

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOHN R. MARTIN III,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2803115

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 16, 2009, to consider sworn complaint SC-2803115. 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 571.1242 of the Government Code, 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 disclose political contributions and political expenditures, made or authorized campaign expenditures at a time when he did not have a campaign treasurer appointment in effect, 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 city council member for the City of Conroe and was first elected to that office in May 2002. The respondent was re-elected to that office as an opposed candidate in the June 2006 runoff election.
2. According to the records of the local filing authority, the respondent filed a campaign treasurer appointment that was signed on February 16, 2006, but that was not date stamped by the local filing authority.

30-day pre-election report

3. The respondent filed his 30-day pre-election campaign finance report for the May 2006 election on April 13, 2006. The report disclosed that it covered a period beginning February 16, 2006 through April 6, 2006. The correct period for the respondent's 30-day report was February 16, 2006, through April 3, 2006. The report disclosed approximately \$9,980 in political expenditures from personal funds. The report did not indicate that the respondent intended to reimburse himself for these expenditures from political contributions. The report also disclosed:

- A blank space for total political contributions of \$50 or less
- \$650 in total political contributions
- \$90 in political expenditures of \$50 or less
- \$10,466.20 in total political expenditures
- \$168.90 in total political contributions maintained
- A blank space for outstanding loans

8-day pre-election report

4. The respondent filed his 8-day pre-election campaign finance report for the May 2006 election on May 5, 2006. The report disclosed that it covered a period beginning April 6, 2006, through May 5, 2006. The correct period for the respondent's 8-day pre-election report was April 4, 2006, through May 3, 2006. The report disclosed approximately \$12,850 in political expenditures from personal funds. The report did not indicate that the respondent intended to reimburse himself for those expenditures from political contributions. The report did not disclose the purpose of one political expenditure. The report also did not disclose a complete address of one political expenditure. The report also disclosed:

- \$50 in total political contributions of \$50 or less
- \$2,200 in total political contributions
- A blank space for political expenditures of \$50 or less
- \$15,260.92 in total political expenditures
- \$8.72 in total political contributions maintained
- A blank space for outstanding loans

Runoff report

5. The respondent filed his runoff campaign finance report for the June 2006 runoff election on July 6, 2006. The report disclosed that it covered a period beginning May 6, 2006, through June 8, 2006. The correct period for the respondent's 8-day report was May 4, 2006, through June 7, 2006. The report disclosed approximately \$13,400 in political expenditures from personal funds. The report did not indicate that the respondent intended to reimburse himself for those expenditures from political contributions. Of the political expenditures

made from personal funds, the respondent disclosed a \$2,500 expenditure to himself as “reimbursement for campaign advance.” The report did not disclose a complete address for five out of 29 political expenditures. The report also did not disclose the purpose of one political expenditure. The report also disclosed:

- A blank space for total political contributions of \$50 or less
- \$3,850 in total political contributions
- A blank space for political expenditures of \$50 or less
- \$16,375.78 in total political expenditures
- \$1,814.57 in total political contributions maintained
- A blank space for outstanding loans

Final report #1

6. The respondent filed a final campaign finance report on June 29, 2006. The report disclosed that it covered a period beginning June 9, 2006, but included no ending date. The report disclosed approximately \$21,590 in political expenditures from personal funds. The report did not indicate that the respondent intended to reimburse himself for those expenditures from political contributions. Of the political expenditures made from personal funds, the respondent disclosed one \$700 expenditure to himself for “supplies,” and a \$1,687 expenditure to himself for “Reimburse-Catering Appreciation Dinner.” The report did not disclose an address for one political contribution. The report disclosed a contribution accepted on May 5, 2006, for \$500 outside of the period covered by the report. The report did not disclose a complete address for five political expenditures. The report disclosed 18 political expenditures totaling approximately \$9,240 with dates outside of the period covered by the report. The report disclosed one political expenditure which did not contain a complete date. The report also did not disclose the purpose of one political expenditure. The report also disclosed:

- A blank space for total political contributions of \$50 or less
- \$1,750 in total political contributions
- A blank space for political expenditures of \$50 or less
- \$25,109.17 in total political expenditures
- \$44.79 in total political contributions maintained
- A blank space for outstanding loans

Final report #2

7. The respondent filed a second final campaign finance report on January 16, 2007. The report disclosed that it covered a period beginning June 9, 2006, through December 31, 2006. Although the report disclosed \$25,395.12 in total political expenditures, the report only itemized one political expenditure dated September 26, 2006, for \$287.95 to The Courier for “advertising.” The report also disclosed:

- \$0 in total political contributions of \$50 or less
 - \$0 in total political contributions
 - \$0 in political expenditures of \$50 or less
 - \$25,395.12 in total political expenditures
 - \$79.98 in total political contributions maintained
 - \$0 in outstanding loans
8. The respondent's campaign finance reports filed prior to the respondent's 30-day pre-election report for the May 2006 election, disclosed approximately \$4,490 in political expenditures made from personal funds, and approximately \$12,530 in contributions from the respondent to his campaign. The political expenditures from personal funds disclosed on the reports did not indicate that the respondent intended to reimburse himself for those expenditures from political contributions. The respondent did not disclose any reimbursement to himself from campaign funds until his runoff campaign finance report filed in connection with the June 2006 runoff.
9. On March 10, 2008, staff mailed notice of this sworn complaint by certified mail. The notice was returned as unclaimed. On May 13, 2008, staff mailed notice of this complaint a second time by certified mail. Once again the notice was returned as unclaimed. On June 20, 2008, staff mailed notice of this complaint a third time using both certified mail and delivery confirmation. The notice sent by certified mail was returned as unclaimed, but the United State Postal Service website shows that the notice sent by delivery confirmation was delivered on June 21, 2008.
10. The commission has not received a response to the complaint.

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 Contributions or Political Expenditures

1. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. The report must also include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all

outstanding loans as of the last day of the reporting period. The report must also 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 report must also include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. The report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(1), (2), (3), (5), and (6).

30-day pre-election report

2. The complaint alleged that the respondent failed to disclose the proper amount of total political contributions accepted on his 30-day pre-election report for the May 2006 election. The allegation appears to be based on the assumption that the total amount of political contributions accepted may be calculated by subtracting the total amount of political contributions maintained from the amount of total political expenditures. However, the total amount of political contributions accepted cannot necessarily be calculated by using this method, and there is no additional evidence to show that the amount disclosed was incorrect. Therefore, there is insufficient evidence of a violation of section 254.031(a)(6) of the Election Code as to the total amount of political contributions accepted that was disclosed on the respondent's 30-day pre-election report for the May 2006 election.
3. The evidence indicates that the respondent left blank the spaces used to disclose his total political contributions of \$50 or less and the total of outstanding loans. Therefore, as to the respondent's 30-day pre-election report for the May 2006 election, there is credible evidence of violations of sections 254.031(a)(2) and (5) of the Election Code.

8-day pre-election report

4. The complaint alleged that the respondent failed to disclose the proper amount of total political contributions accepted on his 8-day pre-election report for the May 2006 election. The allegation appears to be based on the assumption that the total amount of political contributions accepted may be calculated by subtracting the total amount of political contributions maintained from the amount of total political expenditures. However, the total amount of political contributions accepted cannot necessarily be calculated by using this method, and there is no additional evidence to show that the amount disclosed was incorrect. Therefore, there is insufficient evidence of a violation of section 254.031(a)(6) of the Election Code as to the total amount of political contributions accepted that was disclosed on the respondent's 8-day pre-election report for the May 2006 election.
5. The evidence indicates that the respondent failed to disclose the purpose of one political expenditure, and the complete address of one political expenditure. The evidence also indicates that the respondent left blank the spaces used to disclose his total political

expenditures of \$50 or less, and total of outstanding loans. Therefore, as to the respondent's 8-day pre-election report for the May 2006 election, there is credible evidence of violations of section 254.031(a)(2),(3) and (5) of the Election Code.

Runoff Report

6. The complaint alleged that the respondent failed to disclose the proper amount of total political contributions accepted on his runoff report filed for the June 2006 runoff. The allegation appears to be based on the assumption that the total amount of political contributions accepted may be calculated by subtracting the total amount of political contributions maintained from the amount of total political expenditures. However, the total amount of political contributions accepted cannot necessarily be calculated by using this method, and there is no additional evidence to show that the amount disclosed was incorrect. Therefore, there is insufficient evidence of a violation of section 254.031(a)(6) of the Election Code as to the total amount of political contributions accepted that was disclosed on the respondent's report filed for the June 2006 runoff election.
7. The complaint alleged that the respondent failed to report addresses for multiple political expenditures. The evidence indicates that the respondent failed to disclose a complete address for five out of 29 political expenditures. The complaint also alleged that the respondent failed to report the purpose of one political expenditure. The evidence indicates that the respondent failed to disclose the purpose of one political expenditure. The evidence also indicates that the respondent left blank spaces used to disclose his total political contributions and expenditures of \$50 or less, and total of outstanding loans. Therefore, as to the respondent's report filed for the June 2006 runoff election, there is credible evidence of violations of section 254.031(a)(2),(3) and (5) of the Election Code.

Final Report #1

8. The complaint alleged that the respondent failed to disclose the proper amount of total political contributions accepted on his final campaign finance report filed on June 29, 2006. The allegation appears to be based on the assumption that the total amount of political contributions accepted may be calculated by subtracting the total amount of political contributions maintained from the amount of total political expenditures. However, the total amount of political contributions accepted cannot necessarily be calculated by using this method, and there is no additional evidence to show that the amount disclosed was incorrect. Therefore, there is insufficient evidence of a violation of section 254.031(a)(6) of the Election Code as to the total amount of political contributions accepted that was disclosed on the respondent's final campaign finance report filed on June 29, 2006.
9. The complaint alleged that the respondent failed to report the address of one political contribution. The evidence indicates that the respondent failed to disclose a complete address for one political contribution. The complaint also alleged that the respondent disclosed political contributions and political expenditures which should have been disclosed

on previously filed campaign finance reports. The evidence indicates that the respondent reported one political contribution of \$500 and 18 political expenditures totaling approximately \$9,240 with dates outside of the period covered by the report.

