

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOSEPH DESHOTEL,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-3100123

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-3100123. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.0612 of the Election Code, and sections 20.62 and 20.63 of the Ethics Commission Rules, and credible evidence of technical or *de minimis* violations of sections 253.035(h) and 254.031 of the Election Code, 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) accepted contributions from a corporation or labor organization, 2) did not properly disclose political contributions, political expenditures, and total political contributions maintained, 3) improperly reported reimbursements to staff and political expenditures from personal funds, and 4) did not include the principal occupation or job title and the full name of employer for certain contributors.

III. Facts Supported by Credible Evidence

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

1. The respondent is the state representative of District 22.
2. The complaint alleged that the respondent:
 - Accepted four corporate or labor organization contributions totaling \$2,750, that were disclosed on the respondent's July 2008 and January 2009 semiannual reports, and 8-day pre-election report in connection with the November 2008 general election.

- Failed to disclose the full name of contributors for 14 contributions totaling \$8,350 disclosed on his July 2008 and January 2009 semiannual reports, and 8-day pre-election report filed in connection with the November 2008 election.
- Failed to disclose the full name of one payee on his July 2008 semiannual report.
- Incorrectly reported total political contributions maintained on his July 2008, January 2009, and July 2009 semiannual reports, and 30-day pre-election report filed in connection with the November 2008 election.
- Incorrectly reported total political expenditures on his July 2008, January 2009, and July 2009 semiannual reports.
- Improperly reported 29 reimbursements to staff totaling approximately \$18,340 on his July 2008, January 2009, and July 2009 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the November 2008 election.
- Improperly reported five reimbursements for political expenditures from personal funds totaling approximately \$7,440 on his January 2009 and July 2009 semiannual reports.
- Failed to fully disclose the purposes related to 29 political expenditures totaling approximately \$12,070, disclosed in the respondent's July 2008, January 2009, and July 2009 semiannual reports and 30-day pre-election report for the November 2008 election.
- Failed to include the principal occupation of 11 persons from whom political contributions that in the aggregate exceeded \$500 were accepted during the reporting period, on his January 2009 semiannual report and 8-day pre-election report filed in connection with the November 2008 general election.

Corporate Contributions

3. The complaint alleged that the respondent accepted four corporate contributions totaling \$2,750.
4. Three of the political contributions at issue, totaling \$1,250, were made by political committees.
5. With regard to the remaining contribution at issue, the evidence either did not establish that the contributor was a corporation or labor organization, or that the respondent knew that the contributor was an incorporated entity or labor organization.

Required Information on Campaign Finance Reports

6. The complaint alleged that the respondent failed to disclose the names of 14 contributors for contributions totaling \$8,350 disclosed on his July 2008 and January 2009 semiannual reports, and 8-day pre-election report filed in connection with the November 2008 election and the name of one payee on his July 2008 semiannual report.
7. The respondent's July 2008 report disclosed a \$250 political contribution from "IMPACT." The respondent's January 2009 report disclosed a \$1,000 political contribution from "TSA PAC."
8. For the remaining contributions totaling \$7,100 at issue, the respondent disclosed the names or recognized acronyms of political committees that file with the commission or the Federal Election Commission (FEC.)
9. The individual payee name disclosed for the expenditure at issue was correct as originally disclosed.

Total Political Expenditures and Total Political Contributions Maintained

10. The complaint alleged that the respondent incorrectly reported total political contributions maintained on his July 2008, January 2009, and July 2009 semiannual reports, and 30-day pre-election report filed in connection with the November 2008 election, and incorrectly reported total political expenditures on his July 2008, January 2009, and July 2009 semiannual reports.
11. In his response, the respondent stated that total political contributions maintained "was pulled from (the respondent's) accounts and is accurate." The respondent filed corrections to each of the reports at issue, and each of the corrected reports disclosed an increase in total political expenditures. On the reports alleged, the amount at issue is approximately \$760.
12. The respondent disclosed six additional expenditures totaling approximately \$18,120, on his corrected 8-day pre-election report filed in connection with the November 2008 election.

Actual Payees of Political Expenditures

13. The complaint alleged that the respondent improperly reported 29 political expenditures to individuals totaling approximately \$18,330 on his July 2008, January 2009, and July 2009 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the November 2008 election. The purposes disclosed for these expenditures included: "Catering Services," and "Reimbursement" (the respondent's July 2009 semiannual report disclosed purposes such as "Rem: Gas 30 17 15.50 20; Food/Bev. 33.25; Walmart 250.62; Lowes 26.93; Moving exp: 356.70").

14. Approximately \$6,450 in expenditures to individuals were for personal services such as photography, catering, or reimbursement for mileage, and correct as originally reported. The respondent filed corrections with regard to the remaining approximately \$11,880 in expenditures, disclosing vendor payees for those expenditures.
15. The respondent's corrected 8-day pre-election report disclosed six additional expenditures totaling approximately \$18,120 to new payees that do not appear to have been disclosed in other reports.

