

TEXAS ETHICS COMMISSION

IN THE MATTER OF
W. ROBERT EISSLER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2611238, SC-2611243,
SC-2705113, AND SC-2709200

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 2008, to consider sworn complaints SC-2611238, SC-2611243, SC-2705113, and SC-2709200. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035, 253.041, 254.001, and 254.031 of the Election Code and section 20.59 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaints allege that the respondent used political contributions to make or authorize political expenditures to purchase real property. The complaints also allege that the respondent used political contributions to pay his spouse for personal services and to make unlawful payments to his business. The complaints also allege that the respondent converted political contributions to personal use and failed to properly disclose political expenditures made by a credit card.

III. Facts Supported by Credible Evidence

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

1. The respondent is a state representative who was first elected in a November 2002 general election. He represents District 15, which includes The Woodlands and part of Montgomery County.
2. The allegations relate to political expenditures disclosed in the respondent's campaign finance reports and that were made from political contributions from July 2003 through June 2006.
3. The respondent's reports disclosed political expenditures made from political contributions totaling \$17,500 to "Linda Eissler" for rent between January 2004 and June 2006. According to the reports, the rate for a single month of rent was \$500 and the payments

ranged from \$500 to \$3,000. The reports described the purposes of the expenditures as, for example, “Condo Rent,” “Reimbursement – Condo Rent,” or “Reimburse Condo Payment.”

4. According to a warranty deed on file with Travis County on or about July 29, 2002, the respondent purchased a condominium in a condominium project in Austin called “Condominiums at Hyde Park.” A lending bank, Hometown Mortgage Co., Inc., lent \$162,000 for the purchase of the condominium and retained a vendor’s lien on the property. The deed of trust indicates that the respondent and his spouse, Linda Eissler, were co-borrowers on a promissory note by which they borrowed the \$162,000 and agreed to repay the amount over a 30-year period. The deed of trust also states that the respondent and his spouse are jointly and severally liable on the note. Documents on file with the Travis County Appraisal District show that the respondent is the owner of the condominium, which contains 1,202 square feet of living area and was appraised at a value of \$204,831 in 2007.
5. An article that appeared in the *Houston Chronicle* on September 9, 2006, stated that the respondent “said he thought what he was doing was legal because he had to have a place to live while serving in the Legislature and the \$500 from his campaign each month covered just a part of his \$1,600 monthly mortgage payment.”
6. In response to the complaints, the respondent swears that he and his spouse purchased the condominium so that their two sons could live there while attending a university and that the respondent began living in the condominium during legislative sessions and other state-related activities. He also swears that, as of January 5, 2007, one of his sons continued to live in the condominium. Regarding the payments of \$500 per month to his spouse, the respondent swears that these amounts “did not pay for the mortgage on the condominium, which is approximately \$1,600 per month.”
7. The respondent swears:

This amount was intended as reimbursement for my contribution to the general living expenses related to my use of the condominium while in Austin. I also paid homeowner’s dues which were for trash, water, and other similar expenses. Bills for electricity, telephone, internet and security were paid with personal funds. This amount was intended as reimbursement for these general living expenses, not the interest or principal on the note.

I am aware that I used the word “rent” on the report. However, for me, the use of that word “rent” is interchangeable with an expense. It was simply an easy and short answer to categorize my share of the sum of the household expenses. In fact, when answering questions from the press, I used the example of the amount of the mortgage, \$1,600 per month, versus the reimbursement of \$500 per month, to demonstrate that I was not buying the condominium with campaign funds, but was instead paying for a portion of the household expenses.

I have since learned that in order to be reimbursed for the household expenses that I needed to specify the names, dates, purposes and amounts, as stated in Texas Election Code §253.035(h). This error was not done knowingly, nor was it intentional. I sincerely apologize for this error.

