

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CRAIG ESTES,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-270115

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2008, to consider sworn complaint SC-270115. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035(h) and 254.031(a)(3) of the Election Code, and sections 20.59, 20.61, and 20.63 of the Ethics Commission Rules, rules adopted by and 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. The complaint also alleges that the respondent converted political contributions to personal use. The complaint also alleges that the respondent made an improper payment, and failed to properly report a payment, to a business in which he has an interest.

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 from Wichita Falls.

Failure to Properly Report Political Expenditures Made by Credit Card

2. The complaint alleges that the respondent failed to properly report political expenditures made by credit card, in violation of sections 254.031(a)(3) and 254.035 of the Election Code, and section 20.59 of the Ethics Commission Rules.

3. The respondent disclosed a credit card company as the payee on a total of approximately \$9,500 in political expenditures on his July 2006 semiannual report, and on a total of approximately \$5,300 on his January 2007 semiannual report.
4. The complaint also alleged that the respondent failed to disclose the expenditures at issue during the proper reporting period. There is no evidence to support the allegation.
5. In response to the complaint, the respondent filed a sworn response stating that it was not until he received notice of the complaint that he became aware of section 20.59 of the Ethics Commission Rules that requires a filer reporting a credit card expenditure to identify the vendor who receives payment from the credit card company.
6. The respondent corrected the July 2006 semiannual report to properly disclose the expenditures but has not corrected the January 2007 semiannual report.

Improperly Reported Political Expenditures as Reimbursements

7. The complaint alleges that the respondent improperly reported political expenditures to individuals and an entity as reimbursements.
8. The respondent's July 2005, January 2006, and July 2006 semiannual reports disclose reimbursements to individuals and an entity totaling approximately \$45,800.
9. The respondent's affidavit filed in response to the sworn complaint states that when they reported reimbursements to staff they reported the information required by statute as they understood the requirements.
10. The respondent corrected the reports to properly disclose the expenditures.

Failure to Properly Report, and Improperly Reimbursed, Political Expenditures Made with Personal Funds

11. The complaint alleges that the respondent failed to properly report, and improperly reimbursed, political expenditures made with personal funds.
12. The respondent's July 2005 semiannual report disclosed one expenditure from political contributions to himself for "Expense reimbursement" in the amount of \$6,000 on Schedule F.
13. The respondent's January 2006 semiannual report disclosed one expenditure from political contributions to himself for "Expense reimbursement" in the amount of \$24,841.14 on Schedule F.

14. The total amount at issue is approximately \$30,841. The political expenditures had not been previously disclosed indicating that reimbursement was intended.
15. The respondent's affidavit filed in response to the sworn complaint states:

Section 20.63(c), Texas Ethics Commission Rules, states that 'a candidate or officeholder must report a political expenditure from personal funds as a political expenditure, not as a political contribution or a loan.' Following these instructions, we reported these reimbursements on Schedule F – the schedule for political expenditures. While Schedule G may have been more appropriate, we have found no guidance in statute, rule or guide stating that reporting these expenditures on Schedule F is prohibited.
16. The respondent's affidavit also states: "The allegation regarding the conversion of political contributions to personal use is intertwined with the allegation discussed above. As mentioned, all reporting was done in good faith and at no time was it my intention or that of my campaign to convert political contributions to personal use."
17. The respondent corrected the reports to properly disclose the expenditures.

Making an Improper Payment and Failing to Properly Report a Payment to a Business in Which the Respondent Has an Interest

18. The complaint alleges that the respondent made an improper payment and failed to properly report political expenditures made to a business in which the respondent has an interest.
19. The respondent's July 2005 semiannual report disclosed two political expenditures on Schedule H (Payment From Political Contributions To A Business of C/O) to a business, Estes, Inc. The total of the expenditures is approximately \$1,560. The purpose of the expenditures is "Expense reimbursement."
20. The respondent's January 2006 semiannual report disclosed three expenditures on Schedule F (Political Expenditures) to a business, Estes, Inc. The purpose of two of the expenditures, one in the amount of \$12,184.80 and one in the amount of \$259.50 is, "Travel reimbursement." The purpose of the third expenditure, in the amount of \$131.25 is, "Training expense reimbursement." The total of the expenditures is approximately \$12,576.
21. The evidence indicates that the respondent is chairman of Estes, Inc., a company that is in the agriculture and specialty chemical business.
22. The respondent submitted an affidavit stating that he used a credit card for both political and business purposes. He states that rather than paying the credit card directly out of the

campaign account for the political expenditures, Estes, Inc. paid the entire bill and the campaign paid Estes, Inc. for the portion of the bill that covered political expenditures.

23. The respondent corrected the reports to properly disclose the expenditures.

Converted Political Contributions to Personal Use

24. The complaint alleges that the respondent converted political contributions to personal use.
25. The respondent's January 2007 semiannual report disclosed eight expenditures from political contributions to "Airplane Account – Chase Bank" for "Travel Expense" for a total amount of approximately \$82,180.
26. The respondent's affidavit states:

The final allegation concerns payments made to an "airplane account" for use of a leased plane. [The complainant] falsely assumes that since these payments were sent to the post office box shared with Estes, Inc., that Estes, Inc. owns the plane. In fact, this plane is leased by Estes, Inc. for business use, by myself for personal use, and for state/political related travel. When the plane is used for political or officeholder purposes, payments are made to an account at Chase Bank to cover costs associated with this use.

