

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JON LINDSAY,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2612264

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 2008, to consider sworn complaint SC-2612264. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035 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 alleges that the respondent improperly reported political expenditures as reimbursements. The complaint also alleges that the respondent failed to properly report, and improperly reimbursed, political expenditures made from personal funds. The complaint also alleges that the respondent used political contributions for personal use.

III. Facts Supported by Credible Evidence

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

1. The respondent is a former state senator.
2. The allegations are based on the respondent's January 2005, July 2005, January 2006, and July 2006 semiannual campaign finance reports.
3. The respondent's campaign finance reports disclosed reimbursement to staff totaling approximately \$2,059. Of that amount, approximately \$1,819 was used for small expenditures that amounted to \$50 or less to any one payee during any reporting period.

4. The respondent's campaign finance reports disclosed reimbursements to himself totaling approximately \$15,621. Of that amount, approximately \$15,398 was reimbursement for mileage.
5. The respondent did not previously disclose the political expenditures as having been made from the respondent's personal funds and subject to reimbursement.
6. The respondent did not previously disclose the political expenditures at issue as a loan.
7. The respondent's campaign finance reports disclosed a total of approximately \$57,208 in donations to Klein United Methodist Church. The evidence indicates that Klein United Methodist Church is a recognized domestic nonprofit corporation. The evidence indicates that the respondent did not have any discretion or control over how his donations would be spent.

IV. Findings and Conclusions of Law

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

1. Each campaign finance report filed by an officeholder is required to include the full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period. ELEC. CODE § 254.031(a)(3).
2. In Ethics Advisory Opinion No. 450 (2003), the commission determined that a political expenditure made to reimburse a staff member may be reported in one of two ways: (1) reporting it as a loan to the candidate from the staff member and then as an expenditure by the candidate to repay the staff member; or (2) if the expenditure and reimbursement occur during the same reporting period, report a single expenditure by listing the name of the individual or entity paid by the campaign worker as the payee, showing the date of the expenditure as the date the staff member made the expenditure, and explaining in the "purpose" section that a staff member made the expenditure from personal funds and that the candidate subsequently reimbursed the staff member.
3. The reports at issue disclosed reimbursements totaling approximately \$2,059 to staff members of the respondent. Of that amount, approximately \$1,819 were reimbursements for expenditures under \$50 to any one payee during any reporting period. Therefore, those expenditures were not required to be itemized on the detailed reporting schedules.
4. In the reports at issue, the respondent disclosed reimbursements totaling approximately \$240 to his staff for expenditures that were over \$50 to any one payee during any reporting period. The respondent did not itemize and report those reimbursements in compliance with Ethics

Advisory Opinion No. 450. Therefore, there is credible evidence of violations of section 254.031 of the Election Code.

5. A candidate who makes political expenditures from the candidate's personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures and the report 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).
6. In the alternative, a candidate who makes political expenditures from the candidate's personal funds may report the amount expended as a loan and may reimburse personal funds from political contributions in the amount of the reported loan. ELEC. CODE § 253.0351(a).
7. Ethics Advisory Opinion No. 347 (1996) concludes that if a candidate or officeholder uses a personal car for political purposes, reporting is required only if and when the candidate or officeholder pays himself reimbursement from political contributions.
8. In the reports at issue, the respondent disclosed multiple reimbursements to himself. The disclosures by the respondent of reimbursement to himself for mileage were properly reported. The remaining reimbursements at issue totaled approximately \$223. The evidence indicates that the respondent did not previously disclose the political expenditures that were reimbursed as having been made from the respondent's personal funds with the intent to seek reimbursement. Therefore, there is credible evidence of violations of section 253.035(h) of the Election Code.
9. 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).
10. 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. ELEC. CODE § 253.035(d).
11. Ethics Advisory Opinion No. 47 (1992) states that an expenditure for one of the purposes set forth in section 254.204 of the Election Code is not a personal use. One of the purposes in that section is an expenditure of political contributions to a recognized tax-exempt, charitable organization formed for educational, religious, or scientific purposes.
12. Ethics Advisory opinion No. 149 (1993) further clarifies that if the expenditure (donation) would primarily further the purposes of the charitable organization and the individuals that it serves then it is not a conversion to personal use.

13. The respondent disclosed political expenditures to Klein United Methodist Church totaling approximately \$57,208. The evidence indicates that Klein United Methodist Church is a recognized domestic nonprofit corporation. The evidence also indicates that the respondent had no discretion or control over how the donations were used, and the donation primarily furthered the purposes of the church and the individuals that it serves. Therefore, there is credible evidence of no violation of section 253.035 of the Election Code in regard to the expenditures made to the respondent's church.

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 filed by an officeholder is required to include the full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period. The respondent acknowledges that the proper way to report reimbursement to staff is in accordance with section 20.62 of the Ethics Commission Rules. The respondent acknowledges that a candidate who makes political expenditures from the candidate's personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures and the report clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. In the alternative, a candidate who makes political expenditures from the candidate's personal funds may report the amount expended as a loan and may reimburse personal funds from political contributions in the amount of the reported loan. 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 \$200 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-2612264.

AGREED to by the respondent on this _____ day of _____, 2008.

Jon Lindsay, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director