8. The respondent swears that he made the expenditures in compliance with Ethics Advisory Opinion No. 76 (1992) (EAO 76), which permits a legislator to use political contributions for utility bills for a house in Austin that the legislator owns. Further, he swears that the monies reimbursed “were used to offset the cost of various utilities and other housing expenses such as electricity, phone, cable and internet service, and like expenses.” He swears that he does not ordinarily reside in Travis County and that the expenditures were made for his share of utilities, trash removal, and other household expenses while he was on state-related business. Thus, he swears, he was permitted to make the expenditures based on EAO 76 because they were reasonable household expenses made primarily in connection with the performance of his duties as an officeholder.
9. The respondent swears that he “considered rent to be interchangeable with expenses as he considered the payment his share of the cost of living there.” He also swears that the intent of the law “is to keep officeholders from enriching themselves with their campaign funds” and that he “was not enriching himself but using the campaign funds to cover his expenses.”
10. The respondent swears that “[a]lthough not always characterized as these expenses in the articles and interviews, the intent to cover costs was, in fact, Representative Eissler’s true intention.”
11. The respondent swears:

I also want to take this opportunity to state that I am not using my campaign account in any way to personally enrich myself or my wife. I intended to use the monies solely for those expenses that are permissible under the law. I believe I have shown that the money characterized as “rent” in my original filings was actually for permissible expenditures and misreported as “rent.”
12. The respondent admits that he did not properly include the payees, exact dates, purposes, and amounts of each expenditure for household expenses in his campaign finance reports.
13. Regarding the payments from political contributions to his spouse that were originally disclosed as reimbursements for rent, the respondent swears that the payments were made to reimburse the personal funds of him and his spouse and that they do not have separate personal funds.
14. The commission asked the respondent if any portion of a rent payment was used to pay any amount of principal or interest on a note executed to borrow funds for the purchase of the condominium. In a sworn response, the respondent stated, “no portion of any payment listed as rent was used to pay any amount of principal or interest on the note for the purchase of the condominium.”

15. The commission asked the respondent how he determined that \$500 was his “share of the cost of living” in the condominium. In a sworn response, the respondent stated that his share of the cost of living in the condominium “would be the household living expenses” and that the “monies reimbursed partially offset the cost of various utilities and other housing expenses such as electricity, phone, cable and internet services, and like expenses.”
16. The commission requested copies of bills and invoices regarding the expenditures that were originally disclosed as reimbursements for rent. The respondent submitted copies of invoices and other documents regarding the expenditures, in addition to an affidavit in which he states that he has been “gathering other bills” in response to the complaints.
17. The respondent submitted copies of invoices from the City of Austin to the respondent’s son at the condominium address from January to December 2006 that include charges for electricity, waste disposal, drainage/street service, and occasional late fees. According to the invoices, the amounts totaled approximately \$1,523 (an average of approximately \$127 per month) and ranged from \$71.64 in February 2006 to \$178.91 in October 2006. The respondent also included a page from a spreadsheet that states that \$750.43 was paid to the City of Austin for “utilities” from July to November 2007.
18. The respondent submitted a page from an on-line banking statement that details payments made from a checking account from August 23 to September 20, 2007. The statement indicates that a payment of \$138.02 was made to “Merry Maids” in Austin on September 17, 2007. The respondent swears that expenses for housekeeping services for upkeep and maintenance of the condominium are reasonable and that Merry Maids provides this service for an average of \$138.02, depending on the number of cleanings per month. The respondent also submitted a page from a spreadsheet address to his attorney that is titled “Eissler Condo Expenses” and includes a handwritten note that states “Maid Svc \$125.00/month.”
19. The respondent submitted a copy of an invoice from DS Waters (Sparkletts or Sierra Springs) that indicates that \$19.39 was charged to a credit card on August 22, 2005, for drinking water provided from July 30 to August 22, 2005. The invoice was addressed to his son at the condominium address. The respondent swears that these expenses were generally \$19 a month.
20. The respondent submitted a copy of an invoice of \$51.94 from ADT Home Security dated October 19, 2005, that indicates a charge for two months of service from October to December 2005, at the rate of \$25.97 for each month. The invoice was addressed to the respondent’s spouse at the condominium address. The respondent also submitted a page from a spreadsheet that states that two payments were made to ADT Security in August 2007 for \$103.88 and in November 2007 for \$51.94 and that indicates that the payments were made for six months of service in 2007.
21. The respondent submitted a copy of an invoice from Time Warner Cable that indicates a monthly charge of \$116.95 (before taxes) for phone and cable service. The invoice covered service through October 2007 and was addressed to the respondent’s son at the condominium address. The respondent also included a page from a spreadsheet that states that \$720.42 was paid to Time Warner Cable from July to November 2007 for “utilities.”

