

TEXAS ETHICS COMMISSION

IN THE MATTER OF

YVONNE DAVIS,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2807284

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaint SC-2807284. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035(h) and 254.031(a)(3) of the Election Code, and sections 20.62 and 20.63 of the Ethics Commission Rules, and credible evidence of a technical or *de minimis* violation of section 571.1242 of the Government Code and section § 12.52 of the Ethics Commission Rules, laws 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 disclose political expenditures made as reimbursements to staff and other individuals, and failed to properly disclose, and improperly reimbursed, political expenditures made from personal funds.

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 111 and was a successful opposed candidate in the November 2006 and November 2008 general elections.
2. The complaint alleged that the respondent disclosed approximately \$1,820 in political expenditures as reimbursements to staff, other individuals or to herself without disclosing what was purchased, who was paid, or when it was purchased, and failed to properly disclose, and improperly reimbursed, political expenditures made from personal funds. The allegations are based on the respondent's July 2006, July 2007, and January 2008 semiannual reports.

3. The respondent's July 2006 semiannual report disclosed the following:
 - \$2,857 in total political contributions of \$50 or less
 - \$31,924 in total political contributions
 - \$50 in total political expenditures of \$50 or less
 - \$26,994.02 in total political expenditures
 - \$12,601.85 in total political contributions maintained as of the last day of the reporting period
 - \$0.00 in the field for outstanding loans
4. The respondent's July 2007 semiannual report disclosed the following:
 - \$50 in total political contributions of \$50 or less
 - \$550 in total political contributions
 - \$50 in total political expenditures of \$50 or less
 - \$21,690.44 in total political expenditures
 - \$12,448.27 in total political contributions maintained as of the last day of the reporting period
 - \$0.00 in the field for outstanding loans
5. The respondent's January 2008 semiannual report disclosed the following:
 - \$1,250 in total political contributions of \$50 or less
 - \$46,946.47 in total political contributions
 - \$149.90 in total political expenditures of \$50 or less
 - \$43,400 in total political expenditures
 - \$8,487.04 in total political contributions maintained as of the last day of the reporting period
 - \$0.00 in the field for outstanding loans
6. On August 26, 2008, the respondent filed corrections to the reports at issue. In the correction affidavit for each correction, the respondent swears:

The original report was filed in good faith and with the belief that the reimbursements of expenditures made in relations to the campaign or office holder were itemized in compliance with the rules and laws administered by the Ethics Commission. The corrective report brings the report in compliance with the Election Code and the appropriate rules of the Ethics Commission.

Improper Disclosure of Political Expenditures from Personal Funds

7. Out of 43 total political expenditures that the respondent disclosed on her July 2006 semiannual report, seven political expenditures totaling approximately \$880 were disclosed on Schedule G (used for reporting political expenditures made from personal funds) and did not indicate that reimbursement was intended. For each of the following expenditures at issue, the respondent disclosed herself as the payee:
 - \$170.80 on February 17, 2006, for “Signs for Hat & Gloves”
 - \$138.50 on February 17, 2006, for “Expenditures for Health/Wellness Forum”
 - \$32.14 on February 17, 2006, for “Resolution framing”
 - \$387.27 on February 17, 2006, for “Hat & Gloves fundraiser”
 - \$80.39 on February 28, 2006, for “Donation”
 - \$26.68 on March 3, 2006, for “Framing”
 - \$45.91 on March 7, 2006, for “Donation”
8. The respondent filed a corrected July 2006 semiannual report to remove herself as the payee for the expenditures at issue and disclose the vendors of the goods or services, as well as the category of goods or services. The corrected expenditures disclosed the following:
 - \$170.80 on February 17, 2006, to “Fast Signs” for “Signs for Hat & Gloves Event”
 - \$138.50 on February 17, 2006, to “Walmart” for “Expenditures for Health/Wellness Forum”
 - \$32.14 on February 17, 2006, to “Hobby Lobby” for “Resolution framing”
 - \$387.27 on February 17, 2006, to “M&M Special Events Company” for “Hat & Gloves fundraiser”
 - \$80.39 on February 28, 2006, to “Albertsons” for “Refreshment – Donation Kati Hubner Campaign”
 - \$26.68 on March 3, 2006, to “Hobby Lobby” for “Framing”
 - \$45.91 on March 7, 2006, to “Albertson” for “Donation – Food for Election Day workers”
9. On her January 2008 semiannual report, the respondent disclosed on Schedule F (used for reporting political expenditures made from political contributions) a \$729.55 political expenditure to herself on November 29, 2007, for, “Reimbursement for fundraising event gifts.”
10. The respondent filed a corrected January 2008 semiannual report to remove herself as the payee for the expenditure at issue and disclosed the vendor of the goods or services as “Best Buy.” She also corrected the category of goods or services to disclose that the expenditure was for, “Purchase fundraising event gifts.”

Improper Reporting of Political Expenditures as Reimbursements

11. Out of 24 total political expenditures that the respondent disclosed on Schedule F (used to disclose political expenditures from political contributions) of her July 2007 semiannual report, two political expenditures totaling approximately \$210 disclosed her staff member's name and address as the payee and "Reimbursement" as the purpose description for each expenditure.
12. The respondent filed a corrected July 2007 semiannual report to remove her staff members as the payees for the expenditures at issue and disclose the vendors of the goods or services, as well as the category of goods or services. The corrected purpose description for each expenditure at issue discloses that the expenditures were "For staff [staffer name] to perform duties at the Capitol during the opening of the session."

