

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BEVERLY B. KAUFMAN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-980548

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 9, 1999, to consider Sworn Complaint SC-980548 filed against Beverly B. Kaufman, Respondent, on May 14, 1998. A quorum of the commission was present.

The commission voted to accept jurisdiction of the allegations of violations of:

1. Section 253.035, Election Code, but to refuse jurisdiction of the allegation regarding the July 1995 semiannual report;
2. Section 253.041, Election Code, but to refuse jurisdiction of allegations regarding expenditures made before May 14, 1996;
3. Section 253.165, Election Code; and
4. Section 254.031, Election Code, but to refuse jurisdiction of the allegations regarding reports required to be filed July 1994 through January 1996.

The commission also voted to refuse jurisdiction of allegations of violations of the following laws:

1. Chapter 573, Government Code;
2. Chapter 273, Election Code;
3. Sections 20 and 24, Article 5, Texas Constitution; and
4. Public Information Act (Chapter 552, Government Code).

Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of Sections 253.035, 253.041, 253.165, 254.031, and 254.063, Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

1. The complainant alleges that the respondent violated the Election Code by failing to notify the Texas Ethics Commission of the failure of 25 judicial candidates to file the judicial declaration of intent.
2. The complainant also alleges that the respondent violated the Election Code by reporting expenditures as payments to American Express credit card.
3. The complainant also alleges that the respondent violated the Election Code by converting political funds to personal use.
4. The complainant also alleges that the respondent violated the Election Code by using political funds to compensate her husband.
5. The complainant also alleges that the respondent violated the following laws: Chapter 573, Government Code; Chapter 273, Election Code; Sections 20 and 24, Article 5, Texas Constitution; and the Public Information Act (Chapter 552, Government Code).

III. Facts Supported by Credible Evidence

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

1. The respondent is currently the Harris County Clerk and held that position at all times relevant to this complaint.
2. In support of the first allegation, the complainant submitted two letters from the county clerk's office indicating that the 25 judicial candidates in question filed campaign treasurer appointments but did not file timely judicial declarations of intent. Eighteen of those candidates filed campaign treasurer appointments **before** September 1, 1997. The remainder of those candidates filed campaign treasurer appointments **on or after** September 1, 1997. The commission has no record of receiving any notices from the respondent concerning the failure of those candidates to file judicial declarations of intent.
3. In response to the first allegation, the respondent submitted an affidavit swearing that although she takes responsibility for all the duties of her office, she had no personal knowledge of these filings because the filings and related inquiries are under the purview of the Administrator of Elections.
4. The commissioner's court in Harris County has not created the position of county elections administrator. The Administrator of Elections is an office within the office of the County Clerk's Office.

5. In support of the second allegation, the complainant submitted copies of five of the respondent's semiannual reports (January 1996, July 1996, January 1997, July 1997, and January 1998 semiannual reports), which include 26 expenditures totaling \$17,281.35 to American Express. The complainant also alleges reporting violations on reports required to be filed between July 1994 and July 1995.
6. In response to the second allegation, the respondent filed corrected reports and good-faith affidavits for the reports submitted by the complainant and itemized the expenditures in question.
7. In support of the third allegation, the complainant submitted copies of the respondent's July 1997 and January 1998 semiannual reports, which indicate that portions of seven political expenditures were for clothes, business clothes, evening dress, and evening attire.
8. In response to the third allegation concerning the purchase of clothing, the respondent filed corrected July 1997 and January 1998 semiannual reports, which disclose that she expended \$3,972.05 of her political funds to purchase clothing. On the corrected reports, the respondent reported the purchases as nonpolitical expenditures. The explanations provided by the respondent under the "purpose" section of the expenditure schedules disclose that the expenditures were made for "clothes" and in two instances "shoes."
9. Also, in response to that allegation, the respondent reimbursed her political funds in the amount of \$3,972.05. The reimbursement is reported on two of the respondent's corrected reports. The respondent swears that, "The issue of the use of political funds to pay for clothes is quite confused in Harris County. It has been widely publicized among female officers in Houston that it is permissible to use political funds to purchase clothing to be used at political events."
10. Also, in support of the third allegation, the complainant submitted copies of the respondent's July 1995, January 1996, and July 1996 semiannual reports. The January 1996 and July 1996 semiannual reports indicate that the respondent made payments totaling \$668.04 to herself from political contributions. The explanations provided under the "purpose" section of the political expenditure schedules included the following: office supplies, meeting expenses, greeting cards, flowers for staff, and food and paper goods for staff party.
11. In response to the third allegation concerning the respondent's payments to herself from political contributions, the respondent filed corrected January 1996 and July 1996 semiannual reports and good-faith affidavits itemizing the expenditures previously reported as payments to herself.
12. In support of the fourth allegation, the complainant submitted copies of three of the respondent's campaign finance reports, which include three political expenditures totaling \$816.90 to the respondent's husband. The first was a \$66.90 expenditure made on October 25, 1995, for "photo processing, toll road tokens, parking." The second was a \$500

expenditure made on May 5, 1996, for “graphic design for Christmas cards and fund raising invitations ‘94, ‘95, ‘96.” The third was a \$250 expenditure made on April 28, 1997, for “graphic design for Christmas card and Luau invitation.”