22. The respondent submitted a copy of an invoice from USAA (United Services Automobile Association) that includes a charge for “USAA homeowners policy 94A” at the condominium address for a period beginning on September 29, 2007. The invoice provides a balance of \$674.85 due on that policy with payment options of either \$74.95 or \$56.22 a month. The invoice was addressed to the respondent at his home in The Woodlands. The respondent swears that insurance on the condominium costs \$60 per month.
23. The respondent swears that after the amounts for monthly utilities and expenses are deducted from \$500, a balance of \$13 remains “to cover incidental repairs and maintenance, any special assessments by the homeowners’ association, a portion of the homeowners’ association dues if applicable, and any other household expenses.” As examples of incidental repairs and maintenance, the respondent referred to plumbing and air-conditioning repairs and a roofing assessment from the homeowners’ association. The respondent submitted three invoices from Fox Service Company that show payments of \$207 due in September 2006 and \$198 due in May 2005 for services performed on a water heater and bath fixtures. The invoices were addressed to the respondent at the condominium address.
24. The respondent swears that his actual expenses “easily total more than the \$500 a month that Representative Eissler calculated as permissible expenditures to use the condominium while attending to legislative duties in Austin.”
25. After the responses and additional documents were submitted, the respondent filed corrections to his campaign finance reports on February 1, 2008. The corrections indicate that, during the time period at issue, the respondent made political expenditures from political contributions to numerous utility companies and other businesses for condominium security, electricity, food, cleaning services, telephone services, drinking water, cable services, and condominium insurance.
26. The respondent’s reports originally disclosed \$54,000 in political expenditures made from political contributions to “Linda Eissler” for “services” from October 2003 to June 2006. The respondent corrected his reports by correcting the amount of a \$2,000 expenditure to \$1,000 and correcting a \$500 political expenditure by disclosing a \$750 political expenditure to a vendor for “Copy Machine rental July – Dec. 2004 (\$125.00/Mo).”
27. The respondent swears that the payments for “services” were made to his spouse “for her services as a manager for my campaign as well as the bookkeeper, scheduler, and secretary.” He swears that he hired his spouse to work for him as a “cost-saving measure” and that the payments were not “personal,” but were in connection with his campaign and his official duties. He further swears that he was unaware that these payments were prohibited, that he ceased to make them as soon as the issue was raised, and that “I never made them with the intention of violating the law.” In addition, he apologizes for making the expenditures.
28. The respondent’s January 2008 semiannual report disclosed a \$1,000 credit from the respondent’s spouse for “partial repayment of unacceptable payment of services rendered in previous reports.”

