

TEXAS ETHICS COMMISSION

IN THE MATTER OF
THOMAS WILLIAMS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-290108

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 11, 2010, to consider sworn complaint SC-290108. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 253.035(h) of the Election Code, and section 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 failed to disclose political contributions from the specific-purpose committee Texans for Tommy Williams (TTW) and failed to disclose political expenditures made from those political contributions, on semiannual campaign finance reports filed in July 2007, January 2008, July 2008, and January 2009, as well as on 30-day and 8-day pre-election reports for the March 2008 primary election and a 30-day pre-election report for the November 2008 general election.

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 4. The respondent was an opposed candidate in the March 2008 primary election and was unopposed in the November 2008 general election.
2. On July 10, 2007, the respondent filed an original July 2007 semiannual report that disclosed no political contributions and no political expenditures, and that did not disclose receiving notice of political expenditures by any political committees to support the respondent.

3. On February 15, 2008, the respondent filed a corrected July 2007 semiannual report that disclosed no political contributions and no political expenditures, but that disclosed receiving notice that TTW made political expenditures to support the respondent.
4. On June 30, 2009, after receiving notice of the sworn complaint allegations, the respondent filed a corrected July 2007 semiannual report that added a political expenditure of \$629.14 on Schedule G (used to disclose political expenditures made from personal funds) for "Electronic Scheduler." The report did not indicate that the respondent intended to seek reimbursement for the political expenditure.
5. On January 15, 2008, the respondent filed an original January 2008 semiannual report that disclosed no political contributions and no political expenditures, and that did not disclose receiving notice of political expenditures by any political committees to support the respondent.
6. On February 15, 2008, the respondent filed a corrected January 2008 semiannual report that disclosed no political contributions and no political expenditures, but that disclosed receiving notice that TTW made political expenditures to support the respondent.
7. On June 30, 2009, after receiving notice of the sworn complaint allegations, the respondent filed a corrected January 2008 semiannual report that added eight political expenditures from personal funds on Schedule G totaling approximately \$150 for parking, tolls, and staff meeting meals. The report did not indicate that the respondent intended to seek reimbursement for the political expenditures.
8. On February 4, 2008, the respondent filed an original 30-day pre-election report for the March 2008 primary election that disclosed no political contributions and no political expenditures, and that did not disclose receiving notice of political expenditures by any political committees to support the respondent.
9. On February 15, 2008, the respondent filed a corrected 30-day pre-election report for the March 2008 primary election that disclosed no political contributions and no political expenditures, but that disclosed receiving notice that TTW made political expenditures to support the respondent.
10. On February 25, 2008, the respondent filed an original 8-day pre-election report for the March 2008 primary election that disclosed no political contributions and no political expenditures, but that disclosed receiving notice that TTW made political expenditures to support the respondent. The respondent did not file any corrections to the report.
11. On July 14, 2008, the respondent filed an original July 2008 semiannual report that disclosed no political contributions and no political expenditures, but that disclosed receiving notice

- that TTW and another political committee made political expenditures to support the respondent.
12. On June 30, 2009, after receiving notice of the sworn complaint allegations, the respondent filed a corrected July 2008 semiannual report that added 18 political expenditures from personal funds on Schedule G totaling approximately \$300 for parking, tolls, office supplies, and staff and constituent meeting meals. The report did not indicate that the respondent intended to seek reimbursement for the political expenditures.
 13. On October 1, 2008, the respondent filed an original 30-day pre-election report for the November 2008 general election that disclosed no political contributions and no political expenditures, but that disclosed receiving notice that TTW made political expenditures to support the respondent.
 14. On June 30, 2009, after receiving notice of the sworn complaint allegations, the respondent filed a corrected 30-day pre-election report for the November 2008 general election that added two political expenditures from personal funds on Schedule G totaling approximately \$10 for tolls. The report did not indicate that the respondent intended to seek reimbursement for the political expenditures.
 15. On October 26, 2008, the respondent filed an original 8-day pre-election report for the November 2008 general election that disclosed no political contributions and no political expenditures, but that disclosed receiving notice that TTW made political expenditures to support the respondent. The respondent did not file any corrections to the report.
 16. On January 11, 2009, the respondent filed an original January 2009 semiannual report that disclosed no political contributions and no political expenditures, but that disclosed receiving notice that TTW made political expenditures to support the respondent.
 17. On June 30, 2009, after receiving notice of the sworn complaint allegations, the respondent filed a corrected January 2009 semiannual report that added eight political expenditures from personal funds totaling approximately \$60 for parking and tolls. The report did not indicate that the respondent intended to seek reimbursement for the political expenditures.
 18. On July 14, 2009, TTW filed an original July 2009 semiannual report that disclosed on Schedule K (used for reporting credits) a payment of \$1,143.46 for "COH Sch G Reimb.7-07to1-09 [sic]."

