

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JERRY MADDEN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-280265

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2009, to consider sworn complaint SC-280265. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.0612 of the Election Code and section 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 proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent accepted a political contribution from a corporation. The complaint also alleged that the respondent failed to disclose the principle occupation or job title and full name of the employer for individual contributors in campaign finance reports. The complaint further alleged that the respondent failed to properly disclose the purpose of a political expenditure, and improperly reported political expenditures as reimbursements to staff.

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 67 and held that position during the period at issue.

Acceptance of Corporate Contribution

2. The complaint alleged that the respondent accepted a political contribution from a corporation.

3. The respondent's February 2008 30-day pre-election report disclosed a \$2,500 political contribution from Lube Center Holdings LTD. (LCH).
4. LCH was a limited partnership with a general partner and three limited partners. One of the limited partners had a general partner that was incorporated.
5. The respondent swore that prior to accepting the contribution, he was told by the managing partners that the contribution was not from a corporation and that the partners were individuals.

Failure to Include Occupation/Job Title and Name of Employer

6. The complaint alleged that the respondent failed to properly disclose the principal occupation or job title and employer of contributors in his July 2007 and January 2008 semiannual reports, and February 2008 30-day pre-election report.
7. The respondent's July 2007 semiannual report disclosed one political contribution, totaling \$1,000 from an individual whose contributions equaled or exceeded \$500 or more during the reporting period, and did not disclose the principal occupation or job title and employer of the individual.
8. The respondent's January 2008 semiannual report disclosed 19 political contributions, totaling approximately \$14,250 from individuals whose contributions equaled or exceeded \$500 or more during the reporting period, and did not disclose the principal occupation or job title and employer of the individuals.
9. The respondent's February 2008 30-day pre-election report disclosed two political contributions, totaling \$1,500 from individuals whose contributions equaled or exceeded \$500 or more during the reporting period, and did not disclose the principal occupation or job title and employer of the individuals.
10. The respondent swore that, "I believe I am in compliance with the occupation and employer reporting requirements. I have used "best efforts" as defined by Election Code section 254.0312, to obtain the required information."
11. The respondent provided an example of the respondent's contribution solicitation card, which included a place to provide the required information but did not include a request for the information or include an accurate statement of the law regarding the collection and reporting of the information.
12. The respondent also provided an example of the follow up letter sent by the respondent to contributors to thank contributors for their contribution. The letter requested the contributor's occupation and current employer, and indicated that this information was

required in order to comply with the “Ethics Code.” The letter did not include a request for an additional contribution.

13. The respondent filed corrected reports to include the information at issue.

Failure to Disclose Purpose of Political Expenditure

14. The complaint alleged that the respondent failed to properly disclose the purpose of an expenditure.
15. The respondent’s January 2008 semiannual report disclosed an expenditure of \$800 to the Texas Ethics Commission for the purpose of “Ethics Report.”
16. The expenditure at issue was for the payment of a civil penalty to the commission as the result of a sworn complaint.
17. The respondent filed a corrected report changing the purpose of the expenditure at issue from “Ethics Report” to “Civil Penalty.”

Staff Reimbursements

18. The complaint also alleged that the respondent improperly reported four political expenditures to an individual as reimbursements for “travel expenses.”
19. The respondent’s July 2007 semiannual report disclosed that each of the four political expenditures at issue were for approximately \$730, totaling approximately \$2,900, and were for the purpose of “travel expense.”
20. The respondent swore that the expenditures at issue were for payments made to his chief of staff who had a primary residence in his district and whom he required to be in Austin during the session of the Texas Legislature. The respondent swore that this required her to maintain a secondary residence in Austin and to incur living expenses she would not normally have incurred.
21. The respondent swore that after the staff member found an apartment and estimated what her expenses were going to be, he discussed the expenses with her and told her the campaign would pay for part of her expenses each month during session.
22. The respondent swore that the money was given directly to the staff member, by check made out to her, and was to be used to offset the expenses she incurred during her temporary relocation to Austin for the duration of session.

23. The respondent filed a corrected report to change the purpose of the expenditures at issue from “travel expense” to “reimburse expenses including apartment for chief of staff relocation to Austin for session.”

IV. Findings and Conclusions of Law

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

Acceptance of Corporate Contribution

1. A corporation may not make a political contribution or political expenditure that is not authorized by this subchapter. ELEC. CODE § 253.094.
2. A person may not knowingly make a political contribution in violation of this chapter nor knowingly accept a political contribution the person knows to have been made in violation of this chapter. ELEC. CODE § 253.003.
3. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
4. A partnership that has corporate partners is subject to the same restrictions on political activity that apply to corporations. *See* Ethics Advisory Opinion No. 221 (1994).
5. A political contribution means a campaign contribution or an officeholder contribution. ELEC. CODE § 251.001(5). 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. ELEC. CODE § 251.001(3). A contribution means 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. ELEC. CODE § 251.001(2).
6. In order to show a violation of section 253.003 of the Election Code, the evidence must show that the contributor was a corporation, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
7. The respondent accepted a contribution from LCH.
8. Although LCH itself was not incorporated, a limited partner of LCH had a general partner that was incorporated.

9. However, at the time that he accepted the contribution the respondent was unaware that any of the partners in the chain of ownership of LCH were incorporated.
10. Even if the commission were to find that the political contribution was from an incorporated entity, the respondent did not know that the political contribution was from a corporation. Therefore, there is credible evidence of no violation of section 253.003 of the Election Code.