29. The respondent's reports disclosed approximately \$4,230 in political expenditures made from political contributions to "Linda Eissler" for reimbursements for auto leases, auto expenses, and other expenses from October 2003 to June 2005. The respondent corrected his reports to disclose the actual payees of approximately \$4,100 of these political expenditures. The corrected expenditures indicated that they were for the purpose of reimbursing part of an auto lease at the rate of \$333 or \$350 per month.
30. The respondent's reports disclosed approximately \$10,788 in political expenditures made from political contributions to "Eissler & Associates, Inc." for various expenses from July 2003 to June 2006.
31. Regarding the payments to his business, the respondent swears:
- Eissler and Associates, Inc. is my company where I conduct business as an executive recruiter. I do not have a separate campaign office, so I frequently make purchases for my company and then reimburse the company for anything I use for campaign or officeholder purposes. I do not believe that is in violation of any law or Commission rule and I deny that these funds were used inappropriately.
32. The respondent swears that his business made no profit from the payments to the business and that the payments were made in accordance with Ethics Advisory Opinion No. 35 (1992).
33. The commission requested additional information regarding the payments to the business at issue. The respondent swore that his business made no profit from the payments and, as an example, explained that his business leased a vehicle from GMAC for business purposes and that his travel for business and campaign purposes was made in that vehicle. He submitted a copy of an August 2007 invoice from GMAC, addressed to the respondent at his home address, that indicated that the respondent owed \$785.08 each month from June to September 2007 for a 2005 GMC Yukon. The invoice also indicated a remaining unpaid balance of \$30,267.22. The respondent swears that his campaign reimbursed his business for only a portion of the lease amount.
34. The respondent corrected his reports to correct the payees of approximately \$9,038 in political expenditures made from political contributions that were originally disclosed with his business as the payee. The reports indicate that the purposes of the expenditures were for an auto lease of \$333 or \$350 per month or the rental of a copy machine at \$125 or \$165 per month.
35. Records filed with the Secretary of State and Texas Comptroller of Public Accounts indicate that, at the time the expenditures to the business were made, Eissler & Associates, Inc., was a corporation and that the respondent was a registered agent, president, treasurer, and director of the corporation.
36. The respondent's reports disclosed \$1,974 in political expenditures made from political contributions to "Duval Condominiums" and "Hyde Park Condominiums" for condominium

- (HOA) dues from May 2004 to July 2006. The deed of trust concerning the condominium states that the respondent and his spouse agreed to pay community association dues, fees, and assessments.
37. The respondent swears that the HOA dues are allowable expenditures and that the dues were for numerous expenses, including landscaping, maintenance, pest control, trash removal, and cable television and electricity for the HOA's property.
 38. The respondent's campaign finance reports disclosed a political expenditure made from political contributions of \$1,767 to "Duval Condominiums" for "Hoa assessment" on December 4, 2004. Of the expenditures, \$1,203 was used for repairs to the roof of the condominium complex, with the assessment for repairs based on the square footage of the condominium. The remaining \$564 was for HOA dues.
 39. The respondent swears that the total amount of HOA dues for each year was \$2,256 and that he used political contributions "for two quarterly dues payments in 2004, two quarterly dues half payments in 2005, and three quarterly dues half payments in 2006." Based on the respondent's statements and his reports, quarterly dues were \$564.
 40. The respondent did not provide details regarding the living arrangements in the condominium or the periods of time in which other individuals were or were not residing in the condominium.
 41. The respondent's campaign finance reports disclosed a political expenditure made from political contributions of \$137 to "Fox Service" for "Condo A/C repair" on August 12, 2005. The respondent swears that he paid "for all of the cost of this particular bill" and submitted an invoice from the payee, which indicates that the company charged \$137 for labor, sealant, and tape used to repair an air conditioner at the respondent's condominium.
 42. The respondent's reports disclosed approximately \$6,255 in political expenditures to a credit card company, made from January 2004 to January 2006, without including the names or addresses of the vendors who were paid by the credit card company for the expenditures. An expenditure for \$321.70 to "American Express" for "Computer Software" has not been corrected to disclose the payee information for the vendor(s) of the expenditure.
 43. The respondent swears that he has "discovered that reporting entries need to be more specific regarding the vendors from whom the credit card purchases are made" and that "details of the amount and purpose of the expenditures were clearly provided in almost every instance." He also swears that "there may be questions regarding some expenses that were more generally described, but there was never an intent on my part to keep anyone from seeing how contributions to my campaign were used."

