

TEXAS ETHICS COMMISSION

IN THE MATTER OF
LINDA HARPER-BROWN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-280281

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 13, 2008, to consider sworn complaint SC-280281. 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 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 and failed to properly disclose the purposes of political expenditures.

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 105.
2. The complaint alleges that the respondent converted political contributions to personal use by making approximately \$5,153 in expenditures from contributions for food, supplies, and groceries from 2003 to 2007. The expenditures at issue include, in approximate amounts:
 - \$465 for food and “Austin supplies” in 2003
 - \$381 for “Austin supplies” in 2004
 - \$931 for food and “Food/Supplies Austin” in 2005
 - \$884 for “Austin Apartment” in 2005
 - \$536 for “Food” in 2006

- \$1,956 for food, supplies, and groceries in 2007
3. In response to the allegations, the respondent swears:
- ...[I]n response to the assertion that specified expenditures in the above complaint were converted to personal use, it is my belief that they were made and used for purposes permitted. However, I will correct the reports to include an expanded purpose statement. The supplies, books, gifts and food (snacks, candy, fruit, and beverages) and lodging were used in the performance of office-holder and campaign activities. The food purchased with campaign contributions was not used for my personal consumption. Such food was used in my offices for staff and constituents. Food for personal consumption was purchased with personal funds.
4. The respondent provided a spreadsheet that includes more detailed purposes of the expenditures at issue. She also swears:
- The uses and purposes of these expenditures included meetings and gatherings involving staff, house members and others during issue discussions and visits to the offices. Other expenditures were used for research, campaigning, parades, donations to non-profits, staff gifts, member gifts, visitor gifts, and refreshments. The lodging was used as permitted for office-holder and campaign purposes.
5. On September 30, 2008, the respondent filed corrections to her reports to change the purposes of the expenditures at issue.
6. The complaint also alleges that the respondent failed to properly disclose the purposes of approximately \$10,524 in expenditures. The expenditures at issue include, in approximate amounts:
- \$4,589 for “Airfare,” “Austin Apartment,” “Books,” “Food/Supplies Austin,” “Lodging,” and “Christmas Gifts” in 2005
 - \$3,580 for “Austin Apartment Supplies,” “Books,” “Food,” “Gifts,” “Food/Gifts,” “Lodging,” and “Supplies,” in 2006
 - \$2,355 for “Books,” “Food,” “Groceries,” “Gifts,” “Food/Gifts,” “Easter Gifts Austin,” “Lodging,” “Food/Supplies Austin,” “Supplies Austin” in 2007
7. Of the expenditures at issue, one expenditure of \$16.93 to “Sam’s Club” for “Supplies Austin” was made to a payee to whom the respondent made expenditures totaling \$50 or less in the reporting period. The remaining expenditures were made to payees to whom the respondent made political expenditures totaling more than \$50 in their respective reporting periods.

IV. Findings and Conclusions of Law

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

1. 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).
2. The prohibitions prescribed by Subsections (a) and (b) include the personal use of an asset purchased with the contribution and the personal use of any interest and other income earned on the contribution. *Id.* § 253.035(c).
3. “Personal use” means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. *Id.* § 253.035(d). Personal use does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of rent, utility, and other reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County, but excluding payments prohibited under section 253.038 of the Election Code. *Id.* § 253.035(d)(1).
4. In Ethics Advisory Opinion No. 241, the commission stated that the exception to the definition of personal use for “household expenses” does not extend to the cost of meals in Austin because it is meant to cover costs associated with the necessity of maintaining a second residence in the Austin area and that they are costs that a legislator would not incur if he were not required by his public office to reside in Austin during the legislative session. Ethics Advisory Opinion No. 241 (1995). In contrast, the commission stated, the legislator would incur meal costs whether or not he was required to reside in Austin. *Id.* The commission also stated that a legislator may use political contributions to purchase small gifts such as flags or souvenirs for volunteers or constituents made in connection with campaign or officeholder activities. *Id.*
5. In Ethics Advisory Opinion No. 237, the commission determined that a member of the legislature who does not ordinarily reside in Travis County may use political contributions to lease or purchase furniture for a residence in Travis County. Ethics Advisory Opinion No. 237 (1994).
6. Ethics Commission rules prohibit the commission from considering an allegation if the alleged violation is not a criminal offense and if the allegation is based on facts that occurred more than three years before the date the complaint is filed. Ethics Commission Rules § 12.5(a). There is no criminal offense for a violation of section 253.035 of the Election Code. ELEC. CODE § 253.035. Thus, the commission may not consider allegations relating to expenditures that were made before February 22, 2005 (more than three years before the complaint’s postmark date). Therefore, only the following expenditures at issue are within the commission’s enforcement jurisdiction:

- Approximately \$723 in expenditures for food and “Food/Supplies Austin” in 2005
 - Approximately \$536 in expenditures for “Food” in 2006
 - Approximately \$1,956 in expenditures for food, supplies, and groceries in 2007
7. The respondent’s original reports disclosed approximately \$3,215 in political expenditures for various purposes, including food, supplies, and groceries. The respondent’s spreadsheet, sworn response, and corrections to the reports include sufficient details to indicate that the expenditures at issue were made for goods for the respondent’s district and capitol offices, staff, and other visitors to the offices as well as supplies and fixtures for the respondent’s apartment, goods related to a July 4 parade, and gifts for staff, constituents, legislators, and legislators’ children. The respondent has also sworn that the food purchased with contributions was not used for her personal consumption. Thus, the detailed information provided by the respondent indicates that the expenditures were made in connection with the performance of duties or activities as a candidate for or holder of a public office and were not used for personal or family purposes. Therefore, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code.
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. 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(a). The criminal offense for a violation of section 254.031 of the Election Code is a Class C misdemeanor. ELEC. CODE § 254.041(b). The statute of limitations for a Class C misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Thus, the commission may not consider allegations relating to expenditures that were required to be disclosed in a report due before February 22, 2006 (more than two years before the complaint’s postmark date). Therefore, only the following expenditures at issue are within the commission’s enforcement jurisdiction:
- Approximately \$4,116 in expenditures for food, books, gifts, lodging, and supplies in 2006

- Approximately \$4,312 in expenditures for books, gifts, food, supplies, lodging, and groceries in 2007
11. The complaint alleges that the purposes of approximately \$8,428 in expenditures were not sufficiently disclosed. One expenditure of \$16.93 was not required to be itemized because the respondent made political expenditures totaling \$50 or less to the payee in the reporting period. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code or section 20.61(a) of the Ethics Commission Rules in connection with the expenditure.
 12. Regarding the remaining approximate \$8,411 in expenditures at issue, approximately \$2,566 in expenditures were originally disclosed for “Supplies,” “Supplies/Food,” “Food/Gifts,” or “Gifts” and were made to department stores, grocery stores, a restaurant, and gift stores. The purposes of “supplies” and “gifts” do not sufficiently describe the categories of goods or services that were purchased or how much of the expenditures for “Supplies/Food” or “Food/Gifts” were for supplies, food, or gifts. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules in connection with approximately \$2,566 the expenditures.
 13. Regarding the remaining approximate \$5,845 in expenditures, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code or section 20.61(a) of the Ethics Commission Rules in connection with the expenditures.

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 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 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 \$200 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-280281.

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

Linda Harper-Brown, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director