

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ERNEST “ED” CHANCE,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-2810357

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaint SC-2810357. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.032(e) and 254.031(a)(1),(a)(3) and (a)(8) of the Election Code, 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’s January 2007, July 2007, and January 2008 semiannual campaign finance reports failed to include or improperly disclosed required information. The complaint also alleged that the respondent converted political contributions to personal use, accepted a political contribution from a corporation, and failed to include required information about an out-of-state political committee with his January 2008 semiannual campaign finance report.

III. Facts Supported by Credible Evidence

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

1. The respondent is currently the Montgomery County Commissioner, Precinct 3.

Personal Use of Political Contributions

2. The complaint alleged that from February 2006 through May 2007 the respondent made the following expenditures, disclosed on his campaign finance reports, for personal use:
 - a. \$250 to “Wayne Stockdale,” for “Fish Fryer.”
 - b. \$914.80 to “Optimum Computer,” for “Printer.”

- c. \$4,250 to “Conroe Golf Cart,” for “Spring Creek Park Golf Cart Prade [sic] Use.”
 - d. \$427.59 to “Office Depot,” for “Desk Chair.”
 - e. \$3,895.50 to “Morgan Bldgs.,” for “Storage Bldg.”
 - f. \$1,726.46 to “Woodland Mall,” for “Employee’s Gift Cert.”
 - g. \$346.30 to “Best Buy #865,” for “Ant. For Office- Splitter-Cable.”
 - h. \$1,840 to “OCS Inc.,” for “Computer.”
 - i. \$165 to “Wayne Stockdale,” for “Cooker.”
 - j. \$1,000 to “Woodlands Mall,” for “Graduation Gift Cert.”
3. The total amount of the alleged conversion to personal use is approximately \$14,820.
 4. The respondent swore that the fish fryer, printer, golf cart, desk chair, storage building, antenna, computer, and cooker were used for campaign and officeholder purposes.
 5. The respondent swore that the gift certificates at issue were purchased to use for employee Christmas gifts and 40 \$25 gifts certificates for graduating seniors.

Acceptance of a Corporate Contribution

6. The complaint also alleged that the respondent accepted a contribution from a corporation in violation of sections 253.003 and 253.094 of the Election Code. At issue is a \$500 contribution from G.H.B.A. accepted by the respondent on October 12, 2006, and disclosed on the respondent’s January 2007 semiannual report.
7. The respondent corrected his January 2007 semiannual report to change the name of the contributor at issue from “G.H.B.A.,” to “G.H.B.A. Greater Houston Builders Assn P.A.C.,” and included the political committee ID number for GHBA Home-PAC (GHBAPAC).
8. According to the records of the Texas Secretary of State, the Greater Houston Builders Association is a domestic for-profit corporation with the same contact address that the respondent disclosed on his January 2007 semiannual report for the contribution from G.H.B.A.
9. GHBAPAC is a general-purpose political committee registered with the commission. GHBAPAC shares the same address that the respondent disclosed for the \$500 contribution at issue from G.H.B.A.
10. GHBAPAC’s 8-day pre-election report for the November 2006 election disclosed that on October 12, 2006, it made a \$500 political expenditure to the Ed Chance Campaign.
11. According to commission records, GHBAPAC’s original name was the “Greater Houston Builders Association Home PAC.” On November 21, 2005, GHBAPAC filed an amended campaign treasurer appointment changing to its present name, but has been using that name on its campaign finance reports since early 1997.

12. The evidence shows that the political contribution from the “Greater Houston Builders Association” was from their political committee not the corporation.

Failure to Disclose Information Regarding Contributions from Out-of-State Political Committees

13. The complaint also alleged that the respondent failed to disclose required information about an out-of-state political committee. At issue is an October 8, 2007, \$500 contribution from Waste Mgt. PAC, 701 Pennsylvania Ave. #500, Washington, 20004, disclosed on the respondent’s January 2008 semiannual report. The report did not include any additional information about the political committee.
14. There is not a political committee named Waste Mgt. PAC on file with the commission.
15. Waste Management Employees Better Government Fund (WMEBGF) is a political committee registered with the Federal Election Commission (FEC), with the same address as that disclosed by the respondent. WMEBGF’s August 2007 monthly report of receipts and disbursements disclosed a \$500 disbursement to the respondent on July 31, 2007.
16. On October 28, 2008, the respondent filed a corrected January 2008 semiannual report. The report disclosed the FEC identification number for WMEBGF on the \$500 contribution from Waste Mgt. PAC at issue.
17. On October 7, 2009, the respondent filed a second corrected report which contained a statement of organization from WMEBGF.

