

TEXAS ETHICS COMMISSION

IN THE MATTER OF
EDWIN E. RINEHART,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2909214

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 21, 2010, to consider sworn complaint SC-2909214. A quorum of the commission was present. The commission determined that there is credible evidence of violations, including 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: 1) failed to properly disclose total political contributions, total political expenditures, outstanding loan totals, and the payees of political expenditures; 2) accepted political contributions from corporations; and 3) converted political contributions to personal use.

III. Facts Supported by Credible Evidence

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

1. The respondent is Montgomery County Commissioner, Precinct 4.

Total Political Contributions/Expenditures

2. The complaint alleged that the respondent disclosed incorrect amounts of total political contributions and total political expenditures on his July 2008 and July 2009 semiannual reports. The respondent corrected the reports to disclose the correct amounts.

Total Outstanding Loans

3. The complaint alleged that the respondent failed to disclose the amount of total outstanding loans on his January 2009 semiannual report. The report disclosed a line through the field for total principal amount of all outstanding loans as of the last day of the reporting period.
4. In his affidavit submitted in response to the complaint, the respondent swore there were no outstanding loans, and the evidence did not show that the respondent had unreported loans.

Reporting Political Expenditures

5. The complaint alleged that the respondent failed to properly report the actual vendors, addresses, dates, and amounts in connection with 19 political expenditures totaling approximately \$28,120 that were disclosed in the respondent's July 2008, January 2009, and July 2009 semiannual reports. The expenditures at issue were made to individuals for various purposes such as donation, sponsor, "Fundraiser – Assistant," entertainment at event or fundraiser, "Coordinator Fee – Fundraiser," and campaign marketing.
6. The respondent corrected the payee's name and address, and purpose of payment for approximately \$1,590 in political expenditures.

Contributions from Corporations

7. The complaint alleged that the respondent accepted corporate contributions totaling \$9,450, based on 14 political contributions disclosed in the respondent's July 2008 and July 2009 semiannual reports.
8. Two of the contributors were not corporations and did not have corporate partners at the time they made the contribution at issue, totaling \$1,000.
9. Regarding the remaining \$8,450 in contributions at issue, the evidence either did not clearly establish the status of the entities at the time the contribution was made, or did not establish that the respondent knew the actual legal status of the entity at the time he accepted the contribution.

Personal Use

10. The complaint alleged that the respondent converted approximately \$7,760 in political contributions to personal use. The allegations were based on a \$5,000 expenditure on May 19, 2008, disclosed in the July 2008 semiannual report, and a \$2,762.50 expenditure on July 9, 2008, disclosed in the January 2009 semiannual report. Both expenditures were made to a law office for "Attorney's Fees."

11. In his affidavit, the respondent swore that the payments to the attorney were for campaign and officeholder services.

IV. Findings and Conclusions of Law

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

Total Political Contributions/Expenditures

1. 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).
2. The respondent did not correctly calculate the amount of total political contributions accepted and the amount of total political expenditures made during the reporting periods at issue. The respondent disclosed amounts of contributions and expenditures of \$50 or less but failed to include those amounts in the totals on the reports' cover page. Therefore, there is credible evidence that the respondent committed technical or *de minimis* violations of section 254.031(a)(6) of the Election Code.

Total Outstanding Loans

3. 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).
4. The respondent drew a line through the field to indicate that there were no outstanding loans as of the last day of the reporting period at issue. Further, there is no evidence that the respondent had accepted any loans that required disclosure. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(2) of the Election Code.

Reporting Political Expenditures

5. 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. ELEC. CODE § 254.031(a)(3).
6. Political expenditures made out of personal funds by a staff member of an officeholder or candidate with the intent to seek reimbursement from the officeholder or candidate that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: (1) 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; and (2) included with

the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. If the reimbursement occurs during a different reporting period, the political expenditure must be reported as follows: (1) the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the political committee; (2) the expenditure made by the staff member is reported as a political expenditure by the political committee; and (3) the reimbursement to the staff member to repay the loan is reported as a political expenditure by the political committee. Ethics Commission Rules § 20.62.

7. The complaint alleged that the respondent did not disclose the actual payee information, dates, or amounts for approximately \$28,120 in political expenditures. Approximately \$1,590 in political expenditures did not reflect the names of the actual payees that actually received the benefits of the expenditures. Thus, for approximately \$1,590 in political expenditures, the respondent failed to properly disclose the actual payees. As for the remaining political expenditures at issue, the respondent disclosed the actual payee on the original report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code in connection with approximately \$1,590 in expenditures, and credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules in connection with approximately \$26,530 in expenditures.

Contributions from Corporations

8. A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094(a).
9. A person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253, Election Code. *Id.* § 253.003(b).
10. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
11. In Ethics Advisory Opinion No. 221 (1994), the commission determined that a partnership that has corporate partners is subject to the same restrictions on political activity that apply to corporations.
12. 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, that the respondent knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.

13. Two of the contributors were not corporations and did not have corporate partners at the time the respondent accepted their contributions, totaling \$1,000. Therefore, there is credible evidence that the respondent did not violate sections 253.003 and 253.094 of the Election Code with respect to these contributions.
14. As for the remaining contributions at issue totaling \$8,450, there is insufficient evidence that the respondent violated sections 253.003 and 253.094 of the Election Code.

Personal Use

15. 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).
16. Personal use is defined as 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).
17. The complaint alleged that the respondent converted political contributions to personal use. The respondent swore that the expenditures were for campaign or officeholder purposes. The complaint did not include any evidence that the expenditures primarily furthered an individual or family purpose not connected with the respondent's performance of duties or activities as a candidate or officeholder. Therefore, there is insufficient evidence of a violation of section 253.035 of the Election Code with regard to the expenditures.

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 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 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 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 \$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-2909214.

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

Edwin E. Rinehart, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director