

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
ISMAEL “KINO” FLORES,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-280127

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on December 4, 2008, to consider sworn complaint SC-280127. 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 and sections 20.61 and 20.62 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 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 the state representative for District 36.
2. 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, 2006, (two years before the postmark date of the complaint) are not within the commission’s sworn complaint jurisdiction. Some reporting allegations in this complaint relate to the respondent’s July 2005 and January 2006

- semiannual campaign finance reports that were filed prior to January 24, 2006. Therefore, those reporting allegations were not considered.
3. The allegations within the statute of limitations are based on the respondent's 30-day pre-election report due in October 2006 and his July 2006, January 2007, July 2007 and January 2008 semiannual reports.
  4. The campaign finance reports at issue disclosed expenditures totaling approximately \$7,715 as reimbursements to the respondent's staff.
  5. The respondent's July 2006 campaign finance report disclosed two expenditures totaling approximately \$1,120 to Rosalba Martinez for "parade float," and "float.
  6. The respondent's October 30-day pre-election and January 2007 semiannual reports disclosed three expenditures totaling approximately \$475 to Rosalba Martinez for "gas money," "Christmas party music," and "gas."
  7. The respondent's January 2008 semiannual report disclosed a \$1,000 expenditure to McCreey Aviation for reimbursement. Although the respondent disclosed McCreey Aviation as the payee of this expenditure, the payee address disclosed on the report is the same as the address for McCreery Aviation Company, Inc., a full service general aviation center located in McAllen, Texas. It appears that the respondent may have misspelled the name of the payee.
  8. On October 9, 2008, the respondent filed a correction to his July 2006 semiannual report. He corrected the entries to Rosalba Martinez to show two expenditures to Home Depot and one expenditure to LA Imports for materials and flowers for a parade float. In addition he corrected all other entries to show the true vendor of the products or services that were purchased.
  9. On October 9, 2008, the respondent filed a correction to his January 2008 semiannual report. He corrected the purpose of the expenditure to McCree[r]y Aviation to, "paid for improperly depositing an Inc. check." On the same report, the respondent disclosed a \$1,000 contribution from Robert J. McCreery. Mr. McCreery is disclosed as the owner of McCreery Aviation. Both the expenditure and the acceptance of the contribution occurred on the same day. The respondent also corrected all other entries to disclose the true vendor of the products or services that were purchased.
  10. On October 9, 2008, the respondent also filed corrections to his July 2007 semiannual report to disclose the true vendor of the products or services purchased. As of December 4, 2008, the respondent has not filed corrections to his 30-day pre-election (filed October 10, 2006) or his January 2007 semiannual reports.

#### 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 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. 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.
2. Ethics Advisory Opinion No. 450 (2003) (EAO 450), describes the proper way to report reimbursements during the period covered by the respondent's July 2006 and January 2007 semiannual reports. 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. The commission has since adopted section 20.62 of the Ethics Commission Rules, which sets forth the current proper method for reporting reimbursements to staff.
3. Ethics Commission Rule § 20.62 currently states that political expenditures made out of personal funds by a staff member of an officeholder or candidate, with the intent to seek reimbursement from the officeholder or candidate that in the aggregate do not exceed \$5,000 (\$500 until October 2007) during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made:
  - (1) 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; and
  - (2) Included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period.
4. Ethics Commission Rule § 20.62 also states, in relevant part, that if the staff member is not reimbursed during the same reporting period, or is reimbursed more than \$5,000 in the aggregate during the reporting period, then a political expenditure made out of personal funds

by the staff member of an officeholder or candidate with the intent to seek reimbursement from the officeholder or candidate must be reported as follows:

- (1) The aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, or candidate;
  - (2) The expenditure made by the staff member is reported as a political expenditure by the officeholder or candidate; and
  - (3) The reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder or candidate.
5. The evidence indicates that the respondent disclosed two political expenditures on his July 2006 semiannual report totaling approximately \$1,120 to Rosalba Martinez for “parade float,” and “float.” The respondent corrected these entries on the reports at issue to disclose the proper vendor of the goods or services purchased. The corrections indicate that the expenditures for those purposes were actually reimbursements to the respondent’s staff. The evidence indicates that the respondent did not originally use either of the two proper methods set out in EAO 450 to report these staff reimbursements. Therefore, as to those expenditures, there is credible evidence of violations of section 254.031 of the Election Code and section 20.61 of the Ethics Commission Rules.
6. The evidence indicates that on his 30-day pre-election (filed October 10, 2006) and January 2007 semiannual reports, the respondent made three political expenditures totaling approximately \$475 to Rosalba Martinez. The expenditures were disclosed as being for “gas money,” “Christmas party music,” and “gas.” Staff requested additional clarification from the respondent’s attorney about these entries, but did not receive a written response. It is unclear from the provided evidence whether the expenditure for the Christmas music was to reimburse Ms. Martinez for purchasing these items from another source, or an actual payment to her for providing a product. It is also unclear whether the expenditures for gas and gas money were payments to the respondent’s staff member for mileage or reimbursements specifically for gasoline. All other expenditures for gasoline explicitly stated the purpose of reimbursement. Although the categories of goods or services were disclosed, there is insufficient evidence to determine whether the expenditures at issue were reimbursements to an individual or direct payments for goods or services. Thus, as to those expenditures, there is insufficient evidence of a violation of section 254.031 of the Election Code and section 20.61 of the Ethics Commission Rules.
7. The evidence also indicates that the respondent disclosed a \$1,000 expenditure on his January 2008 semiannual report to McCreery Aviation (MAC) for reimbursement (misspelled as McCreey on the report). In the correction to this entry, the respondent describes the purpose as “paid for improperly depositing an Inc. check.” By disclosing the expenditure to MAC only as reimbursement on the original report, the respondent did not provide sufficient detail to disclose the actual purpose of the expenditure. Therefore, as to

that expenditure, there is credible evidence of a violation of section 254.031 of the Election Code.

8. The evidence indicates that in the reports at issue the respondent reported approximately \$7,715 in reimbursements to his staff. The evidence also indicates that the respondent did not use either of the two proper methods set out in Ethics Advisory Opinion No. 450 or Ethics Commission Rule § 20.62 to report the staff reimbursements on multiple reports. Therefore, as to those expenditures, there is credible evidence of violations of section 254.031 of the Election Code and section 20.61 of the Ethics Commission Rules for those reports filed before February 25, 2007, and section 254.031 of the Election Code and sections 20.61 and 20.62 of the Ethics Commission Rules for reports filed after that date.

### **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 the proper way to report reimbursement to staff is in accordance with section 20.62 of the Ethics Commission Rules. 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 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 \$1,100 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-280127.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Ismael "Kino" Flores, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director