

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GERALD EVERSOLE,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2712236 AND SC-2712237

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2009, to consider sworn complaints SC-2712236 and SC-2712237. 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 20.61 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaints alleged that the respondent improperly reported the dates and purposes of expenditures and converted political contributions to personal use.

III. Facts Supported by Credible Evidence

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

1. At the time relevant to the complaint, the respondent was the commissioner of Precinct 4 of Harris County and was re-elected to the office in the general election held on November 7, 2006, in which he was unopposed.
2. The expenditures at issue were disclosed as political expenditures in the respondent's January and July semiannual campaign finance reports due in 2007.
3. In response to the complaints, the respondent filed corrections to the reports on January 29, 2009, May 18, 2009, and June 5, 2009.

4. The complaints alleged that the respondent improperly disclosed the dates of approximately \$121,830 in expenditures to various payees in the respondent's January 2007 semiannual report.
5. The complaints alleged that the respondent failed to properly disclose the purposes of approximately \$204,292 in expenditures.
6. The expenditures at issue include approximately \$126,812 in expenditures made from political contributions for "public relations." The payees of the expenditures include restaurants and cafes; retailers of various goods, including sports equipment, clothing, gifts, collectibles, jewelry, books, health product retailers; entertainment venues; hotels; and other payees.
7. The expenditures at issue include approximately \$3,597 in expenditures from political contributions to various payees for "gifts," expenditures totaling approximately \$7,360 for "event expenses," and an expenditure of \$972 for "misc."
8. The expenditures at issue include an expenditure of \$27,990 to the Former Texas Rangers Foundation (foundation) in Wimberley, Texas, for "donation."
9. The expenditures at issue include an expenditure of \$16,550 to "Spring Tri-Club" for "public relations – livestock auction purchases" and expenditures totaling approximately \$6,074 to booksellers for "books."
10. The expenditures at issue include an expenditure of \$14,937 to a bank for "1120 POL tax deposit."
11. In response to the allegations, the respondent swore:

I am reviewing the reports with special attention to any issue related to personal use and will file corrections where necessary. Most of the items with a reported purpose of "public relations" were purchased and either donated or were used by me in either a fundraising or promotional capacity. After a complete review I shall inform you by separate affidavit of any corrections.
12. On January 15, 2008, the respondent's campaign issued a press release regarding his reports which stated:

"A number of errors were pointed out in our past reports. They were a result of poor reporting practices and ignorance of the applicable laws. I have taken the criticism to heart and adopted a 'best practices' approach to my

campaign finances. I have made a dramatic shift in procedures and practices,” Commissioner Eversole said.

Eversole continued, “First, I have asked former County Judge Robert Eckels to take over all campaign finances as of the beginning of the New Year. He is a gentleman known for adhering to the highest ethical standards. I appreciate his willingness to assist in helping me raise the bar. Going forward, I have removed myself from the operations and Judge Eckels will serve as treasurer having direct oversight of all future financial transactions.

“Second, I have retained legal counsel and professional assistance in the preparation of this report. With the help and assistance of others, I believe this report is free of the same errors that plagued past reports.

“Third, I have asked Judge Eckels to oversee a complete review of past filings and to help me put the finances of the campaign in order. It is no secret that numerous errors have been brought to light in past reports and I intend to see that those errors are corrected and brought into full compliance with the law.”

Eversole concluded, “I regret that I have not been more attentive to the details of my campaign finances. I have sought assistance from experts and made the necessary changes to minimize future errors and perform a complete review of past reports and amending and re-filing of those reports.”

