

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
JOHN WHITMIRE,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-2807272

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaint SC-2807272. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.0612 of the Election Code, a law 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 converted political contributions to personal use and failed to disclose on his campaign finance reports the principal occupation or job title and the full name of the employer for individuals who contributed more than \$500 during a reporting period.

### III. Facts Supported by Credible Evidence

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

1. The respondent is currently the state senator for District 15.

#### Personal Use of Contributions

2. The complaint alleged that the respondent converted political contributions to personal use.
3. From July 21, 2005, through July 21, 2008, the respondent made the following expenditures that are at issue in the complaint:
  - Approximately \$38,590 to “Houston Astros Baseball,” for “constituent entertainment.”
  - Approximately \$210 to “Memorial Park,” for “constituent entertainment.”
  - Approximately \$3,320 to the “Houston Live Stock Show Rodeo,” for “constituent entertainment.”

- Approximately \$21,710 to the “Houston Texans,” for “constituent entertainment.”
  - Approximately \$33,000 to the “Houston Rockets,” for “constituent entertainment.”
  - Approximately \$460 to the “Macys Wedding Channel,” for a “constituent gift.”
  - \$700 to “UT Mens Athletic Tickets,” for “constituent entertainment.”
  - \$317.17 to “Fisher Florist,” for a “constituent gift.”
  - \$200.56 to “Neiman Marcus,” for a “constituent gift.”
  - \$554.89 to “Tiffany and Co.,” for a “constituent gift.”
  - \$152.42 to “Sirius Radio,” for a “travel expense.”
4. The total amount of the alleged conversion to personal use is approximately \$99,220.
5. The respondent swore, “In the year 2000, I began purchasing season tickets to the three professional sporting teams to increase political visibility and to support the arenas he had passed legislation to help construct. I gave the tickets to charity auctions, supporters and contributors, and constituents.”
6. The respondent swore that, “The items in the sworn complaint listed as constituent gifts are for weddings, birthdays, retirements, baby showers, and other celebratory events. Constituent entertainment is used to sponsor a variety of activities that support my constituents and their work in the community. The Sirius Radio is used to keep abreast of local news particularly when I am traveling to Austin or are in Austin for session where it allows me to listen to the local Houston news.”

### **Employer and Occupation/Job Title**

7. The complaint also alleged that the respondent failed to provide required information on campaign finance reports.
8. The allegations are based on contributions of \$500 or more disclosed in the following reports:
- 30-day pre-election report for the November 2006 election, disclosing \$55,220 in total political contributions and \$39,169.43 in total political expenditures.
    - Did not disclose either a principal occupation/job title or employer for approximately \$27,000 in political contributions.
    - Disclosed only an employer for \$2,000 in political contributions.
  - 8-day pre-election report for the November 2006 election, disclosing \$104,285 in total political contributions and \$28,193.45 in total political expenditures.

- Did not disclose either a principal occupation/job title or employer for approximately \$8,000 in political contributions.
  - Disclosed only an occupation for a \$500 political contribution.
  - Disclosed only an employer for approximately \$13,000 in political contributions.
  - Disclosed the occupation as “retired” for a \$1,000 political contribution without disclosing an employer.
  - January 2007 semiannual report, disclosing \$543,215 in total political contributions and \$92,209.59 in total political expenditures.
    - Did not disclose either a principal occupation/job title or employer for approximately \$81,850 in political contributions.
    - Disclosed only an occupation for a \$500 political contribution.
    - Disclosed only an employer for approximately \$40,150 in political contributions.
    - Disclosed the occupation as “retired” for approximately \$1,500 in political contributions without disclosing an employer.
  - July 2007 semiannual report, disclosing \$45,000 in total political contributions and \$115,048.80 in total political expenditures.
    - Did not disclose either a principal occupation/job title or employer for approximately \$25,000 in political contributions.
    - Disclosed only an occupation for a \$10,000 political contribution.
    - Disclosed only an employer for a \$10,000 political contribution.
  - January 2008 semiannual report, disclosing \$328,031 in total political contributions and \$119,996.88 in total political expenditures.
    - Did not disclose either a principal occupation/job title or employer for approximately \$74,080 in political contributions.
    - Disclosed only an occupation for approximately \$10,500 in political contributions.
    - Disclosed only an employer for approximately \$39,500 in political contributions.
    - Disclosed the occupation as “retired” for approximately \$1,000 in political contributions without disclosing an employer.
9. The respondent has filed corrected reports.

#### **IV. Findings and Conclusions of Law**

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

**Personal Use of Contributions**

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). 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).
2. The complaint alleged that the respondent's expenditures to the Houston Astros, Houston Texans, Houston Rockets, Houston Live Stock Show Rodeo, Memorial Park, and UT Men's Athletics were for personal use. On his campaign finance reports the respondent described the purposes of those expenditures as "constituent entertainment." Since the respondent represents the Houston area it appears that there was at least some candidate or officeholder purpose behind those expenditures. There is no additional evidence that would show that those expenditures primarily furthered an individual or family purpose not connected with the performance of duties or activities as a candidate or officeholder. Therefore, there is insufficient evidence of a violation of section 253.035 of the Election Code with regard to those expenditures.
3. The commission stated in Ethics Advisory Opinion No. 241 (EAO 241) 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. Ethics Advisory Opinion No. 241 (1995).
4. The complaint alleged that the respondent's expenditures to Tiffany and Co., Fisher Florist, Neiman Marcus, and the Macy's Wedding Channel were for personal use. The respondent described the purposes of those expenditures as "constituent gifts," on his campaign finance reports. The respondent swore that the constituent gifts were for weddings, birthdays, retirements, baby showers, and other celebratory events. Although the gifts appear to be more than just small gifts, neither the statutes nor the commission have established that such gifts are always improper, or a value at which such gifts may be improper. There is no additional evidence that would show that those expenditures primarily furthered an individual or family purpose not connected with the performance of duties or activities as a candidate or officeholder. Therefore, there is insufficient evidence of a violation of section 253.035 of the Election Code with regard to those expenditures.
5. The complaint also alleged that the respondent's expenditure to Sirius Radio was for personal use. There is no evidence that would show that those expenditures primarily furthered an individual or family purpose not connected with the performance of duties or activities as a candidate or officeholder. Therefore, there is insufficient evidence of a violation of section 253.035 of the Election Code with regard to those expenditures.

**Failure to Report Employer and Occupation/Job Title**

6. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
7. In addition to the contents required by section 254.031 of the Election Code, each report by a candidate for a statewide office in the executive branch or a 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 and that are accepted 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.
8. The respondent failed to include both the principal occupation/job title and employer information for approximately \$215,930 in political contributions of \$500 or more on the reports at issue. The respondent also disclosed only an occupation/job title for approximately \$21,500 in political contributions of \$500 or more on the reports at issue. The respondent also disclosed only an employer for approximately \$104,650 in political contributions of \$500 or more on the reports at issue. Therefore, there is credible evidence of violations of section 254.0612 of the Election Code with regard to those contributions.
9. The respondent disclosed "retired" as the employer for approximately \$3,500 in political contributions of \$500 or more on the reports at issue. The respondent left a blank space for the occupation of those contributors. It is reasonable to conclude that those contributors did not have an occupation since they were retired. Therefore, there is credible evidence of no violation of section 254.0612 of the Election Code with regard to those contributions.

**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 in addition to the contents required by section 254.031 of the Election Code, each report by a candidate for a statewide office in the executive branch or a 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 and

that are accepted 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 \$3,400 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-2807272.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
John Whitmire, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director