The complainant also alleges that the respondent reimbursed her husband for personal services on three other occasions in January, March, and April 1995. The complainant did not submit a copy of the respondent’s report disclosing those expenditures.

13. In response to the fourth allegation, the respondent’s husband refunded \$750 to the respondent’s campaign. The refund was reported by the respondent on her July 1998 semiannual report. The respondent swears that, “Payments made to my spouse under a misunderstanding of the law have been refunded.” As to the \$66.90 payment to her spouse, the respondent swears that it was for legitimate campaign expenditures and that she itemized the expenditures on her corrected reports.

IV. Findings and Conclusions of Law

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

Allegation No.1 (Failure to Notify Commission):

1. Beginning September 1, 1997, a county clerk is required to notify the Ethics Commission’s Executive Director within five days if a judicial candidate files a campaign treasurer appointment and does not file a judicial declaration of intent to comply or not to comply with the expenditure limits provided by the Judicial Campaign Fairness Act. Section 253.165, Election Code.
2. As to the eighteen judicial candidates who filed campaign treasurer appointments **before** September 1, 1997 (the effective date of the law requiring the notice), the respondent was not required to notify the executive director of those candidates’ failure to file a judicial declaration of intent. As to the seven judicial candidates who filed campaign treasurer appointments **on or after** September 1, 1997, but did not timely file judicial declarations of intent, the respondent, and not the Administrator of Elections, was required by law to notify the executive director of that fact. The commission has no record of receiving such notices. Thus, there is credible evidence that the respondent failed to comply with Section 253.165, Election Code.

Allegation No. 2 (Reporting Expenditures to American Express Credit Card):

3. A person filing a campaign finance report is required to itemize expenditures exceeding \$50 during a reporting period, including the name and address of the payee and the date, amount, and purpose of the expenditure. Sections 254.031 and 254.063, Election Code. A report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. Section 20.59, Ethics Commission Rules. A person commits an

offense that is a Class C misdemeanor if the person knowingly fails to include required information in a campaign finance report. Section 254.041, Election Code.

4. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Section 12.5(3), Ethics Commission Rules. The statute of limitations for Class C misdemeanors is two years from the date of the commission of the offense. Article 12.02, Code of Criminal Procedure. Allegations relating to reports required to be filed July 1994, January 1995, July 1995, and January 1996 are based on alleged offenses that occurred more than two years before the complaint was filed, and are therefore not within the commission's sworn complaint jurisdiction. Allegations relating to four reports, which disclose 20 expenditures totaling \$16,184.62, are within the commission's jurisdiction.
5. In response to this complaint, the respondent filed corrected reports and good-faith affidavits itemizing the expenditures in question. A person filing reports under Title 15, Election Code, who files an affidavit swearing that a corrected report, other than one correcting a report due eight days before an election, was filed in good faith is not subject to a fine for a late report. Sections 18.49 and 18.83, Ethics Commission Rules. The corrected reports filed by the respondent are not 8-day before election reports. Thus, the reports are not subject to late fines for improperly reporting American Express as the payee for certain political expenditures.

Allegation No. 3 (Personal Use):

6. Section 253.035, Election Code, provides that a person who accepts a political contribution as a candidate or as an officeholder may not convert the contribution to personal use. Section 253.035(a), Election Code.¹ Personal use means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of public office. *Id.* Whether a particular use amounts to a personal use is a question of fact in each case.
7. *Purchase of Clothing:* In an early Ethics Advisory Opinion, the commission determined that laundry and dry cleaning expenses are not made in connection with the performance of duties or activities as an officeholder and thus, a legislator may not use political contributions to pay those expenses. The commission stated,

“A useful basis for making this determination is the standard for determining whether clothing expenses may be deducted as business expenses for federal purposes. Clothing expenses may be deducted as business expenses “only if: (1) the clothing is of a type specifically required as a condition of employment, (2) it is not adaptable to general use as ordinary clothing, and

¹ Pursuant to Section 12.5, Ethics Commission Rules, the statute of limitations is three years for an allegation of a violation of Section 253.035, Election Code.

(3) it is not so worn.” We think that the same standard would apply in determining whether clothing expenses, including laundry expenses, are permissible officeholder expenditures under title 15.”

Ethics Advisory Opinion No. 104 (1992).

8. In a later Ethics Advisory Opinion, the commission modified the earlier standard as follows:
“An officeholder may use political contributions to pay for clothing expenses if the clothing (1) is of a type appropriate for performance of duties or activities of the office held, (2) is not adaptable to general usage as ordinary clothing, and (3) is not so worn.”

Ethics Advisory Opinion 401 (1998).