10. The evidence also indicates that the respondent failed to disclose a complete address for five political expenditures. The evidence also indicates that the respondent failed to disclose a complete date for one out of 35 political expenditures. The evidence also indicates that the respondent failed to disclose the purpose of one political expenditure. The evidence also indicates that the respondent left blank spaces used to disclose his total political contributions and expenditures of \$50 or less, and total of outstanding loans on the report at issue. Therefore, there is credible evidence of violations of section 254.031(a)(1),(2),(3) and (5) of the Election Code.

Authorized Campaign Expenditures at a Time when a Campaign Treasurer Appointment was not in Effect

11. An expenditure is 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. ELEC. CODE § 251.001(6).
12. A political expenditure means a campaign expenditure or an officeholder expenditure. ELEC. CODE § 251.001(10).
13. A campaign expenditure is an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. ELEC. CODE § 251.001(7).
14. An officeholder expenditure means an expenditure made by any person 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. ELEC. CODE § 251.001(9).
15. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE § 253.031.

16. The designation of a report as a final report relieves the candidate of the duty to file additional reports as a candidate and terminates the candidate's campaign treasurer appointment. ELEC. CODE § 254.065(b).
17. The complaint alleged that the respondent made a campaign expenditure at a time when a campaign treasurer appointment was not in effect. The complaint is based on a \$287.95 political expenditure to "The Courier" for "advertising" on September 26, 2006, that was disclosed on the respondent's second final report filed on January 16, 2007. The complainant did not provide additional evidence to show that the expenditure at issue was a campaign expenditure. The respondent had previously filed a report designated as his final report on June 29, 2006, which terminated the respondent's campaign treasurer appointment. Although the evidence indicates that the expenditure occurred at a time when the respondent did not have a campaign treasurer in effect, the evidence is insufficient to show whether the expenditure at issue was a campaign expenditure. Therefore, there is insufficient evidence of a violation of section 253.031 of the Election Code.

Improperly Reimbursed Political Expenditures made from Personal Funds

18. A candidate who makes political expenditures from the candidate's personal funds may reimburse those personal funds from political contributions only if: (1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures; and (2) 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).
19. 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).
20. The complaint alleged that the respondent improperly reimbursed himself for political expenditures from personal funds. The allegations are based on one \$2,500 expenditure to the respondent disclosed on his runoff report as "Reimbursement for Campaign Advance," and two expenditures totaling approximately \$2,390 to the respondent disclosed on his first final report (filed June 29, 2006), for "supplies," and "Reimburse-Catering Appreciation Dinner." The expenditures at issue were disclosed on Schedule G as political expenditures made from personal funds with the respondent disclosed as the payee. It appears that the respondent may have disclosed reimbursement to himself on the wrong schedule since Schedule F is the proper schedule for disclosing political expenditures made from political funds.
21. Previous reports filed by the respondent disclosed numerous expenditures as political expenditures from personal funds, but did not indicate that he intended to reimburse himself from political contributions. The disclosures at issue indicate that the respondent reimbursed himself. But the payees, dates, and purposes of the expenditures for which the respondent

reimbursed himself are unclear. By showing expenditures to himself, the respondent failed to disclose the actual payees, dates, and purposes of the expenditures from personal funds.

22. 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, disclosing the actual payees, dates, and purposes of the expenditures and checking the box labeled "reimbursement from political contributions intended." Alternatively, the expenditures could have been reported as a loan on Schedule E. The evidence indicates that the respondent did not properly disclose political expenditures from personal funds on the reports at issue either on Schedule G or on Schedule E. Therefore, there is credible evidence of violations of section 253.035(h) of the Election Code.

Failure to Respond to Notice of a Sworn Complaint

23. A respondent must respond to the notice of a Category Two violation not later than the 25th business day after the date the respondent receives the notice. Failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. GOV'T CODE § 571.1242(a)(c).
24. United State Postal Service records show that the notice of this complaint was delivered on June 21, 2008. The notice stated that the respondent was required to respond within 25 business days from receipt of the notice. The respondent failed to respond. Therefore, there is credible evidence of a violation of section 571.1242 of the Government 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 must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. The report must also include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial

institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. The report must also 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 report must also include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period.

The respondent also acknowledges that a candidate who makes political expenditures from the candidate's personal funds may reimburse those personal funds from political contributions only if: (1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures; and (2) the report clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement.

The respondent also acknowledges that a respondent must respond to the notice of a Category Two violation not later than the 25th business day after the date the respondent receives the notice.

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 \$1,200 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-2803115.

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

John R. Martin III, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director