

TEXAS ETHICS COMMISSION

IN THE MATTER OF

ROYCE WEST,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2812388

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 12, 2010, to consider sworn complaint SC-2812388. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.032, 253.035(h), 253.041, 254.031, and 254.0612 of the Election Code and sections 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 accepted contributions from corporations or labor organizations, made expenditures that constituted conversions of political contributions to a personal use, made prohibited payments to the officeholder's business, and failed to properly disclose and include required information in 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 senator for District 23.
2. The complaint alleged that the respondent:
 - Accepted 22 corporate or labor organization contributions totaling \$20,250, that were disclosed on the January 2007, January 2008, and July 2008 semiannual reports;
 - Failed to include documentation relating to political contributions from three out-of-state committees totaling \$6,000, that were disclosed on the January 2007 semiannual report;
 - Made 30 expenditures totaling approximately \$22,580 that constituted conversions of political contributions to a personal use. The expenditures were disclosed on the January 2007, July 2007, January 2008, and July 2008 semiannual reports, and 30-

- day and 8-day pre-election reports filed in connection with the November 2008 election;
- Made eight prohibited payments totaling approximately \$12,800 to the officeholder's business, disclosed on the January 2007 semiannual report;
 - Failed to timely disclose nine expenditures and one in-kind contribution for travel outside of Texas, disclosed on the January 2008 semiannual and 8-day pre-election reports;
 - Improperly disclosed 112 reimbursements to staff totaling approximately \$44,000 on the January 2007, July 2007, January 2008, and July 2008 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the November 2008 election;
 - Improperly disclosed 10 reimbursements for political expenditures from personal funds totaling approximately \$3,100 on the January 2007, July 2007, and January 2008 semiannual reports;
 - Failed to disclose the addresses of 12 expenditures to 10 payees receiving political contributions, totaling \$20,525 on the January 2007 semiannual report;
 - Failed to disclose the purpose of five expenditures totaling approximately \$4,900 disclosed on the January 2007 semiannual report;
 - Failed to disclose the office sought, office held, and candidate benefitted by a direct expenditure on the 8-day pre-election report filed in connection with the November 2008 election;
 - Incorrectly reported total political expenditures and total political contributions maintained on the 30-day pre-election report; and
 - Failed to disclose the principal occupation of 80 persons from whom political contributions that in the aggregate exceeded \$500 were accepted during the reporting period, on the January 2007 and July 2008 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the November 2008 election. Of the reports at issue, only the January 2007 semiannual report disclosed entries that appear to fail to include occupation and employer information, disclosing 43 political contributions that in the aggregate exceeded \$500 during the reporting periods at issue, totaling \$95,250.

Acceptance of Corporate Contributions

3. The complaint alleged that the respondent accepted 22 corporate contributions totaling \$20,250. The allegations were based on contributions, from 20 different contributors, disclosed on the January 2007, January 2008, and July 2008 semiannual reports.
4. Fourteen of the contributions were from political committees associated with entities. Four contributions were from either a professional association, sole proprietorship, or limited liability company.

5. For the remaining four contributions, the evidence did not indicate that any contribution came from an incorporated entity.

Documentation for Out-of-State Committees

6. The complaint alleged that the respondent did not include a Federal Election Commission identification number (FEC ID) for three contributions totaling \$6,000 on his January 2007 semiannual report. The report disclosed a \$500 contribution on October 31, 2006, from "PPAC HDR" with an address of "Omaha, NE 68114." Professionals PAC HDR, Inc., a political committee that files with the commission, disclosed a \$500 contribution to the respondent on October 31, 2006, on the committee's January 2007 semiannual report. The committee's address is 804 Indian Hills Drive, Omaha, NE 68114.
7. The respondent also disclosed a \$500 political contribution on August 30, 2006, from Federal Express PAC, but did not disclose an FEC ID. Federal Express PAC is an FEC committee. The respondent corrected the report to disclose a FEC ID for the committee.
8. The third contribution was a \$5,000 political contribution dated November 1, 2006, from the Chickasaw Nation. The evidence does not show that the Chickasaw Nation is a political committee.

Personal Use of Political Contributions

9. The complaint alleged that the respondent converted political contributions to a personal use by making expenditures related to the use of a motor vehicle.
10. Thirty expenditures totaling approximately \$22,600 are at issue.
11. The respondent indicated in his response that the expenditures were related to a campaign vehicle. The complaint did not provide any evidence that those expenditures primarily furthered an individual or family purpose not connected with the performance of duties or activities as a candidate or officeholder.