Failure to Respond to Notice of a Sworn Complaint

13. On July 18, 2008, the commission mailed notice of this sworn complaint to the respondent by certified mail. United States Postal Service records show that the respondent received the notice of this sworn complaint on August 5, 2008.
14. On September 4, 2008, commission staff spoke with the respondent by telephone and informed the respondent that the deadline to respond to the complaint was September 11, 2008 (25 business days from the date the respondent received the notice). The respondent stated that she had already corrected the reports to address the allegations in this sworn complaint. Commission staff informed the respondent that she should respond with an affidavit by September 11, 2008, or there would be an additional violation for the late response. The respondent stated that she would do so and wanted to get this done that day.
15. Commission staff spoke with the respondent by telephone on January 23, 2009, and January 29, 2009, and informed the respondent that the commission had not received a response to this sworn complaint. The respondent said she thought she had filed a response and would send via facsimile the response that she had in her files. On January 29, 2009, the respondent sent to the commission via facsimile a copy of the quarterly notice letter from the commission, a copy of the sworn complaint, and copies of the corrected reports previously filed on August 26, 2008.
16. The affidavit section of the corrected reports indicates that, "The original report was filed in good faith and with the belief that the reimbursements of expenditures made in relations to the campaign or office holder were itemized in compliance with the rules and laws administered by the Ethics Commission. The corrective report brings the report in compliance with the Election Code and the appropriate rules of the Ethics Commission." The commission has not received any other written response.

IV. Findings and Conclusions of Law

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

Improper Disclosure of Political Expenditures from Personal Funds

1. A candidate is required to disclose a campaign expenditure from personal funds. Ethics Commission Rules § 20.63(a). A candidate or officeholder who makes political expenditures from his or her 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 that covers 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); Ethics Commission Rules § 20.63(d).
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. The expenditures at issue on the July 2006 semiannual report include approximately \$880 that the respondent originally reported as paid to herself from personal funds for signs, framing, a health/wellness forum, a fundraiser, refreshments for a candidate's campaign, and food for election day workers.
4. The expenditures at issue on the July 2006 semiannual report were reported as political expenditures made from personal funds with no indication that reimbursement was intended.
5. Although the respondent corrected the expenditures at issue to disclose the vendor names and addresses of the actual payees and to clarify the purpose descriptions of the expenditures, the respondent did not properly disclose the expenditures at issue when the reports were originally due.
6. The evidence indicated that the respondent's January 2008 semiannual report improperly disclosed a political expenditure of \$729.55 as a reimbursement to herself. The respondent failed to disclose the person who actually received payment for the goods or services that were purchased. The respondent corrected the political expenditure at issue to disclose the person who received the payment and to replace the original purpose description of the expenditure, "Reimbursement for fundraising event gifts" with, "Purchase fundraising event gifts." The respondent did not provide any response to the allegation that she improperly reimbursed herself from political expenditures.

7. Although the respondent corrected the expenditures at issue to disclose the actual payees, the political expenditures were not properly reported when the reports were originally filed. 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 by failing to properly disclose approximately \$880 in political expenditures from personal funds, and credible evidence that the respondent violated section 254.035(h) of the Election Code and section 20.63(d) of the Ethics Commission Rules, by failing to properly disclose, and improperly reimbursing, the political expenditure of \$729.55.

Improper Reporting of Political Expenditures as Reimbursements

8. 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).
9. Ethics Commission Rule § 20.62 currently states that political expenditures made out of personal funds by a staff member of a candidate with the intent to seek reimbursement from the candidate that in the aggregate do not exceed \$5,000 (\$500 until October 2007)¹ 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.

Ethics Commission Rule § 20.62 also states 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 a candidate with the intent to seek reimbursement from the candidate must be reported as follows:

¹ Ethics Commission Rule § 20.62 originally became effective on February 25, 2007. On October 26, 2007, the rule was amended to raise the threshold for reporting staff reimbursements as a loan from \$500 to \$5,000. The change became effective on November 18, 2007.

- (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 candidate;
 - (2) The expenditure made by the staff member is reported as a political expenditure by the candidate; and
 - (3) The reimbursement to the staff member to repay the loan is reported as a political expenditure by the candidate.
10. The \$500 threshold in the former version of Ethics Commission Rule § 20.62 applies to the July 2007 semiannual report.
 11. The evidence indicated that the respondent's July 2007 semiannual report improperly disclosed approximately \$210 in political expenditures as reimbursements to staff members. The respondent failed to disclose the person who actually received payment for the goods or services that were purchased.
 12. Although the respondent corrected the report at issue to disclose the actual payees, 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 section 20.62 of the Ethics Commission Rules.

Failure to Respond to Notice of a Sworn Complaint

13. A respondent must respond to the notice of a Category Two violation not later than the 25th business day after the date the respondent receives the notice. Failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. GOV'T CODE § 571.1242(c). The response must be in writing, admit or deny the allegations set forth in the complaint, and be signed by the respondent. Ethics Commission Rules § 12.52.
14. The United States Postal Service records show that the notice of this complaint was delivered on August 5, 2008.
15. The notice stated that the respondent was required to respond within 25 business days from receipt of the notice. A response was due by September 11, 2008.
16. The respondent failed to timely respond to the sworn complaint. However, she corrected the reports at issue before the response deadline and submitted them as a response on January 29, 2009. Nevertheless, that response was not timely and did not comply with section 12.52 of the Ethics Commission Rules. Therefore, there is credible evidence of a technical or *de minimis* violation of section 571.1242 of the Government Code and section 12.52 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 a candidate is required to disclose a campaign expenditure from personal funds. The respondent also acknowledges that a candidate or officeholder who makes political expenditures from his or her 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 that covers 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. The respondent further 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 proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules. The respondent further acknowledges that a respondent must respond to the notice of a Category Two violation not later than the 25th business day after the date the respondent receives the notice. 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 \$500 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-2807284.

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

Yvonne Davis, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director