

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

JOE HEFLIN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2809334

## ORDER And AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaint SC-2809334. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035(h), 254.031(a)(3), and 254.0612 of the Election Code, and sections 20.61, 20.62, and 20.63 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 committed the following violations: (1) failed to include in campaign finance reports the principal occupation or job title and employer information for individuals who contributed \$500 or more; (2) failed to properly report total political contributions maintained; (3) failed to properly report political expenditures made from personal funds; (4) failed to properly report political expenditures made as reimbursements to staff; (5) accepted political contributions from corporations and labor organizations; and (6) converted political contributions to personal use.

### III. Findings of fact and Conclusions of Law

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

1. The respondent is the state representative of District 85 and was a candidate for that office in the November 2006 general election.
2. The complainant is not a resident of House District 85.

**Allegation #1:** failure to include in campaign finance reports the principal occupation or job title and employer information for individuals who contributed \$500 or more during a reporting period

**Findings:**

1. Each campaign finance report by a candidate for a statewide office in the executive branch or a legislative office must include, for each individual from whom the candidate has accepted political contributions that in the aggregate equal or exceed \$500 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.
2. Each report by a holder of a statewide office in the executive branch or a legislative office must include the contents prescribed by section 254.0612. *Id.* § 254.0912.
3. The complaint alleged that the respondent failed to disclose the principal occupation or job title and employer in "46 places" in five campaign finance reports.
4. The respondent made corrections to the reports at issue to add the principal occupation or job title and employer information, including contributions for which no allegation was made. In each case, the respondent did not disclose the principal occupation, job title, or employer of the contributors when the reports were originally due. The respondent did not correct contributions that when aggregated with other contributions from the same contributor during the reporting period equaled or exceeded \$500. The respondent did respond, for example, when the occupation was farmer, that the employer was "self" or assumed to be self.

**Conclusion:**

Even though the respondent made corrections to the reports at issue, there is credible evidence that when the reports were originally filed, the respondent violated section 254.0612 of the Election Code in connection with the contributions.

**Allegation #2:** failure to properly report total political contributions maintained

**Findings:**

1. The complaint alleged that the respondent disclosed an incorrect contribution balance on his 30-day and 8-day pre-election reports for the November 2006 general election, January and July 2007 semiannual reports, and January and July 2008 semiannual reports. The complaint alleged that the respondent should have had certain amounts of political contributions maintained at the end of each reporting period based upon formula created by the complainant whereby the contribution balance is calculated by taking the amount of

- contributions maintained disclosed in the immediately preceding report, adding the amount of total political contributions, and subtracting the amount of total political expenditures.
2. Each campaign finance report must include, as of the last day of the reporting period, 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).
  3. The total amount of political contributions maintained in one or more accounts includes: (1) the balance on deposit in banks, savings and loan institutions and other depository institutions; and (2) the present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, and treasury bills. Ethics Commission Rules § 20.50(a).
  4. The campaign finance reporting system is not an accounting system. Due to statutory reporting requirements, the amount of political contributions maintained cannot necessarily be computed by using the totals on a report's cover sheet. For example, an expense may be incurred in one reporting period but paid in a later reporting period, or a contribution may be an in-kind contribution. (Here, the respondent's reports disclose over \$86,000 in in-kind contributions during the period at issue.) The law only requires that the amount of political contributions maintained in one or more accounts be disclosed in a report, and the respondent has sworn that the proper amounts have been disclosed. There is no evidence that the amounts of total political contributions maintained disclosed in the reports at issue are incorrect, and there is evidence that the respondent accepted over \$86,000 in in-kind contributions, which would not be included in the total for political contributions maintained.
  5. The respondent swore that the balances reported are true and correct and that the balance disclosed on a report was the total amount in his account at the end of the reporting period. He also swore that the funds are not placed in an interest bearing account.

**Conclusion:**

There is credible evidence that the respondent did not violate section 254.031(a)(8) of the Election Code.

