

TEXAS ETHICS COMMISSION

IN THE MATTER OF
STEPHEN FROST,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-280277

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 10, 2008, to consider sworn complaint SC-280277. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 253.035(a) of the Election Code, a law 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 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. During the period at issue the respondent was the state representative for District 1 (Bowie, Cass, Marion, and Morris counties).
2. The commission may not consider an allegation that is outside the applicable statute of limitations. The statute of limitations for an allegation that a person converted political contributions to personal use is three years. Ethics Commission Rules § 12.5. The allegations relating to political expenditures made or authorized more than three years before the complaint was filed are not within the commission's sworn complaint jurisdiction and cannot be considered.
3. The complaint alleges that the respondent converted political contributions to personal use when he used political contributions to pay for groceries, cooking supplies, food, cleaning supplies, and dry cleaning. The complaint included a list of expenditures from the respondent's July 2005 semiannual campaign finance report and July 2007 semiannual campaign finance report.

4. The respondent's July 2005 semiannual report disclosed nine political expenditures totaling approximately \$85 for dry cleaning, and one political expenditure of \$105.39 for food and cleaning supplies for an apartment in Austin.
5. The respondent's July 2007 semiannual report disclosed one political expenditure of \$89.58 for groceries and cooking supplies.
6. In response to the sworn complaint, the respondent submitted an affidavit in which he denies the allegations. The respondent swears all of the expenditures in question resulted from having to maintain a separate household in Austin.

IV. Findings and Conclusions of Law

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

1. 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). 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. *Id.* § 253.035(d). Personal use does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County. *Id.* § 253.035(d)(1).
2. The respondent swears that the expenditures at issue resulted from the costs of maintaining a residence in Austin. The precise amount of the expenditures at issue that is related to cleaning supplies is unclear, and the respondent has not provided that information. However, the evidence indicates that the portion of the expenditure at issue for cleaning supplies was not a conversion to personal use because the expenditure was made to defray ordinary and necessary expenses incurred in maintaining a residence in Travis County by a member of the legislature. Therefore, as to the portion of the expenditure at issue for cleaning supplies, there is credible evidence of no violation of section 253.035 of the Election Code.
3. The commission stated in Ethics Advisory Opinion No. 241 that it is permissible for a legislator to use political contributions to pay for "meals for state business not reimbursed by the state." Ethics Advisory Opinion No. 241 (1995). For meals that do not take place in connection with the conduct of state business, the commission stated that it did not interpret the "reasonable housing or household expenses" exception to extend to the cost of meals in Austin in general. *Id.*

4. The evidence indicates that the respondent converted political contributions to personal use when he used political contributions to pay for groceries, cooking supplies, and food. There is no evidence to indicate that these expenditures were made in connection with the respondent's performance of duties or activities as a candidate or officeholder. Therefore, as to the expenditures at issue for groceries, cooking supplies, and food, there is credible evidence that the respondent violated section 253.035 of the Election Code, as discussed in Ethics Advisory Opinion No. 241.
5. Legislators may not use political contributions to pay laundry and dry cleaning expenses incurred in Austin and that such an expenditure would constitute a conversion of a political contribution to personal use. Ethics Advisory Opinion No. 104 (1992).
6. The evidence indicates that the respondent converted political contributions to personal use when he used political contributions to pay approximately \$85 for dry cleaning. Such use of political contributions is prohibited by section 253.035 of the Election Code. Therefore, as to the expenditures at issue for dry cleaning, there is credible evidence that the respondent violated 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 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 this requirement 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 \$100 civil penalty, contingent upon the respondent using his personal funds to reimburse his political funds the amount at issue (\$84.54).

If the respondent does not reimburse the amount at issue, then the commission imposes a \$200 civil penalty to be paid from the respondent’s personal funds. The respondent shall furnish to the commission evidence of the required payments.

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-280277.

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

Stephen Frost, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director