

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BONNIE RANGEL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2908196 AND SC-2909209

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 21, 2010, to consider sworn complaints SC-2908196 and SC-2909209. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035, 253.1611, and 254.031 of the Election Code and section 20.63 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaints specifically alleged that the respondent converted political contributions to personal use and failed to properly disclose political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent was an opposed incumbent candidate for judge of the 171st Judicial District (El Paso County) in a March 2, 2010, primary election.
2. The allegations were based on expenditures disclosed in the respondent's semiannual campaign finance reports due from January 2008 to July 2009.
3. The respondent filed a campaign treasurer appointment with the commission on July 13, 2001, which did not specify the office sought.

January 2008 Semiannual Report

4. The respondent's January 2008 semiannual report disclosed the following:
 - \$0 in total political contributions of \$50 or less
 - \$0 in total political contributions
 - \$115 in total political expenditures of \$50 or less
 - \$7,340 in total political expenditures (corrected to \$13,090)
 - \$41,222.62 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans
5. The report disclosed a political expenditure of \$150 from political contributions to the respondent for "Democratic Party Hall of Fame Dinner." The report also disclosed a \$2,500 political expenditure to another individual from personal funds and approximately \$4,580 in political expenditures made from personal funds to the respondent. None of the expenditures made from personal funds were disclosed with the intent to seek reimbursement.
6. The respondent corrected the report to disclose the actual payees of approximately \$1,550 of the expenditures originally disclosed as payments from personal funds to herself. The remaining expenditures from personal funds to herself totaling approximately \$3,030 were not corrected. The respondent also corrected the report to disclose approximately \$5,750 in reimbursements to the respondent from political contributions.

July 2008 Semiannual Report

7. The respondent's July 2008 semiannual report disclosed the following:
 - \$0 in total political contributions of \$50 or less
 - \$0 in total political contributions
 - \$70 in total political expenditures of \$50 or less (corrected to \$105)
 - \$5,070 in total political expenditures (corrected to \$10,105)
 - \$33,882.62 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans
8. The report disclosed \$5,000 in political expenditures made from personal funds to various payees. None of the expenditures were disclosed with the intent to seek reimbursement.
9. The respondent corrected the report to disclose an additional approximate \$5,035 in political expenditures, including \$5,000 in itemized reimbursements paid to the respondent from political contributions and \$35 in unitemized expenditures.

January 2009 Semiannual Report

10. 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
 - \$3,725 in total political expenditures (corrected to \$7,450)
 - \$28,812.62 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans
11. The report disclosed a \$100 political expenditure from political contributions. The respondent corrected the report to show that the \$100 expenditure was a political expenditure made from personal funds.
12. The original report also disclosed approximately \$3,630 in political expenditures made from personal funds to various payees, of which approximately \$2,980 of the expenditures were made with the intent to seek reimbursement. The report was corrected to disclose an additional approximate \$3,730 in political expenditures, all of which were itemized reimbursements paid to the respondent from political contributions.

July 2009 Semiannual Report

13. The respondent's July 2009 semiannual report stated that the respondent was a candidate for judge of the 171st Judicial District and 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
 - \$10,661.32 in total political expenditures (corrected to \$21,322.64)
 - \$25,087.62 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans
14. All of the expenditures in the report were itemized as political expenditures made from personal funds to various payees. Approximately \$10,530 in expenditures were made to payees to whom the respondent paid over \$50 in the reporting period. All of the expenditures were disclosed with the intent to seek reimbursement.
15. The respondent corrected the report to disclose an additional approximate \$10,660 in political expenditures, all of which were itemized reimbursements paid to the respondent from political contributions.

Corrected Reports

16. After the complaints were filed, the respondent filed corrections to the reports at issue. In the correction affidavit for each corrected report, other than the January 2008 semiannual report, the respondent swore:

On April 15 2010 [commission staff] informed me that the law required a filer to list political expenditures in Schedules G and F if reimbursement is intended. Intending reimbursement for all expenses expended from personal funds in addition to reporting in Schedule G only I have filed a corrected report including Schedule F.

17. The respondent indicated in each correction, other than the January 2008 semiannual report, that she filed the corrected report not later than the 14th business day after the date she learned that the report as originally filed was inaccurate or incomplete and that any error or omission in the original report was made in good faith.

18. The respondent also corrected her January 2008 semiannual report and swore:

I incorrectly reported political expenditures from personal funds intended for reimbursement. Therefore I am filing corrected Schedules F and G.

