

TEXAS ETHICS COMMISSION

IN THE MATTER OF
EDMUND KUEMPEL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-270105

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 29, 2007, to consider sworn complaint SC-270105. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 253.035 of the Election Code and sections 20.59 and 20.61 of the Ethics Commission Rules, 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 failed to properly report political expenditures made by credit card. The complaint alleges that the respondent improperly reported political expenditures as reimbursements. The complaint also alleges that the respondent used political contributions to purchase merchandise 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 state representative.
2. The allegations are based on the respondent's January 2005, July 2005, January 2006, and July 2006 semiannual campaign finance reports.
3. On these reports the respondent disclosed the credit card company as payee for political expenditures totaling approximately \$80,800.

4. The respondent's campaign finance reports disclosed reimbursements to staff totaling approximately \$1,300.
5. The respondent disclosed approximately \$700 to a business over multiple reporting periods for food and entertainment.
6. The evidence indicates that the expenditures for the food and entertainment in question were for the purpose of meeting with the respondent's constituents regarding matters relating to his office as a state representative.
7. The respondent's corrected January 2005 semiannual campaign finance report includes Schedule K (credits) that discloses that the respondent reimbursed his campaign account for multiple items originally purchased with political contributions. This included airline tickets used by the respondent and his family members and for personal items totaling approximately \$2,500.

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. 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.
3. The respondent reported the name of the credit card company and not the vendor who actually received payment from the company for approximately \$80,800 in political expenditures over multiple reports. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules.
4. 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. ELEC. CODE § 254.031.

5. 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.
6. 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.
7. The respondent did not use either of the two proper methods to report reimbursement to staff. The reimbursements totaled approximately \$1,300. Therefore, there is credible evidence of a violation of section 254.031 of the Election Code and section 20.61 of the Ethics Commission Rules.
8. 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).
9. 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).
10. The food and entertainment expenditures made to the business were for the purpose of the respondent’s meeting with his constituents regarding matters relating to his office as a state representative. Thus, the expenditures were not conversion to personal use because they were made in connection with the respondent’s performance of duties or activities as a candidate or an officeholder. Therefore, there is credible evidence of no violation of section 253.035 of the Election Code.
11. The corrected January 2005 semiannual campaign finance report disclosed expenses reimbursed to the campaign because the expenses primarily furthered individual or family purposes not connected with the performance of duties or activities as a candidate or officeholder. Therefore, there is credible evidence of a violation of section 253.035 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 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 a report of a political expenditure by credit card must identify the vendor who receives payment from the card company. The respondent acknowledges that the report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. The respondent acknowledges that the proper way to report a reimbursement to a staff member is in accordance with section 20.62 of the Ethics Commission Rules. The respondent acknowledges that a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. The respondent acknowledges that 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. 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 an \$8,500 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-270105.

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

Edmund Kuempel, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director