As to the July 2006 semiannual report, which disclosed the credit card company as payee on a total of approximately \$11,287 of expenditures, the respondent filed a corrected report on October 31, 2007. The report disclosed \$96,894.81 in political expenditures (\$18,817.14 more than disclosed originally) and disclosed approximately \$32,276 of expenditures on Schedule F that were not itemized on the initial report. The initial report disclosed total

political expenditures of \$50 or less, unless itemized of \$71.08. The corrected report disclosed total political expenditures of \$50 or less, unless itemized of \$891.03.

9. As to the January 2007 semiannual report, which disclosed the credit card company as payee on a total of approximately \$17,127 of expenditures, the respondent filed a corrected report on October 31, 2007, and then a second corrected report on July 28, 2008. The report disclosed \$120,218.01 in political expenditures (\$6,906.63 more than disclosed originally) and disclosed approximately \$26,560 of expenditures on Schedule F that were not itemized on the initial report. All of the payees of the approximately \$26,560 in expenditures were paid more than \$50 during the reporting period. The initial report disclosed total political expenditures of \$50 or less, unless itemized of \$176.90. The second corrected report disclosed total political expenditures of \$50 or less, unless itemized of \$698.24.
10. As to the July 2007 semiannual report, which disclosed the credit card company as payee on a total of approximately \$24,720 of expenditures, the respondent filed a corrected report on October 31, 2007, and then a second corrected report on July 28, 2008. The report disclosed \$46,125.40 in political expenditures (\$1,710.64 less than disclosed originally) and disclosed approximately \$23,191 of expenditures on Schedule F that were not itemized on the initial report. All of the payees of the approximately \$23,191 in expenditures were paid more than \$50 during the reporting period. The initial report disclosed total political expenditures of \$50 or less, unless itemized of zero. The second corrected report disclosed total political expenditures of \$50 or less, unless itemized of \$845.78.
11. The six reports disclosed the credit card company as payee on a total of approximately \$60,176 in political expenditures.
12. The six corrected reports disclose approximately \$107,577 of expenditures on Schedule F that were not itemized on the initial report. This figure includes the \$60,176 of credit card expenditures. Thus, the reports disclose that in addition to those political expenditures that disclosed the credit card company as payee, these were political expenditures that were not included in some of the original reports.

Improperly Reported Political Expenditures as Reimbursements

13. The respondent reported political expenditures as reimbursements on his 30-day and 8-day pre-election reports for the March 7, 2006, primary election and on his January and July 2006, and January and July 2007 semiannual reports.
14. The respondent swears that he did not intentionally violate any provision of law relating to the itemization of campaign and officeholder expenses and swears that all complained of reports were corrected promptly after receiving notice of the complaint. The respondent swears that the original reports were incorrect because of a misunderstanding in the

application of Election Code, Title 15's reporting requirements as viewed against general accounting principles.

15. The six reports disclosed expenditures as reimbursements totaling approximately \$12,621.

Failure to Properly Report Political Expenditures Made with Personal Funds

16. The respondent reported reimbursements to himself for political expenditures made from personal funds on his 30-day and 8-day pre-election reports for the March 7, 2006, primary election and on his January and July 2006, and January and July 2007 semiannual reports. The respondent did not originally disclose the payees of these political expenditures from personal funds during the reporting period in which the expenditures were made.
17. The amount at issue totals approximately \$27,675.
18. The respondent swears that he did not intentionally violate any provision of law relating to the itemization of campaign and officeholder expenses and swears that all complained of reports were corrected promptly after receiving notice of the complaint. The respondent swears that the original reports were incorrect because of a misunderstanding in the application of Election Code, Title 15's reporting requirements as viewed against general accounting principles. The respondent swears that the original reports were prepared incorrectly because of a misplaced concern over "double counting" of all political expenditures from personal funds.
19. The explanation of correction on the correction affidavit for each report states, "The originally filed version of this report did not itemize political expenditures made from personal funds – it just listed 'Garnet Coleman' as the payee for all Schedule G expenditures. The corrected report itemizes all political expenditures from personal funds under Schedule G then lists a reimbursement to Representative Coleman in Schedule F.

