

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOAQUIN CASTRO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2807283

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 6, 2009, to consider sworn complaint SC-2807283. 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 section 20.63 of the Ethics Commission Rules, a law and rule 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 failed to properly report, and improperly reimbursed, political expenditures made from personal funds. The complaint also alleged that the respondent improperly reported political expenditures as reimbursements to staff.

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 125.
2. The respondent filed an affidavit in response to the sworn complaint in which he numbered each item at issue and responded accordingly.
3. The respondent's affidavit asserts that the sworn complaint is not properly filed because the affidavit that states the source and basis of the complainant's information refers to an attachment instead of detailing the information on the affidavit. Therefore, the respondent asserts, the affidavit is deficient, making the complaint invalid.
4. The allegation that the respondent failed to properly report and improperly reimbursed political expenditures made from personal funds is based on the following reports and expenditures disclosed on Schedule G (used to disclose political expenditures made from

personal funds) (the numbering of the expenditures included in the respondent's response has been included):

July 2006 semiannual campaign finance report

Expenditures to the respondent disclosed on Schedule G:

1. 05/26/2006 Fundraising Expense-FedEx	\$ 41.06
2. 06/08/2006 Flight to Democratic Convention	\$ 203.60
3. 06/13/2006 Conference Flight Reschedule	\$ 86.00
4. 06/15/2006 Conference meals	\$ 56.40
5. 06/22/2006 Internet Usage	\$ 25.59
6. 06/23/2006 Internet Usage	\$ 10.90
Expenditures total:	\$ 423.55

30-day pre-election report for the 2006 general election

Expenditure to the respondent disclosed on Schedule G:

9. 07/22/2006 campaign Lunch for Volunteers	\$ 165.92
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5. The total amount of expenditures at issue is approximately: \$ 590
6. The respondent did not check the box to indicate that reimbursement from political contributions was intended for any of these expenditures.
7. The respondent's affidavit asserted that, "Expenditure #1 ('Fundraising Expense – FedEx') was a campaign expenditure." The respondent believed that the entry complied with then existing law.
8. The respondent's affidavit stated in part, "Expenditures #2-6 were unreimbursed officeholder expenditures that did not need to be reported. . . . Also, Respondent has not been reimbursed from campaign funds for any of those expenses."
9. The respondent's affidavit stated in part, "Expenditure #9 was a campaign expenditure made by Respondent. It was a lunch at the Olive Garden on NW Loop 410 in San Antonio for several campaign volunteers."
10. Regarding the allegation that the respondent improperly reported a \$165.92 political expenditure made from personal funds, the respondent filed a corrected 30-day pre-election report disclosing the name and address of the vendor who received payment.
11. The complaint alleged that the respondent failed to properly disclose in his July 2007 semiannual report political expenditures made to reimburse campaign or office staff. The allegation is based on the following expenditures that were disclosed by the respondent:

30-day pre-election report for the 2006 general election

Expenditures disclosed on Schedule F:	
7. 09/10/2006 Castro, Julian (Mrs.) / Reimb. For Decorations	\$ 77.93
8. 08/02/2006 Soto, [Victor] (Mr.) / Reimbursement	<u>\$ 100.00</u>
	\$ 177.93

8-day pre-election report for the 2006 general election

Expenditures disclosed on Schedule F:	
10. 10/12/2006 Arreola, Alvaro, Mr. / Reimb. For Supplies	\$ 84.62
11. 10/05/2006 Carrizales, Cynthia, Ms./ Reimb. For Food and Misc Expenses	\$ 336.57
12. 10/05/2006 Chapa, Cynthia, Mrs. Reimb. For Gas\n	<u>\$ 90.00</u>
	\$ 511.19

January 2007 semiannual report

Expenditures disclosed on Schedule F:	
13. 12/06/2006 Carrizales, Cynthia (Ms.)/ Reimb. For Food and Misc Expenses	\$ 127.00
14. 12/12/2006 Castro, Maria del Rosario (Mrs.) / reimbursement for [poll] workers	<u>\$2,365.53</u>
	\$2,492.53

January 2008 semiannual report

Expenditures disclosed on Schedule F:	
15. 08/23/2007 Carrizales, Cynthia (Ms.) / Town Hall Meeting\n \n	\$ 153.24
16. 12/18/2007 Carrizales, Cynthia (Ms.) / Office Expense\n \n	<u>\$ 200.96</u>
	\$ 354.20

12. The total amount of expenditures at issue is approximately: \$3,540
13. The respondent's affidavit stated in part, "Expenditure #7 was a \$77.93 reimbursement to Mrs. Julian Castro for decorations for a campaign event. . . . Respondent believes that the

