

TEXAS ETHICS COMMISSION

IN THE MATTER OF

YVONNE DAVIS,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2912294

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-2912294. 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 and sections 20.61 and 20.62 of the Ethics Commission Rules, 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) improperly reported political contributions and political expenditures on multiple campaign finance reports, 2) accepted political contributions from corporations, and 3) failed to include the occupation or job title and employer for political contributions of \$500 or more on multiple campaign finance reports.

III. Facts Supported by Credible Evidence

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

Total Political Contributions Maintained

1. The complaint alleged that the respondent incorrectly reported the amount of total political contributions maintained on her January and July semiannual reports for calendar years 2008 and 2009, and 30-day and 8-day pre-election reports filed in connection with a November 2008 election. The allegations were based on calculations using information disclosed in the reports at issue. In response to the complaint, the respondent submitted an affidavit in which she swore that the total political contributions maintained disclosed on each report was correct, and disclosed account balances for the last day of the reporting period.

Political Contributions from Corporations or Labor Unions

2. The complaint alleged that, based on disclosures in the respondent's January 2008, July 2008, and January 2009 semiannual reports and the 30 day pre-election report filed in connection with a November 2008 election, the respondent accepted 13 political contributions totaling approximately \$8,160 from corporations or labor organizations.
3. One \$500 political contribution at issue was from a professional corporation.
4. Six political contributions at issue totaling approximately \$5,000 appear to be from the affiliated political committees of corporations or other business entities.
5. Public records did not establish the legal status for two contributors whose contributions totaled \$350.
6. Approximately \$2,310, in contributions at issue appear to be from corporations.

Disclosure of Full Names of Persons Making Political Contributions

7. The complaint alleged that the respondent failed to disclose the contributor's full name for approximately \$7,560 in political contributions disclosed on the reports at issue.
8. Of the 20 disclosures at issue, 10 contributions, totaling approximately \$3,560, did not include the full name of the contributor. These contributions disclosed an unrecognized acronym of a political committee, some other type of entity, or the initials of a person.
9. The remaining 10 political contributions, totaling approximately \$4,000, disclosed business names or recognized acronyms of political committees available on the Ethics Commission or Federal Election Commission websites.

Disclosure of Full Name of Persons Receiving Political Expenditures

10. The complaint alleged that, the respondent failed to disclose the full name for approximately \$195 in political expenditures disclosed on the respondent's January and July 2008 semiannual reports.
11. The respondent did not disclose the full name of a \$135 political expenditure to "WCNAA" on her January 2008 semiannual report.
12. The respondent also did not disclose the full name of a \$60 expenditure to "PVL-New Era," on her July 2008 semiannual report.

Disclosure of Purposes of Political Expenditures

13. The complaint alleged that the respondent failed to properly disclose the purposes of approximately \$27,440 in political expenditures on her January 2008, July 2008, January 2009, and July 2009 semiannual reports and 8-day pre-election report for the November 2008 election.
14. The purposes disclosed for approximately \$8,350 in political expenditures were variations of “petty cash” or “cash” for campaign workers or an event.
15. The remaining expenditures at issue disclosed adequate purposes.

Actual Payees of Political Expenditures

16. The complaint alleged that the respondent improperly reported staff reimbursement for approximately \$38,480 in political expenditures on her January and July semiannual reports for calendar years 2008 and 2009, and 30-day and 8-day pre-election reports filed in connection with a November 2008 election.
17. Approximately \$20,050 in expenditures at issue appear to be rent payments to an individual for the use of an Austin apartment.
18. Approximately \$4,200 in expenditures appear to be payments to individuals as an allowance for gasoline.
19. Approximately \$2,750 in expenditures appear to be actual payments to individuals for personal services.
20. Approximately \$8,350 in expenditures appear to be cash withdrawals from a bank. The purposes disclosed for those expenditures are “petty cash” or “cash” for campaign workers or an event.
21. Approximately \$2,380 in expenditures were disclosed as reimbursement to individuals.
22. The respondent’s January 2008 semiannual report disclosed a \$750 expenditure to a bank for “Cashier’s Check for 2008 dem party filing fee.” The complaint also alleged that this expenditure was an improperly reported staff reimbursement.

Disclosure of Political Expenditures for Travel Outside of Texas

23. The complaint alleged that the respondent failed to disclose on Schedule T on her January and July 2009 semiannual reports approximately \$1,180 in political expenditures made for travel outside of Texas.