**Allegation #3:** failure to properly report political expenditures made from personal funds

**Findings:**

1. The allegation was based on a political expenditure that was disclosed on schedule F (used for itemizing political expenditures made from political contributions) of the respondent's January 2007 semiannual report. The report disclosed a \$267.52 payment on November 20, 2006, to the respondent for the purpose of "reimburse for office supplies purchased."

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. A candidate is required to report campaign expenditures from personal funds. Ethics Commission Rules § 20.63(a).
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); Ethics Commission Rules § 20.63(d).
5. The evidence indicates that the respondent reimbursed himself for a \$267.52 political expenditure made from personal funds. However, the respondent did not previously disclose the expenditure as having been made from his personal funds with the intent to seek reimbursement from political contributions.

**Conclusion:**

There is credible evidence that the respondent violated sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules by reimbursing himself for a \$267.52 expenditure made from personal funds.

**Allegation #4:** failure to properly report political expenditures made as reimbursements to staff

**Findings:**

1. The complaint alleged that the respondent failed to disclose the payees, dates, purposes, and amounts of political expenditures "when reimbursing expenses." The complaint identified political expenditures totaling approximately \$7,080 that were disclosed in four campaign finance reports.
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 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.
4. For campaign finance reports due before February 25, 2007, Ethics Advisory Opinion No. 450 (EAO 450) describes the proper way to report reimbursements to staff or campaign workers. 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 campaign worker and then as an expenditure by the candidate to repay the campaign worker; or (2) if the expenditure and reimbursement occurred in 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 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).
5. The commission has since adopted section 20.62 of the Ethics Commission Rules, which sets forth the current method for reporting reimbursements to staff. The rule became effective on February 25, 2007. On October 26, 2007, the rule was amended to clarify the reporting requirement and to increase the threshold from \$500 to \$5,000. The change became effective on November 18, 2007. Under section 20.62 of the Ethics Commission Rules, 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.

If the staff member is not reimbursed during the same reporting period, or is reimbursed more than \$5,000 in the aggregate during the report period, then a political expenditure made out of personal funds by the staff member with the intent to seek reimbursement 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 candidate or officeholder;
- (2) the expenditure made by the staff member is reported as a political expenditure by the candidate or officeholder; and

- (3) the reimbursement to the staff member to repay the loan is reported as a political expenditure by the candidate or officeholder.
6. For the January 2007 semiannual report, EAO 450 describes the proper way to report staff reimbursements. The \$500 threshold in the former version of Ethics Commission Rule § 20.62 applies to the respondent's July 2007 semiannual report, and the \$5,000 threshold in the current version of the rule applies to the respondent's January 2008 and July 2008 semiannual reports.
7. The respondent swore that \$4,082.50 in political expenditures made were correctly reported. There is no evidence to refute the respondent's statements or to show that the payments were reimbursements to staff members.
8. The respondent corrected \$800 in expenditures originally disclosed as "travel – fuel expense for block walkers" to indicate that the payments were for services rendered by the payee. However, the respondent failed to properly disclose the expenditures at the time the reports were originally due.
9. The respondent corrected approximately \$1,420 in political expenditures to indicate that they were mileage reimbursements to staff members. In Ethics Advisory Opinion No. 347, the commission determined 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. Although that opinion applies to a candidate or officeholder's use of a personal car, the commission has said that reporting mileage reimbursements to staff members this way is also permissible. However, it is not clear from the respondent's original reports that the expenditures were made to reimburse staff members for mileage. Although the respondent corrected the purpose of the expenditures at issue to indicate that the payments were mileage reimbursements, the respondent failed to properly report the expenditures at the time the reports were originally due.
10. The respondent corrected approximately \$780 in political expenditures to indicate that they were reimbursements to staff members for food, supplies and other expenses. Of that amount, the respondent corrected approximately \$660 of expenditures to disclose the actual payees, all of whom were paid over \$50 in the respective reporting period. He corrected approximately \$90 in expenditures by adding the amounts to the total amount of political expenditures of \$50 or less in the respective report because the payments to the vendors were under \$50 and did not require itemization. He corrected the remaining \$30 in expenditures to include the vendor of the goods or services in the purpose section but the staff members were still listed as the payees. Although the respondent corrected the expenditures at issue, they were not properly reported at the time the reports were originally due.

