

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RUTH MCCLENDON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2810366

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 6, 2009, to consider sworn complaint SC-2810366. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(3) and 254.0612 of the Election Code and sections 20.59, 20.61, and 20.62 of the Ethics Commission Rules, laws and rules 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: (1) failed to include required information in her October 2006 8-day pre-election report, and January 2007, July 2007, January 2008, and July 2008 semiannual campaign finance reports; 2) failed to include the principal occupation or job title and the full name of the employer for individuals who contributed \$500 or more during the reporting periods at issue; 3) improperly reported political expenditures as reimbursements; 4) failed to properly disclose total political contributions maintained; 5) failed to properly disclose political expenditures made by credit card; and 6) failed to disclose required documentation relating to political contributions from out-of-state political committees on two campaign finance reports.

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 120.
2. In November 2008, after receiving notice of this sworn complaint, the respondent provided an affidavit in which she swore to the following:

I have always prepared my Title 15 reports myself. I understand that I inadvertently omitted some required information for certain contributors. I also understand that certain reimbursements were not properly reported. I also understand that I failed to properly report “total political contributions maintained.” I also understand that certain political expenditures made by credit card were not properly reported. Furthermore, I understand that I must include proper documentation relating to contributions from out-of-state political committees.

3. The complaint alleged that the respondent’s October 20, 2006, 8 day pre-election report:
 - Failed to disclose the principal occupation, job titles or the full names of the employers for two political contributions of \$500 or more in violation of section 254.0912 of the Election Code; and
 - Failed to disclose the payee, date, purpose, and amount of a political expenditure in violation of section 254.031(a)(3) of the Election Code.
4. The respondent did not disclose a principal occupation/job title and employer for two political contributions, totaling \$6,000 (one for \$1,000 and the other for \$5,000 both from individual contributors). The principal occupation/job title of each contributor was disclosed, but not the employer information. The report also discloses a political expenditure of \$2,554.81 to payee “American Express” on October 2, 2006, for the purpose of “Car Rental Airline tickets Hotel Expenses & office supplies pertaining to legislative duties.”
5. The complaint alleged that the respondent’s January 2007 semiannual report:
 - Disclosed an incorrect contribution balance in violation of section 254.031(a)(8) of the Election Code;
 - Failed to disclose the principal occupation, job titles or the full names of the employers for six political contributions of \$500 or more in violation of section 254.0912 of the Election Code; and
 - Failed to disclose the payee, date, purpose, and amount of ten political expenditures in violation of section 254.031(a)(3) of the Election Code.
6. The respondent did not disclose a principal occupation/job title and employer for six political contributions, totaling \$8,500, each of which was \$500 or more and from an individual contributor. The principal occupation/job title of each contributor was disclosed, but not the employer information. The respondent’s report also disclosed:
 - Two political expenditures to payee “American Express,” one for \$2,382.44 on November 15, 2006, for the purpose of “Mailing Services printing

constituent meals & office supplies pertaining to legislative duties” and the second in the amount of \$2,184.55 on December 17, 2006, for the purpose of “Hotel rental car office supplies meals printing services pertaining to legislative duties.”

- Two expenditures to payee “Brooke Boddy,” one in the amount of \$125.57 on November 24, 2006, for the purpose of “Reimbursement for Auction items” and the second in the amount of \$208 on December 20, 2006, for the purpose of “Reimbursement for supplies/gift.”
- Two political expenditures to “Marge Reyna,” totaling approximately \$300, for the purpose of “gift” and “Reimbursement for food for District Holiday Celebration.”
- Four political expenditures totaling approximately \$210 to “Sandra Sapenter,” for the purposes of “reimbursement” and “gift.”
- Total political contributions maintained of \$44, 356.88.

7. The complaint alleged that the respondent’s July 2007 semiannual report:

- Disclosed an incorrect contribution balance in violation of section 254.031(a)(8) of the Election Code; and
- Failed to disclose the payee, date, purpose, and amount of 15 political expenditures in violation of section 254.031(a)(3) of the Election Code.

8. The respondent’s July 2007 semiannual report disclosed:

- One political expenditure of \$105.99 to “Roger Chanes” on February 8, 2007, for the purpose of “Reimbursement for supplies.”
- One political expenditure of \$70.00 to “Ryan Guillen” on May 22, 2007, for the purpose of “Donation for Chairman Gift.”
- Six political expenditures totaling approximately \$60 to “Marge Reyna,” three for the purposes of “Reimbursement for supplies,” two for “reimbursement for parking/legislative duties” and one for “reimbursement for plant for constituent.”
- Five political expenditures totaling approximately \$230 to “Janis Reinken” for the purpose of “Reimbursement for supplies.”
- One political expenditure of \$67.83 to “Joel Tabar” on January 9, 2007, for the purpose of “Reimbursement for supplies.”
- One political expenditure of \$58 to “Mike Villarreal” on May 20, 2007, for the purpose of “Donation for Chairman Gift.”
- Total political contributions maintained of \$19,211.37.