Personal Use of Political Contributions

19. The complaints alleged that the respondent converted political contributions to personal use and referred to approximately \$3,480 in expenditures disclosed in the respondent's original reports. All of the expenditures at issue were originally disclosed as political expenditures made from personal funds. The original reports did not disclose any expenditures to the respondent to reimburse an expenditure made from personal funds.
20. The complaints also referred to additional expenditures in the respondent's reports, and the report totals, to show that the respondent was using political contributions to either make all of the expenditures at issue or to reimburse herself for the expenditures made from personal funds. The respondent filed corrections to the reports at issue to disclose that all of the expenditures in the reports were originally made from personal funds and that the respondent subsequently used political contributions to reimburse herself for the expenditures.
21. The complaints alleged that the respondent converted political contributions to personal use in connection with the following political expenditures disclosed in her July 2008 semiannual report:

- \$475 to Gonzalo's at 401 E Nevada in El Paso on March 8, 2008, for "Election results party"
 - \$700 to Sam's at an unspecified address "on Gateway West" in El Paso on January 4, 2008, for "Food/Drinks for my campaign workers at political events during primary season"
 - \$400 to Sam's at an unspecified address "on Gateway West" in El Paso on March 8, 2008, for "Food/Drinks for my campaign workers working at polls on election day"
 - \$200 to a candidate in El Paso on February 10, 2008, for "Political contribution"
22. The complaints alleged that the respondent "was not a candidate for any elective office" in 2008 and was not seeking re-election and that the July 2008 semiannual report did not indicate the office sought by the respondent or specify the election for which the report was filed.

Sam's

23. Regarding the expenditures to Sam's, the respondent swore:

These were expenditures for food and drinks for campaign workers that have consistently helped me with my campaigns. I have been involved in contested races since 1992, when I first ran for the Texas Senate. That is why I referred to them as "my campaign workers." They were involved in the political process and I provided these items.

24. The respondent stated that the campaign workers were not campaigning for her because she was not campaigning at the time. The respondent stated that she mainly bought snacks, breakfast bars, and food. The respondent stated that the reason she gave the food and beverages to the campaign workers was that "I just do that" and that she was "a political person." The respondent stated that some of the food and beverages were given to voting-age high school students while she and her daughter were talking to students about registering to vote. She also stated that she gave some of the food and beverages to "senior citizens places" while talking to residents about voting and registration.

Gonzalo's Restaurant

25. Regarding the expenditure to Gonzalo's, the complaints alleged that Gonzalo's was a restaurant owned by the respondent's father. The respondent swore that she hosted an "'election watch' party for election day poll workers" and that the restaurant was owned and run by her family. The respondent stated that she had invited some of her past campaign workers to the election party and that they were working for several other campaigns at the time.

Candidate

26. Regarding the \$200 expenditure to the candidate, the complaints alleged that the payee was a judicial candidate and that the respondent either “made a political expenditure in the name of another” or that “the respondent could not have made a political expenditure on behalf of any elective office for which [she] was a candidate.” During the time the expenditure was made, the candidate was the judge of the 243rd Judicial District and, according to a campaign treasurer appointment filed with the commission on June 19, 2007, was a candidate for “8th Court of Appeals Justice.” The respondent swore that the expenditure was a campaign contribution. The candidate disclosed an in-kind political contribution of “wood frames for campaign signs” valued at \$200 from a judge named “Yvonne Rangel” at the respondent’s address on February 10, 2008.

Charitable Expenditure

27. The complaints alleged that the respondent converted political contributions to personal use in connection with a \$1,700 political expenditure made to the respondent on October 12, 2007, for “Charitable situation for Chantal (a political worker),” disclosed in her January 2008 semiannual report. The complaints alleged that the individual named “Chantal” was the daughter of a local precinct chairman and “is not physically disabled and not mentally disabled, based on information and belief.”
28. Regarding the expenditure, the respondent swore that the expenditure was related to a high school student’s attendance at a social event. The respondent did not correct the report to disclose the actual payee for the expenditure.

Disclosure of Political Expenditures

29. The complaints alleged that the respondent converted approximately \$3,480 in political contributions to personal use. To show that the respondent had used political contributions to make the expenditures or to reimburse herself for expenditures made from personal funds, the complaints specifically alleged that the total amount of political contributions maintained had decreased in each of the respondent’s subsequent reports. Furthermore, the complaints alleged that the expenditures at issue were reimbursed with political contributions, regardless of whether the expenditures were originally disclosed with the intent to seek reimbursement.