Payments Made to Officeholder's Business

12. The complaint alleged that the respondent made prohibited payments to the respondent's business. The respondent disclosed on his January 2007 semiannual report eight expenditures totaling approximately \$12,800 to "Skyview Development Corporation LLC" with an address of "320 S.R.L. Thornton, Dallas, TX, 75203." The report disclosed on Schedule H (the schedule used to disclose payments from political contributions to a business of a candidate or officeholder) the following expenditures and purposes:

- July 26, 2006, \$966.01, "Office Rent;"
 - September 1, 2006, \$966.01, "Office Rent;"
 - October 4, 2006, \$966.01, "Office Rent;"
 - October 9, 2006, \$3,500, "Sign Lease;"
 - October 31, 2006, \$966.01, "Office Rent;"
 - November 10, 2006, \$3,500, "Sign Usage;"
 - November 29, 2006, \$966.01, "Office Rent;" and
 - December 18, 2006, \$966.01, "Office Rent."
13. According to Texas Secretary of State records, Skyview Development Corporation was a domestic for-profit corporation that voluntarily dissolved in 2003, and Skyview Development L.L.C. came into existence in 2003 and is a domestic limited liability company. The respondent is the director and sole managing member of the LLC.
14. Property tax records of the Dallas Central Appraisal District show that Skyview Development LLC owns the property at 320 South R.L. Thornton Freeway. The respondent's campaign finance reports list suite 210 at that address as the candidate/officeholder address, and Royce West and Associates is located in suite 310 at that address.
15. The respondent indicated in his response that, "Skyview Development Corporation LLC billed the campaign the same dollar amount that any other tenants or clients would pay for the same or similar services."

Staff Reimbursement

16. The complaint alleged that the respondent improperly disclosed 112 political expenditures to individuals totaling approximately \$44,250 on his January 2007, July 2007, January 2008, and July 2008 semiannual reports and on his 30-day and 8-day pre-election reports filed in connection with the November 2008 election. The purposes disclosed for these expenditures included: "reimbursement," "holiday bonus," "film developing," "fundraiser," "in-state travel," and "framing."
17. The respondent stated that approximately \$39,220 in expenditures were for reimbursement of staff for mileage, holiday bonuses for staff members, payments to individual vendors for services, and of that total, approximately \$3,000 of the expenditures at issue were to individual staff members for reimbursement and in accordance with commission rules, made during the same reporting periods in which the political expenditures were originally disclosed.

18. The complaint specifically alleged that the respondent's:
- January 2007 semiannual report improperly disclosed 40 expenditures totaling approximately \$17,000; the respondent corrected the report to disclose payees for 57 political expenditures totaling \$3,741.05;
 - July 2007 semiannual report improperly disclosed four expenditures totaling approximately \$1,100; the respondent corrected the report to disclose payees for two political expenditures totaling \$809.75;
 - January 2008 semiannual report improperly disclosed 45 expenditures totaling approximately \$13,000; the respondent corrected the report to disclose a payee for one political expenditures for \$100;
 - July 2008 semiannual report improperly disclosed 17 expenditures totaling approximately \$10,400; the respondent corrected the report to disclose payees for 25 political expenditures totaling \$379.87;
 - 30-day pre-election report improperly disclosed five expenditures totaling \$1,900; and
 - 8-day pre-election report improperly disclosed one expenditure for \$300.

Political Expenditures from Personal Funds

19. The complaint alleged that the respondent improperly disclosed 10 reimbursements for political expenditures from personal funds totaling approximately \$3,100 on his January 2007, July 2007, and January 2008 semiannual reports.
20. The respondent disclosed himself as payee for the following expenditures:
- Four expenditures totaling approximately \$850 on his January 2007 semiannual report, for the purpose of "Reimbursement;"
 - Three expenditures totaling approximately \$1,290 on his July 2007 semiannual report, for the purpose of "Reimbursement;" and
 - Three expenditures totaling approximately \$980 on his January 2008 semiannual report.
21. The respondent acknowledged that three of the expenditures totaling approximately \$650 disclosed on the January 2007 semiannual report were incorrectly reported, but indicated that the fourth for \$189.72 was a reimbursement for travel and was correct as originally reported. The reports do not appear to disclose the original expenditure tied to this reimbursement. The respondent filed a corrected report disclosing 16 new expenditures to vendors that he indicated correspond to the \$650 in expenditures.
22. The respondent indicated that the three expenditures to himself totaling approximately \$1,300 disclosed on his July 2007 semiannual report were correctly reported, and that these

expenditures corresponded to two itemized expenditures to Conn's and Cingular, and one unitemized expenditure to Lincoln Mercury for \$42.43, during the reporting period.

