

TEXAS ETHICS COMMISSION

IN THE MATTER OF
HELEN GIDDINGS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31006198

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 11, 2011, to consider sworn complaint SC-31006198. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.0612, and 254.0912 of the Election Code and section 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) did not properly disclose political contributions, political expenditures, and total political contributions maintained on multiple campaign finance reports; 2) accepted political contributions from a corporation or labor organization; 3) did not include on multiple campaign finance reports the principal occupation or job title and the full name of the employer for individuals who contributed \$500 or more during a reporting period; and 4) 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 the state representative of District 109 and was a candidate for re-election in the November 2008 general election.
2. At issue in the complaint were the following six campaign finance reports: July 2008 semiannual report, 30-day and 8-day pre-election reports for the November 2008 general election, January and July 2009 semiannual reports, and January 2010 semiannual report.

Total Political Contributions Maintained

3. The complaint alleged that the respondent improperly disclosed the amount of total political contributions maintained in all six reports at issue. The allegations appear to be based on the notion that the total amount of political contributions maintained at the end of a reporting period can be derived by a formula in which the amount of political contributions accepted in the period are added to the amount of political contributions maintained at the end of the previous reporting period, and then the amount of political expenditures made in the period are subtracted from that sum. The complaint included no evidence that the contributions maintained amount disclosed in each report was incorrect, and the evidence was insufficient to determine if the amounts were incorrect.

Contributions from a Corporation or Labor Organization

4. The complaint alleged that, based on disclosures in the respondent's July 2008, January 2009, and January 2010 semiannual reports, the respondent accepted five political contributions totaling \$4,250 from corporations or labor organizations.
5. Four political contributions at issue totaling \$4,000 were from political committees. One \$250 political contribution was from a business that was not incorporated.

Principal Occupation or Job Title and Name of Employer

6. The complaint alleged that the respondent did not disclose the principal occupation or job title and the full name of the employer for individuals contributing \$500 or more in five of the six reports at issue. The complaint included a list of 20 political contributions at issue totaling approximately \$14,000.
7. Out of 37 political contributions disclosed in the respondent's July 2008 semiannual report, one \$1,000 political contribution disclosed the contributor's principal occupation as "self employed" and showed a blank field for the employer.
8. Out of 19 political contributions disclosed in the 30-day pre-election report, two contributions totaling \$1,000 included the contributor's principal occupation or job title but did not include the contributor's employer.
9. Out of 53 political contributions disclosed in the 8-day pre-election report, five contributions totaling approximately \$3,000 included the contributor's principal occupation or job title but did not include the contributor's employer.
10. Out of 110 political contributions disclosed in the January 2009 semiannual report, three political contributions totaling approximately \$2,500 included the contributor's principal occupation or job title but did not include the contributor's employer. The complaint also listed a \$1,000 contribution from "Sanford and Kuhl" on November 3, 2008, with an address

in Houston, Texas. The report disclosed this contributor's principal occupation as "attorney" but did not include the contributor's employer. It appears from the face of the report that the contributor was an entity, and there is a law firm in Houston named Sanford and Kuhl.

11. Out of 96 political contributions disclosed in the January 2010 semiannual report, seven political contributions totaling approximately \$5,000 included the contributor's principal occupation or job title but did not include the contributor's employer. The complaint also listed a \$500 contribution from an individual on September 17, 2009, for which the report disclosed "Retired" in the "Employer" field and left a blank in the "Principal occupation/Job title" field.
12. The respondent swore that, "The campaign has always made its 'best efforts' as defined by the Texas Ethics Commission to report the employer and occupation of each donor that has contributed \$500 in a reporting period." She corrected the reports at issue to disclose the employer for 19 contributions at issue and, in regards to a \$1,000 contribution, moved the word "Retired" from the "Employer" field to the "Principal occupation/Job title" field.