Failure to Include Occupation/Job Title and Name of Employer

11. Each report by a candidate for statewide office in the executive branch or legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 during the reporting period, the individual's principal occupation or job title, and the full name of the individual's employer. ELEC. CODE § 254.0612.
12. A person required to file a report under chapter 254 of the Election Code is considered to be in compliance with section 254.0612 of the Election Code only if the person shows that the person has used best efforts to obtain, maintain, and report the information required by section 254.0612 of the Election Code. A person is considered to have used best efforts to obtain, maintain, and report that information if the person complies with section 254.0312 of the Election Code. ELEC. CODE § 254.0312(a).
13. In order to meet the "best efforts" standard, each written solicitation for political contributions from an individual must include a clear request for the individual's full name and address, the individual's principal occupation or job title, and the full name of the individual's employer, and an accurate statement of state law regarding the collection and reporting of individual contributor information such as:
 - a. State law requires (certain candidates, officeholders, or political committees, as applicable) must use best efforts to obtain, maintain, and report the name and address, principal occupation or job title, and full name of employer of individuals whose contributions equal or exceed \$500 in a reporting period; or
 - b. To comply with state law, (certain candidates, officeholders, or political committees, as applicable) must use best efforts to obtain, maintain, and report the full name and address, principal occupation or job title, and full name of employer of individuals whose contributions equal or exceed \$500 in a reporting period.ELEC. CODE § 254.0312(b).
14. For each political contribution received from an individual that, when aggregated with all other political contributions received from the individual during the reporting period, equals

- or exceeds \$500 and for which the information required by section 254.0612 of the Election Code is not provided, the person must make at least one oral or written request for the missing information. A request must be made not later than the 30th day after the date the contribution is received, must include a clear and conspicuous statement that complies with subsection (b) of section 254.0312 of the Election Code, and if made orally, must be documented in writing and may not be made in conjunction with a solicitation for an additional political contribution. ELEC. CODE § 254.0312(c).
15. A person who receives information required by section 254.0612 of the Election Code after the filing deadline for the report on which the contribution is reported must include the missing information on the next report the person is required to file under chapter 254 of the Election Code. ELEC. CODE § 254.0312(e).
 16. The respondent failed to include the principal occupation or job title and the full name of the employer for 22 political contributions from individuals who made contributions that in the aggregate equaled or exceeded \$500 during the reporting period.
 17. The failure to provide the information would be excused if the respondent demonstrated that he made “best efforts,” in accordance with section 254.0312 of the Election Code, to acquire the information.
 18. The respondent’s contribution solicitation card had a space for the contributor to provide employer and occupation information, but did not include a clear request for the information or include an accurate statement of the law regarding the collection and reporting of the information.
 19. Thus, although the respondent attempted to obtain the required information, he did not fully comply with the best efforts requirements of section 254.0312 of the Election Code. Therefore, there is credible evidence of violations of section 254.0612 of the Election Code.

Failure to Disclose Purpose of Political Expenditure

20. 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.
21. The respondent disclosed “Ethics Report” as the purpose of an \$800 political expenditure to the Texas Ethics Commission.
22. The political expenditure was for the payment of a civil penalty imposed by the commission as the result of a sworn complaint.

23. “Ethics Report” does not provide an adequate description for the purpose of a political expenditure to pay a civil penalty. 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.

Staff Reimbursements

24. 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.
25. Section 20.62 of the Ethics Commission Rules, which became effective on February 25, 2007, set forth a method for reporting a staff reimbursement.
26. The commission has held that a legislator may use political contributions to supplement the salary of a state worker who works for the legislator. *See* Ethics Advisory Opinion No. 254 (1995).
27. The commission has also determined that a legislator may use political contributions to pay or reimburse expenditures incurred by a staff member who normally resides in Austin to lease and furnish a second residence in the legislator’s district if the legislator has requested that the staff member spend time in the legislator’s district during the legislative session to maintain contact with the legislator’s constituents. *See* Ethics Advisory Opinion No. 359 (1997).
28. The respondent required a staff member to temporarily reside in Austin during the legislative session, and made expenditures to the staff member to reimburse the staff member for expenses that she incurred during her temporary relocation in Austin.
29. The money was given directly to the staff member, and the staff member had the authority to choose how to use the funds for her living expenses. Thus, the evidence indicated that the expenditures were a salary supplement to the staff member.
30. The proper payee for a salary supplement to a staff member is the staff member. The respondent’s reports disclosed the staff member as the payee. Therefore, there is credible evidence of no violation of section 254.031 of the Election Code and section 20.62 of the Ethics Commission Rules with regard to disclosure of the payee.
31. The respondent’s report disclosed the purpose of the expenditures at issue to be “travel expense.”

32. Disclosing “travel expense” does not state the purpose of the expenditure, i.e. salary supplement to staff for living expenses.
33. Although the respondent corrected the expenditures at issue, the respondent did not sufficiently describe the purpose or the category of goods or services received in the original report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules with regard to the disclosure of the purpose for the expenditures at issue.

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 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 further 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 each report by a candidate for statewide office in the executive branch or legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 during the reporting period, the individual’s principal occupation or job title, and the full name of the individual’s employer. 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 \$600 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-280265.

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

Jerry Madden, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director