23. The respondent indicated that the three expenditures totaling approximately \$970 disclosed on his January 2008 semiannual report were correctly reported. Schedule E (loan schedule) disclosed three loans with the respondent named as the lender in amounts that correspond to the allegations, and it appears the actual payees were shown on Schedule F, as well as the repayment (reimbursement) to the respondent.

Required Information on Campaign Finance Reports

24. The complaint alleged that the respondent failed to disclose the addresses of 10 payees, totaling \$20,525, and the purpose of five expenditures totaling approximately \$4,900, on his January 2007 semiannual report. The complaint alleged that the respondent also failed to disclose the office sought, office held, and candidate benefitted by a direct expenditure on his 8-day pre-election report filed in connection with the November 2008 election.
25. The respondent's January 2007 semiannual report included 13 expenditures totaling approximately \$20,600 that disclose "UNKNOWN" in the place provided to disclose payee address. The respondent's January 2007 semiannual report contained five expenditures totaling approximately \$4,900, three of these disclosed question marks ("???") and two disclosed "UNKNOWN" in the space provided to disclose the purpose of payment.
26. The respondent's 8-day pre-election report filed in connection with the November 2008 election disclosed an expenditure on Schedule F in the amount of \$35,000, to "Alpha Business Images LLC" with a purpose disclosed of "Media services partial in kind cont. to the Ragael Anchia Roy C. Brooks & Lupe Valdez Camp." Box 9, the box provided to disclose the Candidate/Officeholder name, office sought, and office held, (if applicable) for direct expenditures to benefit candidates or officeholders, was left blank.

Timely Reporting Contributions and Expenditures

27. The complaint alleged that the respondent failed to timely report nine political expenditures for travel outside of Texas totaling approximately \$3,100, and one \$698.92 in-kind contribution for travel outside of Texas.
28. On Schedule T (used to disclose in-kind contributions and political expenditures for travel outside Texas) on his January 2008 semiannual report, the respondent disclosed:
 - An in-kind contribution from the "University of Minnesota," the dates of travel disclosed are "6/11/2007" and "6/12/2007." The respondent also disclosed a date for the in-kind contribution of 9/19/2007 on Schedule A (used to disclose contributions) and a value of \$698.92;

- An expenditure to “Air Taxi,” the dates of travel disclosed are “6/12/2007” and “6/12/20007” (also disclosed on Schedule F, on 7/10/2007 in the amount of \$32.48);
 - An expenditure to “American Airlines,” the dates of travel disclosed are “6/11/2007” and “6/11/20007” (also disclosed on Schedule F, on 7/10/2007 in the amount of \$25);
 - An expenditure to “Radisson University Hotel,” the dates of travel disclosed are “6/11/2007” and “6/12/2007” (also disclosed on Schedule F, on 7/10/2007 in the amount of \$208.20); and
 - An expenditure to himself, the dates of travel disclosed are “6/11/2007” and “6/12/2007” (also disclosed on Schedule F, on 09/18/2007 in the amount of \$529.65).
29. On Schedule T (the schedule provided to disclose in-kind contributions and political expenditures for travel outside Texas) on his 8-day pre-election report filed in connection with the November 2008 election, the respondent disclosed:
- An expenditure to “American Airlines,” the dates of travel disclosed are “8/26/2008” and “8/29/2008” (also disclosed on Schedule F, on 10/01/2008 in the amount of \$253.50);
 - An expenditure to “American Airlines,” the dates of travel disclosed are “8/26/2008” and “8/29/2008” (also disclosed on Schedule F, on 10/01/2008 in the amount of \$1,101.18);
 - An expenditure to “Enterprise Rent-A-Car,” the dates of travel disclosed are “8/26/2008 and “8/29/2008” (also disclosed on Schedule F, on 10/01/2008 in the amount of \$660.99);
 - An expenditure to “Frontier Airlines,” the dates of travel disclosed are “8/26/2008” and “8/29/2008” (also disclosed on Schedule F, on 10/01/2008 in the amount of \$232.69); and
 - An expenditure to “King Soopers Fuel,” the dates of travel disclosed are “8/26/2008” and “8/29/2008” (also disclosed on Schedule F, on 10/01/2008 in the amount of \$87.69).
30. The period covered by the respondent’s January 2008 semiannual report was July 1, 2007, through December 31, 2007. The period covered by the respondent’s 8-day pre-election report was September 26, 2008, through October 25, 2008. The period covered by the respondent’s 30-day pre-election report was July 1, 2008, through September 25, 2008.
31. The complaint alleged that due to the dates of travel, the respondent should have disclosed the contribution and expenditures disclosed on the January 2008 semiannual report on the July 2007 semiannual report, and the expenditures disclosed on the 8-day pre-election report on the earlier 30-day pre-election report.

