

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ANNISE PARKER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2906160

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 21, 2010, to consider sworn complaint SC-2906160. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031 of the Election Code, as well as credible evidence of technical or *de minimis* violations of section 254.031 of the Election Code, a law 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 a contribution from a corporation, failed to include documentation relating to two political contributions from an out-of-state committee, converted political contributions to a personal use, improperly reported reimbursements to staff, incorrectly reported political expenditures of \$50 or less on her July 2008 semiannual report, and failed to timely file her 30-day pre-election report in connection with the November 2007 election.

III. Facts Supported by Credible Evidence

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

1. The respondent is the Mayor of the City of Houston and was City Controller during time in question.

Corporate Contributions

2. The respondent disclosed a \$250 contribution from "Raymond R. Betz Interests" on March 21, 2007, on her July 2007 semiannual campaign finance report. The address disclosed for the contributor was, "Houston TX 77067."

3. According to the Texas Secretary of State's (SOS) records, Raymond R. Betz Interests, Inc., with an address of "10940 W Sam Houston Pkwy N Ste 300 Houston, TX 770645768" is a domestic for-profit corporation.
4. In an affidavit filed in response to the complaint, the respondent swore that she was told the contribution was from the individual Raymond R. Betz and was not drawn on a corporate account. She further swore that after receiving notice of this complaint, she returned the contribution to the contributor. The respondent provided a copy of a check stub, showing a payment in the amount of \$250 to "Raymond R. Betz Interests" on August 27, 2009, with a note, "Refund of Corporate Contribution."

Documentation for Out-of-State Committees

5. The complaint alleged that the respondent failed to include required documentation for two political contributions from an out-of-state committee. The respondent disclosed two contributions from the Gay and Lesbian Victory Fund, the first contribution of \$398 was disclosed as accepted on November 14, 2007, and the second contribution of \$8,400 was disclosed as accepted on February 25, 2008.
6. Federal Election Commission (FEC) records show a committee by the name Gay and Lesbian Victory Fund, however, the committee did not file reports during the time at issue.
7. In her response, the respondent swore that the two contributions were from the contributor's Texas committee, and correct as originally reported.
8. The Gay and Lesbian Victory Fund is a political committee that files with the commission. The committee disclosed mailing and business addresses of "1133 15th Street NW, #350 Washington DC 20005." The committee's reports do not disclose a \$398 contribution to the respondent during the period at issue. However, the committee's 8-day pre-election report filed in February 2008 disclosed an \$8,400 expenditure to the respondent on February 14, 2008.

Personal Use of Political Contributions

9. The complaint alleged that the respondent converted political contributions to a personal use by making 71 expenditures totaling approximately \$11,590 to vendors such as Sprint, Time Warner Cable, the United States Treasury, various restaurants, and expenditures disclosing herself as payee on her July 2007, January 2008, July 2008, and January 2009 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the November 2007 election.

10. The respondent disclosed these expenditures on Schedules F (used to disclose political expenditures from political contributions) and Schedules G (used to disclose political expenditures from personal funds). The respondent disclosed various purposes for these expenditures including “insurance,” “federal income tax,” “alarm permit,” “telephone,” “security,” “internet access,” “Travel-meals,” and “meeting refreshments.” For the expenditures on Schedule F listing the respondent as payee, she disclosed purposes such as “Reimburse 1/03/07 Artista Restaurant (Schedule G),” and disclosed corresponding expenditures on schedule G to vendor payees such as Artista Restaurant for the purpose of “Business meeting,” or “Event expense.”
11. In her response, the respondent swore that “no campaign funds have ever been used for personal use.” She addressed each of the expenditures alleged, and swore that each expenditure was for a campaign related purpose.
12. With regard to the expenditures that disclosed the respondent as payee, she swore that these were for reimbursement for expenditures made from the respondent’s personal funds originally disclosed on Schedule G, with the box checked to show her intent to seek reimbursement.

Staff Reimbursement

13. The complaint alleged that the respondent improperly reported three political expenditures to individuals totaling approximately \$2,920 on her July 2007 and July 2008 semiannual reports.
14. The respondent disclosed the following expenditures on her July 2007 semiannual report:
 - March 8, 2007, to an individual in the amount of \$153.69 for the purpose of “Event expenses.”
 - May 31, 2007, to an individual in the amount of \$2,680.84 for the purpose of “Reimburse 4/4/07 Four Seasons Hotel (Schedule E).”
15. The respondent disclosed the following expenditure on her July 2008 semiannual report:
 - April 16, 2007, to an individual in the amount of \$85 for the purpose of “Sponsorship – A. Philip Randolph Institute.”
16. The respondent swore that the expenditure for “Event expenses” was paid to an individual for services in organizing a campaign event. She swore that the expenditure related to the Four Seasons Hotel was for the purpose disclosed in the original expenditure, (reimbursement for an expenditure to Four Seasons Hotel disclosed on Schedule E, the schedule provided to disclose loans) and that the purpose disclosed “includes the actual vendor that was paid and the date of the payment.” The respondent swore that the

expenditure was made to the A. Philip Randolph Institute “by care of [an individual]” for “sponsorship.”

