

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
JAMES E. NELSON,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-290339

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2010, to consider sworn complaint SC-290339. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(1), 254.031(a)(2), 254.031(a)(3), 254.031(a)(6), and 254.063 of the Election Code, and credible evidence of a technical or *de minimis* violation of sections 254.031(a)(2), and 254.031(a)(6) 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 did not properly disclose political contributions, political expenditures, and loans in campaign finance reports. The complaint also alleged that the respondent failed to timely file the January 2009 semiannual report.

### III. Facts Supported by Credible Evidence

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

1. The respondent is a member of the city council of League City and was an incumbent candidate in a May 12, 2007, election and the ensuing runoff election on June 16, 2007.
2. The allegations were based on the respondent's 30-day and 8-day pre-election reports for the May 12, 2007, election; 8-day pre-election report for the June 16, 2007, runoff election; July 2007, July 2008, and January 2009 semiannual campaign finance reports.
3. On June 18, 2009, the respondent filed corrections to the reports at issue with the local filing authority. On March 19, 2010, the respondent filed additional corrections to the reports at issue with the local filing authority. The report totals listed below reflect the amounts from the original reports and the most recent corrections.

4. The respondent's 30-day pre-election report for the May 2007 election disclosed the following:
  - \$2,100 in total political contributions of \$50 or less
  - \$0 in total political contributions (corrected to \$2,100)
  - A blank field for total political expenditures of \$50 or less
  - \$2,406.22 in total political expenditures
  - \$0 in total political contributions maintained as of the last day of the reporting period
  - \$15,000 in outstanding loans (corrected to \$5,000)
  
5. The respondent's 8-day pre-election report for the May 2007 election disclosed the following:
  - \$0 in total political contributions of \$50 or less
  - \$0 in total political contributions
  - \$0 in total political expenditures of \$50 or less
  - \$4,972.05 in total political expenditures
  - \$0 in total political contributions maintained as of the last day of the reporting period
  - \$15,000 in outstanding loans (corrected to \$5,000)
  
6. The respondent's 8-day pre-election report for the June 2007 runoff election disclosed the following:
  - \$0 in total political contributions of \$50 or less
  - \$0 in total political contributions
  - \$0 in total political expenditures of \$50 or less
  - \$2,893.19 in total political expenditures
  - \$0 in total political contributions maintained as of the last day of the reporting period
  - \$15,000 in outstanding loans (corrected to \$5,000)
  
7. The respondent's July 2007 semiannual report disclosed the following:
  - \$0 in total political contributions of \$50 or less
  - \$500 in total political contributions (corrected to \$1,500)
  - \$0 in total political expenditures of \$50 or less
  - \$8,639.14 in total political expenditures
  - \$0 in total political contributions maintained as of the last day of the reporting period
  - \$4,729.03 in outstanding loans (corrected to \$5,000)

8. The respondent's July 2008 semiannual report disclosed the following:
- \$0 in total political contributions of \$50 or less
  - \$0 in total political contributions (corrected to \$5,000)
  - \$0 in total political expenditures of \$50 or less
  - \$0 in total political expenditures (Schedule F discloses a \$5,000 political expenditure)
  - \$0 in total political contributions maintained as of the last day of the reporting period
  - \$3,729.03 in outstanding loans (corrected to \$0)
9. The respondent's January 2009 semiannual report disclosed the following:
- \$0 in total political contributions of \$50 or less
  - \$0 in total political contributions
  - \$0 in total political expenditures of \$50 or less
  - \$0 in total political expenditures
  - \$0 in total political contributions maintained as of the last day of the reporting period
  - \$3,729.03 outstanding loans (corrected to \$0)

### **Political Contributions**

10. The complaint alleged that the respondent disclosed an incorrect amount of total political contributions accepted during the periods covered in his 30-day pre-election report for the May 2007 election, July 2008, and January 2009 semiannual reports.
11. The complaint also alleged that the respondent failed to disclose the address of a person giving a political contribution in "one place" on the July 2007 semiannual report.
12. The respondent also acknowledged that he failed to disclose on his original July 2007 and July 2008 semiannual reports two political contributions totaling \$6,000.