32. In his response, the respondent stated that although travel was during the July 2007 semiannual reporting period, and during the 30-day pre-election reporting period, that the expenditures were made by credit card, and that he received the credit card bill and paid the expenditures during the January 2008 semiannual reporting period, and 8-day pre-election reporting period respectively. The respondent did not address the allegation concerning the in-kind contribution.

Reporting the Amount of Total Political Expenditures

33. The complaint alleged that the respondent incorrectly reported an investment with Morgan Stanley as a political expenditure, thus overstating total political expenditures, and understating total political contributions maintained on his 30-day pre-election report filed in connection with the November 2008 general election.
34. On Schedule F of his 30-day pre-election report, the respondent disclosed an expenditure to payee "Morgan Stanley" on August 31, 2008, in the amount of \$54,147.75 for the purpose of "Investment of campaign funds."
35. In response to this allegation, the respondent indicated that, "The Morgan Stanley investment was reported as an expenditure (that there may be full disclosure of the activity) and the amount was included in the contribution balance of the 30-Day report as required."

Principal Occupation or Job Title and Employer of Contributors

36. The complaint alleged that the respondent failed to disclose the principal occupation or job title and employer for 80 contributors on his January 2007 and July 2008 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the November 2008 election.
37. Of the reports at issue, the January 2007 semiannual report disclosed 43 contributions from individuals who contributed \$500 or more during the period and disclosed no occupation or employer information.

IV. Findings and Conclusions of Law

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

Acceptance of Corporate Contributions

1. 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.

2. 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).
3. 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.
4. Fourteen contributions (totaling \$13,500 from AT&T, Dallas Fire Fighters, Empact, Home Builders Association, TX AFL-CIO, Texas Association For Home Care, Inc., Texas Financial Services Association, Texas Manufactured Housing Association Inc., Texas State Association of Firefighters, Harris County Deputies Organization, and the Texas Association Of Defense Counsel PAC, Solvay Pharmaceuticals, Committee for Responsible Government of Temple-Inland, and Texas Credit Union League) were from the political committees of those entities, and four contributions (totaling \$1,750 from CAA, Diamond RJR, PCCCLCC, and Tex-Mart Fireworks), were from either a professional association, sole proprietorship, or an LLC with no corporate partners. Therefore, as to 18 contributions (totaling \$15,250), there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code.
5. As to the four contributions (totaling \$5,000) from General Drivers Warehousemen & Helpers, Vandever Family Trust, and the second contribution from Texas Credit Union League, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.

Documentation for Out-of-State Committees

6. A candidate that accepts political contributions from an out-of-state political committee that filed a statement of organization with the Federal Election Commission 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 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.
7. "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).

8. 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).
9. The respondent was required to include an FEC ID number for the contribution from Federal Express PAC. The respondent did not include that information on his original report. Therefore, there is credible evidence of a violation of section 253.032 of the Election Code.

Personal Use of Political Contributions

10. 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).
11. In Ethics Advisory Opinion No. 129, the commission stated that it is permissible for an officeholder to use political contributions to pay the expenses of maintaining and operating a personal asset for campaign or officeholder purposes. *See* Ethics Advisory Opinion Nos. 116 (1993) and 129 (1993).
12. The complaint alleged that the respondent's expenditures related to a motor vehicle were a conversion of political contributions to a personal use. Absent any evidence that the vehicle at issue was used for a purpose other than that sworn to by the respondent, there is insufficient evidence of a violation of section 253.035(a) of the Election Code with regard to these expenditures.

