

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ORLANDO SANCHEZ,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-2508153

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on March 23, 2006, to consider sworn complaint SC-2508153. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035, 254.036, 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 proposes this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent filed the January 2005 semiannual campaign finance report late and included an extra day in the reporting period in violation of sections 254.063 and 254.036 of the Election Code. The complaint also alleged that the respondent converted political contributions to personal use in violation of section 253.035 of the Election Code. Additionally, the complaint alleged that the respondent failed to properly report outstanding loan amounts in violation of section 254.031 of the Election Code.

III. Facts Supported by Credible Evidence

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

1. The respondent is a former city council member. The January 2005 semiannual report was due on Tuesday, January 18, 2005.
2. The complainant submitted a copy of the report filed with the city secretary showing a receipt stamp of January 24th and a notation by the city secretary's office that the mail postmark was January 19th.

3. The respondent swears that the report was placed in a USPS mailbox located at the Houston, Texas Central US Post Office on January 18th.
4. The reporting period covered by the January semiannual report should have been July 1, 2004 through December 31, 2004. The respondent's report covered July 1, 2004 through January 1, 2005.
5. The respondent swears that the period covered was a clerical error and the report discloses expenditures between July 1st and December 31st.
6. The respondent's January 2005 semiannual report shows two expenses on Schedule F listing the payee as "American Express" and the purpose of the payment as "Political Expenses (see Schedule G)."
7. The report discloses numerous political expenditures from personal funds on Schedule G, none of which are marked that reimbursement is intended. Twenty-three of these expenditures are for restaurant meals that list their purpose as "political meeting."
8. The complainant also questions two other expenditures: \$300 to American Express for "Card Membership," and \$350 to CFR for "Membership fee."
9. The respondent swears that the expenditures reported were political meetings with political purposes, and that all of the reported expenses were in connection with activities as a candidate.
10. When staff requested clarification, the respondent explained that CFR is the Council on Foreign Relations, which he joined to support his city council duties as a representative to the Houston International Trade Association.
11. Schedule F of the report discloses expenditures to American Express with a purpose of "political expenses (see Schedule G)." Schedule G of the report includes eight pages of detailed political expenditures from personal funds that are not marked that reimbursement is intended.
12. The respondent filed campaign finance reports on January 15, 2003, July 15, 2003, October 6, 2003, October 27, 2003, December 1, 2003, January 15, 2004, July 15, 2004, and January 19, 2005, all with Penny Butler as treasurer, that show no outstanding loan amounts.
13. The respondent filed a second January 15, 2003, campaign finance report with Robert Pelfrey as treasurer that discloses an outstanding loan total of \$15,000. The respondent filed a second January 15, 2004, campaign finance report with Robert Pelfrey as treasurer that discloses an outstanding loan total of \$15,000 and contributions maintained of \$855.85.

14. The respondent filed a campaign finance report on July 15, 2005, with Penny Butler as treasurer that discloses an outstanding loan total of \$15,000.
15. The January and July 2003 reports are outside the applicable statute of limitations and cannot be considered by the commission.
16. The respondent stated that his campaign filed two campaign finance reports, one of which included the loan amount in question. He states that after learning that only one report should be filed he consolidated the information for all subsequent reports.
17. The respondent did not report the outstanding loan information on six reports.

IV. Findings and Conclusions of Law

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

1. A candidate shall file two reports each year. The second report shall be filed not later than January 15th and covers the period beginning July 1 and continuing through December 31. ELEC. CODE § 254.063.
2. A report is considered timely filed if it is properly addressed with postage or handling charges prepaid and deposited in the mail or with a common or contract carrier within the period or before the deadline. ELEC. CODE § 251.07(2).
3. A document filed by delivery to the United States Postal Services is presumed to have been filed before 5:00 p.m. on the date indicated by the postmark. Ethics Commission Rules § 6.9(d).
4. Since the report did arrive at the city secretary's office on January 24th, there is credible evidence that it was properly addressed with postage paid. The report is presumed to be filed on January 19, 2005, the postmark date.
5. The respondent swears that he deposited it in the mail on the January 18th filing deadline, which would be timely. There is no evidence to counter the respondent's affidavit of timely filing.
6. Therefore, there is insufficient evidence that the respondent violated section 254.063 of the Election Code.
7. 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).

8. If an expenditure made from political contributions primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office, a conversion to personal use would result. ELEC. CODE § 253.035(d).
9. There is no evidence to counter the respondent's sworn affidavit that the expenses were all payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate.
10. Therefore, there is insufficient evidence that the expenses for meals and membership fees were converted to personal use.
11. A candidate or officeholder who makes political expenditures from 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 in the report required to be filed and the report on which the expenditures 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).
12. Even though the expenditures were detailed on Schedule G, the box that indicates that reimbursement was intended was not checked. However, Schedule F disclosed that the Schedule G expenditures were reimbursed.
13. Therefore, there is credible evidence of a technical or *de minimis* violation of section 253.035 of the Election Code.
14. Each report filed under chapter 254 of the Election Code must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
15. Allegations relating to the two reports filed before August 17, 2003, are based on alleged offenses that occurred more than two years before the complaint was filed (August 17, 2005), and are therefore not within the commission's sworn complaint jurisdiction.
16. The reports filed on October 6, 2003, October 27, 2003, December 1, 2003, January 15, 2004, July 15, 2004, and January 19, 2005, failed to include the aggregate principal amount of all outstanding loans as required by title 15 of the Election Code.
17. Therefore, there is credible evidence of a violation of section 254.031(a)(2) 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 a candidate who makes political expenditures from 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 in the report required to be filed and the report on which the expenditures 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 also acknowledges that each report filed under chapter 254 of the Election Code must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. 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 \$500 civil penalty for the violations described under Sections III and IV.

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-2508153.

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

Orlando Sanchez, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director