

TEXAS ETHICS COMMISSION

IN THE MATTER OF
DONNIE DIPPEL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2809318

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 11, 2010, to consider sworn complaint SC-2809318. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.032, 254.031(a)(3), and 254.0612 of the Election Code and sections 20.29 and 20.63(a) of the Ethics Commission Rules, and credible evidence of a technical or *de minimis* violation of sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63(a) 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 the total amount of political contributions maintained on his 30-day and 8-day pre-election reports for the March 2008 primary election and July 2008 semiannual report, failed to include on his 8-day pre-election report for the March 2008 primary election the principal occupation or job title and the full name of the employer for individuals who contributed \$500 or more during the reporting period, failed to properly disclose, and improperly reimbursed, political expenditures made from personal funds for the periods covered by the respondent's 30-day and 8-day pre-election reports for the March 2008 primary election and July 2008 semiannual report, and failed to include required information for an out-of-state political committee on his 8-day pre-election report for the March 2008 primary election.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for state representative for District 17 in the November 2008 general election.

2. On February 4, 2008, the respondent filed a 30-day pre-election report for the March 2008 primary election that disclosed \$50 in total unitemized political contributions, \$10,169.61 in total political contributions, \$80 in total unitemized political expenditures, \$561.63 in total political expenditures, and \$4,602.38 in total political contributions maintained as of the last day of the reporting period. Schedule G (used for reporting political expenditures made from personal funds) disclosed a political expenditure of \$81.19 to the respondent for “Campaign pictures at Boyd Photography,” and nine political expenditures totaling approximately \$400 to the respondent for travel with the mileage entered for each entry, and indicated that reimbursement was intended.
3. On December 29, 2009, the respondent filed a corrected 30-day pre-election report for the March 2008 primary election. Schedule G of the corrected report disclosed Boyd Photography as the payee for the \$81.19 political expenditure from personal funds.
4. On February 25, 2008, the respondent filed an 8-day pre-election report for the March 2008 primary election that disclosed \$55 in total unitemized political contributions, \$17,704 in total political contributions, \$134 in total unitemized political expenditures, \$24,994.18 in total political expenditures, and \$7,941.97 in total political contributions maintained as of the last day of the reporting period. Schedule A (used for reporting political contributions) disclosed that the respondent failed to include the principal occupation or job title and the full name of the employer for six individuals who contributed \$500 or more during the reporting period (totaling approximately \$6,500). Schedule A also disclosed a political contribution of \$499.99 from “Southern Crop Production Assn. PAC#2,” and did not disclose a federal PAC identification number for that contribution. The report disclosed the political committee’s name, address, and the date and amount of the political contribution, but did not include any other information about the committee. Schedule F (used for reporting political expenditures) disclosed two political expenditures totaling approximately \$130 to the respondent as reimbursements for “Texas Democratic Party Dinner” and “Bastrop Advertiser.”¹ Schedule G disclosed a political expenditure of \$237 to the respondent for “Office Rent,” but did not disclose that reimbursement was intended. Schedule G also disclosed a political expenditure of \$1,547.32 to the respondent for “3064 miles travel @ \$0.505/ mile” and indicated that reimbursement was intended.
5. On March 13, 2008, the respondent filed a corrected 8-day pre-election report for the March 2008 primary election that disclosed \$55 in total unitemized political contributions, \$26,346 in total political contributions, \$134 in total unitemized political expenditures, \$16,352.18 in total political expenditures, and \$7,941.97 in total political contributions maintained as of the last day of the reporting period. The correction affidavit that accompanied the report disclosed that an in-kind contribution was mistakenly reported as a political expenditure on the original report and subsequently moved to Schedule A. The correction to the report did not involve the sworn complaint allegations.

¹ Previous campaign finance reports filed by the respondent did not disclose political expenditures from personal funds for these purposes.