Names of Contributors

13. The complaint alleged that the respondent did not disclose the full name of the contributor for seven political contributions totaling \$4,750 in four reports at issue.
14. Of the seven disclosures at issue, two contributions totaling \$1,250 disclosed the contributor's full name, and three contributions totaling \$3,000 disclosed an acronym that was not actually part of the committee's name but was listed in commission records. The respondent reported a \$250 political contribution from an individual by disclosing the contributor's last name and first initial. One \$250 contribution at issue from "TSCPA PAC Dallas Chapter" did not disclose the full name of the contributor. The respondent corrected the reports at issue to disclose the full name of contributors.

Reporting Political Expenditures as Reimbursements

15. The complaint alleged that the respondent did not properly disclose "the actual vendor payee, address, date, and amount pertaining to the stated purpose" in 34 places. The complaint included a list of 34 political expenditures totaling approximately \$9,750 that were disclosed in the six reports at issue.
16. In response to the allegations, the respondent swore that, "[T]he campaign has disclosed the actual payee vendor and stated purpose." She swore that approximately \$9,450 of the expenditures at issue were made directly to the individuals disclosed as the payees for their services or as compensation for their time and effort, that approximately \$170 were reimbursements to staff for meals or lodging, and that approximately \$130 were made for her pro-rata share of the cost of a gift to a legislator. The respondent filed corrections to the

reports to amend the purpose of each expenditure at issue but did not change the name of any of the payees.

17. Of the disclosures at issue, 25 expenditures totaling approximately \$8,880 disclosed the actual vendor as the payee. Four expenditures totaling approximately \$130 were made to legislators for the respondent's share of a committee or legislative gift. Four expenditures totaling approximately \$570 were reimbursements to individuals for expenses the individuals paid using personal funds. A \$167 political expenditure at issue was made to a family member for picking up and delivering lunch.

Purpose of Political Expenditures

18. The complaint alleged that the respondent did not sufficiently describe the purpose of 146 political expenditures totaling approximately \$37,690 in all six reports at issue.
19. At issue were expenditures for such purposes as telephone service, auto lease payments, office supplies, office reception, staff lunch, "insurance for car driven for state business," "Lease for campaign," "TV & cable for capitol office," "office décor for capitol office," "Palm pilot repair service," gifts for South African officials or other colleagues, "capitol ornaments for constituents," newspaper subscription, and "lodging during conference."
20. In response to the allegations, the respondent swore that the expenditures at issue were for campaign or officeholder use, or for legislative purposes. She filed corrected reports and clarified the purpose of expenditures to indicate that they were for campaign, officeholder, or legislative purposes.

Names and Addresses of Payees

21. The complaint alleged that the respondent did not fully disclose the payee's name or address for 37 political expenditures totaling approximately \$27,510 that were disclosed in the six reports at issue. At issue were the following political expenditures:
 - 22 auto lease payments totaling approximately \$14,480 to CABT LLC
 - \$150 annual membership dues to NOBEL [corrected payee's name to "National Organization of Black Elected Legislative Women (NOBEL)"]
 - \$400 donation to MASS Inc. [corrected payee's name to "Mothers & Fathers for The Advancement of Social Systems Inc (MASS)"]
 - 11 payments totaling approximately \$12,240 to AMLI for "Housing for session"

- \$38.97 payment to MWS Company for campaign t-shirts [corrected payee's name to "Mail Man Sales Company (MMS)"]
 - \$200 donation to "I C D C" [corrected payee's name to "Innercity Community Development Corporation (ICDC)"]
22. In response to the allegations, the respondent swore that, "The campaign disclosed the full name of the payee in each allegation." She swore that CABT LLC is the lease holder of the vehicle being used for campaign and officeholder purposes. Texas Secretary of State records and an Internet search indicate that CABT LLC is an affiliate of Ford Motor Co. The respondent asserted that NOBEL is a known acronym for the National Organization of Black Elected Legislators, that MASS Inc. is a known acronym for Mothers (Fathers) For the Advancement of Social Systems Inc., and that MWS Company is a known name for Male Man Sales Company. She also swore that, "AMLI is the name of the company that this expenditure was made to for officeholder lodging during interim duties." The respondent filed corrected reports to clarify the name of each payee at issue.
23. The expenditures at issue included each payee's full address in the original reports. Evidence indicated that "AMLI" is the name of an apartment and corporate furnished housing company. With regards to the remaining expenditures at issue, an Internet search using the payee names as disclosed in the original reports yielded no results that related to the corrected payee names or the disclosed purpose of payments.