Failure to Properly Report Political Expenditures

27. The complaint alleges that the respondent failed to properly report political expenditures.
28. The respondent's January 2007 semiannual report disclosed eight expenditures from political contributions to "Airplane Account – Chase Bank" for "Travel Expense" for a total amount of approximately \$82,180.
29. The respondent has not filed a corrected report for the January 2007 semiannual report.

IV. Findings and Conclusions of Law

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

Failure to Properly Report Political Expenditures Made by Credit Card

1. A campaign finance report must 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. For purposes of reporting under chapter 254 of the Election Code, 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).
3. With respect to a political expenditure made by credit card during the reporting period for a semiannual campaign finance report, the amount of the political expenditure is readily determinable by the person making the expenditure on the date the person receives the credit card statement that includes the expenditure. ELEC. CODE § 254.035(c).
4. 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.
5. On the two reports at issue, the respondent disclosed the name of the credit card company and not the names or addresses of the vendors who actually received payment from the credit card company for approximately \$14,800 in political expenditures. The improper reporting was clear from the face of the reports. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules.
6. There is no evidence that the respondent disclosed the political expenditures at issue in the wrong reporting period. Therefore, there is no evidence that the respondent violated section 254.035 of the Election Code.

Improperly Reported Political Expenditures as Reimbursements

7. 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(a)(3). 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. When a political expenditure is made on behalf of a candidate or officeholder by a staff member or campaign worker, the name of the actual payee must be disclosed, not the name of the staff member or campaign worker. Ethics Advisory Opinion No. 450 (2003); Ethics Commission Rules § 20.62.
8. There is credible evidence that on three campaign finance reports the respondent failed to disclose the required information regarding the actual payee for goods and services and failed to describe the categories of goods or services received in exchange for political expenditures totaling approximately \$45,800. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.

Failure to Properly Report, and Improperly Reimbursed, Political Expenditures Made with Personal Funds

9. A campaign finance report must 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).
10. A candidate or officeholder who makes political expenditures from his or her 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 that covers the period during 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); Ethics Commission Rules § 20.63.
11. The evidence shows that the respondent made approximately \$30,841 in political expenditures from his personal funds without properly reporting the political expenditures, and indicate that reimbursement was intended. The respondent improperly reimbursed himself from political contributions for those political expenditures. Therefore, there is credible evidence that the respondent violated sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules.

Making an Improper Payment and Failing to Properly Report a Payment to a Business in Which the Respondent Has an Interest

12. 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 candidate or officeholder or by the spouse or dependent child of the candidate or officeholder 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; or the candidate or officeholder or the spouse or dependent child of the candidate or officeholder. ELEC. CODE § 253.041(a).
13. A payment that is made from a political contribution to a business described by Election Code section 253.041(a) and that is not prohibited by that subsection may not exceed the amount necessary to reimburse the business for actual expenditures made by the business. ELEC. CODE § 253.041(b).
14. Each report by a candidate or officeholder must include on a separate page or pages of the report, the identification of any payment from political contributions made to a business in

- which the candidate 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. ELEC. CODE § 254.061.
15. A campaign finance report must 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).
 16. The evidence shows that the respondent serves as an officer of the business, Estes, Inc.
 17. The evidence shows that the respondent used a credit card for both political and business purposes. The evidence shows that the business, Estes, Inc., paid the entire credit card bill and then the campaign paid Estes, Inc. for the portion of the bill that covered political expenditures made with the credit card.
 18. The evidence indicates that Estes, Inc. is a business of the respondent. There is no evidence that the payments made by the respondent to Estes, Inc. were for the personal services of the respondent or the respondent's spouse or dependent child. There is no evidence that the payments made by the respondent to Estes, Inc. were for actual expenditures made by the business. Therefore, there is no evidence that the respondent violated section 253.041 of the Election Code.
 19. The evidence indicates that the respondent did not make payments from political contributions to Estes, Inc. for goods or services. Therefore, the respondent was not required to use Schedule H to disclose any such payments. Therefore, there is credible evidence that the respondent did not violate section 254.061 of the Election Code.
 20. The respondent disclosed that the purpose of payments to Estes, Inc. were reimbursement for expenses, travel, and training. The evidence shows that the expenditures were actually credit card expenditures. The respondent was required to disclose the full name and address of the payees, and the dates and purposes of these political expenditures. A violation of section 254.031(a)(3) was found for the respondent's failure to disclose this information under the allegation of failure to properly report political expenditures made by credit card.

Converted Political Contributions to Personal Use

21. 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).
22. "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. ELEC. CODE § 253.035(d).

23. The respondent's affidavit states that the payment to the account at Chase Bank were made to cover costs of using a leased plane for political or officeholder purposes. There is no evidence to refute his assertion.
24. There is credible evidence that the respondent made the payments from political contributions at issue for political or officeholder purposes. Therefore, there is credible evidence that the respondent did not violate section 253.035 of the Election Code.

Failure to Properly Report Political Expenditures

25. The respondent disclosed "Airplane Account – Chase Bank" as the name of the payee for approximately \$82,200. The respondent's affidavit states that these expenditures were for the lease of an airplane. The respondent was required to disclose as payee the name and address of the company from which he leased the airplane. The respondent failed to do so, therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code as to these expenditures.

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 campaign finance report must 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 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 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 also acknowledges that a candidate or officeholder who makes political expenditures from his or her 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 that covers the period during 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 acknowledges that the proper

way to disclose a political expenditure by a staff member is in accordance with section 20.62 of the Ethics Commission Rules. 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 \$52,300 civil penalty. If the respondent corrects his January 2007 semiannual report by May 1, 2008, to properly disclose the missing information the civil penalty will be reduced to \$17,300.

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-270115.

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

Craig Estes, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director