

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JERRY SHULTS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-290340

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 21, 2010, to consider sworn complaint SC-290340. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035, 254.031, 254.063, and 254.064 of the Election Code and sections 20.61 and 20.63 of the Ethics Commission Rules, as well as technical or *de minimis* violations of section 254.031 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: 1) converted political contributions to personal use; 2) failed to properly disclose political contributions and political expenditures; and, 3) failed to timely file campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. During the time relevant to the complaint, the respondent was the mayor of League City and a candidate for re-election in the May 2008 election.

Personal Use of Political Contributions

2. The complaint alleged that the respondent converted approximately \$1,440 in political contributions to personal use based on political expenditures disclosed on the respondent's July 2007 and January 2008 semiannual reports, and 30-day pre-election report for the May 2008 election.
3. At issue in the July 2007 semiannual report were two political expenditures disclosed on Schedule G (used to disclose political expenditures made from personal funds). The report disclosed an expenditure of \$161.15 to Dillard's on January 12, 2007, for "Tuxedo Shirt For

- Banquet” and an expenditure of \$1,000 to the respondent on May 18, 2007, for “Meals, Transportation In Las Vegas, NV @ ICSC Conf.”
4. The tuxedo shirt was purchased to wear to a political function.
 5. The \$1,000 payment to the respondent was made to reimburse him for expenses incurred in conjunction with an officeholder activity, a conference.
 6. At issue in the January 2008 semiannual report was an expenditure of \$145.97 to the City of League City on August 1, 2007, for “TRAVEL Reimburse For Los Angeles Trip.” The report included a Schedule T disclosing that the respondent traveled to Los Angeles from June 21-25, 2007, for the purpose of attending the “U.S. Conference of Mayors – Annual Conference.” He corrected the report and changed the purpose of expenditure to “reimburse city for buying wife’s ticket to political event.”
 7. The city hosting the U.S. Conference of Mayors’ (UCSM) Annual Conference included information about the conference on its website, including spouse and youth activities such as tours of downtown Los Angeles, Walt Disney concert hall, Chinatown, Universal Studios Hollywood, and visiting or shopping at various shopping districts.
 8. At issue in the 30-day pre-election report were two expenditures of \$96.50 and \$34.61 to Pappas Seafood on February 3, 2008, and February 13, 2008, for “LUNCH.” The respondent swore the expenditures were political lunches and corrected the purpose of expenditure to “LUNCH w/ political consultant” for both expenditures at issue.

Payees, Dates, Purposes, and Amounts

9. The complaint alleged that the respondent failed to “disclose the payees, dates, purposes, and amounts of political expenditures” in “1 place” on his July 2007 semiannual report and in “2 places” on his January 2008 semiannual report.
10. At issue in the July 2007 semiannual report is a \$1,000 payment to the respondent for “Meals, Transportation In Las Vegas, NV @ ICSC Conf” that was disclosed on Schedule G of the report with an indication that reimbursement from political contributions was intended. The respondent swore the expenditure “was a reimbursement of political loans” but corrected the report to clarify the purpose of expenditure as “Person Funds used on Meals & Transportation in Las Vegas, NV @ ICSC Conf.” However, he did not disclose the actual vendors that received payment for goods or services. The respondent later corrected the report to move the \$1,000 expenditure from Schedule G to Schedule F.
11. At issue in the January 2008 semiannual report were two political expenditures totaling \$500 to Shell Credit Card. One expenditure of \$300 was made on December 10, 2007, for “Vehicle Expenses – Gas (July – Sept 07)” and another expenditure of \$200 was made on December 31, 2007, for “Vehicle Expenses – Gas (Oct – Dec 07).” Both expenditures were disclosed on Schedule G with an indication that reimbursement from political contributions was intended. In response to the allegations, the respondent swore that the expenditures at

issue “were both for accumulated purchase of fuel usage for political functions.” The respondent corrected the report by moving the expenditures to Schedule F, and disclosing himself as the payee and the purpose of expenditure as “reimbursing self for gas mileage.”