Political Expenditures for Travel Outside of Texas

24. The complaint alleged that the respondent did not disclose approximately \$1,420 in political expenditures made for travel outside of Texas on Schedule T of her 30-day pre-election report. The two expenditures at issue (\$1,070.34 to Red Lion Hotel Denver Southeast on August 29, 2008, and \$345 to Sheraton New Orleans Hotel on July 22, 2008) were made to hotels for lodging. Schedule T (used for reporting in-kind contributions or political expenditures for travel outside the state of Texas) of the report disclosed several expenditures for airfare and included the purpose of the travel.
25. In response to the allegations, the respondent swore that the expenditures were for officeholder or staff lodging. She corrected the report to add additional information regarding the lodging on Schedule T.

Personal Use of Political Contributions

26. The complaint alleged that the respondent converted approximately \$230 in political expenditures to personal use based on two expenditures disclosed on her July 2009 semiannual report. The expenditures at issue (\$123.49 to Flemings on May 30, 2009, and \$110.18 to Trios Grill on June 5, 2009) were made to restaurants for the purpose of a "dinner

meeting with colleagues” [sic]. Both expenditures were disclosed on Schedule G (used to disclose political expenditures made from personal funds) and indicated that reimbursement from political contributions was intended.

27. In response to the allegations, the respondent swore that, “The campaign/office holder account has never been used for personal use.” She corrected the report to clarify and add that the expenditures were “related to legislative duties.”

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. A campaign finance report must 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).
2. The total amount of political contributions maintained in one or more accounts includes balance on deposit in banks, savings and loan institutions and other depository institutions and the present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc. Ethics Commission Rules § 20.50(a).
3. The campaign finance reporting system is not an accounting system. Due to statutory reporting requirements, the amount of political contributions maintained cannot necessarily be computed by using the totals on a report’s cover sheet. Instead, the amount is derived from one or more balances in bank accounts, which would not include political contributions that have not been deposited or expenditures that may appear in a report before a payment or transfer of funds is actually made. There is insufficient evidence of a violation of section 254.031(a)(8) of the Election Code.

Contributions from a Corporation or Labor Organization

4. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, Chapter 253, Election Code. ELEC. CODE § 253.094. That subchapter does not authorize a corporation to make a political contribution to a candidate.
5. “Corporation” means a corporation that is 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.

6. 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(b).
7. The political contributions at issue were from political committees and a sole proprietorship. Therefore, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code with regard to those contributions.

Principal Occupation or Job Title and Name of Employer

8. Each report by a candidate for or holder of a 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, 254.0912.
9. A person required to file a report under this chapter is considered to be in compliance with section 254.0612 or 254.0912 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. ELEC. CODE § 254.0312(a).
10. 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).
11. 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 section 254.0612 or 254.0912 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).
12. As state representative and a candidate for a legislative office, the respondent was required to disclose the occupations and employers of contributors whose contributions equaled or exceeded \$500. Although the respondent swore that the campaign always made its best efforts to report this information, she did not provide any evidence to support that assertion. The respondent failed to provide complete information for 18 contributors at the time the reports were originally due. Therefore, there is credible evidence of violations of sections 254.0612 and 254.0912 of the Election Code with respect to those contributions.