IV. Findings and Conclusions of Law

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

1. A candidate or officeholder may not knowingly make or authorize a payment from a political contribution to purchase real property or to pay the interest on or principal of a note for the purchase of real property. ELEC. CODE § 253.038(a).

2. In Ethics Advisory Opinion No. 76 (EAO 76), the commission stated:

[Section 253.038 of the Election Code] does not prohibit the use of political contributions to pay utility bills in the circumstances described in section 253.035, regardless of whether the legislator owns or rents the residence. Consequently, it is permissible for a member of the legislature who does not ordinarily reside in Travis County to use political contributions to pay utility bills for a house in Austin that the member owns.

Ethics Advisory Opinion No. 76 (1992).

3. A political contribution means a campaign contribution or an officeholder contribution. ELEC. CODE § 251.001(5).

4. A campaign contribution means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(3).

5. An officeholder contribution means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(4).

6. A contribution means, in pertinent part, a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2).

7. A statement, registration, or report that is filed with the commission is considered to be under oath by the person required to file the statement, registration, or report regardless of the absence of or defect in the affidavit of verification, including a signature. GOV'T CODE § 571.077(a). This section applies to a statement, registration, or report that is filed with the commission electronically or otherwise. *Id.* § 571.077(c).

8. A candidate or officeholder who makes political expenditures from the candidate's or officeholder'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 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).

9. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rules § 12.5(a). The criminal offense for a violation of section 253.038(a) of the Election Code is a Class A misdemeanor. ELEC. CODE § 253.038(b). The statute of limitations for a Class A misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Of the \$17,500 in expenditures originally disclosed as reimbursements for rent or condo payments and that are alleged to have been made in violation of that section, \$7,000 in expenditures were made or authorized more than two years before the date that the earliest complaint that contains the allegations was filed (SC-2611238—November 6, 2006). Therefore, the remaining expenditures totaling \$10,500 are within the commission’s sworn complaint jurisdiction.
10. Of the approximate \$1,974 in political expenditures made for HOA dues at issue, \$564 in expenditures were made more than two years before the date that the earliest complaint that alleges the expenditures violated that section regarding the expenditures was filed (SC-2705113—May 26, 2007). Therefore, the remaining expenditures totaling \$1,410 are within the commission’s sworn complaint jurisdiction.
11. Ethics Commission rules prohibit the commission from considering an allegation if the alleged violation is not a criminal offense and if the allegation is based on facts that occurred more than three years before the date the complaint is filed. Ethics Commission Rules § 12.5(a). There is no criminal offense for a violation of section 253.035 of the Election Code. ELEC. CODE § 253.035. Three of the complaints contain allegations that the respondent violated this section by making political expenditures for rent, condominium dues, or reimbursements for other payments. One of the alleged expenditures, a \$129.90 reimbursement to the respondent’s spouse, occurred more than three years before the date the specific complaint containing the allegation was filed (SC-2705113—May 26, 2007). Therefore, all of the remaining expenditures that are alleged to have been made in violation of section 253.035 of the Election Code in the complaints are within the commission’s sworn complaint jurisdiction.
12. The respondent’s originally filed reports indicated that he used his political contributions to pay \$10,500 as reimbursements to his spouse in connection with a condominium located in Travis County at a rate of \$500 per month. There is insufficient evidence that the respondent violated section 253.038(a) of the Election Code in connection with the expenditures.
13. The respondent has admitted that the political expenditures made in connection with the condominium were reported incorrectly as reimbursements for rent and has filed corrections to disclose a total of approximately \$22,024 in political expenditures. The respondent has also sworn that the payments were originally made from personal funds for utilities and household expenses, for which political contributions were subsequently used for reimbursements. All of the expenditures at issue were required to be properly disclosed in a campaign finance report that was due on or after July 15, 2004, which is a date within three years of the date that the earliest of the complaints alleging violations regarding the expenditures was filed. Therefore, there is credible evidence that the respondent violated section 253.035(h) of the Election Code because the expenditures made with personal funds were not properly disclosed in reports.