Improperly Reported Political Contributions and Expenditures

18. The complaint alleged that the respondent failed to:
 - a. Fully disclose the addresses for 11 political expenditures on his January 2007 semiannual report and two political expenditures on his July 2007 semiannual report.
 - b. Disclose the correct amount of total political contributions maintained on his January 2007, July 2007, and January 2008 semiannual reports.
 - c. Disclose the purpose of a political expenditure on his July 2007 semiannual report.
 - d. Fully disclose the address of a political contribution on his January 2008 semiannual report.
19. The respondent filed a January 2007 semiannual report on January 10, 2007. The report disclosed \$500 in total political contributions, \$17,610.71 in total political expenditures and \$78,519.33 in total political contributions maintained. The report did not disclose complete addresses for 11 out of 29 political expenditures totaling approximately \$3,490. The report

- disclosed the city and state for the expenditures at issue but did not include a complete street address. All but two included the zip code.
20. The respondent filed a corrected January 2007 semiannual report on October 28, 2008. The report disclosed \$500 in total political contributions, \$17,610.71 in total political expenditures, and \$76,679.33 in total political contributions maintained. The report disclosed complete addresses for the 11 political expenditures that did not previously contain them.
 21. The respondent filed a July 2007 semiannual report on July 13, 2007. The report disclosed \$500 in total political contributions, \$13,065.36 in total political expenditures and \$65,953.97 in total political contributions maintained. The report did not disclose complete addresses for three political expenditures totaling approximately \$680 (only two of which were alleged). One was missing a zip code, and two did not include a street address. The report also failed to disclose the purpose of a \$1,250 expenditure.
 22. The respondent filed a corrected July 2007 semiannual report on October 28, 2008. The report disclosed \$500 in total political contributions, \$13,065.36 in total political expenditures, and \$67,113.97 in total political contributions maintained. The report disclosed complete addresses for the two political expenditures that did not previously include a street address. The corrected report disclosed a purpose for the \$1,250 political expenditure.
 23. The respondent filed a second corrected July 2007 semiannual report on October 28, 2008. The report disclosed a complete address for the remaining political expenditure that did not contain one.
 24. The respondent filed a January 2008 semiannual report on January 14, 2008. The report disclosed \$119,750 in total political contributions, \$42,583.83 in total political expenditures, and \$134,120.14 in total political contributions maintained. The report did not disclose complete addresses for two out of 105 political contributions and 21 political expenditures totaling approximately \$31,110. The city and state were disclosed for both contributions. For the political expenditures, the city and state were disclosed for all but one payee, AT&T, to which seven expenditures were made.
 25. The respondent filed a corrected January 2008 semiannual report on October 28, 2008. The report disclosed \$119,750 in total political contributions, \$42,583.83 in total political expenditures, and \$144,280.14 in total political contributions maintained. The report disclosed a complete address for one political contribution that did not previously contain it. The report still does not disclose complete addresses for 21 political expenditures.

26. The respondent filed a second corrected January 2008 semiannual report on October 7, 2008. The report disclosed complete addresses for the 21 political expenditures that did not previously contain them.
27. The respondent deducted two lines in error for his total political contributions maintained on his January 2007 semiannual report. Due to the fact that this error was carried forward to his July 2007 semiannual report, the respondent's total political contributions maintained disclosed on that report was wrong. Further, the respondent transposed two numbers on the total political contributions maintained disclosed on his January 2008 semiannual report. The amount that should have been disclosed was \$143,120.14 and not \$134,120.14. The respondent's corrected January 2008 semiannual report disclosed \$144,280.14 in total political contributions maintained.

IV. Findings and Conclusions of Law

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

Personal Use of Political 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 for a fish fryer, printer, golf cart, desk chair, storage building, antenna, computer, and cooker were for personal use. There is no additional evidence that the expenditures at issue primarily furthered an individual or family purpose not connected with the respondent's 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. 254 (EAO 254) that the use of political contributions to supplement the salaries of state employees was not a conversion to personal use since "personal use" does not include payments for purposes connected with the performance of duties or activities as a holder of public office. Ethics Advisory Opinion No. 254 (1995).
4. The complaint alleged that the respondent's expenditure of gift certificates for his employees was for personal use. The expenditures were for Christmas gifts for his employees. Thus, the gift certificates were a use of political contributions akin to supplements of the salaries of the respondent's employees. There is no additional evidence that the expenditures at issue primarily furthered an individual or family purpose not connected with the respondent's performance of duties or activities as a candidate or officeholder. Therefore, there is

credible evidence of no violation of section 253.035 of the Election Code with regard to that expenditure.

5. 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, and certificates for students who graduate from high school or college. Ethics Advisory Opinion Nos. 241 (1995) and 209 (1994).
6. The complaint alleged that the respondent's expenditure for gift certificates for graduating high school students was for personal use. The expenditure was for 40 individual gift certificates of \$25 each for graduating high school students. The commission has stated that, in connection with campaign or officeholder activities, it is permissible to use political contributions to purchase small gifts for constituents and volunteers. There is no additional evidence that the expenditures at issue primarily furthered an individual or family purpose not connected with the respondent's 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 that expenditure.