24. The January and July 2009 semiannual reports at issue did not include a Schedule T (used to disclose additional information for travel outside of Texas).
25. The respondent disclosed a \$238.92 political expenditure on her January 2009 semiannual report for a rental car in Denver, Colorado. The expenditure appears to be for the purpose of renting a car in Denver, not to travel to Denver.
26. The respondent also disclosed a \$941.20 political expenditure from personal funds to American Airlines for "Travel to inauguration." It appears that this expenditure was for a flight to the January 2009 presidential inauguration held in Washington D.C.

Principal Occupation or Job Title and Employer Information for Contributors

27. The complaint alleged that the respondent failed to include the principal occupation or job title and employer for approximately \$8,600 in political contributions disclosed on the respondent's January 2008 and January 2009 semiannual reports and 30-day and 8-day pre-election reports filed in connection with a November 2008 election.
28. The respondent disclosed a principal occupation and employer for all \$8,600 in political contributions at issue.

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. Each 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).
2. There is insufficient evidence of violations of section 254.031(a)(8) of the Election Code.

Political Contributions from Corporations or Labor Unions

3. A corporation may not make a political contribution or political expenditure that is not authorized by this subchapter. ELEC. CODE § 253.094. This subchapter applies only to corporations that are organized under the Texas Business Corporation Act, the Texas Non-Profit 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. *Id.* § 253.091.

4. For purposes of this subchapter, the following associations, whether incorporated or not, are considered to be corporations covered by this subchapter: banks, trust companies, savings and loan associations or companies, insurance companies, reciprocal or interinsurance exchanges, railroad companies, cemetery companies, government-regulated cooperatives, stock companies, and abstract and title insurance companies. *Id.* § 253.093.
5. A person may not knowingly make a political contribution in violation of this chapter nor knowingly accept a political contribution the person knows to have been made in violation of this chapter. *Id.* § 253.003.
6. One \$500 political contribution was from a permissible business entity (a professional corporation). Six political contributions at issue totaling approximately \$5,000 appear to be from the affiliated political committees of corporations or other business entities. Therefore, with regard to those allegations, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code.
7. Public records do not establish the status of the contributors of two political contributions totaling \$350. Therefore, with regard to those allegations, there is insufficient evidence of violations of sections 253.003 and 253.094 of the Election Code.
8. The remaining political contributions at issue totaling approximately \$2,310, appear to be from corporations. However, there is insufficient evidence of violations of sections 253.003 and 253.094 of the Election Code.

Disclosure of Full Names of Persons Making Political Contributions

9. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
10. Of the 20 disclosures at issue, 10 contributions, totaling approximately \$3,560, did not include the full name of the contributor. These contributions disclosed an unrecognized acronym of a political committee, some other type of entity, or the initials of a person. Therefore, with regard to those contributions, there is credible evidence of violations of section 254.031(a)(1) of the Election Code.
11. The remaining 10 political contributions, totaling approximately \$4,000, disclosed business names or recognized acronyms of political committees available on the Ethics Commission or Federal Election Commission websites. Therefore, with regard to those contributions, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code.

Disclosure of Full Name of Persons Receiving Political Expenditures

12. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
13. The respondent failed to disclose the full name for “WCNAA” on her January 2008 semiannual report. Therefore with respect to that \$135 expenditure, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.
14. The \$60 expenditure to “PVL-New Era,” disclosed on the respondent’s July 2008 semiannual report disclosed the full name of that political committee. Therefore, with respect to that expenditure, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.

Disclosure of Purposes of Political Expenditures

15. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
16. 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.
17. Approximately \$8,350 in expenditures appear to be cash withdrawals from a bank. The purposes disclosed for those expenditures were “petty cash” or “cash” for campaign workers or an event. A cash withdrawal from a bank is not a reportable transaction, but since the respondent did report it “petty cash” or “cash” appear to be sufficient purposes for the transaction. Therefore, with regard to the purpose of those expenditures, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.
18. The expenditures do not disclose whether the cash was used to purchase actual items or was used to pay campaign workers.
19. The disclosures for the remaining expenditures at issue were adequate. Therefore, with regard to those expenditures, there is credible evidence of no violations of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.