Timely Reporting of Expenditures

12. The complaint alleged that the respondent did not fully disclose his travel expenses and failed to timely report political expenditures in connection with a trip to Los Angeles.
13. The respondent’s January 2008 semiannual report disclosed a political expenditure of \$145.97 to the City of League City on August 1, 2007, for “TRAVEL Reimburse For Los Angeles Trip.” The report included a Schedule T disclosing the dates of travel as June 21-25, 2007, and the purpose of travel was the U.S. Conference of Mayors’ Annual Conference.
14. The complaint alleged that the travel dates indicate that the travel expenses should have been reported on the July 2007 semiannual report. The respondent’s July 2007 semiannual report did not disclose any political expenditures relating to the Los Angeles trip.
15. In response to the allegations, the respondent swore that he did disclose his travel expenses or the complainant would not have known he charged \$145.97, and that he was waiting on credit card receipts to accurately report expenses.
16. The respondent filed corrections to his January 2008 semiannual report and changed the date of expenditure to August 7, 2007, and the purpose of expenditure to “reimburse city for buying wife’s ticket to political event.” He also corrected Schedule T to add “Received Receipts From Travel On 8/10/07” in the purpose of travel.

Addresses of Payees

17. The complaint alleged that the respondent failed to disclose the full address of persons receiving political expenditures in “9 places” on his July 2007 semiannual report.
18. Out of 11 political expenditures itemized in the original report, nine expenditures totaling approximately \$2,245 did not include the payee’s complete address. Two of the expenditures at issue totaling \$40 did not exceed \$50 to a single payee. The respondent had corrected the report to add the missing address information approximately 11 months before the complaint was filed.

Total Political Expenditures

19. The complaint alleged that the respondent disclosed an incorrect amount of total political expenditures on his 30-day and 8-day pre-election reports for the May 2008 election. In response to the allegations, the respondent swore that he made a mathematical mistake on the addition of political expenditures.

20. The original 30-day pre-election report disclosed total political expenditures of \$11,040.97. The correct amount should be \$11,075.58. The discrepancy between the amount disclosed on the report and the actual total was \$34.61. The respondent corrected the report and disclosed the correct total.
21. The original 8-day pre-election report disclosed total political expenditures of \$6,759.53. The correct amount should be \$6,786.47. The discrepancy between the amount disclosed on the report and the actual total was \$26.94. The respondent corrected the report, but there is still a discrepancy of \$1.06 between the amount disclosed on the corrected report and the actual total.

Timely Filing Campaign Finance Reports

22. The complaint alleged that the respondent failed to timely file an 8-day pre-election report for the May 2008 election and a July 2008 semiannual report.
23. The 8-day pre-election report was due May 2, 2008. The respondent's report was date stamped as received by the city secretary's office on May 7, 2008.
24. The July 2008 semiannual report was due July 15, 2008. The respondent's report was date stamped as received by the city secretary's office on July 17, 2008. A handwritten notation on the report's cover sheet states, "USPS – 7/17/08."

Total Political Contributions

25. The complaint alleged that the respondent failed to disclose the amount of total political contributions of \$50 or less on his 8-day pre-election report.
26. The field for total political contributions of \$50 or less was left blank on the report at issue. There were five political contributions itemized on Schedule A of the report totaling \$2,400, and 10 pledged contributions itemized on Schedule B totaling \$1,900. The report disclosed total political contributions of \$17,204.45. The respondent corrected the report to enter a zero in the blank field for total political contributions of \$50 or less, and changed the amount of total political contributions to \$2,400.

Total Political Contributions Maintained

27. The complaint alleged that the respondent disclosed an incorrect contribution balance on his 8-day pre-election report and July 2008 semiannual report. The complaint provided no evidence to support the allegations that the amounts disclosed on the reports were incorrect, and the allegations appear to be based on calculations using totals reported on the cover sheets of the respondent's reports. In response to the allegations, the respondent swore that the amounts disclosed on his reports were the correct amounts as of the last day of the reporting periods.