Political Expenditures from Personal Funds

16. The complaint alleged that the respondent improperly reported five reimbursements for political expenditures from personal funds totaling approximately \$7,440 on his January 2009 and July 2009 semiannual reports.
17. The respondent disclosed the following expenditures disclosing himself as payee:
 - an expenditure totaling \$3,780 on his January 2009 semiannual report, for the purpose of "Cash/Block Walkers/Gas Mileage for Election Day,"
 - an expenditure totaling \$388.30 on his January 2009 semiannual report, for the purpose of "Novemeber (sic) Gas Mileage-Campaign,"
 - an expenditure totaling \$420 on his January 2009 semiannual report, for the purpose of "Organizing Block Walk-Reimbursement" (disclosed as a direct expenditure to support another candidate),
 - an expenditure totaling \$1,345 on his July 2009 semiannual report, for the purpose of "Reim: Rent Austin City Lights 501 E Stassney Ln Austin TX 78745," and
 - an expenditure totaling \$1,506 on his July 2009 semiannual report, for the purpose of "Deposit & Rent for Austin City Light Apt."
18. In his response, the respondent explained that the \$388.30 expenditure disclosing himself as payee was a properly reported reimbursement for mileage. The respondent indicated that the other two expenditures at issue on the January 2009 semiannual report were reimbursements reported in error, the \$3,780 expenditure was to an individual for "Contract Services—Organizing Block Walkers" and the \$420 expenditure was a reimbursement to himself for "Contract Services—Organizing Block Walk." The respondent argued that the two expenditures disclosing a purpose of rent for "Austin City Lights" apartments disclosed the information required and were correct as originally reported. The respondent filed a corrected January 2009 semiannual report, disclosing the individual payee, and clarifying the

purpose for the reimbursement to himself. He also filed corrections to the July 2009 semiannual report disclosing Austin City Lights as the payee for those expenditures.

Principal Occupation or Job Title and Employer of Contributors

19. The complaint alleged that the respondent failed to include the principal occupation of 11 persons from whom political contributions that in the aggregate equaled or exceeded \$500 were accepted during the reporting period, on his January 2009 semiannual report and 8-day pre-election report filed in connection with the November 2008 general election.
20. On his 8-day pre-election report filed in connection with the November 2008 general election the respondent disclosed a \$500 contribution from an individual, on October 24, 2008, that disclosed a principal occupation or job title of "Governmental Relations" and employer as "Self."
21. On his January 2009 semiannual report, the respondent disclosed the following contributions:
 - \$500 from an individual on December 3, 2008, that left blank the space provided to disclose a principal occupation or job title, and disclosed as employer, "Pastor,"
 - \$500 from an individual on December 3, 2008, that disclosed a principal occupation or job title of "Requested" and employer as "Information,"
 - \$1,000 from an individual on November 24, 2008, that disclosed a principal occupation or job title of "Requested" and employer as "Information,"
 - \$500 from an individual on December 3, 2008, that disclosed a principal occupation or job title of "Paramedic" and employer as "CPA,"
 - \$500 from an individual on December 3, 2008, that left blank the spaces provided to disclose a principal occupation or job title, and employer,
 - \$2,000 from an individual on November 24, 2008, that disclosed a principal occupation or job title of "Requested" and employer as "Information,"
 - \$500 from an individual on November 24, 2008, that left blank the spaces provided to disclose a principal occupation or job title, and employer,
 - \$1,000 from an individual on November 24, 2008, that disclosed a principal occupation or job title of "Attorney" and employer as "Self,"

- \$500 from an individual on November 24, 2008, that left blank the spaces provided to disclose a principal occupation or job title, and employer, and
 - \$1,000 from an individual on December 3, 2008, that disclosed a principal occupation or job title of “Requested” and employer as “Information.”
22. Of the reports at issue, on the January 2009 semiannual report, there is one contribution in the amount of \$500 disclosing no principal occupation or job title, but disclosing an employer (it appears the employer information was actually a job title that should have been disclosed in the field for principal occupation or job title), and seven contributions disclosed on the January 2009 semiannual report totaling \$6,000 disclosing no principal occupation or job title, and no employer information. Four of those indicated that the information was requested and three were left blank.
23. The respondent corrected the January 2009 semiannual report to disclose a principal occupation or job title for the \$500 contribution (the report disclosed the name of a church). Four contributions indicated that the required information had been requested. The respondent provided a copy of his solicitation letter which requests employer and occupation information from the contributor, and the evidence indicated that the respondent’s solicitation letter requested the required information.

IV. Findings and Conclusions of Law

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

Corporate Contributions

1. 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.
2. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. *Id.* § 253.094.
3. 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. *Id.* § 253.091.
4. For three of the political contributions at issue totaling \$1,250, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code. Regarding the remaining \$1,500 political contribution, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.

Required Information on Campaign Finance Reports

5. 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).
6. 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).
7. Regarding the \$1,000 political contribution from TSA PAC and the \$250 political contribution from “IPACT,” the names disclosed by the respondent do not match any committee filing with the commission or FEC, and do not appear to be the full names of the contributors. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code with regard to those contributions.
8. As to the remaining contributions totaling \$7,100, the respondent disclosed the names or recognized acronyms of political committees that file with the commission or FEC. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code with regard to those expenditures.
9. The payee at issue was properly disclosed as originally reported. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.