19. Campaign finance reports filed by TTW from July 2007 through January 2009 disclosed the following political expenditures to the respondent, totaling approximately \$5,380:
- \$963.78 on January 10, 2007, for the purpose of “Desc:Expense Report 12/03/06 – 12/13/06”
 - \$445.63 on July 2, 2007, for the purpose of “Desc:Expense Report 07/01/07 – 07/30/07
 - \$722.21 on December 6, 2007, for the purpose of “Desc:Expense Report 07/31/07 – 10/31/07”
 - \$462.21 on December 13, 2007, for the purpose of “Desc:Expense Report 11/01/07 – 12/31/07
 - \$142.12 on January 19, 2008, for the purpose of “Desc:Expense Report 01/01/08 – 01/19/08”
 - \$142.12 on January 30, 2008, for the purpose of “Desc:Expense Report 01/01/08 – 01/19/08”
 - \$510.24 on February 22, 2008, for the purpose of “Desc:Expense Report 01/25/08 – 02/24/08”
 - \$342.96 on March 13, 2008, for the purpose of “Desc:Expense Report 02/26/08 – 03/04/08”
 - \$897.01 on June 30, 2008, for the purpose of “Desc:Expense Report 04/13/08 – 06/25/08”
 - \$265.03 on September 25, 2008, for the purpose of “Desc:Expense Report 07/01/08 – 09/25/08”
 - \$163.82 on November 25, 2008, for the purpose of “Desc:Expense Report 10/09/08 – 11/4/08”
 - \$326.79 on December 31, 2008, for the purpose of “Desc:Expense Report 11/12/08 – 12/31/08”
20. In response to the sworn complaint allegations, the respondent submitted an affidavit in which he swore that, as a candidate/officeholder, he neither accepts contributions nor makes expenditures. The respondent swore that all contributions to his campaign are accepted and reported by TTW and all political expenditures made from such contributions are made and reported by TTW. The respondent also swore that, “The vast majority of the expenditures referenced in the sworn complaint with Tommy Williams as payee were permissible payments for mileage.”
21. The respondent’s attorney also submitted a written response stating that the respondent, on June 26, 2009, returned the non-mileage reimbursements, totaling \$1,143.46, to TTW, and reported the reimbursement from personal funds on the July 2009 semiannual report. The respondent’s attorney stated that the amounts that were not itemized on the corrected reports

and were not reimbursed on June, 26, 2009, were appropriate mileage reimbursements, totaling \$4,240.46.

IV. Findings and Conclusions of Law

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

1. A campaign finance report filed by a candidate 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 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).
2. A campaign finance report filed by a candidate must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. *Id.* § 254.031(a)(3).
3. A candidate is required to report a campaign expenditure from personal funds. Ethics Commission Rules § 20.63(a).
4. An officeholder is not required to report officeholder expenditures made from the officeholder's personal funds unless the officeholder intends to be reimbursed from political contributions. ELEC. CODE §§ 254.092, 253.035(h); Ethics Commission Rules § 20.63(b).
5. A candidate or officeholder who makes political expenditures from his personal funds may reimburse those personal funds from political contributions only if the expenditures were fully reported as political expenditures on the report covering the period during which the expenditures were made and the report disclosing the expenditures indicates that the expenditures were made from the candidate's or officeholder's personal funds and are subject to reimbursement. ELEC. CODE § 253.035(h); Ethics Commission Rules § 20.63(d).
6. A candidate or officeholder who has complied with Ethics Commission Rule § 20.63(d) and whose personal funds have been reimbursed from political contributions must report the amount of the reimbursement as a political expenditure in the report covering the period during which the reimbursement was made. *Id.* § 20.63(f).
7. A political expenditure means a campaign expenditure or an officeholder expenditure. ELEC. CODE § 251.001(10).