Payments Made to Officeholder's Business

13. A payment that is made from a political contribution to a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business may not exceed the amount necessary to reimburse the business for actual expenditures made by the business. ELEC. CODE § 253.041(b).
14. In Ethics Advisory Opinion No. 35 (EAO 35), the commission addressed whether a candidate who owned 50 percent of the stock in a corporation could purchase advertising services and supplies from the business. Ethics Advisory Opinion No. 35 (1992). The commission stated:

[A] candidate may make a payment from a political contribution to such a business as long as the payment does not exceed the amount necessary to reimburse the business for actual expenditures made by the business. In other words, the business may not make any profit on such a transaction.

Id.

15. The respondent disclosed eight expenditures from political contributions totaling approximately \$12,800 as payments to Skyview Development Corporation, LLC, a limited liability company at the time the payments were made. The respondent held the position of director and was the sole managing member on its governing body during the period at issue. Thus, in accordance with section 253.041(b) of the Election Code, and EAO 35 the amount of the respondent's payments to the business could not exceed the amount reasonably necessary to reimburse the business for its actual expenses related to the use of the property.
16. Other than the reimbursements disclosed on the respondent's report, and the respondent's response, there is no indication of the actual costs incurred by the business. The respondent stated that the amounts disclosed as political expenditures to Skyview Development LLC were the same as the business would charge any other tenant or client. Based on section 253.041 of the Election Code, the commission has determined that an improper payment from political contributions would occur if a candidate or officeholder used political contributions to make an expenditure to his own business in an amount more than what was necessary to reimburse the business for actual costs. Although the evidence does not show the actual costs to the business for the office space and sign, the respondent stated that he paid the same amount as any tenant or client would pay. It is reasonable to conclude that amount exceeds actual costs.
17. Therefore, there is credible evidence that the respondent violated section 253.041 of the Election Code by making the payments at issue.

Staff Reimbursement

18. 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).
19. Each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. *Id.* § 254.031(a)(5).
20. For reports due before February 25, 2007, Ethics Advisory Opinion No. 450 (2003), describes the proper way to report staff reimbursement. 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 staff member and then as an expenditure

by the candidate to repay the staff member; or (2) if the expenditure and reimbursement occur during 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 staff member made the expenditure, and explaining in the “purpose” section that a staff member made the expenditure from personal funds and that the candidate subsequently reimbursed the staff member. The commission has since adopted section 20.62 of the Ethics Commission Rules, which sets forth the current method for reporting staff reimbursement.¹

21. Ethics Commission Rule § 20.62 currently states that political expenditures made out of personal funds by a staff member of a candidate with the intent to seek reimbursement from the candidate that in the aggregate do not exceed \$5,000 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.

22. Ethics Commission Rule § 20.62 also states that if the staff member is not reimbursed during the same reporting period, or is reimbursed more than \$5,000 in the aggregate during the reporting period, then a political expenditure made out of personal funds by the staff member of a candidate with the intent to seek reimbursement from the candidate must be reported as follows:
 - (1) The aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the candidate;
 - (2) The expenditure made by the staff member is reported as a political expenditure by the candidate; and
 - (3) The reimbursement to the staff member to repay the loan is reported as a political expenditure by the candidate.

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

23. As to the January 2007 semiannual report, Ethics Advisory Opinion No. 450, describes the proper way to report staff reimbursement. The \$500 threshold in the former version of Ethics Commission Rule § 20.62 applies to the July 2007 semiannual report, and the \$5,000 threshold in the current version of Ethics Commission Rule § 20.62 applies to the January 2008, and July 2008 semiannual reports and the 30-day and 8-day pre-election reports filed in connection with the November 2008 election.
24. The respondent acknowledged that he failed to disclose the actual vendor payees for approximately \$5,030 in expenditures. Although the respondent corrected the reports at issue to disclose the actual payees, these political expenditures were not properly disclosed when the reports were originally due. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.
25. As to the remaining approximately \$39,220 in expenditures, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

Political Expenditures from Personal Funds

26. 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's failure to comply with this requirement may not be cured by filing a corrected report after the report deadline has passed. Ethics Commission Rules § 20.63(e).
27. 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.
28. On the three reports at issue, the respondent disclosed himself as the payee and the purpose of the expenditures as "reimbursement" for 10 expenditures totaling approximately \$3,100.
29. The respondent acknowledged that \$650 in expenditures were incorrectly disclosed, and corrected the reports to disclose those payees. The respondent also indicated that he failed to itemize a \$42.43 expenditure from personal funds, for which he sought reimbursement. The respondent also failed to disclose individual payees corresponding to the \$189.72

reimbursement disclosed on his original January 2007 semiannual report. Therefore, there is credible evidence of violations of sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules with regard to reimbursements totaling approximately \$880.