### 30-day Pre-election Report for the May 2007 Election

13. The 30-day pre-election report for the May 2007 election disclosed \$2,100 in total political contributions of \$50 or less, unless itemized, and \$0 in total political contributions accepted. No political contributions were itemized on Schedule A (used to disclose political contributions) in the report at issue.

14. On June 18, 2009, the respondent corrected the report at issue to disclose \$2,100 as the amount of total political contributions accepted.
15. In response to the allegation, the respondent swore, "I simply failed to reflect that my total political contributions for the period were \$2,100.00."

#### July 2007 Semiannual Report

16. The July 2007 semiannual report disclosed a single \$500 political contribution on July 16, 2007, and did not disclose the full address of the contributor.
17. On July 8, 2008, the respondent corrected the report at issue to disclose an additional political contribution of \$1,000, but did not disclose the full address of the contributor.
18. On June 18, 2009, in response to the allegation, the respondent corrected the report to disclose the full addresses for both of the contributions at issue.

#### July 2008 Semiannual Report

19. The July 2008 semiannual report disclosed \$0 for both the total political contributions of \$50 or less, unless itemized, and the total political contributions accepted. No political contributions were itemized on Schedule A in the report at issue.
20. The complaint alleged that the amount of total political contributions disclosed in the report should be \$2,825, according to a calculation performed by the complainant.
21. In response to the allegation, the respondent swore, "I did report an incorrect contribution total. I have reviewed and corrected my math." He also swore, "My correction affidavit will reflect this information."
22. On June 18, 2009, the respondent corrected the report at issue to disclose \$0 as the amount of total political contributions accepted.
23. On March 19, 2010, the respondent filed another correction to the report at issue to disclose a \$5,000 contribution from John C. Nelson on February 1, 2008, and to disclose that the amount of total political contributions accepted was \$5,000. (The correction also disclosed a \$5,000 political expenditure on February 4, 2008, to himself for, "Reimbursement Of Personal Funds Used For Campaign," which was not previously disclosed, and will be addressed in a following section).

January 2009 Semiannual Report

24. The January 2009 semiannual report disclosed \$0 for both the total political contributions of \$50 or less, unless itemized, and the total political contributions accepted. No political contributions were itemized on Schedule A in the report at issue.
25. The complaint alleged that the amount of total political contributions disclosed in the report should be \$2,825, according to a calculation performed by the complainant.
26. There was no evidence to show that the disclosed total was incorrect.

**Total Outstanding Loans**

27. The complaint alleged that the respondent reduced the total principal amount of all outstanding loans as of the last day of the reporting period without reporting political contributions and political expenditures to repay the loan in the July 2007 and July 2008 semiannual reports.
28. In the respondent's 30-day pre-election report for the May 2007 election, the respondent disclosed a \$10,000 loan from himself on February 28, 2007, and a \$5,000 loan from John C. Nelson on March 31, 2007.

July 2007 Semiannual Report

29. The complaint alleged that the respondent reduced the total principal amount of all outstanding loans as of the last day of the reporting period by \$10,270.97 without reporting political contributions and political expenditures used to reduce the loan amount in the July 2007 report.
30. The allegation appears to be based on the disclosure of \$15,000 in outstanding loans in earlier reports and \$4,729.03 in outstanding loans on the July 2007 report, without the July 2007 report disclosing a loan payment or payments that would reduce the outstanding loan total by \$10,270.97, or contributions in an amount sufficient to make a loan payment in that amount.
31. The report at issue disclosed \$500 in total political contributions accepted during the reporting period, \$8,639.14 in total political expenditures made during the reporting period, and \$4,729.03 as the total principal amount of all outstanding loans as of the last day of the reporting period. The report disclosed all 13 political expenditures on Schedule F (used for political expenditures from political contributions).
32. On June 18, 2009, the respondent again corrected the report at issue to disclose \$1,500 in total political contributions accepted and \$0 as the total principal amount of all outstanding

loans as of the last day of the reporting period. (A subsequent correction disclosed the amount of outstanding loans as \$5,000.)

