

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOSEPH M. ADAMS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-280272

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 13, 2008, to consider sworn complaint SC-280272. 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, a law 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 disclose political contributions and political expenditures on his “exceeded \$500 limit” report and 8-day pre-election report for the May 2007 election, and on his July 2007 semiannual report.

III. Facts Supported by Credible Evidence

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

1. The respondent is a school board trustee for the Katy Independent School District. The respondent was a successful incumbent candidate in the May 12, 2007, election.
2. The complaint alleges that the respondent failed to properly disclose political contributions and political expenditures on his “exceeded \$500 limit” report and 8-day pre-election report for the May 2007 election, and on his July 2007 semiannual report. Specifically, the complaint alleges that the respondent failed to disclose approximately \$340 in political contributions, failed to include dates or disclosed improper dates for political contributions and political expenditures, failed to properly disclose loans made to himself, failed to properly disclose total political contributions and total political expenditures, and failed to

- properly disclose total political contributions maintained as of the last day of the reporting periods.
3. The local filing authority provided copies of all documents filed with that office by the respondent since 2007.
 4. On April 3, 2007, the respondent filed a campaign treasurer appointment, in which he elected modified reporting for the 2007 election cycle. On April 13, 2007, the respondent filed an original "exceeded \$500 limit" report for the May 2007 election, covering the period from April 3, 2007, through April 13, 2007. On the report's cover sheet, the respondent disclosed \$500 in total political contributions of \$50 or less, \$100 in total political contributions, zero political expenditures, zero political contributions maintained as of the last day of the reporting period, and zero loans. The respondent disclosed one political contribution of \$100 on Schedule A (used for reporting political contributions other than pledges or loans).
 5. On May 4, 2007, the respondent filed an original 8-day pre-election report for the May 2007 election, covering the period from April 14, 2007, through May 4, 2007. On the report's cover sheet, the respondent disclosed \$800 in total political contributions of \$50 or less, zero in total political contributions, \$36.90 in total political expenditures of \$50 or less, \$1,591 in total political expenditures, zero political contributions maintained as of the last day of the reporting period, and zero loans. The respondent disclosed approximately \$1,600 in political expenditures on Schedule F (used for reporting political expenditures).
 6. On July 12, 2007, the respondent filed an original July 2007 semiannual report, covering the period from May 13, 2007, through July 15, 2007. On the report's cover sheet, the respondent disclosed \$3,730 in total political contributions of \$50 or less, \$3,730 in total political contributions, \$685.98 in total political expenditures of \$50 or less, \$3,844.25 in total political expenditures, zero contributions maintained as of the last day of the reporting period, and zero loans. The respondent disclosed an in-kind contribution of \$80 for "letters, cards, stamps" on Schedule A, but did not include the date of the contribution. The respondent disclosed a political expenditure of \$1,549.06 for campaign signs on Schedule F, but did not include the date of the expenditure. The respondent disclosed five political expenditures made from personal funds totaling approximately \$1,600 on Schedule G (used for reporting political expenditures made from personal funds), and indicated for each expenditure that he intends to seek reimbursement from political contributions.
 7. In response to the complaint, the respondent provided a sworn response in which he denies the allegation that he failed to disclose political contributions. The respondent admits that he omitted the date for the in-kind contribution of \$80 for "letters, cards, stamps" on his July 2007 semiannual report, and swears that the date should be May 15, 2007. The respondent admits that he omitted the date for the political expenditure of \$1,549.06 for campaign signs

- on his July 2007 semiannual report, and swears that the date should be June 1, 2007. The respondent denies the allegation that he failed to properly disclose the dates for additional political expenditures on his July 2007 semiannual report, and swears that “[t]hese are the correct dates that expenditures were paid.” The respondent denies the allegation that he failed to properly disclose loans to himself and swears that he did not make any loans to himself. The respondent admits that he failed to properly disclose total political contributions and total political contributions maintained as of the last day of the reporting period on his “exceeded \$500 limit” report for the May 2007 election. The respondent admits that he failed to properly disclose total political contributions and total political expenditures on his 8-day pre-election report for the May 2007 election. The respondent admits that he failed to properly disclose total political contributions on his July 2007 semiannual report.
8. On September 11, 2008, the respondent provided another sworn statement in which he denies the allegation that he failed to disclose the proper dates for political expenditures on his July 2007 semiannual report. The respondent swears the expenditure dates are listed correctly, and that those are the dates when the exact amount of the expenditures at issue were known.
 9. On March 24, 2008, the respondent filed a corrected “exceeded \$500 limit” report for the May 2007 election. The respondent lists the original period covered as April 13, 2007, through April 13, 2007. The corrected report discloses \$500 in total political contributions of \$50 or less, \$600 in total political contributions, zero political expenditures, \$600 as the total amount of political contributions maintained as of the last day of the reporting period, and zero loans. On September 10, 2008, the respondent filed another correction affidavit for his “exceeded \$500 limit” report for the May 2007 election, in which he lists the original period covered as April 3, 2007, through April 13, 2007.
 10. The respondent filed a corrected 8-day pre-election report for the May 2007 election, covering the period from April 14, 2007, through May 4, 2007. The corrected report is not date stamped by the local filing authority, but the report was sworn to on March 24, 2008. The corrected report discloses \$800 in total political contributions of \$50 or less, \$800 in total political contributions, \$36.90 in total political expenditures of \$50 or less, \$1,627.99 in total political expenditures, zero political contributions maintained as of the last day of the reporting period, and zero loans.
 11. The respondent filed a corrected July 2007 semiannual report, covering the period from May 13, 2007, through July 15, 2007. The corrected report is not date stamped by the local filing authority, but the report was sworn to on March 24, 2008. The corrected report discloses \$3,730 in total political contributions of \$50 or less, \$3,810 in total political contributions, \$685.98 in total political expenditures of \$50 or less, \$3,844.25 in total political expenditures, zero contributions maintained as of the last day of the reporting period, and