Acceptance of a Corporate Contribution

7. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, Chapter 253, Election Code. ELEC. CODE § 253.094. That subchapter does not authorize corporations to make political contributions to a candidate.
8. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b).
9. The complaint alleged that the respondent accepted a corporate contribution from G.H.B.A. The evidence indicates that the respondent accepted a contribution from GHBAPAC and not from the Greater Houston Builders Association, a corporation. GHBAPAC appears to be a political committee affiliated with the Greater Texas Home Builders Association. GHBAPAC's 8-day pre-election report for the November 2006 election disclosed a \$500 political expenditure to the Ed Chance Campaign on the same date that the respondent disclosed a contribution from G.H.B.A. for the same amount. Thus, the respondent did not accept a political contribution from a corporation. Therefore, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code.

Failure to Disclose Information Regarding Contributions from Out-of-State Political Committees

10. If a candidate or officeholder accepts political contributions totaling \$500 or less in a reporting period from an out-of-state political committee, the campaign treasurer must include as part of the report that covers the reporting period in which the contributions are accepted: (1) the same information for the out-of-state political committee required for general-purpose committees by sections 252.002 and 252.003 of the Election Code; or (2) a copy of the out-of-state committee's statement of organization filed as required by law with the FEC and certified by an officer of the out-of-state committee. ELEC. CODE § 253.032(e).
11. An "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).
12. A person who files a report *with the commission* by electronic transfer and who accepts political contributions from an out-of-state political committee required to file its statement of organization with the Federal Election Commission shall either enter the out-of-state committee's federal PAC identification number in the appropriate place on the report; or timely file a certified copy of the out-of-state committee's statement of organization that is filed with the Federal Election Commission. Ethics Commission Rules § 20.29.
13. The complaint alleged that the respondent failed to disclose required information about a \$500 contribution from Waste Mgt. PAC, an out-of-state political committee, on his January 2008 semiannual report. The respondent did not provide either of the documents required by section 253.032 of the Election Code with his originally filed January 2008 semiannual report. Therefore, with regard to the contribution from Waste Mgt. PAC, there is credible evidence of a violation of section 253.032(e) of the Election Code.

Improperly Reported Political Contributions and Expenditures

14. 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). Each campaign finance report must also 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). Each campaign finance report must also 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).
15. The respondent failed to disclose complete addresses for 11 political expenditures on his January 2007 semiannual report, three political expenditures on his July 2007 semiannual report, and 21 political expenditures on his January 2008 semiannual report. The respondent also failed to disclose the purpose of one political expenditure on his July 2007 semiannual report. The respondent also failed to disclose complete addresses for two political contributions on his January 2008 semiannual report. Therefore, there is credible evidence of violations of section 254.031(a)(1) and (a)(3) of the Election Code.
 16. The complaint also alleged that the totals for political contributions maintained disclosed on the respondent's January 2007, July 2007, and January 2008 semiannual reports were incorrect. The amount of political contributions maintained cannot necessarily be calculated by looking at the face of a report but, the respondent's corrected reports disclose different amounts than what was originally reported. The difference between the original and corrected January 2007 semiannual report was \$1,840. The difference between the original and corrected July 2007 semiannual report was \$1,160. The respondent also stated in his response to the complaint that the amounts disclosed for political contributions maintained on his January 2007 and July 2007 semiannual reports were incorrect due to calculation errors. A *de minimis* error in calculating political contributions maintained is not a violation of section 254.031(a)(8) of the Election Code. ELEC. CODE § 254.031(a-1). The available evidence, including that submitted with the complaint, indicate that the errors in the disclosed amount was *de minimis*. Therefore, with respect to the respondent's January 2007 and July 2007 semiannual reports, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code as to the total political contributions maintained disclosed on the reports.
 17. The respondent also admitted that the amount disclosed for political contributions maintained on his July 2008 semiannual report was incorrect because he transposed two numbers in the amount. However, the difference between the corrected report and the original report was \$10,160. Therefore, with respect to the respondent's January 2008 semiannual report, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code as to the total political contributions maintained disclosed on the report.

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 if a candidate or officeholder accepts political contributions totaling \$500 or less in a reporting period from an out-of-state political committee, the campaign treasurer must include as part of the report that covers the reporting period in which the contributions are accepted: (1) the same information for the out-of-state political committee required for general-purpose committees by sections 252.002 and 252.003 of the Election Code; or (2) a copy of the out-of-state committee's statement of organization filed as required by law with the FEC and certified by an officer of the out-of-state committee.

The respondent also acknowledges that 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. The respondent also acknowledges that each campaign finance report must also 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 each campaign finance report must also 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.

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-2810357.

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

Ernest "Ed" Chance, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director