#### July 2008 Semiannual Report

33. The complaint alleged that the respondent reduced the total principal amount of all outstanding loans as of the last day of the reporting period by \$1,000 without reporting a political expenditure in the July 2008 report.
34. The report at issue disclosed \$0 in total political contributions accepted during the reporting period, \$0 in total political expenditures made during the reporting period, and \$3,729.03 in total outstanding loans as of the last day of the reporting period.
35. On June 18, 2009, the respondent corrected the report at issue to disclose \$0 as the total principal amount of all outstanding loans as of the last day of the reporting period.
36. On March 19, 2010, the respondent filed a correction to remove the \$10,000 loan from himself from the previous report, and he filed a second correction to the July 2007 semiannual report to disclose \$5,000 as the total principal amount of all outstanding loans as of the last day of the reporting period.
37. The respondent also corrected the report to disclose all 13 political expenditures totaling \$8,639.14 on Schedule G (used for political expenditures from personal funds) rather than on Schedule F. For seven of those expenditures totaling approximately \$4,400, the respondent marked the box indicating that reimbursement from political contributions was intended.
38. Also on March 19, 2010, the respondent filed a second correction to his July 2008 semiannual report to add a February 1, 2008, \$5,000 contribution from John C. Nelson and a February 4, 2008, \$5,000 political expenditure to himself for, "Reimbursement Of Personal Funds Used For Campaign."
39. The \$5,000 political contribution was the previously disclosed loan from John C. Nelson that was forgiven by the lender.
40. The total principal amount of all outstanding loans as of the last day of the reporting period remained zero.

#### **Political Expenditures of \$50 or Less**

41. The complaint alleged that the respondent failed to disclose the total amount of political expenditures of \$50 or less in his 30-day pre-election report for the May 2007 election.

42. The field in the totals section on the cover sheet for total political expenditures of \$50 or less, unless itemized, was left blank on the report at issue. All nine total political expenditures were itemized on the 30-day report for the May 2007 election.
43. In response to the allegation, the respondent swore, "I itemized all political expenditures including those under \$50 in Schedule F."

### **Political Expenditures**

44. The complaint alleged that the respondent failed to disclose the addresses of persons receiving political expenditures and the purposes of political expenditures in the 30-day and 8-day pre-election reports for the May 2007 election; the 8-day pre-election report for the June 2007 runoff election; and the July 2007 semiannual report.
45. The respondent also acknowledged that he failed to disclose on his original July 2008 report a \$5,000 reimbursement to himself.

#### 30-day Pre-election Report for the May 2007 Election

46. The complaint alleged that the respondent failed to fully disclose the address of the person receiving a political expenditure in "seven places" and failed to disclose the purpose of a political expenditure in "seven places" on the 30-day pre-election report for the May 2007 election.
47. The respondent itemized nine political expenditures totaling approximately \$2,400 in his 30-day pre-election report.
48. Seven political expenditures totaling approximately \$1,730 did not disclose the complete payee address.
49. Seven political expenditures totaling approximately \$2,300 did not disclose the purpose description.
50. On June 18, 2009, in response to the allegations, the respondent corrected the report to disclose the full addresses and purpose descriptions for the expenditures at issue.

#### 8-day Pre-election Report for the May 2007 Election

51. The complaint alleged that the respondent failed to fully disclose the address of the person receiving a political expenditure in "nine places" and failed to disclose the purpose of a political expenditure in "one place" on the 8-day pre-election report for the May 2007 election.

52. The respondent itemized 11 political expenditures totaling approximately \$4,970 in his 8-day pre-election report.
53. Nine political expenditures totaling approximately \$652 did not disclose the payee street address.
54. Two political expenditures totaling approximately \$132 did not disclose the purpose description.
55. On June 18, 2009, in response to the allegations, the respondent corrected the report to disclose the full addresses and purpose descriptions for the expenditures at issue.