9. The complaint alleged that the respondent's January 2008 semiannual report:
- Disclosed an incorrect contribution balance in violation of section 254.031(a)(8) of the Election Code;
 - Failed to disclose the out-of-state PAC identification number for one contributor as required by section 253.032(d) of the Election Code;
 - Failed to disclose the principal occupation/job title or the full names of the employers for 11 political contributions of \$500 or more in violation of section 254.0912 of the Election Code; and
 - Failed to disclose the payee, date, purpose, and amount of 15 political expenditures in violation of section 254.031(a)(3) of the Election Code.
10. The respondent's January 2008 semiannual report did not disclose an out-of-state PAC identification number for a contribution on September 10, 2007, in the amount of \$2,500 from contributor "Union Pacific Corp. Fund for Effective Government," whose address is disclosed as "Washington, DC 20005." The respondent also did not disclose a principal occupation/job title and employer for four political contributions, totaling \$3,000, each of which was \$500 or more and from an individual contributor. The principal occupation/job title was disclosed for three of the contributions. The respondent's report also disclosed:
- Three political expenditures totaling approximately \$130 to "Dori Brown" for the purposes of "Reimbursement for luncheon," reimbursement for supplies" and "Holiday Gift."
 - Three political expenditures totaling \$400 to "Chris Dunn" for the purpose of "Campaign Signs."
 - Two political expenditures totaling \$125 to "Janis Reinken" for the purpose of "Reimbursement for flags" and "Holiday Gift."
 - Seven political expenditures totaling approximately \$250 to "Marge Reyna" for the purpose of various reimbursements including: "supplies," parking," "Lighthouse luncheon," "printing" and "Holiday Gift."
 - Total political contributions maintained of \$33,908.08.
11. The complaint alleged that the respondent's July 2008 semiannual report:
- Disclosed an incorrect contribution balance in violation of section 254.031(a)(8) of the Election Code;
 - Failed to disclose the out-of-state PAC ID number for two contributors as required by section 253.032(d) of the Election Code;
 - Failed to disclose the principal occupation/job title or the full names of the employers for two political contributions of \$500 or more in violation of section 254.0912 of the Election Code; and

- Failed to disclose the payee, date, purpose, and amount of four political expenditures in violation of section 254.031(a)(3) of the Election Code.
12. The respondent's July 2008 semiannual report did not disclose an out-of-state PAC identification number for two contributors which disclosed out-of-state addresses, a contribution on June 6, 2008, in the amount of \$1,000 from the "Chickasaw Nation," and a contribution on March 28, 2008, in the amount of \$500 from contributor "The PBSJ Corporation PAC." The respondent also did not disclose a principal occupation/job title and employer for two political contributions, totaling \$1,000, each of which was \$500 or more and from an individual contributor. The respondent's July 2008 semiannual report also disclosed:
- Two political expenditures totaling \$105.05 to "Dori Brown" for the purpose of "Gift" and "Reimbursement for supplies." (The complaint alleged a third expenditure for \$100 to this payee, however no such entry is disclosed on the report.)
 - A political expenditure of \$215 to "Mario Melendrez Foundation" on March 11, 2008, for the purpose of "Printing."
 - Total political contributions maintained of \$34,526.32.
13. The total amount at issue related to the failure to disclose the principal occupation/job title or the full name of the employer of individual contributors is approximately \$17,500.
14. The total amount at issue related to the failure to disclose the proper payees, dates, purposes, and amounts of political expenditures is approximately \$9,790, approximately \$7,120 of which disclosed American Express, a credit card company, as the payee.
15. The reports disclosed a total of \$4,000 from political committees with out-of-state addresses but did not disclose an out-of-state PAC identification number. All three are listed on the Federal Election Commission (FEC) website. However, under "committee type" the Chickasaw Nation is identified as: "Independent Expenditure (Person or Group, Not a Committee)." FEC records do not show that any of the three made a contribution to the respondent. Texas Ethics Commission records show that Union Pacific Corp. Fund for Effective Government is also a Texas general-purpose committee and that committee disclosed that it made a \$2,500 contribution to the respondent on August 28, 2007. Commission records show that PBSJ Corporation general-purpose committee, is a Texas political committee and that it made a \$500 contribution to the respondent on January 25, 2008.