14. Each candidate and each officeholder shall maintain a record of all reportable activity. ELEC. CODE § 254.001(a). The record must contain the information that is necessary for filing the reports required by this chapter. *Id.* § 254.001(c). A person required to maintain a record under this section shall preserve the record for at least two years beginning on the filing deadline for the report containing the information in the record. *Id.* § 254.001(d).
15. The commission has requested copies of invoices, bills, or other documents regarding the expenditures that were originally disclosed with the purpose of reimbursing rent or condo payments. The respondent has submitted several documents in response to the complaints, many of which relate to activity outside the period of time at issue in the complaints. Furthermore, the corrected reports indicate that the amounts of corrected expenditures for utilities and other household expenses were based upon estimates or averages that, in some instances, conflict with the submitted affidavits. The expenditures were not corrected until February 1, 2008. Regarding the approximate \$12,814 in political expenditures that were disclosed in the respondent's corrected reports, and which occurred during or after the period covered by the respondent's campaign finance report that was due on January 18, 2005, the respondent was required to maintain records regarding those expenditures until, at the earliest, January 18, 2007. The evidence indicates that the respondent did not maintain those records up to that date. Therefore, there is credible evidence that the respondent violated section 254.001 of the Election Code because he has not maintained records of his reportable activity necessary for filing his campaign finance reports.
16. The evidence shows that the respondent used political contributions to pay approximately \$1,410 to Hyde Park Condominiums for HOA dues. There is no evidence that the payments were authorized to be applied, or actually were applied, to a mortgage or were otherwise used to pay the interest on or principal of a note to purchase real property. Therefore, there is credible evidence that the respondent did not violate section 253.038 of the Election Code in connection with the expenditures.
17. A candidate or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the spouse of the candidate or officeholder to the spouse of the candidate or officeholder. ELEC. CODE § 253.041(a)(2).
18. The criminal offense for a violation of section 253.041 of the Election Code is a Class A misdemeanor. *Id.* § 253.041(c). The statute of limitations for a Class A misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Of the \$54,000 in political expenditures alleged to have been made to the respondent's wife for "services" in violation of this section, \$36,500 in expenditures were made more than two years before the date the earliest of the complaints that alleges the expenditures were made in violation of that section was filed (SC-2705113—May 26, 2007). Therefore, the allegations regarding \$17,500 in expenditures made for services are within the commission's sworn complaint jurisdiction.
19. The respondent originally disclosed \$17,500 in political expenditures made from political contributions to his spouse for personal services. The evidence indicates that the respondent incorrectly disclosed the amounts or payees of \$1,500 of those expenditures. The evidence

also indicates that the respondent used political contributions to pay his spouse \$16,000 in compensation for his spouse's services in relation to his office and/or campaign. Therefore, there is credible evidence that the respondent violated section 253.041(a)(2) of the Election Code in connection with the expenditures.

