

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOHN CARONA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-270117

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 10, 2008, to consider sworn complaint SC-270117. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.061 of the Election Code and section 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 improperly reported political expenditures made with personal funds, improperly reported political expenditures as reimbursements, improperly reported political expenditures made to the respondent's business, and made unlawful political expenditures to the respondent's business.

III. Facts Supported by Credible Evidence

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

1. The respondent is a current state senator.
2. The reports at issue are January and July semiannual campaign finance reports due in 2005 and 2006.
3. The reports disclosed approximately \$8,746 in political expenditures from political contributions as reimbursements to staff. Of the reimbursements at issue, approximately \$8,063 in expenditures were disclosed as an "expense and mileage reimbursement." Approximately \$683 in expenditures were disclosed as reimbursements for other goods and services and did not disclose the actual payees.

4. In response to the complaint, the respondent corrected approximately \$5,701 of the expenditures to disclose the actual payees. The respondent also corrected approximately \$995 in expenditures by indicating that they were mileage reimbursements to staff. The respondent also corrected approximately \$2,051 in expenditures by adding the amounts to the total amount of political contributions of \$50 or less in the respective report.
5. The respondent's reports disclosed approximately \$76,090 in payments made from political contributions to "Associa" from January 20, 2005, to May 31, 2006.
6. According to records of the United States Patent and Trademark Office, "Associa" was registered as a trademark of Associations, Inc. ("the corporation"), in May 2005. Associations, Inc. is a corporation that filed articles of incorporation with the Texas Secretary of State on December 12, 2001. The address of "Associa" disclosed in the respondent's reports is the same address the corporation provided in its articles of incorporation.
7. The respondent indicated in personal financial statements that he was the president of the corporation from 2003 to 2006, that he was the chairman of the board of the corporation in 2006, and that he held 50 percent or more of the outstanding ownership in the corporation during calendar years 2003 to 2006.
8. Of the expenditures to the corporation, approximately \$69,011 were disclosed on Schedule F of the respondent's July 2006 report as political expenditures made from political contributions. The remaining approximate \$7,079 in expenditures were disclosed as payments made to the respondent's business on Schedule H of his January and July 2005 semiannual reports.
9. In response to the complaint, the respondent corrected the approximate \$69,011 in expenditures that were originally disclosed on Schedule F on the July 2006 report by moving them to Schedule H. The respondent swears in the correction to the report that he filed the corrected report not later than the 14th business day after he learned that the report as originally filed was inaccurate or incomplete and that any error or omission in the report as originally filed was made in good faith. The respondent also states that any errors in reporting were the result of either clerical error or an honest misunderstanding of the reporting requirements and that immediately upon receipt of the notice from the commission of the alleged violations, corrections of his campaign finance reports were made and submitted to the commission.
10. The complaint alleges that the respondent failed to disclose approximately \$175,789 in political expenditures made with personal funds. The allegation is based on the payments the respondent made to the corporation as reimbursements, including the payments made in December 2004. The respondent denies the allegation. The complaint included no evidence that any of the payments were connected with the respondent's use of his personal funds.

11. The complaint alleges that the expenditures the respondent made to the corporation were unlawful because of the respondent's interest in, and status as an officer of, the corporation. The complaint included no evidence to support the allegation other than the respondent's campaign finance reports.

IV. Findings and Conclusions of Law

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

1. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
2. 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(3). The criminal offense for filing an incomplete or untimely campaign finance report 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. Therefore, the allegations that the respondent failed to properly disclose political expenditures in the January 2005 semiannual report are based on alleged conduct that occurred more than two years before the complaint was filed and are not within the commission's sworn complaint jurisdiction.
3. A political expenditure means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
4. A campaign expenditure means, in pertinent part, a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment in connection with a campaign for an elective office. *Id.* § 251.001(6), (7).
5. An officeholder expenditure means, in pertinent part, a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment to defray expenses that are incurred by an 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(a)(6), (9).
6. In Ethics Advisory Opinion No. 450 (EAO 450), which is relevant to the reports at issue, the commission stated that in a situation in which a member of a candidate's campaign staff makes a campaign expenditure on behalf of the candidate and later receives reimbursement from the candidate, the candidate is required to 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 campaign worker made the expenditure, and explaining in the “purpose” section that a campaign worker made the expenditure from personal funds and that the candidate subsequently reimbursed the campaign worker. Ethics Advisory Opinion No. 450 (2003).
7. 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(a).
 8. In Ethics Advisory Opinion No. 347 (EAO 347), the commission stated 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. Ethics Advisory Opinion No. 347 (1996).
 9. All of the approximate \$995 in expenditures for mileage were originally disclosed as “expense and mileage reimbursements,” but the amounts specifically attributable to mileage were not disclosed until the reports were corrected after the complaint was filed. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules in connection with approximately \$995 in reimbursements for mileage because the amounts and purposes of the expenditures were not properly disclosed.
 10. Of the remaining approximate \$7,751 in reimbursements to staff, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code or section 20.61(a) of the Ethics Commission Rules in connection with the approximate \$2,051 in expenditures because itemization was not required.
 11. Although the respondent disclosed the remaining approximate \$5,700 in reimbursements to staff, he did not disclose the actual payees of the political expenditures. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules by failing to properly disclose the expenditures.
 12. A campaign finance report of a candidate 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(5).
 13. A candidate means, in pertinent part, a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office, including the filing of a campaign treasurer appointment. *Id.* § 251.001(1)(A).

14. The respondent was required to disclose the use of political contributions to make political expenditures to the corporation at issue. The respondent disclosed the expenditures at issue on his original reports, but he used the wrong schedule to disclose approximately \$69,011 of the expenditures. Therefore, there is credible evidence that the respondent violated section 254.061(5) of the Election Code in connection with the expenditures. This error was isolated to the period covered by the respondent's July 2006 semiannual report and the remaining expenditures at issue made to the corporation were reported on the correct schedule.
15. A candidate is required to report a campaign expenditure from personal funds. ELEC. CODE § 20.63(a).
16. 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(d).
17. There is no evidence that any of the expenditures at issue in the complaint were made to reimburse the respondent for expenditures made with personal funds. Therefore, there is credible evidence that the respondent did not violate section 253.035(h) of the Election Code or section 20.63(d) of the Ethics Commission Rules.
18. If a candidate or officeholder knowingly makes or authorizes a payment 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, the payment may not exceed the amount necessary to reimburse the business for actual expenditures made by the business. ELEC. CODE § 253.041(b).
19. 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(3). The criminal offense for making an unlawful payment to a business in which a candidate has an interest is a Class A misdemeanor. ELEC. CODE § 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. Therefore, allegations relating to the payments made by the respondent to his business prior to February 13, 2005, are based on alleged conduct that occurred more than two years before the complaint was filed and are not within the commission's sworn complaint jurisdiction.

20. The evidence indicates that the respondent paid approximately \$76,090 from his political contributions to a corporation in which he held a participating interest of more than 10 percent and served as an officer. There is no evidence that the payments exceeded the amounts necessary to reimburse the corporation for its actual expenditures. Therefore, there is credible evidence that the respondent did not violate section 253.041(b) of the Election Code in connection with the 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, for all 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 political expenditures are made and the dates and purposes of the expenditures. The respondent acknowledges that the proper method of reporting reimbursements to staff members is in accordance with section 20.62 of the Ethics Commission Rules. 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 a campaign finance report of a candidate 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. 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, the commission imposes a \$1,300 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-270117.

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

John Carona, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director