IV. Findings and Conclusions of Law

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

Personal Use of Political Contributions

1. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a).
2. “Personal use” means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. ELEC. CODE § 253.035(d). Personal use does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder. *Id.* § 253.035(d)(1).
3. Political contributions may be used to pay clothing expenses only if the clothing is of a type appropriate for the performance of duties or activities of the office held, is not adaptable to general usage as ordinary clothing, and is not so worn. Ethics Advisory Opinion No. 407 (1998).
4. In Ethics Advisory Opinion No. 241 (1995), the commission stated that political contributions may be used to pay for meals for state business not reimbursed by the state, but an officeholder may not use political contributions to pay for meals in general.
5. The expenditure for a tuxedo shirt was made for an officeholder activity. The clothing at issue is not the type of clothing that is typically adaptable and worn for usage as ordinary clothing. Thus, the purchase of such an item with political funds was not a personal use. Therefore, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code with respect to this expenditure.
6. The \$1,000 in expenditures related to the conference were made in conjunction with an officeholder activity. Thus, the use of political funds to pay the expenses at issue was not a personal use. Therefore, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code with respect to those expenses. Regarding the two expenditures to Pappas Seafood, the evidence was insufficient to show a violation of section 254.035 of the Election Code.
7. The Election Code does not permit the use of political contributions to pay for travel if the primary purpose of the trip is personal. *See* Ethics Advisory Opinion No. 297 (1996).

8. In Ethics Advisory Opinion No. 378 (1997), the commission stated that a member of the legislature may not use political contributions to pay for his spouse to attend a legislative conference if the spouse is attending merely to participate in social activities provided for spouses.
9. Although the respondent's trip to Los Angeles was in connection with an officeholder activity, information distributed by USCM indicates that only the respondent had any duties related to the conference. Thus, the use of political funds to pay for his wife's ticket to Los Angeles was a personal use. Therefore, there is credible evidence that the respondent violated section 253.035(a) of the Election Code with respect to this expenditure.

Payees, Dates, Purposes, and Amounts

10. 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).
11. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61.
12. A candidate is required to report a campaign expenditure from personal funds. Ethics Commission Rules § 20.63(a).
13. A candidate or officeholder who makes political expenditures from the candidate's or officeholder'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 covering 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. ELEC. CODE § 253.035(h); Ethics Commission Rules § 20.63(d).
14. The evidence is insufficient to determine whether the \$1,000 expenditure relating to meals and transportation in Las Vegas were expenditures from personal funds for those purposes or a reimbursement to the respondent for those expenditures. If the former, then the respondent failed to disclose the name of the vendors that were actually paid for goods or services. If the latter, then the respondent improperly disclosed the reimbursement on Schedule G and did not previously report expenditures from personal funds for those purposes. In either case, the respondent failed to properly disclose the expenditure at issue. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules with regards to the expenditure.

15. In Ethics Advisory Opinion No. 347 (1996) (EAO 347), the commission determined that 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.
16. A report of a political expenditure by credit card must identify the vendor who receives payment from the card company. Ethics Commission Rules § 20.59.
17. The respondent swore that the political expenditures relating to gas were mileage reimbursements for the respondent's use of his personal vehicle for political functions. Based on EAO 347, the respondent was not required to report the use of his personal vehicle as a political expenditure from personal funds. However, the respondent was required to report the reimbursements when he paid himself from political contributions. Also, the report originally disclosed Shell Credit Card as the payee. The respondent was required to disclose the vendor, not the credit card company, for expenditures made by credit card. On the other hand, he was allowed to report gas mileage reimbursements on Schedule F at the time of the reimbursement without having to disclose individual gas purchases. Although the respondent corrected his report to disclose the expenditures on Schedule F and to indicate that the payments were mileage reimbursements, the respondent failed to properly report the expenditures at the time the reports were originally due. Therefore, there is credible evidence that the respondent committed technical or *de minimis* violations of section 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules with regard to the expenditures.

