

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ROBERT HUNTER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-280279

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 16, 2009, to consider sworn complaint SC-280279. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035 and 254.031 of the Election Code, and section 20.63 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 converted political contributions to personal use by using political contributions to pay for meals.

III. Facts Supported by Credible Evidence

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

1. The respondent is a former officeholder who, during the period at issue, was the state representative for District 71.
2. The complaint included a list of expenditures from the respondent's July 2005, January 2006, July 2006, and January 2007 semiannual campaign finance reports, which disclose political expenditures for various meals.
3. Allegations relating to 71 political expenditures made or authorized before February 22, 2005 (more than three years before the complaint's postmark date) totaling approximately \$4,380, are not within the commission's sworn complaint jurisdiction and cannot be considered.
4. The respondent's July 2005 semiannual report disclosed the following expenditures within the statute of limitations: 194 political expenditures totaling approximately \$2,980 to various restaurants for the purpose of "Meal" disclosed on Schedule G. 49 expenditures, comprising

- approximately \$832 of the total, were marked to indicate that reimbursement from political contributions was intended.
5. The respondent's January 2006 semiannual report disclosed 254 political expenditures totaling approximately \$4,190 to various restaurants for the purpose of "Meal" on Schedule G, with 30 of those expenditures, comprising approximately \$2,300 of the total, marked to indicate that reimbursement from political contributions was intended.
 6. The respondent's July 2006 semiannual report disclosed 300 political expenditures totaling approximately \$4,620 to various restaurants for the purpose of "Meal" disclosed on Schedule G, 96 expenditures, comprising approximately \$1,600 of the total, were marked to indicate that reimbursement from political contributions was intended.
 7. The respondent's January 2007 semiannual report disclosed 256 political expenditures, totaling approximately \$4,490, to various restaurants for the purpose of "Meal" on Schedule G with 66 of those expenditures, comprising approximately \$1,112 of the total, marked to indicate that reimbursement from political contributions was intended.
 8. The evidence indicates that \$225.32, of which \$186.10 was within the statute of limitations, was for "receipts included by mistake."
 9. The respondent's January 2006, July 2006, and January 2007 semiannual reports, and the respondent's July 2007 semiannual report which is also marked as a final report, do not disclose any expenditures reimbursing the respondent.
 10. The respondent swears that the majority of these expenditures (approximately \$16,090 of the total \$16,280 in expenditures for "Meals") were for reasonable unreimbursed costs expended in connection with his official duties and in meeting with constituents, staff members and supporters in restaurants.
 11. The reports at issue and the final report do not disclose any political expenditure from political contributions to reimburse the respondent for any of the expenditures at issue in this sworn complaint. However, the evidence indicates that the respondent did reimburse himself for each of the expenditures.
 12. On July 12, 2007, the respondent filed a final report.

IV. Findings and Conclusions of Law

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

1. The commission may not consider an allegation that is outside the applicable statute of limitations. The statute of limitations for an allegation that a person converted political

- contributions to personal use or improperly reimbursed political expenditures made with personal funds is three years. Ethics Commission Rules § 12.5.
2. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a). Personal use is a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate or officeholder. *Id.* § 253.035(d).
 3. The commission stated in Ethics Advisory Opinion No. 241 (EAO 241) that it is permissible for a legislator to use political contributions to pay for “meals for state business not reimbursed by the state.” Ethics Advisory Opinion No. 241 (1995). For meals that do not take place in connection with the conduct of state business, the commission stated that it did not interpret the “reasonable housing or household expenses” exception to extend to the cost of meals in Austin in general. *Id.*
 4. 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. ELEC. CODE § 254.031(a)(3).
 5. A candidate who makes political expenditures from the candidate’s personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, and the report 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).
 6. 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 personal funds from political contributions in the amount of the reported loan. ELEC. CODE § 253.0351(a).
 7. A candidate is required to report a campaign expenditure from personal funds. An officeholder is not required to report an officeholder expenditure from personal funds unless he intends to be reimbursed from political contributions. A candidate’s or officeholder’s failure to comply with the disclosure requirements for the use of personal funds may not be cured by filing a corrected report after the report deadline has passed. A candidate or officeholder who has complied with the requirements and whose personal funds have been reimbursed from political contributions must report the amount of the reimbursement as a political expenditure in the report covering the period during which the reimbursement was made. Ethics Commission Rules § 20.63.
 8. The respondent swears that approximately \$16,090 of the total \$16,280 in expenditures at issue were made for political purposes. The available evidence is not sufficient to contradict the respondent’s sworn statement as to these meals.

9. The respondent admits that \$186.10 of the total expenditures were for unqualified expenses. Therefore, there is credible evidence of a violation of section 253.035(a) of the Election Code as to \$186.10 of the total expenditures, and insufficient evidence of a violation as to the remaining \$15,980.
10. The respondent swears that he reimbursed himself for each of the meal expenditures at issue, totaling approximately \$16,280. However, of this total, only \$5,850 of this amount disclosed the respondent's intent to reimburse. Therefore, there is credible evidence of a violation of section 253.035(h) of the Election Code and section 20.63 of the Ethics Commission Rules, as to approximately \$10,430 of the total.
11. Although none of the reports at issue disclose any expenditure for reimbursement to the respondent, the respondent swears that he obtained reimbursement from his campaign and officeholder funds for each of these expenditures. Therefore, there is credible evidence of a violation of section 254.031 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 consent 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 person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. The respondent acknowledges that a candidate who makes political expenditures from the candidate's personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, and the report clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. 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 personal funds from political contributions in the amount of the reported loan. The respondent acknowledges that a campaign finance report must disclose 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 person to whom the payment is made and the date and purpose of the expenditure. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the commission has determined is 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 violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$1,200 civil penalty, contingent upon the respondent reimbursing the amount at issue (\$186) from the respondent's personal funds and filing corrections to the reports at issue. If the respondent does not reimburse the amount at issue, the recommended civil penalty is \$1,400, \$400 of which must be paid from the respondent's personal funds. The respondent will furnish to the commission evidence of the required corrections and payments.

VIII. Order

The commission hereby orders that if the respondents consent to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-280279.

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

Robert Hunter, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director