17. The respondent disclosed on Schedule E (loan schedule) of her July 2007 semiannual report, a \$2,680.84 loan on April 4, 2007, from an individual. That report also disclosed on Schedule F on April 4, 2007, political expenditure to the Four Seasons Hotel for “reception catering.”

Required Information on Campaign Finance Reports

18. The complaint alleged that the respondent failed to disclose total political expenditures of \$50 or less on her July 2008 semiannual report.
19. The respondent’s July 2008 semiannual report disclosed a blank in the space provided to disclose political expenditures of \$50 or less, and \$35,380.37 in the space provided to disclose total political expenditures.
20. In response to the allegation concerning failure to disclose political expenditures of \$50 or less, the respondent swore that “the campaign left (the entry) blank because there were no political expenditures under \$50 that were not itemized.”
21. The total political expenditures disclosed on Schedules F and G totaled \$33,589.97. The total political expenditures disclosed on the cover sheet are \$1,790.40 more than the total itemized expenditures disclosed in the report.
22. The respondent filed a corrected report with the city disclosing expenditures that were omitted on the original report.

Timely Filing of a Campaign Finance Report

23. The complaint alleged that the respondent failed to timely file her 30-day pre-election report in connection with the November 2007 election.
24. The respondent filed her 30-day pre-election report for the November 6, 2007, election on October 9, 2007.

IV. Findings and Conclusions of Law

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

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 she knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
4. Although the contribution was from an incorporated entity, the respondent swore that she was unaware that the contribution was from a corporation. There is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.

Documentation for Out-of-State Committees

5. 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.
6. "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).
7. The \$8,400 contribution and the \$398 contribution were not from an out-of-state committee. Therefore, there is credible evidence of no violation of section 253.032 of the Election Code.

Personal Use of Political Contributions

8. 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).

9. 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).
10. A candidate who makes political expenditures from the candidate's personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, and the report 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).
11. The complaint alleged that each of the expenditures at issue were for personal use. The respondent swore that the expenditures were for various expenses related to campaign meetings, her campaign office, telephone and internet service for her campaign, and other campaign related activity. Expenditures disclosing the respondent as payee referenced expenditures on Schedule G which disclose purposes that appear to be campaign or officeholder related. There is insufficient evidence of a violation of section 253.035(a) of the Election Code with regard to these expenditures.

Staff Reimbursement

12. Each campaign finance report is required to include the full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period. ELEC. CODE § 254.031(a)(3).
13. At the time relevant to this sworn complaint, the rule governing staff reimbursement provided that political expenditures made out of personal funds by a staff member with the intent to seek reimbursement from the officeholder or candidate that do not exceed \$5,000 (\$500 for the July 2007 semiannual report) during the reporting period may be reported as follows: (1) if the reimbursement occurs during the same reporting period that the initial expenditure was made, 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; or (2) the amount of the expenditure made by the staff member is reported as a loan to the officeholder or candidate, the expenditure made by the staff member is reported as a political expenditure by the officeholder or candidate, and the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder or candidate. Ethics Commission Rules § 20.62.
14. With regard to the expenditure that the respondent swore was for services provided to the campaign and correct as originally reported, the evidence does not refute this statement. Therefore, as to this expenditure, 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.

15. With regard to the expenditure to a staff member, the loan from him, the expenditure to the Four Seasons, and payment to that staff member appear to have been correctly reported. Therefore, with regard to this expenditure, 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.
16. As to the remaining expenditure, the respondent admitted that she did not disclose the name of the actual payee for the expenditure to the A. Philip Randolph Institute, but instead disclosed a representative of the Institute who received the contribution. The respondent did disclose the actual payee under the purpose of expenditure, and swore that the date and amount disclosed were correct. However, this expenditure was not correct as originally reported. Therefore, with regard to this expenditure, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(3) of the Election Code.

Required Information on Campaign Finance Reports

17. 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. ELEC. CODE § 254.031(a)(5).
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. Although the respondent left blank the space provided to disclose political expenditures of \$50 or less, she swore that there were no expenditures that were not itemized on the report.
20. Although the respondent swore that she left blank the space provided to disclose political expenditures of \$50 or less because she had itemized all political expenditures on her original report, an error caused a schedule to be left out of the original filing causing approximately \$1,630 in expenditures to not be disclosed on the original report. Even after correction, the respondent still appears to fail to disclose approximately \$157 in political expenditures. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(5) of the Election Code. In addition, based on the respondent's statement and corrected reports, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code.

Timely Filing of a Campaign Finance Report

21. 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. *Id.*

§ 254.064(a). 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 report covers the period beginning 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 under this chapter, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b).

22. The 30th day before the November election, October 7, 2007, fell on a Sunday. The day following was a holiday. Because the filing deadline fell on a Sunday, and the following Monday was a holiday, the 30-day pre-election report was due on October 9, 2007. The respondent filed the report on that date. Therefore, there is credible evidence of no violation of section 254.064 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 total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period and 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 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 \$200 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-2906160.

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

Annise Parker, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director