Corrections

16. On February 28, 2009, the respondent filed corrections to each of the reports at issue.

IV. Findings and Conclusions of Law

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

Failure to Include Documentation for Contributions from Out-of-State PACs

1. A candidate, officeholder, or political committee that accepts political contributions totaling \$500 or less from an out-of-state political committee shall include as part of the report filed under chapter 254 of the Election Code 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 of the Election Code (pertaining to the contents of a campaign treasurer appointment), or a copy of the out-of-state'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. ELEC. CODE § 253.032(e).
2. "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 of this state and federal offices not voted on in this state. ELEC. CODE § 251.001(15).
3. 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(a).
4. The respondent did not include a federal PAC identification number for three contributors with out-of-state addresses from which the respondent accepted political contributions totaling \$4,000. The respondent filed corrections to the two semiannual reports at issue to disclose FEC PAC identification numbers for each contributor. However, one of the contributors, the Chickasaw Nation, does not appear to be a political committee, and the other two contributors, Union Pacific Corp. Fund for Effective Government and the PBSJ

Corporation PAC both disclosed expenditures in the amounts at issue to the respondent through their Texas general-purpose committees during the periods at issue. Therefore, there is insufficient evidence of a violation of section 253.032 of the Election Code.

Failure to Properly Disclose Political Expenditures Made by Credit Card

5. A 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).
6. A report of a political expenditure by credit card must identify the vendor who receives payment from the card company. Ethics Commission Rules § 20.59.
7. The respondent made approximately \$7,120 in political expenditures using credit cards and disclosed the payee information as the name and address of a credit card company. All of the expenditures were made to a payee to whom the respondent paid over \$50 in the respective reporting period. Thus, the respondent was required to disclose those expenditures by reporting the names and addresses of the actual payees. Although the respondent filed corrected reports to disclose this information after receiving notice of the sworn complaint allegations, the information was not disclosed when the reports were due. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules in connection with approximately \$7,120 in political expenditures.

Failure to Properly Report Political Expenditures and Improperly Reported 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. 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.
10. When a political expenditure is made on behalf of a candidate or officeholder by a staff member or campaign worker, the name of the actual payee must be disclosed, not the name of the staff member or campaign worker. Ethics Advisory Opinion No. 450 (2003); Ethics Commission Rules § 20.62.

11. There is credible evidence that on the campaign finance reports at issue the respondent failed to disclose the required information regarding the actual payee for goods and services and failed to describe the categories of goods or services received in exchange for political expenditures totaling approximately \$1,045. Furthermore, there is evidence that the respondent disclosed approximately \$6,250 in previously unreported expenditures on her corrected January 2007 semiannual report. Therefore, 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.

Failure to Include Required Information in Reports

12. Each report by a candidate for statewide office in the executive branch or 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 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.
13. A person required to file a report under chapter 254 of the Election Code is considered to be in compliance with section 254.0612 of the Election Code only if the person shows that the person has used best efforts to obtain, maintain, and report the information required by section 254.0612 of the Election Code. A person is considered to have used best efforts to obtain, maintain, and report that information if the person complies with section 254.0312 of the Election Code. ELEC. CODE § 254.0312(a).
14. 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 of the Election Code is not provided, the person must make at least one oral or written request for the missing information. A request must be made not later than the 30th day after the date the contribution is received, must include a clear and conspicuous statement that complies with subsection (b) of section 254.0312 of the Election Code, and if made orally, must be documented in writing and may not be made in conjunction with a solicitation for an additional political contribution. ELEC. CODE § 254.0312(c).
15. The respondent failed to disclose, in her original October 2006 8-day pre-election report, and her January 2007, January 2008, and July 2008 semiannual reports, the principal occupation or job title and the full name of the employer for individuals from whom the respondent accepted political contributions that in the aggregate equaled or exceeded \$500. The 14 political contributions at issue total \$17,500. Of those, 11 of the contributions, totaling \$16,500, only failed to disclose the employer. Although the respondent filed corrections to these semiannual reports, the information was not included when the reports were originally

due. Therefore, there is credible evidence of violations of section 254.0612 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 a 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 report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. The respondent acknowledges that a political expenditure made on behalf of a candidate or officeholder by a staff member or campaign worker must be disclosed in accordance with section 20.62 of the Ethics Commission Rules. The respondent further acknowledges that each report by a candidate for 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 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 \$3,100 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-2810366.

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

Ruth McClendon, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director