8. A campaign expenditure means, in pertinent part, an expenditure made by any person in connection with a campaign for an elective office. *Id.* § 251.001(7). An officeholder expenditure means an expenditure made by any person to defray expenses that are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(9).
9. An expenditure means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
10. A political contribution means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
11. A campaign contribution means, in pertinent part, a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3). An officeholder contribution means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(4).
12. A contribution means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2).
13. If a candidate or officeholder uses a personal car for political purposes, reporting is required only if and when the candidate or officeholder pays himself reimbursement from political contributions. Ethics Advisory Opinion No. 347 (EAO 347) (1996).
14. A specific-purpose political committee supporting a candidate or officeholder has an identity separate from the identity of that candidate or officeholder. *See* Ethics Advisory Opinion No. 281 (EAO 281) (1995). A committee must report a transfer of funds to the candidate or officeholder as an expenditure, and the candidate or officeholder must report the transfer as a contribution. *Id.*
15. The respondent made political expenditures from personal funds totaling approximately \$1,140. Because the respondent sought reimbursement from political contributions for the political expenditures made from personal funds, he was required to disclose the expenditures on Schedule G of his campaign finance reports. Although the respondent amended his reports to disclose approximately \$1,140 in political expenditures from personal funds, the information was not included when the reports were originally due. There was,

however, no requirement that the respondent disclose the use of his personal vehicle as a political expenditure from personal funds.

16. Reports filed by TTW from July 2007 through January 2009 disclosed that TTW paid approximately \$5,380 to the respondent. Because the payments from TTW were made with the intent that they be used to defray expenses the respondent incurred in performing a duty or engaging in an activity in connection with his office, or as a candidate for public office, and there is no evidence that any of the expenses were reimbursable with public money, the payments were political contributions accepted by the respondent. As discussed previously, the commission held in EAO 281 that a committee must report a transfer of funds to a candidate or officeholder as an expenditure, and the candidate or officeholder must report the transfer as a contribution. Thus, the respondent was required to report the approximately \$5,380 in political contributions he accepted from TTW during the period at issue. The respondent did not disclose this information in his reports.
17. Additionally, the respondent reimbursed himself from political contributions for political expenditures made from personal funds and was, thus, required to disclose the amount of the reimbursement as a political expenditure in the report covering the period during which the reimbursement was made. Under EAO 347, the respondent was also required to report a political expenditure when he used political contributions to reimburse himself for the use of his personal vehicle. The respondent did not disclose the approximately \$5,380 in reimbursements he made from political contributions as political expenditures in his reports.
18. The respondent did not include, in reports filed from July 2007 through January 2009, approximately \$5,380 in political contributions from TTW and approximately \$5,380 in political expenditures he made as reimbursements for political expenditures made from personal funds and the use of his personal vehicle. Although the respondent filed corrected reports to disclose approximately \$1,140 in political expenditures from personal funds, the expenditures were not disclosed when the reports were originally due. Therefore, there is credible evidence of violations of sections 254.031(a)(1), 254.031(a)(3), and 253.035(h) of the Election Code, and section 20.63 of the Ethics Commission Rules.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.

2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a campaign finance report filed by a candidate 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 required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. The respondent acknowledges that a campaign finance report filed by a candidate must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent acknowledges that a candidate or officeholder who makes political expenditures from his personal funds may reimburse those personal funds from political contributions only if the expenditures were fully reported as political expenditures on the report covering the period during which the expenditures were made and the report disclosing the expenditures indicates that the expenditures were made from the candidate's or officeholder's personal funds and are subject to reimbursement. The respondent acknowledges that a candidate or officeholder who makes political expenditures from his personal funds and seeks reimbursement of those personal funds from political contributions must comply with the reporting requirements in section 20.63 of the Ethics Commission Rules. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$750 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-290108.

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

Thomas Williams, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director