

TEXAS ETHICS COMMISSION

IN THE MATTER OF

RENE NUNEZ,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2910269

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 11, 2010, to consider sworn complaint SC-2910269. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 572.023(b)(7) of the Government 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. Allegation

The complaint alleged that the respondent failed to disclose a gift on his personal financial statement filed in 2009.

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 State Board of Education (SBOE).
2. On April 25, 2009, the respondent filed a personal financial statement (PFS) covering calendar year 2008. The respondent did not submit Part 8 of the PFS (used for disclosing gifts) and did not otherwise disclose any gifts on the statement. The respondent disclosed on Part 1 of the PFS (used for disclosing sources of occupational income) that he was a consultant for a management company.
3. The complaint alleged that in 2008 the respondent accepted from AEW Capital Management (AEW) a football game ticket valued at more than \$700. The complaint was based on expenses disclosed by AEW in documents responding to Request for Qualifications (RFQ) for the Texas Permanent School Fund (TPSF).

4. The ticket at issue was to the September 13, 2008, University of Southern California (USC) v. Ohio State University (Ohio State) football game.¹
5. TPSF is a perpetual endowment for the public schools of this state, which the SBOE may invest in accordance with chapter 43 of the Education Code. EDUC. CODE § 43.001; *see generally* EDUC. CODE ch. 43. The SBOE may contract with private professional investment managers to assist the board in making investments of the permanent school fund. EDUC. CODE § 43.005.
6. In August 2009, AEW submitted to the Texas Education Agency (TEA) original “Conflict of Interest and Contacts” documents responding to RFQ for the TPSF. The documents disclosed that on September 5, 2008, an AEW employee conferred a \$729 benefit to the respondent to attend a college football event. The documents disclosed the respondent was a business contact and, in the portion of the documents attributed to AEW as a whole, described the nature of the relationship as, “Members of AEW see Mr. Nunez at industry wide conferences and events.” In the portion of the documents attributed to the AEW employee at issue, the documents described the nature of the relationship:

As a key marketing professional at AEW, [the AEW employee] regularly sees Mr. Nunez at industry wide conferences and events. Generally speaking, [the AEW employee’s] contact with Mr. Nunez is in a group setting with other investment managers and public fund staff and/or board members present.

The AEW employee at issue certified that the documents were accurate.

7. By a letter to TEA dated October 29, 2009, AEW’s general counsel addressed the “Conflict of Interest and Contacts” documents AEW submitted in response to the RFQ for the TPSF. The letter stated that the cost for the respondent’s ticket to the football game at issue was \$688.50, plus approximately \$40 for a pre-game event, and that certain entries on the document had been amended.
8. The amended “Conflict of Interest and Contacts” document, which was attributed to AEW as a whole, changed the date of the football game at issue to September 13, 2008, but did not amend the amount or description of the benefit reportedly conferred to the respondent. The managing director and general counsel of AEW certified that the amended disclosures were accurate.

¹ According to a September 9, 2008, article, prices for a ticket to attend the game between (then top-ranked) USC and (then fifth-ranked) Ohio State ranged from \$100 to \$5,000 on one leading marketplace website. *See* Gary Klein and David Wharton, *Tickets are Hard to Find*, Los Angeles Times, September 9, 2008.

9. AEW included with its October 29, 2009, letter to TEA an invoice from a ticket company to the AEW employee at issue. The invoice disclosed a September 5, 2008, credit card payment of \$1,377 for two tickets to the September 13, 2008, USC v. Ohio State football game. The payment included \$608 for each ticket, plus priority overnight shipping and handling. The invoice disclosed the AEW employee at issue as the person to whom the tickets were billed and shipped. The invoice included the handwritten note, "+ pre-game event."
10. In response to the sworn complaint allegation, the respondent submitted an affidavit that included the following:

I did attend the game in question, but was under the impression that it was merely a regular ticket, and had no idea that the value would have been anywhere near the stated amount from AEW, much less even over the \$250.00 limit violation. I would not have accepted the ticket had I known it was allegedly that value.
11. On January 3, 2009, the respondent filed a January 2009 semiannual report that disclosed no political contributions during the reporting period from July 1, 2008, through December 31, 2008. On July 1, 2009, the respondent filed a corrected January 2009 semiannual report that disclosed \$100 in unitemized political contributions during the reporting period, and that did not disclose any itemized political contributions.
12. Neither AEW nor the AEW employee at issue was registered as a lobbyist under chapter 305 of the Government Code in 2008. No lobby registrations for 2008 disclosed AEW as an employer or client for a registered lobbyist, and no lobby activity reports for 2008 disclosed that an individual was reporting lobby expenditures on behalf of AEW in order for AEW to avoid registration under chapter 305 of the Government Code.

IV. Findings and Conclusions of Law

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

1. A state officer shall file with the commission a verified financial statement complying with sections 572.022 through 572.0252 of the Government Code. GOV'T CODE § 572.021. A financial statement must include an account of the financial activity of the individual required to file a financial statement and an account of the financial activity of the individual's spouse and dependent children if the individual had actual control over that activity for the preceding calendar year. *Id.* § 572.023(a).
2. The account of financial activity includes identification of a person or other organization from which the individual or the individual's spouse or dependent children received a gift of anything of value in excess of \$250 and a description of each gift, except a gift received from an individual related to the individual at any time within the second degree by

consanguinity or affinity, as determined under subchapter B of chapter 573 of the Government Code, a political contribution that was reported as required by chapter 254 of the Election Code, and an expenditure required to be reported by a person required to be registered under chapter 305 of the Government Code. *Id.* § 572.023(b)(7).

3. The respondent accepted a benefit valued at approximately \$690 to attend a September 13, 2008, USC v. Ohio State football game, as well as approximately \$40 in additional expenses to attend a pre-game event. The respondent did not disclose the benefit in his personal financial statement filed in 2009. The benefit was not disclosed as a political contribution or lobby expenditure. Therefore, there is credible evidence of a violation of section 572.023(b)(7) of the Government 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 state officer shall file with the commission a verified financial statement complying with sections 572.022 through 572.0252 of the Government Code. The respondent acknowledges that the financial statement must include an account of the financial activity of the individual required to file a financial statement and an account of the financial activity of the individual's spouse and dependent children if the individual had actual control over that activity for the preceding calendar year. The respondent acknowledges that the account of financial activity includes identification of a person or other organization from which the individual or the individual's spouse or dependent children received a gift of anything of value in excess of \$250 and a description of each gift, except a gift received from an individual related to the individual at any time within the second degree by consanguinity or affinity, as determined under subchapter B of chapter 573 of the Government Code, a political contribution that was reported as required by chapter 254 of the Election Code, and an expenditure required to be reported by a person required to be registered under chapter 305 of the Government Code. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the commission has determined is 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 violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$400 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-2910269.

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

Rene Nunez, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director