20. Each report filed under this chapter 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).
21. Regarding the political expenditures that the respondent originally disclosed as payments to his spouse for personal services, the respondent corrected \$1,500 of those expenditures to indicate that the amounts or payees were inaccurate. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code.
22. Of the approximate \$4,230 in political expenditures alleged to have been made to the respondent's wife for reimbursements in violation of section 253.041(a)(2) of the Election Code, approximately \$3,180 in expenditures were made more than two years before the date the earliest of the complaints that alleges the expenditures were made in violation of that section was filed (SC-2705113—May 26, 2007). Therefore, the allegations regarding \$1,050 in expenditures are within the commission's sworn complaint jurisdiction.
23. The evidence indicates that the respondent used his political contributions to pay \$1,050 to his spouse to reimburse her for payments she made in connection with an automobile lease. There is no evidence that the payment was made to compensate the respondent's spouse for personal services. Therefore, there is credible evidence that the respondent did not violate section 253.041(a)(2) of the Election Code in connection with the expenditure.
24. The respondent corrected his reports to correct the amounts or payees of approximately \$4,100 in political expenditures that were originally disclosed as reimbursements to his spouse. The evidence also indicates that the expenditures were made with personal funds for which reimbursements from political contributions were made. All of the expenditures were required to be properly disclosed in campaign finance reports no later than January 18, 2005. Therefore, there is credible evidence that the respondent violated section 253.035(h) of the Election Code in connection with the expenditures. Regarding \$2,100 of these expenditures that were required to be reported by or later than July 15, 2005, the evidence also indicates that the respondent has failed to maintain records of this reportable activity that are necessary for filing his campaign finance reports. Therefore, there is credible evidence that the respondent violated section 254.001(a) of the Election Code in connection with the expenditures.
25. A payment that is made from a political contribution to a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business may not exceed the amount necessary to reimburse the business for actual expenditures made by the business. ELEC. CODE § 253.041(b).

26. In Ethics Advisory Opinion No. 35 (EAO 35), the commission addressed whether a candidate who owned 50 percent of the stock in a corporation could purchase advertising services and supplies from the business. Ethics Advisory Opinion No. 35 (1992). The commission stated:

[A] candidate may make a payment from a political contribution to such a business as long as the payment does not exceed the amount necessary to reimburse the business for actual expenditures made by the business. In other words, the business may not make any profit on such a transaction.

Id.

27. In Ethics Advisory Opinion No. 249 (EAO 249), the commission addressed whether a legislator may use political contributions to pay for using an airplane owned by a corporation in which the legislator has an interest. Ethics Advisory Opinion No. 249 (1995). The commission stated:

[I]n a situation in which a payment from political contributions is subject to both the restriction in section 253.041 and also the prohibition on corporate political contributions, the payment to the corporation must be in the amount reasonably necessary to reimburse the corporation for its expenses, neither more nor less.

Id.

28. Of the approximate \$10,788 in political expenditures alleged to have been made to the respondent's business in violation of section 253.041(b) of the Election Code, approximately \$5,288 in expenditures were made more than two years before the earliest of the complaints that contain the allegations was filed (SC-2705113—May 26, 2007). Therefore, the allegations regarding \$5,500 in expenditures are within the commission's sworn complaint jurisdiction.
29. There is insufficient evidence that the respondent violated section 253.041(b) of the Election Code in connection with the \$5,500 in political expenditures that were originally disclosed as political expenditures from political contributions to his business.
30. Regarding the \$5,500 in political expenditures that were originally disclosed as political expenditures from political contributions to his business, the respondent corrected all of the expenditures to indicate that the amounts or payees were incorrectly reported. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code in connection with the expenditures. The evidence also indicates that the respondent has failed to maintain records of this reportable activity that are necessary for filing his campaign finance reports. Therefore, there is credible evidence that the respondent violated section 254.001(a) of the Election Code in connection with the expenditures.