13. Regarding the \$500 contribution from an individual whose employer was disclosed as “Retired,” the disclosure did not substantially affect disclosure and was adequate although entered in the wrong field. Therefore, there is credible evidence of no violation of sections 254.0612 and 254.0912 of the Election Code with respect to this contribution.
14. The \$1,000 contribution from “Sanford and Kuhl” appears to have been from an entity. Therefore, there is credible evidence of no violation of sections 254.0612 and 254.0912 of the Election Code with respect to this contribution.

Names of Contributors

15. A campaign finance report filed by a candidate 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 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).
16. Of the seven disclosures at issue, five contributions included the full name of the contributor or an acronym that is used in commission records (in one case, TO PAC, as opposed to TOPAC was substantially the same). Therefore, with respect to those five contributions, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code. The remaining two contributions from TSCPA PAC and an individual disclosed by his first initial and last name, totaling \$500, did not disclose the full name of the contributor, or a name or acronym used in commission records. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code regarding the two contributions.

Reporting Political Expenditures as Reimbursements

17. 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).
18. Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee 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: 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 included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. Except as provided above, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or political committee with the intent to seek reimbursement from

the officeholder, candidate, or political committee must be reported as follows: 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, candidate, or political committee; the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee. Ethics Commission Rules § 20.62.

19. Based on the original disclosures, 29 political expenditures at issue totaling approximately \$9,010 disclosed the correct payees. Therefore, 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 with respect to these expenditures.
20. Four political expenditures totaling approximately \$570 were made to reimburse a staff member for meals, lodging or other expenses paid from personal funds. For each of those four expenditures, the respondent did not disclose the ultimate vendor of the goods or services. 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 with respect to these expenditures.
21. In regards to a \$167 political expenditure made to a family member, 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.

Purpose of Political Expenditures

22. A campaign finance report filed by a candidate 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).
23. 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.
24. Although the respondent filed corrected reports to provide additional information for the political expenditures at issue, the original disclosures were adequate. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.

Names and Addresses of Payees

25. 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).
26. The reports disclosed the full address for the political expenditures at issue. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code with respect to the disclosure of payees' addresses.
27. AMLI is the name of a residential company. Thus, disclosing AMLI as the payee was not improper. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code with regard to the 11 expenditures to AMLI.
28. In regards to the 22 auto lease payments totaling approximately \$14,480 to CABT LLC, the evidence indicates that CABT LLC is the actual name of the company. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code with respect to these expenditures.
29. As to the remaining four political expenditures totaling approximately \$790, the respondent disclosed abbreviations as the names of the payees. However, those abbreviations are not readily identifiable. The respondent asserted that the expenditures were compliant as originally reported. However, for political expenditures that in the aggregate exceed \$50 during a reporting period, the law requires that the full name of the payee be disclosed on a campaign finance report. Although the respondent filed corrections to each report and disclosed additional information for the political expenditures at issue, the respondent failed to disclose the full name of the actual payees at the time the reports were originally due. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code with regard to these expenditures.

Political Expenditures for Travel Outside of Texas

30. 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).
31. The description of a political expenditure for travel outside of the state of Texas must provide the name of the person or persons traveling on whose behalf the expenditure was made, the means of transportation, the name of the departure city or the name of each departure location, the name of the destination city or the name of each destination location, the dates on which the travel occurred, and the campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event. Ethics Commission Rules § 20.61(b).

32. The expenditures at issue were not for actual travel. The respondent was not required to disclose on Schedule T the housing or hotel expenses. Therefore, 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 with regard to the expenditures.

Personal Use of Political Contributions

33. 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 is a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate or officeholder. *Id.* § 253.035(d). Personal use does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County. *Id.* § 253.035(d)(1).
34. There is insufficient evidence of a violation of section 253.035(a) 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, and the full name and address of the person making the contributions, and 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 the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules.

The respondent acknowledges that each report by a candidate for or holder of a 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.

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 \$1,450 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-31006198.

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

Helen Giddings, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director