zero loans. The corrected report discloses “5/15” as the date of the \$80 in-kind contribution at issue and “6/1” as the date of the \$1,549.06 expenditure at issue.

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 is required to include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
2. Each campaign finance report is required to include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
3. Each campaign finance report is required to 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).
4. Each campaign finance report is required to include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
5. Each campaign finance report is required to include, as of the last day of the reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
6. A political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure, unless the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill. In that case, the expenditure is not considered made until the date the bill is received. ELEC. CODE § 254.035.

7. A candidate who makes political expenditures from the candidate's personal funds may reimburse those personal funds from political contributions in the amount of those expenditures 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 required to be filed under this title that covers the period in 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).
8. 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 those personal funds from political contributions in the amount of the reported loan. ELEC. CODE § 253.0351.
9. If a candidate transfers money from a personal account to an account used for candidate purposes, no reportable transaction has occurred. *See* Ethics Advisory Opinion No. 258 (1995).

Failure to Properly Disclose Political Contributions and Political Expenditures

10. The respondent admits in his sworn response to the complaint that he failed to include the date for an in-kind contribution of \$80 for "letters, cards, stamps" and failed to include the date for a political expenditure of \$1,549.06 for campaign signs on his original July 2007 semiannual report. Although the respondent filed a correction to his July 2007 semiannual report in response to the sworn complaint, this information was not included at the time the report was due. Therefore, there is credible evidence of violations of section 254.031(a)(1) and 254.031(a)(3) of the Election Code.
11. The sworn complaint also includes an allegation that the respondent failed to disclose approximately \$340 in political contributions on the reports at issue. The respondent denies this allegation in his sworn response and there is no evidence that the respondent failed to disclose political contributions. Therefore, with regard to the allegation that the respondent failed to disclose approximately \$340 in political contributions, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code.
12. The sworn complaint also includes an allegation that the respondent failed to disclose the proper dates for political expenditures on his July 2007 semiannual report. The respondent itemized six political expenditures totaling approximately \$3,160 on his July 2007 semiannual report for the purposes of advertising, stamps, printing, and

“telecommunications.” The respondent disclosed a date after the May 12, 2007, election for each of these expenditures. Although the respondent disclosed the political expenditures as having been made after May 12, 2007, the costs of the expenditures related to political advertising were readily determinable before May 12, 2007, the date of the election. Thus, the evidence indicates that the respondent failed to disclose the proper dates for political expenditures on his July 2007 semiannual report. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.

Failure to Properly Disclose Total Political Contributions and Total Political Expenditures

13. The respondent admits in his sworn response that he failed to properly disclose total political contributions on his “exceeded \$500 limit” report for the May 2007 election, 8-day pre-election report for the May 2007 election, and July 2007 semiannual report. The respondent also admits in his sworn response that he failed to properly disclose total political expenditures on his 8-day pre-election report for the May 2007 election. Although the respondent filed corrections to the reports at issue, this information was not properly disclosed when the reports were due. Therefore, there is credible evidence of violations of section 254.031(a)(6) of the Election Code.

Failure to Properly Report Total Political Contributions Maintained as of the Last Day of the Reporting Period

14. The respondent admits in his sworn response and in his correction affidavit to his “exceeded \$500 limit” report for the May 2007 election that he failed to properly disclose the total amount of political contributions maintained as of the last day of the reporting period on that report. Although the respondent filed a correction to his “exceeded \$500 limit” report for the May 2007 election, this information was not properly disclosed when the report was due. (The amount of political contributions maintained cannot necessarily be calculated by looking at the face of a report.) Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.

Failure to Properly Disclose Loans

15. The respondent swears that that he did not make any loans to himself. Further, a transfer of personal funds from a personal account to a campaign account is not a reportable transaction. Instead, sections 253.035(h) and 253.0351 of the Election Code allow a candidate to make political expenditures from personal funds and to seek reimbursement from political contributions in the amount of those expenditures, subject to certain reporting requirements. The complaint did not include any evidence that the respondent failed to properly report loans. Therefore, there is credible evidence of no violation of section 254.031(a)(2) 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 is required to include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions. The respondent acknowledges that each campaign finance report is required to 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 acknowledges that each campaign finance report is required to include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The respondent acknowledges that each campaign finance report is required to include, as of the last day of the reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. 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 \$500 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-280272.

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

Joseph M. Adams, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director