31. 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” 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 a public office. The term 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 rent, utility, and other 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, but excluding payments prohibited under section 253.038 of the Election Code. *Id.* § 253.035(d).
32. In Ethics Advisory Opinion No. 76, the commission stated, “[I]t is permissible for a member of the legislature who does not ordinarily reside in Travis County to use political contributions to pay utility bills for a house in Austin that the member owns.”
- Ethics Advisory Opinion No. 76 (1992).
33. In Ethics Advisory Opinion No. 241, the commission stated:
- The exception to the personal use prohibition for rent and utility payments permits a legislator who does not ordinarily reside in Travis County to use political contributions to pay for rent and basic phone service for an Austin residence.
- Ethics Advisory Opinion No. 241 (1995).
34. In Ethics Advisory Opinion No. 237, the commission stated that reasonable household expenses include expenses for furniture and that it is permissible to rent furniture with political contributions. Ethics Advisory Opinion No. 237 (1994).
35. In Ethics Advisory Opinion No. 319, the commission implied that reasonable household expenses also include “maintenance fees” for a condominium in Travis County. Ethics Advisory Opinion No. 319 (1996).
36. In Ethics Advisory Opinion No. 129, the commission stated that it is permissible for an officeholder to use political contributions to pay the expenses of maintaining and operating a personal asset for campaign or officeholder purposes. Ethics Advisory Opinion No. 129 (1993). The commission also stated that it is permissible to use political contributions for annual inspections, auto pilot repair, gas tank repair, propeller repair, alternator rebuilding, aircraft insurance, and airport parking in connection with the officeholder’s personal airplane provided that the expenses are prorated between political use and personal use. *Id.*
37. There is insufficient evidence that the respondent made political expenditures to his spouse for rent in connection with the condominium in violation of section 253.035(a) of the Election Code.

38. Regarding the expenditures made for HOA dues, roof repairs, and air conditioning repairs, the evidence indicates that the respondent made the expenditures at a time when he shared the condominium with one or two other individuals. The respondent has not provided information to clarify the living arrangements in the condominium or the method used to determine how the amounts paid for dues and repairs properly accounted for the use of the condominium attributable only to the respondent. Thus, the evidence indicates that the respondent did not properly prorate the expenditures between political use and personal use. Therefore, there is credible evidence that the respondent violated section 253.035(a) of the Election Code in connection with the expenditures.
39. A report of a political expenditure by credit card must identify the vendor who receives payment from the card company. Ethics Commission Rules § 20.59.
40. The evidence shows that the respondent disclosed approximately \$1,322 in political expenditures by disclosing only the credit card company as the payee. The actual vendors who received a payment from the credit card company were not originally disclosed in the reports. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules by failing to properly disclose the expenditures.
41. For purposes of reporting under this chapter, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. ELEC. CODE § 254.035(a). The amount of a political expenditure made by credit card in a period other than a period covered by a 30-day or 8-day pre-election report is readily determinable by the person making the expenditure on the date the person receives the credit card statement that includes the expenditure. *Id.* § 254.035(c).
42. The complaints included no evidence that the dates of the expenditures made by credit card were incorrect and there is no indication from the respondent's reports that the expenditure dates were incorrect. Therefore, there is credible evidence that the respondent did not violate section 254.035 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 or officeholder who makes political expenditures from the candidate's or officeholder'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 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. 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 also acknowledges that a report of a political expenditure by credit card must identify the vendor who receives payment from the card company.

The respondent also acknowledges that each candidate and each officeholder shall maintain a record of all reportable activity, that the record must contain the information that is necessary for filing the reports required by chapter 254 of the Election Code, and that the records must be preserved for at least two years beginning on the filing deadline for the report containing the information in the record.

The respondent also acknowledges that a candidate or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the spouse of the candidate or officeholder to the spouse of the candidate or officeholder. The respondent also acknowledges that a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use.

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 \$10,600 civil penalty. The commission also requires that the respondent, using personal funds, fully reimburse his political contributions a total amount of \$18,106.53, which consists of: \$16,000 in relation to the payments to his spouse for personal services, and \$2,106.53 in relation to the expenditures for condominium association dues, condominium roof repairs, and air-conditioning repairs at issue in these complaints. The commission requires that the civil penalty of \$10,600 be fully paid to the commission, and that the total amount of \$18,106.53 be fully reimbursed, by November 1, 2008.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, and fully submits the civil penalty and makes the reimbursement as provided under Section VII, this order and agreed resolution is a final and complete resolution of SC-2611238, SC-2611243, SC-2705113, and SC-2709200.

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

W. Robert Eissler, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director