#### 8-day Pre-election Report for the June 2007 Runoff Election

56. The complaint alleged that the respondent failed to fully disclose the address of the person receiving a political expenditure in “two places” and failed to disclose the purpose of a political expenditure in “one place” on the 8-day pre-election report for the June 2007 runoff election.
57. The respondent itemized six political expenditures totaling approximately \$2,890 in his 8-day pre-election runoff report.
58. Two political expenditures totaling approximately \$2,075 did not disclose the payee street address.
59. One \$351 political expenditure did not disclose the purpose description.
60. On June 18, 2009, in response to the allegations, the respondent corrected the report to disclose the full addresses and purpose descriptions for the expenditures at issue.

#### July 2007 Semiannual Report

61. The complaint alleged that the respondent failed to fully disclose the address of the person receiving a political expenditure in “thirteen places” on the July 2007 semiannual report.
62. The respondent itemized 13 political expenditures totaling approximately \$8,640 in his July 2007 semiannual report, all of which failed to disclose the payee street address. Four of those expenditures also did not disclose the zip code.
63. On June 18, 2009, in response to the allegations, the respondent corrected the report to disclose the full addresses for the expenditures at issue.

July 2008 Semiannual Report

64. The respondent corrected his original report to disclose a February 4, 2008, \$5,000 political expenditure to himself as a reimbursement for campaign expenses made from personal funds.

**Timely Filing of Campaign Finance Report**

65. The complaint alleged that the respondent failed to file the January 2009 semiannual report by the reporting deadline.
66. The respondent filed a campaign treasurer appointment with the local filing authority on February 13, 2004, which remained active until the campaign treasurer appointment was terminated on January 15, 2010.
67. The reporting deadline for the January 2009 semiannual report was January 15, 2009. The respondent filed his January 2009 report with the local filing authority on February 13, 2009.
68. The respondent swore, "I admit to the late filing of this report. This was not intentional but just simple human error."

**IV. Findings and Conclusions of Law**

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

**Political Contributions**

1. 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 the report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
2. Each campaign finance report must 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).
3. Each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted during the reporting period. ELEC. CODE § 254.031(a)(5).

30-day Pre-election Report for the May 2007 Election

4. In the 30-day pre-election report for the May 2007 election, the respondent disclosed \$0 for the amount of total political contributions accepted during the reporting period.

5. The respondent disclosed the political contributions of \$50 or less as a lump sum total amount of \$2,100 rather than disclosing the contributions in an itemized listing.
6. The total amount of political contributions accepted during the reporting period was \$2,100. The respondent did not place the total in the proper space on the report, and corrected the report at issue to disclose \$2,100 as the total amount of political contributions accepted. Therefore, there is credible evidence that the respondent committed a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code in connection with the 30-day pre-election report for the May 2007 election.

#### July 2007 Semiannual Report

7. In the respondent's original July 2007 semiannual report, the respondent failed to disclose the contributor's full address for a \$500 contribution and failed to disclose a \$1,000 political contribution.
8. The respondent corrected the report to disclose the required information. Therefore, there is credible evidence that the respondent violated sections 254.031(a)(1) and 254.031(a)(6) of the Election Code in connection with the July 2007 semiannual report.

#### July 2008 Semiannual Report

9. In the July 2008 semiannual report, the respondent disclosed \$0 for the amount of total political contributions accepted during the reporting period, including the political contributions of \$50 or less, unless itemized.
10. The respondent acknowledged that the total amount of political contributions was incorrectly disclosed in the report at issue and corrected the report to disclose \$5,000 in total political contributions accepted. Therefore, there is credible evidence that the respondent violated sections 254.031(a)(1) and 254.031(a)(6) of the Election Code in connection with the July 2008 semiannual report.

#### January 2009 Semiannual Report

11. In the January 2009 semiannual report, the respondent disclosed \$0 for the amount of total political contributions accepted during the reporting period, including the political contributions of \$50 or less, unless itemized. The respondent did not disclose any itemized political contributions in the reports at issue.
12. There is no evidence that the amount disclosed was incorrect. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(6) of the Election Code in connection with the January 2009 semiannual report.