9. In that opinion the commission determined that the rental of a tuxedo for a legislative gala or for attendance at a nonprofit charity event satisfies that standard if the legislator attends the event as an activity of a public office. The commission stated that a tuxedo, unlike a business suit, is for most people not adaptable to general usage as ordinary clothing and that the fact that the legislator was renting the tuxedo indicates that this particular tuxedo will not be so worn.
10. Although the respondent’s reports do not specify the type of clothing purchased with political funds, her job does not generally require special clothing. There was no evidence offered by the respondent that \$3,972.05 worth of clothing satisfies either of the standards. Additionally, the respondent originally reported the purchase of the clothing as *political* expenditures. On her corrected reports the respondent reported the purchases as *nonpolitical* expenditures. There is credible evidence that at least some of the clothing purchased by the respondent is adaptable to general usage as ordinary clothing. There is credible evidence that the respondent violated Section 253.035(a), Election Code, by using political funds to purchase clothing.
11. *Improper Reimbursements from Political Contributions:* For allegations of violations of Section 253.035, Election Code, Ethics Commission rules prohibit the commission from considering an allegation based on facts that occurred more than three years before the date the complaint is filed. Section 12.5, Ethics Commission Rules.
12. The complainant did not submit a copy of the July 1995 semiannual report, but the respondent did file a corrected July 1995 semiannual report and good-faith affidavit. According to that report, all of the reimbursements occurred more than three years before the date the complaint was filed. Thus, allegations relating to reimbursements reported on the July 1995 semiannual report are not within the commission’s jurisdiction.
13. Section 253.035(h), Election Code, provides specific reporting requirements for a candidate or officeholder who makes political expenditures from personal funds and who intends to

seek reimbursement from political contributions. That section requires the candidate or officeholder to fully report those expenditures on the report covering the period in which the expenditures were made, including payees, dates, purposes, and amounts, and to indicate the expenditures were made from personal funds and that reimbursement from political contributions is intended. Alternatively, the law authorizes a candidate or officeholder to report those expenditures as a loan to himself or herself. Section 253.0351, Election Code. The respondent failed to do either on her original January 1996 and July 1996 reports. Instead, the expenditures at issue are reported as “political expenditures” but are not expressly identified as having been made from personal funds. Rather, the respondent is listed as the payee. Under the “purpose” section of the political expenditures schedule, the respondent listed the purpose of the expenditures, such as “office supplies, meeting expenses, greeting cards, flowers for staff, and food and paper goods for staff party.” The respondent neglected to fully identify the actual payee for the expenditures at issue and the precise amount for each item as required by Section 253.035(h), Election Code.

14. In response to this complaint, the respondent filed corrected reports and good-faith affidavits itemizing the expenditures in question. A person filing reports under Title 15, Election Code, who files an affidavit swearing that a corrected report, other than one correcting a report due eight days before an election, was filed in good faith is not subject to a fine for a late report. Section 18.49 and 18.83, Ethics Commission Rules. The law, however, requires proper reporting before reimbursement from political contributions may be made. There is credible evidence that the respondent committed violations of Section 253.035(h), Election Code, by reimbursing herself without complying with the requisite reporting requirements on the January 1996 and July 1996 semiannual reports.

Allegation No. 4 (Payments to Spouse):

15. An officeholder is prohibited from making or authorizing a payment from a political contribution if the payment is made for personal services rendered to the officeholder by the officeholder’s spouse. A person who violates this section commits an offense that is a Class A misdemeanor. Section 253.041, Election Code.
16. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Section 12.5(3), Ethics Commission Rules. The statute of limitations for a Class A misdemeanor is two years from the date of the commission of the offense. Article 12.02, Code of Criminal Procedure. Allegations relating to the four expenditures made in 1995 and the expenditure made on May 5, 1996, are based on alleged offenses that occurred more than two years before the complaint was filed, and are therefore not within the commission’s sworn complaint jurisdiction.
17. As to the April 28, 1997, expenditure (\$250 expenditure for “graphic design for Christmas card and Luau invitation”), there is credible evidence that the respondent committed a

violation of Section 253.041, Election Code, by using political funds to make a payment to her spouse from political contributions for personal services rendered by her spouse.

Other Laws:

18. Sections 571.061 and 571.121(b), Government Code, limit the commission's sworn complaint jurisdiction. The commission does not have jurisdiction over the allegations relating to the following laws: Chapter 573, Government Code; Chapter 273, Election Code; Sections 20 and 24, Article 5, Texas Constitution; and the Public Information Act (Chapter 552, 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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations described under Section IV, Paragraphs 2, 10, 14, and 17, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

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 violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations, after considering the fact that no previous violations by this respondent are known to the commission, and after considering

the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty for the violations described under Section IV, Paragraphs 2, 10, 14, and 17.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-980548;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$500 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than August 6, 1999; and
4. that the executive director shall promptly refer SC-980548 either to the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-980548 proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 1999.

Beverly B. Kaufman, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director