**Conclusions:**

There is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code and sections 20.61 and 20.62 of the Ethics Commission Rules with regards to \$4,082.50 of expenditures. As to the remaining amount of expenditures at issue, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and sections 20.61 and 20.62 of the Ethics Commission Rules.

**Allegation #5:** accepted political contributions from corporations and labor organizations

**Findings:**

1. A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094(a). That subchapter does not authorize corporations or labor organizations to make political contributions to a candidate or officeholder.
2. A person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b).
3. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
4. In order to show a violation of section 253.003 of the Election Code, the evidence must show that the contributor was a corporation that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
5. The following contributions are at issue:
  - Two contributions from J & R Cattle, each for \$300, on September 3, 2006, and November 1, 2006. J & R Cattle is not a corporation.
  - A \$500 political contribution from Johnson & Johnson on November 30, 2006. The contributor was not a corporation.
  - A \$500 political contribution from Lubbock Central Labor Council on October 30, 2006. The Lubbock Central Labor Council is a labor organization affiliated with the Texas AFL-CIO. The respondent swore that he did not know that the check from Lubbock Central Labor Council was not a proper check. He indicated that he thought the check was from the organization's political committee. The respondent

returned the contribution upon learning of the error. The evidence is insufficient to show that the respondent knew that the contribution was from a labor organization at the time he accepted it.

- A \$500 political contribution from Texas AFT on November 26, 2007. The contribution was from a general-purpose political committee, not a corporation or labor organization. A copy of the contributor's check verifies that fact.
- A \$500 political contribution from "Worthy Company" on October 2, 2007. Although the P.O. Box address on the contribution check from "Worthy Company" is the same as the P.O. Box address for Worthy Land & Development, Inc. that is listed in records of the Texas Secretary of State, the respondent swore that he confirmed that the Worthy Company is not a corporation and asserts that it is an assumed name of the business owner. The evidence is insufficient to show that the contribution was from a corporation. Further, if the respondent believed that the contribution was from an individual, then he cannot be found to have violated the prohibition on corporate contributions.

### **Conclusions:**

There is credible evidence that the respondent did not violate sections 253.003 and 253.094 of the Election Code with respect to the contributions from J & R Cattle, Johnson & Johnson, and Texas AFT. There is insufficient evidence that the respondent violated sections 253.003 and 253.094 of the Election Code with respect to the contributions from Lubbock Central Labor Council and Worthy Company.

**Allegation #6:** converted political contributions to personal use

### **Findings:**

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).
2. Personal use is defined as a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. *Id.* § 253.035(d).
3. The complaint alleged that the respondent converted political contributions to personal use. However, there is no evidence to support that allegation. The complaint did not identify specific expenditures that were allegedly made by the respondent for personal use. Additionally, the respondent swore that he did not convert funds to personal use, and the available evidence does not refute the respondent's statements.

**Conclusion:**

There is credible evidence that the respondent did not violate section 253.035 of the Election Code.

**IV. 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, 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. Each campaign finance report by a candidate for a statewide office in a legislative office must include, for each individual from whom the candidate has accepted political contributions that in the aggregate equal or exceed \$500 during the reporting period, the individual's principal occupation or job title and the full name of the individual's employer;
  - b. Each report is also required to include the full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period as well as the categories of goods or services received in exchange for the expenditures;
  - c. A candidate who makes political expenditures from the candidate's personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, and the report clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement; and
  - d. The proper way to report reimbursements 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.

**V. 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.

**VI. Sanction**

After considering the seriousness of the violations described and including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$1,200 civil penalty.

**VII. 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-2809334.

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

\_\_\_\_\_  
Joe Heflin, Respondent

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

Texas Ethics Commission

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