6. On December 29, 2009, the respondent filed a second corrected 8-day pre-election report for the March 2008 primary election. Schedule A of the corrected report added the principal occupation or job title and the full name of the employer for three individuals who contributed \$500 or more during the reporting period. The respondent also moved two expenditures from Schedule F to Schedule G. Schedule G disclosed the Bastrop Advertiser and the Texas Democratic Party as the payees and did not disclose that the respondent intended to seek reimbursement from political contributions for the expenditures. The respondent submitted with the corrected report a copy of the statement of organization for Southern Crop Production Association PAC #2, which indicated it was filed with the North Carolina State Board of Elections. The statement of organization is not certified by an officer of the out-of-state political committee and does not contain contributor information, but includes information about the committee's purpose, the committee's treasurer, and a connected organization or affiliated committee.
7. On December 30, 2009, the respondent filed a third corrected 8-day pre-election report for the March 2008 primary election. Schedule A of the corrected report added the principal occupation or job title and the full name of the employer for three individuals who contributed \$500 or more during the reporting period.
8. On July 15, 2008, the respondent filed a July 2008 semiannual report that disclosed \$1,835.62 in total unitemized political contributions, \$43,751.62 in total political contributions, \$25 in total unitemized political expenditures, \$23,189.09 in total political expenditures, and \$29,161.32 in total political contributions maintained as of the last day of the reporting period. Schedule G disclosed a political expenditure of \$1,504.90 to the respondent for "Milage [sic] expenses for campaign work" and indicated that reimbursement was intended.
9. In response to the sworn complaint allegations, the respondent submitted an affidavit in which he denied that he failed to properly report the total amount of political contributions maintained as of the last day of the reporting periods at issue. The respondent also swore that most of the reported expenditures were for mileage incurred in campaign travel. The respondent did not address the other political expenditures at issue which named the respondent as the payee. The respondent swore that he made oral requests for job title and employer information for individuals who contributed \$500 or more. The respondent provided no other information showing that best efforts were used, and the respondent's attorney stated that the respondent had no written documentation of using best efforts, to obtain the required information. The respondent admitted that he failed to disclose the out-of-state PAC identification number for a contribution from the Southern Crop Production Association PAC #2.
10. Reports filed by the respondent disclosed approximately \$14,530 in in-kind political contributions from January 1, 2008, through June 30, 2008.

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. Each report by a candidate must include, as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
2. The evidence did not show that the respondent failed to properly report the total amount of political contributions maintained as of the last day of the reporting periods. In addition, reports filed by the respondent disclosed approximately \$14,530 in in-kind political contributions from January 1, 2008, through June 30, 2008. In-kind political contributions should not be included in the total for political contributions maintained. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code.

Employer and Occupation Information

3. 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. *Id.* § 254.0612.
4. Individual means a human being who has been born and is alive. Ethics Commission Rules § 6.1(9).
5. A person required to file a report under this chapter is considered to be in compliance with section 254.0612, 254.0912, or 254.1212 of the Election Code only if the person or the person's campaign treasurer shows that the person has used best efforts to obtain, maintain, and report the information required by those sections. A person is considered to have used best efforts to obtain, maintain, and report that information if the person or the person's campaign treasurer complies with this section. ELEC. CODE § 254.0312(a).
6. Each written solicitation for political contributions from an individual must include, in pertinent part, a clear request for the individual's full name and address, the individual's principal occupation or job title, and the full name of the individual's employer, and an accurate statement of state law regarding the collection and reporting of individual contributor information. *Id.* § 254.0312(b).

7. For each political contribution received from an individual that, when aggregated with all other political contributions received from the individual during the reporting period, equals or exceeds \$500 and for which the information required by section 254.0612, 254.0912, or 254.1212 of the Election Code is not provided, the person must make at least one oral or written request for the missing information. A request under this subsection: (1) must be made not later than the 30th day after the date the contribution is received; (2) must include a clear and conspicuous statement that complies with subsection (b); (3) if made orally, must be documented in writing; and (4) may not be made in conjunction with a solicitation for an additional political contribution. *Id.* § 254.0312(c).
8. The respondent failed to disclose the principal occupation or job title and the full name of the employer for six individuals who contributed \$500 or more during a reporting period (totaling approximately \$6,500). The respondent did not use best efforts to obtain the required information. Although the respondent filed corrected reports in December 2009 to disclose the principal occupation or job title and the full name of the employer for the six individuals at issue, the information was not included when the respondent's 8-day pre-election report for the March 2008 primary election was due. Therefore, there is credible evidence of violations of section 254.0612 of the Election Code.

Political Expenditures from Personal Funds

9. Each report by a candidate 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. *Id.* § 254.031(a)(3).
10. A candidate who makes political expenditures from the candidate'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 required to be filed under this title that covers the period in 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. A candidate is required to report a campaign expenditure from personal funds. Ethics Commission Rules § 20.63(a). A candidate's failure to comply with the requirement that a political expenditure from personal funds be properly disclosed during the reporting period in which the expenditure is made and indicate that reimbursement is intended may not be cured by filing a corrected report after the report deadline has passed. *Id.* § 20.63(e).

