

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JAMES KEFFER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2805228

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 2009, to consider sworn complaint SC-2805228. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031(a)(3) 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 failed to properly disclose political expenditures made 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 60, who was a successful opposed candidate in the November 2006 and November 2008 general elections.
2. The political expenditures at issue are disclosed in campaign finance reports required from July 2006 through January 2008.
3. The respondent's original July 2006 semiannual report discloses \$35.15 in unitemized political expenditures and \$49,136.63 in total political expenditures. Schedule F (used for itemizing political expenditures) discloses approximately \$1,750 in payments to staff members for "conference travel expenses," "office reimbursement," and "reimbursement." The report discloses a staff member as the payee on each of these entries. The report also discloses approximately \$940 in payments to a staff member for mileage reimbursement.

4. The respondent's original 30-day pre-election report for the November 2006 general election discloses \$32.31 in unitemized political expenditures and \$20,734.03 in total political expenditures. Schedule F discloses approximately \$10,110 in payments to a staff member for "mileage reimbursement and golf tournament reimbursements" and "reimbursement for golf tournament mileage telephone trophies [sic]." The report discloses a staff member as the payee on each of these entries. The report discloses an additional payment of \$433.23 to a staff member for mileage reimbursement.
5. The respondent's original 8-day pre-election report for the November 2006 general election discloses no unitemized political expenditures and \$28,209.05 in total political expenditures. Schedule F discloses approximately \$4,370 in payments to a staff member for "reimbursement of reception expenditures" and "reimbursement for phone and golf tournament expenses." The report discloses a staff member as the payee on each of these entries.
6. The respondent's original January 2007 semiannual report discloses no unitemized political expenditures and \$58,057.57 in total political expenditures. Schedule F discloses approximately \$1,400 in payments to a staff member for "reimbursement of blue ribbon schools and mileage," "reimbursement mileage phone misc," "travel expenditures reimbursement," and "reimbursement phone expenditures." The report discloses a staff member as the payee on each of these entries.
7. The respondent's original July 2007 semiannual report discloses \$96.30 in unitemized political expenditures and \$51,628.54 in total political expenditures. Schedule F discloses approximately \$960 in payments to a staff member for "reimbursement office supplies etc" and "reimbursement." The report discloses a staff member as the payee on each of these entries. The report also discloses a payment of \$294.59 to a staff member for mileage reimbursement.
8. The respondent's original January 2008 semiannual report discloses \$116.48 in unitemized political expenditures and \$102,301.30 in total political expenditures. Schedule F discloses approximately \$18,660 in payments to staff members for "office rembursements [sic]," "reimbursement," and "reimbursement -- golf tournament," of which approximately \$18,240 was paid to the same staff member. The report discloses a staff member as the payee on each of these entries.
9. The original reports at issue disclose a total of approximately \$38,920 in political expenditures for staff reimbursement, of which, approximately \$1,660 is disclosed as for mileage reimbursement specifically.
10. On June 16, 2008, the respondent filed corrections to the reports at issue.

11. The respondent's corrected July 2006 semiannual report discloses \$233.38 in unitemized political expenditures and \$49,136.63 in total political expenditures. Schedule F discloses the vendor of the goods or services, as well as the category of goods or services, that were purchased for approximately \$1,550 in political expenditures that originally listed a staff member as the payee. The report also discloses approximately \$940 in payments to a staff member for travel reimbursement.
12. The respondent's corrected 30-day pre-election report for the November 2006 general election discloses \$49.25 in unitemized political expenditures and \$20,734.03 in total political expenditures. Schedule F discloses the vendor of the goods or services, as well as the category of goods or services, that were purchased for approximately \$9,530 in political expenditures that originally listed a staff member as the payee. The report also discloses approximately \$1,000 in payments to a staff member for travel reimbursement.
13. The respondent's corrected 8-day pre-election report for the November 2006 general election discloses \$17.52 in unitemized political expenditures and \$28,209.05 in total political expenditures. Schedule F discloses the vendor of the goods or services, as well as the category of goods or services, that were purchased for approximately \$3,710 in political expenditures that originally listed a staff member as the payee. The report also discloses a payment of \$639.47 to a staff member for travel reimbursement.
14. The respondent's corrected January 2007 semiannual report discloses \$7 in unitemized political expenditures and \$58,057.19 in total political expenditures. Schedule F discloses the vendor of the goods or services, as well as the category of goods or services, that were purchased for approximately \$710 in political expenditures that originally listed a staff member as the payee. The report also discloses approximately \$690 in payments to a staff member for travel reimbursement.
15. The respondent's corrected July 2007 semiannual report discloses \$171.17 in unitemized political expenditures and \$51,628.54 in total political expenditures. Schedule F discloses the vendor of the goods or services, as well as the category of goods or services, that were purchased for approximately \$890 in political expenditures that originally listed a staff member as the payee. The report also discloses approximately \$290 in payments to a staff member for travel reimbursement.
16. The respondent's corrected January 2008 semiannual report discloses \$330.89 in unitemized political expenditures and \$114,705.74 in total political expenditures. Schedule E (used for itemizing loans) discloses a loan of \$12,404.44 from Trent Thomas. Schedule F discloses the vendor of the goods or services, as well as the category of goods or services, that were purchased for approximately \$15,870 in political expenditures that originally listed a staff member as the payee. Schedule F also discloses approximately \$12,400 in payments to Trent Thomas as reimbursement for various non-mileage expenditures. The report also discloses approximately \$2,530 in payments to staff members for travel reimbursement.

17. In summary, the respondent's corrected reports disclose the vendor of the goods or services that were purchased for approximately \$32,260 in political expenditures that originally listed a staff member as the payee, and approximately \$6,090 in political expenditures to staff members for travel reimbursement specifically.
18. In December 2008, the respondent provided an affidavit in which he swears that, in the corrected reports, political expenditures to two staff members for "reimbursement for travel to district" were for "mileage (gas)."

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(a)(3). 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. For the July 2006 and January 2007 semiannual reports, as well as the 30-day and 8-day pre-election reports for the November 2006 election, Ethics Advisory Opinion No. 450 (2003), describes the proper way to report staff reimbursement. 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 method for reporting staff reimbursement.
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 the respondent's campaign finance reports from July 2006 through January 2008 improperly disclosed approximately \$32,260 in political expenditures as reimbursements to staff members. The respondent failed to disclose the vendor who actually received payment for the goods or services that were purchased. Additionally, the evidence indicates that the respondent failed to describe the categories of goods or services received in exchange for political expenditures during the period at issue. Although the respondent corrected the reports at issue to comply with sections 20.61 and 20.62 of the Ethics Commission Rules, the political expenditures were not properly reported when the reports were originally due. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and sections 20.61 and 20.62 of the Ethics Commission Rules.

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 also 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 the proper way to report reimbursement to staff is in accordance with section 20.62 of the Ethics Commission Rules. 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 \$3,200 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-2805228.

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

James Keffer, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director