13. The complaints alleged that the approximate \$204,292 in expenditures were converted to personal use.
14. The expenditures at issue include the expenditures for “public relations,” “gifts,” “event expenses,” “misc.,” “books,” and tax deposit and the expenditure to the “Spring Tri-Club.”
15. The expenditures at issue include the expenditure of \$27,990 to the Former Texas Rangers Foundation (foundation) in Wimberley, Texas, for “donation.” The foundation held a “Silver Stars & Six Guns 2006” gala in Kerrville, Texas, on September 30, 2006. According to the foundation’s website, over 620 guests attended the event and benefited the foundation and the Texas Rangers History and Education Center capital building campaign. The event included a live music performance and an auction, during which a Colt revolver with a holster, gun belt, and badge sold for \$19,000, in addition to a rifle. The website stated that “major buyers” at the auction included the respondent and his spouse. The respondent donated the items to charitable organizations after the expenditures were examined in news reports.
16. The expenditures include numerous payments by the respondent to Starbucks, restaurants, retail stores, and health product retailers.

17. KTRK News in Houston posted to its website a copy of the respondent's schedule covering January 1 to September 30, 2007, which KTRK stated it received from the respondent's office. The schedule, titled "Jerry's Weekly Planner," included "work out" in the afternoon in 1 to 3 days of each week in the schedule, except for those weeks that are indicated as vacations. The schedule also included numerous entries for meals at restaurants, some of which are the same restaurants to which the respondent disclosed making political expenditures for "public relations." Many of the entries for meals also included names of individuals, but the schedule did not indicate that the meals were related to campaign or officeholder activities or duties.
18. The expenditures include a payment of \$6,850 to the Astros Wives Organization, Inc., in Houston on October 10, 2006. According to an undated article on KTRK's Internet website, the expenditure was a bid on an auction item called the "'Florida getaway,' described by the charity as a fun packed vacation." The auction item included passes to entertainment parks, tickets to baseball games, and free lodging. The respondent also played golf during the trip and made political expenditures totaling \$3,186 for a hotel, car rental, golf, shopping, and a city tour.
19. The Houston Chronicle reported on November 29, 2007:

[Eversole] also said he and his wife took former Sam Houston State University baseball coach John Skeeters and his wife on a Florida vacation because Skeeters had treated his constituents well when they attended the school. Skeeters also had run baseball clinics in his precinct, he said.

Skeeters, who resigned as Sam Houston State University's coach in 2002, and Eversole were roommates at Sam Houston State University in the mid-1960s.

The commissioner paid more than \$6,800 for the trip at a charity auction put on by the Houston Astros' wives earlier this year. The auction raised money for the Houston Area Women's Center.

"The trip to Florida couldn't have been more legitimate," Eversole said. "I plan to cooperate with the Texas Ethics Commission and whoever else in authority that [sic] will be looking at this. If it's not legitimate, I'll reimburse (the expenses).

Bill Murphy & Chase Davis, *DA probes Eversole's campaign fund use*, HOUSTON CHRONICLE, Nov. 11, 2007, at A1.
20. According to the respondent's schedule, the respondent's schedule for Monday, March 12, 2007, stated "1:30 PM Leave for Florida" and stated "1:45 PM Return from Florida" on

Friday, March 16, 2007. The header for each day of the week stated “Spring Break – Florida” and the schedule provided no other information for the days when the respondent was in Florida.

21. The expenditures at issue include a \$4,200 payment to the North Harris Montgomery Community College Foundation (NHMCCF) on June 19, 2007, for “public relations.” The expenditure was for an annual fundraising event hosted by the NHMCCF, a 501(c)(3) organization, to raise funds for the North Harris Montgomery Community College District.
22. The schedule for March 24, 2007, stated “11:00 AM Spring Tri-Club Buyers Dinner @ Nagy Pavilion on Hardy Rd.” and “12:30 PM Spring Tri-Club Auction.” The schedule also included four entries regarding “Astros,” including “Astros Opening Game,” but did not indicate whether the entries are related to the respondent’s campaign or office. The schedule stated “China Trip” from May 16 to May 29, 2007, and provided no additional information.
23. In response to the allegations, the respondent swore that “most of the items with a reported purpose of ‘public relations’ were purchased and either donated or were used by me in either a fundraising or promotional capacity.” The respondent also provided sworn testimony before the commission regarding the allegations.
24. The respondent filed corrections to the reports to correct the purposes of approximately \$362,000 in expenditures, including the expenditures at issue.
25. The respondent swore that he reimbursed \$41,357.10 to his political funds from personal funds in connection with the expenditures at issue in the complaint, including the approximate \$10,036 in expenditures related to the Florida trip.