11. In the alternative, a candidate who makes political expenditures from the candidate's personal funds may report the amount expended as a loan and may reimburse those personal funds from political contributions in the amount of the reported loan. ELEC. CODE § 253.0351.
12. In Ethics Advisory Opinion No. 347 (EAO 347), the commission stated that if a candidate or officeholder uses a personal car for political purposes, reporting is required only if and when the candidate or officeholder pays himself reimbursement from political contributions. Ethics Advisory Opinion No. 347 (1996).
13. The political expenditures from personal funds relating to mileage were for mileage incurred by the respondent for driving his personal vehicle during the campaign. Based on EAO 347, the respondent was not required to report the use of his personal vehicle as a political expenditure from personal funds. Therefore, as to the reported political expenditures from personal funds relating to the respondent's use of his personal vehicle, there is credible evidence of no violation of sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules.
14. The respondent's original 30-day pre-election report for the March 2008 primary election failed to properly disclose the payee for a political expenditure of \$81.19 for campaign pictures. However, the entry on the "purpose of expenditure" section on Schedule G appeared to disclose the payee and purpose of the expenditure, and the fact that reimbursement was intended. Additionally, on December 29, 2009, the respondent filed a corrected report to properly disclose the payee. Therefore, there is credible evidence of a technical or *de minimis* violation of sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63(a) of the Ethics Commission Rules with respect to this political expenditure.
15. The respondent's original 8-day pre-election report for the March 2008 primary election disclosed on Schedule F two political expenditures totaling approximately \$130 to the respondent as reimbursements for "Texas Democratic Party Dinner" and "Bastrop Advertiser." The respondent did not previously report political expenditures from personal funds for these purposes. On December 29, 2009, the respondent filed a corrected report that disclosed the expenditures on Schedule G instead of Schedule F. Thus, the respondent failed to properly disclose political expenditures made from personal funds when the report was originally due. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.63(a) of the Ethics Commission Rules, and credible evidence of no violation of section 253.035(h) of the Election Code, with respect to these political expenditures.
16. The respondent's 8-day pre-election report for the March 2008 primary election disclosed on Schedule G a political expenditure from personal funds of \$237 to the respondent for "Office Rent," and indicated no reimbursement was intended. The respondent did not address this allegation in his response to the sworn complaint, and the complaint did not include

additional evidence as to the true payee for the expenditure or whether reimbursement was actually made. Therefore, with respect to this political expenditure, there is insufficient evidence of a violation of sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules.

Out-of-State Political Committee Information

17. Out-of-state political committee means a political committee that makes political expenditures outside this state and in the 12 months immediately preceding the making of a political expenditure by the committee inside this state (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder) makes 80 percent or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state. ELEC. CODE § 251.001(15).
18. Political committee means a group of persons that has as a principal purpose accepting political contributions or making political expenditures. *Id.* § 251.001(12).
19. A candidate that accepts political contributions totaling \$500 or less from an out-of-state political committee shall include as part of the report that covers the reporting period in which the contribution is accepted the same information for the out-of-state political committee required for general-purpose committees by sections 252.002 and 252.003, or a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee. *Id.* § 253.032(e).
20. A person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee that is not required to file its statement of organization with the Federal Elections Commission shall either enter the information required by section 253.032(a)(1) or (e)(1) of the Election Code, as applicable, on the report filed by electronic transfer, or timely file a paper copy of the information required by section 253.032(a)(1) or (e)(1) of the Election Code, as applicable. *Id.* § 20.29(b).
21. The respondent accepted a political contribution of \$499.99 from an out-of-state political committee but did not include the information required by section 253.032 of the Election Code and section 20.29 of the Ethics Commission Rules when the report was originally due. Although the respondent filed a corrected report on December 29, 2009, that included a copy of the out-of-state political committee's statement of organization, the information was not included when the report was originally due. Therefore, there is credible evidence of a violation of section 253.032 of the Election Code and section 20.29 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 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 acknowledges that a candidate who makes political expenditures from the candidate'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 required to be filed that covers the period in 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 acknowledges that a candidate is required to report a campaign expenditure from personal funds. The respondent acknowledges that each report by a candidate 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 a candidate that accepts political contributions totaling \$500 or less from an out-of-state political committee shall include as part of the report that covers the reporting period in which the contribution is accepted the same information for the out-of-state political committee required for general-purpose committees by sections 252.002 and 252.003, or a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee or as set forth in section 20.29 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 \$600 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-2909318.

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

Donnie Dippel, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director