Actual Payees of Political Expenditures

20. Ethics Commission Rule § 20.62 states that 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.
21. Ethics Commission Rule § 20.62 also states, in relevant part, that if the staff member is not reimbursed during the same reporting period, or is reimbursed more than \$5,000 in the aggregate during the reporting period, then a political expenditure made out of personal funds by the staff member of an officeholder or candidate with the intent to seek reimbursement from the officeholder or candidate 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 officeholder, or candidate;
 - (2) The expenditure made by the staff member is reported as a political expenditure by the officeholder or candidate; and
 - (3) The reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder or candidate.
22. The complaint alleged that the respondent improperly reported staff reimbursement for approximately \$38,480 in political expenditures on her January and July semiannual reports for calendar years 2008 and 2009, and 30-day and 8-day pre-election reports filed in connection with a November 2008 election.
23. Of the \$38,480 in expenditures at issue, approximately \$20,050 in expenditures were rent payments to an individual for the use of an Austin apartment. Therefore, with regard to those allegations, 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.
24. Approximately \$4,200 in expenditures appear to be payments to individuals as an allowance for gasoline. Therefore, with regard to those allegations, 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.
25. Approximately \$2,750 in expenditures were actual payments to individuals for personal services. Therefore, with regard to those allegations, 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.
 26. Approximately \$8,350 in expenditures appear to be cash withdrawals from a bank. The purposes disclosed for those expenditures are “petty cash” or “cash” for campaign workers or an event. The expenditures do not disclose whether the cash was used to purchase actual items or was compensation to campaign workers. If any payee was paid over \$50 during the reporting period, detailed reporting for that payee would be required. However, there is insufficient evidence of a violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules, with regard to those expenditures.
 27. Approximately \$2,380 in expenditures were disclosed as reimbursement to individuals. It is clear from the purposes disclosed on the respondent’s reports at issue that those political expenditures did not show the correct payee and were improperly reported as reimbursements. Therefore, with regard to those expenditures, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.
 28. The respondent’s January 2008 semiannual report disclosed a \$750 expenditure to a bank for “Cashier’s Check for 2008 dem party filing fee.” The complaint also alleged that this expenditure was an improperly reported staff reimbursement, however, the expenditure is not any form of reimbursement. It appears that this expenditure was for a cashier’s check from a bank, a method to withdraw funds from an account, and may not have been required to be reported. However, the actual payment to the “dem party” for the “filing fee” was required to be reported. There is no expenditure for a filing fee on the respondent’s July 2007, January 2008, or 30-day pre-election report for the November 2008 election. Thus it appears that the respondent disclosed the wrong payee for the \$750 expenditure. Therefore, with regard to that expenditure, there is credible evidence of no violation of section 20.62 of the Ethics Commission Rules, but credible evidence of a violation of section 254.031(a)(3) of the Election Code.

Disclosure of Political Expenditures for Travel Outside of Texas

29. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).

30. The description of a political expenditure for travel outside of the state of Texas must provide the following:
- (1) The name of the person or persons traveling on whose behalf the expenditure was made;
 - (2) The means of transportation;
 - (3) The name of the departure city or the name of each departure location;
 - (4) The name of the destination city or the name of each destination location;
 - (5) The dates on which the travel occurred; *and*
 - (6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

Ethics Commission Rules § 20.61(b).

31. The respondent was required to disclose information about travel outside of the state of Texas on Schedule T. The respondent disclosed a \$238.92 political expenditure on her January 2009 semiannual report for a rental car in Denver, Colorado. The expenditure appears to be for the purpose of renting a car in Denver, not to travel to Denver. The expenditure was not required to be disclosed on Schedule T. Therefore, with regard to that expenditure, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.61(b) of the Ethics Commission Rules.
32. The respondent also disclosed a \$941.20 political expenditure from personal funds to American Airlines for "Travel to inauguration." It appears that this expenditure was for a flight to the January 2009 presidential inauguration held in Washington D.C. The respondent did not properly include the information required by section 20.61(b) of the Ethics Commission Rules in the report. Therefore, with regard to that expenditure, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code and section 20.61(b) of the Ethics Commission Rules.

Principal Occupation or Job Title and Employer Information for Contributors

33. In addition to the contents required by sections 254.031 and 254.061 of the Election Code, each report by a candidate for a statewide office in the executive branch or a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period, the individual's principal occupation or job title and the full name of the individual's employer. ELEC. CODE § 254.0612. (The complaint alleged a violation of section 254.0912 of the Election Code, which applies to officeholders, but the respondent was a candidate during the period at issue, so section 254.0612 of the Election Code is the appropriate provision.)

34. The respondent disclosed a principal occupation and employer for all \$8,600 in political contributions at issue. Therefore, there is credible evidence of no violation of section 254.0612 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 amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. The respondent also acknowledges that the report must also include, for all 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 political expenditures are made and the dates and purposes of the expenditures.

The respondent also acknowledges the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules.

The respondent also acknowledges the proper way to report political expenditures for travel outside of Texas is in accordance with section 20.61 of the Ethics Commission Rules.

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 \$900 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-2912294.

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

Yvonne Davis, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director