Respondent's Request for Dismissal

20. The respondent requests the commission to dismiss the complaint because it was not filed in accordance with commission rules. The respondent states that the complainant did not file her complaint on the form prescribed by the commission. The form submitted by the complainant does not look identical to the prescribed form available on the commission's website, but it is in the same format and includes the statutorily required information.

IV. Findings and Conclusions of Law

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

Failure to Properly Report Political Expenditures Made by Credit Card

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 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.
3. On the six reports at issue, the respondent disclosed the name of the credit card company and not the names or addresses of the vendors who actually received payment from the credit card company for approximately \$60,176 in political expenditures. The six corrected reports disclose approximately \$107,577 of expenditures on Schedule F that were not itemized on the initial report. This figure includes the \$60,176 of credit card expenditures. The improper reporting is clear from the face of the reports. Although not alleged, the corrected reports also show that the respondent's reports failed to properly disclose all of his political 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.

Improperly Reported Political Expenditures as Reimbursements

4. 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).
5. In Ethics Advisory Opinion No. 450, which was relevant to the reports at issue that were filed through January 2007 (Ethics Commission Rule § 20.62 applied to the July 2007 semiannual report), 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); Ethics Commission Rules § 20.62.

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. The evidence shows that the respondent's reports disclose approximately \$12,621 in expenditures as reimbursements. The respondent's original reports did not disclose the names or addresses of the vendors who were actually paid by the individuals. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules, by failing to properly disclose expenditures totaling approximately \$12,621.

Failure to Properly Report Political Expenditures Made with Personal Funds

8. 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).
9. 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).
10. A candidate is required to report a campaign expenditure from personal funds. *Id.* § 20.63(a).
11. 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).
12. The evidence shows that the respondent made approximately \$27,676 in political expenditures to himself as reimbursements for expenditures made with personal funds. The respondent did not disclose the names or addresses of the vendors that he made the purchases from or the dates or purposes of the expenditures. The improper reporting is clear from the face of the reports. 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.

Respondent's Request for Dismissal

13. The complainant's form is substantially similar to the commission's prescribed form and complies with the requirement to file a sworn complaint on a form prescribed by the commission as required by section 571.122 of the Government Code and therefore, the request to dismiss is denied.

Failure to Timely Respond to Notice of Sworn Complaint

14. A respondent must respond to a Category One violation not later than the 10th business day after the date the respondent receives the notice. Failure to timely respond to a notice of sworn complaint within the time required is a separate Category One violation. GOV'T CODE § 571.1242(a)(c).
15. The respondent received the sworn complaint notice on September 27, 2007. The notice stated that the respondent was required to respond within 10 business days from receipt of the notice. The 10th business day after September 27, 2007, was October 12, 2007. On October 10, 2007, the commission received a letter from the respondent's attorney requesting that the deadline for filing the response and any necessary corrected reports be extended to October 31, 2007. On October 12, 2007, the commission notified the respondent's attorney that his request was granted and that the new deadline was October 31, 2007. The commission did not receive a response until May 16, 2008. Therefore, there is credible evidence of a violation of section 571.1242 of the Government 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 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 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 disclose such expenditures in accordance with section 20.62 of the Ethics Commission Rules. The respondent also 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 also acknowledges that a candidate is required to report a campaign expenditure from personal funds. 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 a respondent must respond to a Category One violation not later than the 10th business day after the date the respondent receives the notice. 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 \$9,500 civil penalty.

The respondent agrees that the Texas Ethics Commission, P. O. Box 12070, Austin, Texas 78711, must receive from the respondent full payment of the \$9,500 civil penalty no later than July 8, 2009, and agrees to waive any right to a hearing related to this sworn complaint. The respondent agrees that if the full amount is not received by July 8, 2009, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

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-2709206.

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

Garnet Coleman, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director