IV. Findings and Conclusions of Law

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

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). “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. *Id.* § 253.035(d).
2. A political contribution means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
3. A campaign contribution means 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).
4. A contribution means, in pertinent part, 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).
5. A political expenditure means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
6. A campaign expenditure means, in pertinent part, 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 in connection with a campaign for an elective office. *Id.* § 251.001(6), (7). Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7).
7. “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).
8. “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, including the filing of a campaign treasurer appointment. *Id.* § 251.001(1)(A).
9. The complaints alleged that the respondent converted political contributions to personal use. Generally, the complaints alleged that the respondent did not make the expenditures for campaign or officeholder purposes and cited approximately \$3,480 in expenditures. All of the expenditures at issue were originally disclosed as made from personal funds. None of the reports disclosed an expenditure from political contributions to the respondent to reimburse an expenditure made from personal funds. After the complaints were filed, the respondent corrected the reports at issue to disclose that she reimbursed herself from political contributions for all of the expenditures at issue. Thus, all of the expenditures were subject to the personal use restriction under section 253.035(a) of the Election Code.

Respondent's Status as a Candidate

10. As evidence for the allegations that the political contributions were converted to personal use, the complaints alleged that the respondent made the expenditures during a time when she was not a candidate for public office. However, the respondent filed a campaign treasurer appointment with the commission on July 31, 2001, and the appointment had never been terminated. By section 251.001(1)(A) of the Election Code, a person who files a campaign treasurer appointment is considered a candidate. In addition, the status of an expenditure as a campaign expenditure is not affected by whether an expenditure is made before, during, or after an election.

Sam's

11. Regarding approximately \$1,100 in expenditures to Sam's for "Food/Drinks for my campaign workers at political events during primary season" and "Food/Drinks for my campaign workers working at polls on election day," the complaints alleged that the expenditures were not made for a campaign purpose because the respondent was not up for re-election until 2010.
12. There is insufficient evidence that the expenditures were made to further individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. Therefore, there is insufficient evidence that the respondent violated section 253.035(a) of the Election Code in connection with the expenditures.

Gonzalo's Restaurant

13. Regarding the expenditure of \$475 to Gonzalo's in El Paso on March 8, 2008, for "Election results party," the complaints alleged that the payee was a restaurant owned by the respondent's father. There is insufficient evidence that the expenditure was made to further individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. Therefore, there is insufficient evidence that the respondent violated section 253.035(a) of the Election Code in connection with the expenditure.

Political Contribution

14. Regarding the \$200 expenditure to a candidate for "political contribution," the complaints alleged that the respondent violated section 253.035(a) of the Election Code.
15. In Ethics Advisory Opinion No. 47 (EAO 47), the commission stated that using political contributions to make a political contribution to a candidate or officeholder would not constitute a conversion of political contributions to personal use. Ethics Advisory Opinion No. 47 (1992). Based upon that opinion, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code by making the contribution.

16. A judicial candidate or officeholder may not use a political contribution to knowingly make political contributions that in the aggregate exceed \$100 in a calendar year to a candidate or officeholder. ELEC. CODE § 253.1611(a). The \$200 contribution was made from the respondent's political contributions to another candidate for judicial office. Therefore, there is credible evidence that the respondent violated section 253.1611(a) of the Election Code in connection with the expenditure.

Charitable Expenditure

17. Regarding the \$1,700 expenditure to the respondent for "Charitable situation for Chantal (a political worker)," the complaints alleged that the respondent violated section 253.035(a) of the Election Code.
18. In EAO 47, the commission addressed whether a candidate may give surplus political contributions to charity. Ethics Advisory Opinion No. 47 (1992). The commission stated that an expenditure of political contributions for one of the purposes set out in section 254.204 of the Election Code is not a personal use of political contributions. *Id.*
19. A former officeholder or candidate shall use any unexpended political contributions for one of six listed purposes, including remitting the contributions to a recognized charitable organization formed for educational, religious, or scientific purposes that is exempt from taxation under section 501(c)(3), Internal Revenue Code of 1986. ELEC. CODE § 254.204(a).
20. In Ethics Advisory Opinion No. 483 (EAO 483), the commission considered whether an officeholder may use political contributions to contribute to a trust fund established for the benefit of an individual for paying that individual's medical and other supplemental needs. Ethics Advisory Opinion No. 483 (2009). The facts presented by the requestor of the opinion also stated that the individual for whom the trust fund had been established was a former campaign manager or fundraiser for officeholders. The commission stated:

The critical issue in determining whether a use of political contributions is personal is the primary purpose for which such use occurs. There is no indication in the facts provided that the contributor or the contributor's family would receive a tangible benefit as a result of the contribution. However, we do not discount the personal intangible benefit, the satisfaction of seeing someone in need get the help they need, that a person receives from making a contribution to a friend or to another individual for purposes of assisting that individual with medical or other expenses unrelated to a campaign or public office. While a contribution in the circumstances described by the requestor may certainly be honorable and of great benefit to the ultimate recipient of the contribution, the decision to contribute to the trust fund for the benefit of the specific individual also serves a personal need of the contributor of seeing a specific person in need get the help they need.

This is distinguishable from a situation in which a candidate or officeholder donates to a tax-exempt 501(c)(3) organization that fits into the purpose of section 254.204(a)(5) due, in part, to the absence of control that the contributor has over the disposition of the funds once they are held by the organization or over the selection of the beneficiaries of the funds. Under the circumstances described in this opinion, we think that the purpose of the proposed contribution primarily furthers the contributor's personal purposes and would therefore constitute a personal use of political contributions in violation of section 253.035(a) of the Election Code.

Id.

21. There is credible evidence that the expenditure primarily furthered the respondent's personal purposes. Therefore, there is credible evidence that the respondent violated section 253.035(a) of the Election Code in connection with the expenditure.

Disclosure of Political Expenditures

22. A candidate is required to report a campaign expenditure from personal funds. Ethics Commission Rules § 20.61(a).
23. 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 required to be filed under this title that covers the period in which the expenditures from personal funds were made, and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. ELEC. CODE § 253.035(h).
24. A 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. *Id.* § 254.031(a)(3).
25. A report must also include the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment. *Id.* § 254.031(a)(4).

26. Regarding the expenditure of \$1,700 for “Charitable situation for Chantal (a political worker),” which was not made for a political purpose, the respondent originally disclosed herself as the payee. In addition, the respondent used political contributions to reimburse herself for the expenditure but did not disclose the reimbursement or that reimbursement was intended. Therefore, there is credible evidence that the respondent failed to properly reimburse herself for the expenditure because she did not disclose the actual payee of the expenditure, disclose any reimbursements for the expenditure, or disclose that reimbursement was intended, in violation of sections 253.035(h) and 254.031(a)(4) of the Election Code and section 20.63(a) of the Ethics Commission Rules.
27. Regarding the remaining approximate \$1,780 in expenditures at issue, all of the expenditures were made with personal funds and the respondent reimbursed herself for each expenditure from political contributions. None of the reimbursements were disclosed in the respondent’s original reports. In addition, the expenditures were not originally disclosed with an intent to reimburse. Thus, there is credible evidence that the respondent failed to properly reimburse herself for approximately \$1,780 in expenditures because she did not properly disclose reimbursements for the expenditures, in violation of sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63(a) of the Ethics Commission Rules.

Additional Expenditures

28. The respondent corrected the reports at issue to correct or add approximately \$21,700 in political expenditures made from personal funds. The respondent also disclosed an additional approximate \$1,330 in political expenditures made from personal funds in her original January 2008 semiannual report and did not correct the expenditures to disclose the original payee. The respondent reimbursed herself for all of the expenditures. Therefore, there is credible evidence that the respondent did not properly disclose reimbursements for approximately \$23,030 in expenditures, in violation of sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63(a) 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 these sworn complaints.
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 is required to report a campaign expenditure from personal funds and that 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 required to be filed under this title that covers the period in which the expenditures from personal funds were made, and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement.

The respondent also acknowledges that a campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent also acknowledges that a report must also include the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment.

The respondent also acknowledges that a judicial candidate or officeholder may not use a political contribution to knowingly make political contributions that in the aggregate exceed \$100 in a calendar year to a candidate or officeholder.

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

VI. Confidentiality

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

VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$3,000 civil penalty. The respondent must also use personal funds to reimburse her political funds in the amount of \$1,700. The respondent shall furnish to the commission evidence of the required reimbursement.

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-2908196 and SC-2909209.

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

Bonnie Rangel, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director