**Total Outstanding Loans**

13. Each campaign finance report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2). A candidate's use of personal funds is technically not a loan and is not required to be disclosed as an outstanding loan on a campaign finance report. Reporting the amount as an outstanding loan would not be considered incorrect. Ethics Opinion No. 349 (1996).
14. Each campaign finance report must 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).

July 2007 Semiannual Report

15. The complaint alleged that the respondent failed to disclose approximately \$10,270 in political contributions in the July 2007 semiannual report.
16. The respondent's 30-day pre-election report for the May 2007 election disclosed \$15,000 in outstanding loans.
17. The respondent was only required to disclose \$5,000 as the outstanding loan amount in that report and subsequent reports.
18. The respondent corrected the July 2007 report to disclose an outstanding loan total of \$5,000 instead of (\$4,729.03 was the original loan amount). Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(2) of the Election Code.

July 2008 Semiannual Report

19. In the July 2008 semiannual report, the respondent disclosed \$0 in total political expenditures during the reporting period and \$3,729.03 in total outstanding loans as of the last day of the reporting period.
20. The respondent acknowledged that the outstanding loans total should be zero.
21. The respondent corrected the report at issue to disclose a \$5,000 political contribution accepted on February 1, 2008, which was actually the forgiveness of the loan. Thus, the total principal amount of outstanding loans as of the last day of the reporting period was zero, not \$3,729.03 as originally disclosed. Therefore, there is credible evidence of a violation of section 254.031(a)(2) of the Election Code.

**Political Expenditures**

22. Each campaign finance report must include the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. ELEC. CODE § 254.031(a)(5).
23. The respondent disclosed all political expenditures in the 30-day pre-election report for the May 2007 election. There were no political expenditures to a single payee with an aggregate total of \$50 or less during the reporting period.
24. Although the respondent left blank the field for disclosing political expenditures of \$50 or less, unless itemized, it is apparent when viewing the report that the respondent detailed all of his political expenditures. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(5) of the Election Code.
25. 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).
26. Although the reports at issue generally disclosed the payee name and city, and in many instances the zip code for the payee, the respondent failed to disclose the full payee addresses for a total of approximately \$13,100 in political expenditures and failed to disclose the purpose descriptions for a total of approximately \$2,780 in political expenditures.
27. The respondent corrected each of the reports at issue to disclose the full payee addresses and the purpose descriptions for the political expenditures at issue. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code in connection with approximately \$13,100 total expenditures related to payee addresses and approximately \$2,780 total expenditures related to purpose descriptions.
28. The respondent also corrected the July 2008 report to disclose a \$5,000 political expenditure. Therefore, there is credible evidence a violation of section 254.031(a)(3) of the Election Code for that expenditure.

**Timely Filing of Campaign Finance Report**

29. “Candidate” means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include the filing of a campaign treasurer appointment. ELEC. CODE § 251.001(1)(a).
30. A candidate shall file two reports for each year. The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the candidate’s campaign

treasurer appointment is filed, or the first day after the period covered by the last report, as applicable, and continuing through June 30. The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31. ELEC. CODE § 254.063.

31. The respondent filed his campaign treasurer appointment on February 13, 2004, with an authority other than the commission.
32. The campaign treasurer appointment remained in effect until the appointment was terminated on January 15, 2010. Thus, the respondent was a candidate with an active campaign treasurer on file at the time the report was due and was required to file the semiannual report due January 15, 2009.
33. The respondent did not file the January 2009 semiannual report until February 13, 2009. Therefore, there is credible evidence of a violation of section 254.063 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 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 the report, 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 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 further acknowledges that each campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The respondent also acknowledges that each campaign finance report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. The respondent further acknowledges that a candidate shall file two reports for each year. The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is

filed, or the first day after the period covered by the last report, as applicable, and continuing through June 30. The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31. 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-290339.

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

\_\_\_\_\_  
James E. Nelson, Respondent

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

Texas Ethics Commission

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