Total Political Expenditures and Total Political Contributions Maintained

10. Each campaign finance report is required to include the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
11. Each campaign finance report must also include, as of the last day of a reporting period for which the person is required to file a report, 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).
12. The respondent corrected the reports at issue to disclose approximately \$760 in additional expenditures on his July 2008, January 2009, and July 2009 semiannual reports. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code with regard to those expenditures.

13. The respondent filed corrections adding six additional expenditures totaling approximately \$18,120, on his 8-day pre-election report in connection with the November 2008 election. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code with regard to those expenditures.
14. Regarding total political contributions maintained, there is insufficient evidence of a violation of section 254.031(a)(8) of the Election Code.

Actual Payees of Political Expenditures

15. 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).
16. 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. *Id.* § 254.031(a)(5).
17. Ethics Commission Rule § 20.62 states that political expenditures made out of personal funds by a staff member of a candidate with the intent to seek reimbursement from the 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.
18. The respondent failed to disclose the actual payee for approximately \$11,880 in expenditures. Therefore, 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. In addition, there are approximately \$18,120 in new expenditures disclosed on the 8-day pre-election report. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code with respect to those political expenditures.
19. Regarding the remaining approximately \$6,450 in expenditures, 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.

Political Expenditures from Personal Funds

20. A candidate who makes political expenditures from the candidate'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); Ethics Commission Rules § 20.63. A candidate's failure to comply with this requirement may not be cured by filing a corrected report after the report deadline has passed. Ethics Commission Rules § 20.63(e).
21. In the alternative, a candidate who makes political expenditures from the candidate's personal funds may report the amount expended as a loan and may reimburse those personal funds from political contributions in the amount of the reported loan. ELEC. CODE § 253.0351.
22. The \$388.30 political expenditure that the respondent made to himself was a reimbursement for mileage, and correct as originally 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 20.63 of the Ethics Commission Rules.
23. The respondent maintained that the \$420 expenditure to himself was a payment for "Contract Services—Organizing Block Walk" and correct as originally reported. It is not clear whether this was a payment for personal services to the campaign, or a reimbursement for expenses incurred in connection with activities as a candidate or officeholder. Therefore, with regard to this expenditure, there is insufficient evidence of a violation of sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules.
24. The respondent failed to disclose the actual payee for the \$3,780 expenditure disclosed on his January 2009 semiannual report. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.
25. The respondent failed to disclose the actual payee in the "payee name" field for the two expenditures to Austin City Lights disclosed on his July 2009 semiannual report. However, the name of the actual payee and purpose were disclosed in the "purpose" field on that report. Therefore, with regard to these two expenditures totaling approximately \$2,850 there is credible evidence of technical or *de minimis* violations of sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules.

Principal Occupation or Job Title and Employer of Contributors

26. Each report by a candidate for statewide office in the executive branch or 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 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.
27. A person required to file a report under this chapter is considered to be in compliance with sections 254.0612, 254.0912, or 254.1212 of the Election Code only if the person or the person's campaign treasurer shows that the person has used best efforts to obtain, maintain, and report the information required by those sections. A person is considered to have used best efforts to obtain, maintain, and report that information if the person or the person's campaign treasurer complies with this section. *Id.* § 254.0312(a).
28. Each written solicitation for political contributions from an individual must include, in pertinent part, a clear request for the individual's full name and address, the individual's principal occupation or job title, and the full name of the individual's employer, and an accurate statement of state law regarding the collection and reporting of individual contributor information. *Id.* § 254.0312(b).
29. For each political contribution received from an individual that, when aggregated with all other political contributions received from the individual during the reporting period, equals or exceeds \$500 and for which the information required by sections 254.0612, 254.0912, or 254.1212 of the Election Code is not provided, the person must make at least one oral or written request for the missing information. A request under this subsection: (1) must be made not later than the 30th day after the date the contribution is received; (2) must include a clear and conspicuous statement that complies with subsection (b); (3) if made orally, must be documented in writing; and (4) may not be made in conjunction with a solicitation for an additional political contribution. *Id.* § 254.0312(c).
30. For three of the contributions at issue the respondent disclosed the required information. Therefore, there is credible evidence of no violation of section 254.0612 of the Election Code with respect to those contributions. For four of the contributions, the evidence indicated that the respondent's solicitation letter requested the required information and that the respondent made an additional request for information as required by statute. Therefore, with regard to those four contributions, there is credible evidence of no violation of section 254.0612 of the Election Code.
31. With regard to the three contributions where the required information was left blank, and the \$500 contribution for which no employer information was provided, there is credible evidence of violations 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 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 acknowledges that each campaign finance report is required to include the total amount of all political expenditures made during the reporting period. The respondent also acknowledges that the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules. The respondent further acknowledges that a candidate or officeholder who makes political expenditures from his or her 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 that covers the period during 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 further acknowledges that each report by a candidate for 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. 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 \$1,500 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-3100123.

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

Joseph Deshotel, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director