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 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).
2. A campaign finance report must include the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment. *Id.* § 254.031(a)(4).
3. For purposes of reporting under this chapter, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure.

- Id.* § 254.035(a). The amount of a political expenditure made by credit card in a period other than a period covered by a 30-day or 8-day pre-election report is readily determinable by the person making the expenditure on the date the person receives the credit card statement that includes the expenditure. *Id.* § 254.035(c).
4. A political expenditure means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
 5. 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).
 6. 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).
 7. Regarding the approximate \$121,830 in expenditures disclosed in the respondent's January 2007 report, there is insufficient evidence that the respondent disclosed incorrect dates for the expenditures. Therefore, there is insufficient evidence that the respondent violated section 254.031(a) of the Election Code in connection with the dates of the expenditures.
 8. 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).
 9. The respondent disclosed expenditures with purposes of "public relations," "gifts," "event expenses," and "misc." The reports did not adequately describe the categories of goods or services received in exchange for the expenditures. The respondent also corrected the purposes of expenditures in response to the complaints. The expenditures at issue include nonpolitical expenditures. Therefore, there is credible evidence that the respondent violated sections 254.031(a)(3) and (4) of the Election Code and section 20.61(a) of the Ethics Commission Rules by failing to properly disclose the purposes of expenditures.
 10. 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). The prohibition includes the personal use of an asset purchased with the contribution and the personal use of any interest and other income earned on the contribution. *Id.* § 253.035(c).

11. “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. *Id.* § 253.035(d).
12. Each candidate and each officeholder shall maintain a record of all reportable activity. *Id.* § 254.001(a). The record must contain the information that is necessary for filing the reports required by this chapter. *Id.* § 254.001(c). A person required to maintain a record under this section shall preserve the record for at least two years beginning on the filing deadline for the report containing the information in the record. *Id.* § 254.001(d).
13. In Ethics Advisory Opinion No. 405, the commission determined that a candidate or officeholder may not use political contributions to pay for family recreation or entertainment. Ethics Advisory Opinion No. 405 (1998).
14. In Ethics Advisory Opinion No. 407, the commission determined that an officeholder may use political contributions to pay clothing expenses only if the clothing is of a type appropriate for the performance of duties or activities of the office held, is not adaptable to general usage as ordinary clothing, and is not so worn. Ethics Advisory Opinion No. 407 (1998).
15. Regarding the expenditures of \$27,990 to the Former Texas Rangers Foundation and \$16,550 to the “Spring Tri-Club,” there is insufficient evidence that the respondent violated section 253.035(a) of the Election Code in connection with the expenditures.
16. Regarding the expenditure of \$14,937 for the “1120 POL tax deposit,” there is insufficient evidence that the respondent violated section 253.035(a) of the Election Code in connection with the expenditure.
17. In response to the complaints, the respondent swore that he reimbursed \$41,357.10 from his personal funds to his political contributions, which included approximately \$10,036 in expenditures for the trip to Florida that primarily furthered individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. Therefore, there is credible evidence that the respondent violated section 253.035(a) 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 these sworn complaints.

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 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. The respondent also acknowledges that a campaign finance report must include the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment. The respondent also acknowledges that a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. 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 \$75,000 civil penalty, contingent upon the respondent reimbursing \$41,357.10 to his political funds by July 9, 2009. Any reimbursements to political funds made pursuant to this order and agreed resolution shall be made from the respondent's personal funds and shall be reported on Schedule G (used for reporting political expenditures from personal funds) of the respondent's campaign finance reports and indicate that no reimbursement is intended. The respondent must provide sufficient evidence that the reimbursements have been made in accordance with this order.

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-2712236 and SC-2712237.

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

Gerald Eversole, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director