- expenditure was consistent with then-existing state law.”
14. The respondent’s affidavit stated in part, “Expenditure #8 contains an error in the “Purpose of Payment” box. It incorrectly lists this expenditure as a reimbursement; it was not. Instead, it was a payment of \$100 for sign construction and placement.”
 15. The respondent’s affidavit stated in part, “Expenditure #10 was a reimbursement for supplies to Alvaro Arreola, campaign manager for Respondent’s 2006 re-election campaign. Part of Mr. Arreola’s duties included overseeing blockwalking, event planning and other campaign functions. In that role, he purchased supplies for the campaign.”
 16. The respondent’s affidavit stated in part “Expenditures #11, 12, 13, 15 and 16 to Cynthia Carrizales and Cynthia Chapa, respectively, were reimbursements to state staff – not campaign staff – that involved officeholder-related expenditures and not campaign expenditures. The purpose listed for each is consistent with an officeholder function.”
 17. Regarding the allegation that the respondent improperly reported political expenditures as reimbursements to staff, the respondent filed corrected reports for the reports at issue. The respondent disclosed the names and addresses of the vendors who received payment from the individuals.

IV. Findings and Conclusions of Law

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

1. The commission finds that the sworn complaint was properly filed because it is sufficient to refer to an attachment to show the source and basis of a complainant’s information and belief.
2. 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).
3. An officeholder is not required to report officeholder expenditures made from the officeholder’s personal funds, except as provided by section 253.035(h) of the Election Code. ELEC. CODE § 254.092.
4. A candidate or officeholder who makes political expenditures from the candidate’s or officeholder’s personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only 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 covering the period during 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).
5. A candidate is required to report a campaign expenditure from personal funds. Ethics Commission Rules § 20.63(a).
 6. Ethics Commission Rule § 20.63(a) was adopted on December 31, 1993, and the reimbursement provision in section 253.035(h) of the Election Code has been in effect since January 1992.
 7. The respondent disclosed himself as the payee on Schedule G for six political expenditures on his July 2006 semiannual report, and for one expenditure on his 30-day pre-election report for the 2006 general election.
 8. The respondent swore, "Expenditures #2 - 6 were unreimbursed officeholder expenditures that did not need to be reported." There is no evidence to refute the respondent's assertion. Although officeholder expenditures that are made from political contributions must be disclosed, the officeholder expenditures at issue were made from personal funds. Therefore, there is credible evidence that the respondent did not violate section 254.031 of the Election Code by disclosing the expenditures in the manner in which they were disclosed.
 9. Expenditure #1 for \$41.06 and Expenditure #9 for \$165.92 are campaign expenditures from personal funds. Therefore, the respondent was required to disclose the expenditures. The respondent was not required to itemize Expenditure #1 because he did not intend to seek reimbursement for the expenditure and the amount did not exceed \$50. Including the amount on Schedule G of the July 2006 semiannual report without disclosing the actual payee complied with the requirement to report the expenditure. The expenditures listed on Schedule G are included in the total political expenditures amount on the report's totals page. The respondent was required to itemize Expenditure #9 on his October 2006 30-day pre-election report. The respondent did not properly disclose the actual payee information for Expenditure #9. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.63(a) of the Ethics Commission Rules as to that expenditure. The respondent did not reimburse himself for that expenditure. Therefore, there is credible evidence that the respondent did not violate section 253.035(h) of the Election Code as to that expenditure.
 10. In Ethics Advisory Opinion No. 450 (2003) (EAO 450), the commission stated that in a situation in which a member of a candidate's campaign staff makes a campaign expenditure on behalf of the candidate and later receives reimbursement from the candidate, the candidate is required to 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 campaign worker made the expenditure, and explaining in the "purpose" section that

a campaign worker made the expenditure from personal funds and that the candidate subsequently reimbursed the campaign worker. Ethics Advisory Opinion No. 450 (2003).¹

11. Individuals made political expenditures totaling approximately \$3,540 on the respondent's behalf and were subsequently reimbursed by the respondent. The respondent's reports disclosed the name and address of the individuals who were reimbursed by the respondent without disclosing any information about the payees of the expenditures made by the individuals. The respondent has corrected the reports at issue to show the actual payees. Although the respondent asserted that EAO 450 does not apply in this case, even without EAO 450 the respondent would have been required to comply with the reporting requirements that applied to reimbursements before the adoption of EAO 450. Prior to the adoption of EAO 450 the proper way to report a political expenditure made on behalf of a candidate or officeholder with the intent that it be reimbursed, was to disclose those political expenditures as loans, and disclose the vendor payee who received payment and then report the expenditure by the candidate or officeholder to repay the individual. The respondent did not report the expenditures as loans from the individuals making the expenditures on his behalf nor did he report the expenditures as authorized by EAO 450 (or Ethics Commission Rule § 20.62 for the January 2008 semiannual report.) Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) 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 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 acknowledges that the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules.

The respondent also acknowledges that a candidate is required to report a campaign expenditure from personal funds.

¹ Ethics Commission Rule § 20.62 adopted in February 2007 and amended in October 2007, sets out the proper method for reporting staff reimbursements for reports due after the effective date of the rule.

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 \$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-2807283.

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

Joaquin Castro, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director