

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JANE NELSON,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-270112

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 11, 2007, to consider sworn complaint SC-270112. 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 and section 20.59 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 also 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.

III. Facts Supported by Credible Evidence

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

1. The respondent is a state senator.
2. The complaint was filed January 24, 2007.
3. The allegations are based on the respondent's January 2005, July 2005, January 2006, July 2006, and January 2007 semiannual campaign finance reports.
4. The respondent's campaign finance reports disclosed the credit card company as the payee for political expenditures totaling approximately \$16,400.

5. The evidence indicates that American Express Company was the vendor of gift certificates that were used for staff compensation, and membership fees for the use of the card.
6. The respondent's campaign finance reports disclosed reimbursement to staff totaling approximately \$11,800.
7. The respondent's campaign finance reports disclosed reimbursements to herself totaling approximately \$2,800. The respondent did not previously disclose the political expenditures at issue as having been made from the respondent's personal funds and subject to reimbursement.
8. The respondent did not previously disclose the political expenditures at issue as a loan.
9. The respondent has filed corrected reports.

IV. Findings and Conclusions of Law

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

1. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. If the alleged violation is not also a criminal offense, the statute of limitations is three years. Ethics Commission Rules § 12.5(a).
2. The criminal offense for a violation of section 254.031 of the Election Code is a Class C misdemeanor. ELEC. CODE § 254.041. The statute of limitations for a Class C misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02.
3. Reporting allegations relating to campaign finance reports that were filed before January 24, 2005, are not within the commission's sworn complaint jurisdiction. Some reporting allegations in this complaint relate to the respondent's January 2005 semiannual campaign finance report, which was filed January 10, 2005. Therefore, those reporting allegations were not considered.
4. Each campaign finance report 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).
5. 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.

6. The evidence indicates that the credit card company was the actual payee in the entries disclosed on the respondent's July 2005, January 2006, and July 2006 semiannual reports. The expenditures were not purchases made by credit card, but in fact payments were made to the company itself. There was no vendor who received payment from the credit card company. As a result, the entries were properly disclosed. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules.
7. 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.
8. The evidence indicates that the respondent did not use either of the two proper methods set out in Ethics Advisory Opinion No. 450 to report staff reimbursement on her July 2005, January 2006, July 2006 and January 2007 semiannual reports. The reimbursements totaled approximately \$11,772. Therefore, there is credible evidence of violations of section 254.031 of the Election Code.
9. Allegations of improper reimbursement of political expenditures made from personal funds do not allege a criminal offense. Therefore, the statute of limitations is three years. All the reports at issue fall within this period.
10. 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).
11. 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).
12. The respondent's January 2005, July 2005, January 2006, July 2006, and January 2007 semiannual reports disclosed multiple reimbursements to herself. The total amount that the respondent reimbursed herself was approximately \$2,800. The evidence indicates that the

respondent did not previously disclose the political expenditures for the reimbursements as having been made from the respondent's personal funds with the intent to seek reimbursement.

13. The proper way to report the expenditures would have been to disclose them on Schedule G of the campaign finance report in the period for which the expenditures were made, and check the box labeled "reimbursement from political contributions intended." Alternatively, the expenditure could have been reported as a loan on Schedule E. The respondent did not properly disclose political expenditures from personal funds on the report covering the period either on Schedule G or on Schedule E. Therefore, there is credible evidence of a violation of section 253.035(h) 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 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 \$1,500 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-270112.

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

Jane Nelson, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director