Timely Reporting of Expenditures

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. The complaint alleged that the respondent did not fully disclose his travel expenses. The respondent disclosed one political expenditure relating to the Los Angeles trip and later corrected his report to indicate that the expenditure was for his wife's ticket. Apparently, city funds were used to make the original expenditure. The respondent was not required to report travel expenses paid by the city (although he was required to disclose the use of political funds to reimburse the city). Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code regarding the \$145.97 expenditure made by the city.

Addresses of Payees

20. 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).

21. The respondent failed to disclose the full address of payees on his original July 2007 semiannual report. The information was required because the expenditures exceeded \$50 to one person during the reporting period. Although the respondent corrected the report to add the full address of payees, the information was not disclosed when the report was originally due. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code.

Total Political Expenditures

22. Each campaign finance report must include the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
23. The respondent itemized the expenditures he made during each reporting period at issue but entered an incorrect total on each report's cover page. The respondent did not correctly calculate the amount of total political expenditures made during the respective reporting periods. The amounts of the discrepancy were minor (\$34.61 and \$26.94). Therefore, there is credible evidence that the respondent committed technical or *de minimis* violations of section 254.031(a)(6) of the Election Code.

Timely Filing Campaign Finance Reports

24. A candidate is required to file two reports for each year. The first report must be filed not later than July 15. The second report must be filed not later than January 15. ELEC. CODE § 254.063.
25. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. ELEC. CODE § 254.064.
26. For the 8-day pre-election report to be considered timely filed, it must be received by the filing authority by the due date. The report was due May 2, 2008. The filing authority received the respondent's report on May 7, 2008, five days after the due date. Therefore, there is credible evidence that the respondent violated section 254.064 of the Election Code with respect to this report.
27. For a semiannual report to be considered timely filed, it must be postmarked by the due date. The July 2008 semiannual report was due July 15, 2008. A notation on the report indicates that the respondent's report was postmarked July 17, 2008, two days after the due date. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code with respect to this report.

Total Political Contributions

28. Each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted during a reporting period. ELEC. CODE § 254.031(a)(5).
29. Each campaign finance report must include the total amount of all political contributions accepted. ELEC. CODE § 254.031(a)(6).
30. Total political contributions disclosed on a campaign finance report should include total political contributions of \$50 or less plus the total of the political contributions detailed on Schedule A. The respondent's original 8-day pre-election report disclosed total political contributions of \$17,204.45. The report disclosed only \$2,400 on Schedule A and left blank the space for political contributions of \$50 or less (the respondent later corrected the report to disclose \$0 in total political contributions of \$50 or less, and \$2,400 in total political contributions). There is credible evidence that the respondent violated sections 254.031(a)(5) and (a)(6) of the Election Code.

Total Political Contributions Maintained

31. Each campaign finance 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).
32. The total amount of political contributions maintained in one or more accounts includes the balance on deposit in banks, savings and loan institutions and other depository institutions and the present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, and treasury bills. Ethics Commission Rules § 20.50(a).
33. Due to statutory reporting requirements, the amount of political contributions maintained cannot necessarily be computed by using the totals on a report's cover sheet. The respondent swore that he reported the correct amounts, and there is no evidence that the amounts of political contributions maintained disclosed in the reports at issue were incorrect. Therefore, there is insufficient evidence that the respondent violated section 254.031(a)(8) of the Election Code.

V. Representations and Agreement by Respondent

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

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to

the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.

2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. The respondent also 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 further 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 acknowledges that a candidate is required to file two reports for each year. The first report shall be filed not later than July 15. The second report shall be filed not later than January 15. The respondent also acknowledges that in addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day.

The respondent acknowledges that each campaign finance report must include:

- a. 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;
- b. 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; and,
- c. the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period.

The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

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

VII. Sanction

After considering the 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 \$700 civil penalty.

The respondent agrees that the Texas Ethics Commission, P. O. Box 12070, Austin, Texas, 78711, must receive from the respondent full payment of the \$700 civil penalty no later than May 20, 2011, and waives any right to a hearing related to this sworn complaint. The respondent also acknowledges that if the \$700 civil penalty is not received by May 20, 2011, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

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-290340.

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

Jerry Shults, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director