30. The remaining \$2,220 in expenditures were correctly reported as reimbursements or payments to the respondent. Therefore, as to these expenditures, there is credible evidence of no violation of sections 253.035 and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules.

Required Information on Campaign Finance Reports

31. 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). Each campaign finance report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
32. A candidate or officeholder is required to report the name and other information about each candidate or officeholder who benefits from a direct campaign expenditure. ELEC. CODE § 254.031(a)(7).
33. 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).
34. It is apparent from the face of the report, that 13 political expenditures disclose no address and five political expenditures disclose no purpose of payment. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code with regard to those expenditures.
35. The expenditure to Alpha Business Images is disclosed as a partial in-kind contribution. There is no evidence to indicate that this expenditure was a direct expenditure to benefit a candidate or officeholder, instead it appears that it may have been an in-kind contribution to benefit two candidates. Therefore, there is credible evidence of no violation of section 254.031(a)(7) of the Election Code with regard to this expenditure.

Timely Reporting Contributions and Expenditures

36. 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 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)(1), (3).
37. For purposes of reporting under this chapter, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure, except as provided by Subsection (b). ELEC. CODE § 254.035(a).
38. The amount of a political expenditure made by credit card is readily determinable by the person making the expenditure on the date the person receives the credit card statement that includes the expenditure. *Id.* § 254.035(c). Subsection (c) does not apply to a political expenditure made by credit card during the period covered by a pre-election report. *Id.* § 254.035(d).
39. As to the approximately \$800 in expenditures disclosed on the respondent's January 2008 semiannual report, the amount of expenditure was readily determinable by the respondent on the date he received the credit card statement. The respondent used that date to disclose the expenditures. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code as to the expenditures.
40. As to the \$698.92 in-kind contribution from the University of Minnesota, disclosed on the respondent's January 2008 semiannual report, the dates of travel fell outside the reporting period, but the date of the contribution fell inside the reporting period. The evidence is insufficient to show a violation of section 254.031(a)(1) of the Election Code with regard to this contribution.
41. As to the approximately \$2,340 in expenditures disclosed on the respondent's 8-day pre-election report, the travel occurred on or about August 26, 2008, a date which fell during the 30-day pre-election reporting period. Because the expenditures were during a period covered by a pre-election report, the amounts of the expenditures were considered readily determinable at the time they were made. Thus, the respondent was required to disclose the expenditures in the 30-day pre-election report, not the 8-day pre-election report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code in connection with these expenditures.

Reporting the Amount of Total Political Expenditures

42. Each campaign finance report must include the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
43. Each 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).
44. In Ethics Advisory Opinion No. 224 (1994) (EAO 224), the commission stated that the only limit title 15 of the Election Code places on a candidate's or officeholder's investment of political contributions is that an investment may not constitute a conversion of a political contribution to the personal use of the candidate or officeholder.
45. The commission has viewed the purchase of an investment with political contributions as an allowable use of political contributions. The respondent disclosed the purchase and also included the amount in his total political contributions maintained on that report. Therefore, there is credible evidence of no violation of sections 254.031(a)(6) and 254.031(a)(8) of the Election Code.

Principal Occupation or Job Title and Employer of Contributors

46. 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.
47. The respondent's January 2007 semiannual report disclosed 413 political contributions. Forty-three political contributions of \$500 or more from individuals did not disclose a principal occupation or job title and employer for the contributor. These contributions, (which total approximately \$95,250) are from contributors who made contributions of \$500 or more during that reporting period and for whom the respondent failed to disclose the principal occupation or job title and employer. Therefore, there is credible evidence of violations of section 254.0612 of the Election Code with regard to these contributions.

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 campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent also acknowledges that the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules. The respondent further acknowledges that a candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report that covers the period during which the expenditures from personal funds were made and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. The respondent also acknowledges that 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. 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 further acknowledges that an officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business; and that a payment that is made from a political contribution to such a business that is not prohibited may not exceed the amount necessary to reimburse the business for actual expenditures made by the business. 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 \$3,000 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-2812388.

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

Royce West, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director